

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

RECEIVED
DEC 27 2017
SC Court of Appeals

Appellate Case No. 2017-001-001483

WCC File No. 1516896

Herbert Randall, Employee/Claimant

Respondent/Appellant

v.

Palmetto State Transportation, Employer
Cherokee Insurance Company, Carrier.

Appellant/Respondent

RECORD ON APPEAL

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The South Carolina Court of Appeals

Herbert Randall, Employee, Claimant, Respondent-Appellant,

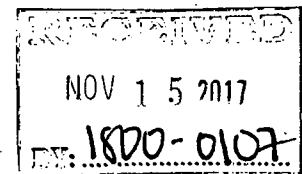
v.

Palmetto State Transportation, Employer, and Cherokee Insurance Company, Carrier, Appellants-Respondents.

Appellate Case No. 2017-001483

Trial Court Case No. 1516896

ORDER



The motion to allow late filing for the respondent's initial brief of the respondent/appellant is hereby Granted. The respondent's initial brief of the respondent/appellant has been received and accepted as filed.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED

11-13-17

Columbia, South Carolina

cc:

George D. Gallagher, Esquire
Jeffrey Dean Ezell, Esquire

Full Commission Order
SCWCC File No: 1516896

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Herbert Randall,)
Employee/)
Claimant)
Vs.)
Palmetto State Transportation,)
&)
Cherokee Insurance Company)
Employer and)
Carrier (defendants).)

BEFORE
THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

ORDER OF
FULL COMMISSION
W.C.C. File No.: 1516896

AFFIRM WITH AMMENDMENTS

Date of Hearing: April 19, 2017

Location of Hearing: Columbia, SC

Claimant/Cross-Appellant/
Respondent represented by: Jeffrey D. Ezell
Attorney at Law
Greenville, SC

Defendants/Cross-Respondent/
Appellant represented by: George Gallagher
Attorney at Law
Columbia, SC

Purpose: To determine issues as appealed by the parties
from the Order of Commissioner Campbell

Decision and Order: Commissioners James, McCaskill, and Taylor
South Carolina Workers' Compensation
Commission
(Order Assigned to Commissioner Taylor)

This matter came before the Full Commission upon appeals by both parties. The matter was originally heard by Commissioner Campbell who made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. *Claimant sustained an admitted injury by accident to his back, cervical spine, and wrist arising out of and in the course and scope of his employment on 10/31/15. The Claimant was driving an 18-wheel tractor/trailer truck in Texas. The time was approximately 1:30 A.M. and the weather was rainy. He was travelling eastbound on Interstate 10 going toward Beaumont, Texas. There had been an accident on the eastbound side, causing traffic to come to a stop. The Claimant was completely stopped in the right lane, and put on his four-way flashers because of the stopped traffic. He was stopped approximately 20 feet from the vehicle in front of him. When the Claimant looked in his mirror he saw another vehicle stopped behind him. Within just a few seconds, he was violently struck in the rear end of the truck by the vehicle that was stopped behind him. The driver of another vehicle struck the vehicle behind the Claimant, continuing into the truck/trailer driven by the Claimant. The impact was so severe, the vehicle behind the Claimant (which was a pickup truck) was totally destroyed, and the force of the impact caused the frame on the Claimant's trailer to break. The police investigating the accident charged the driver with DUI. The impact was so sudden and sharp the Claimant became pinned against the dash of the semi-truck, thus resulting in the injury to his low back, cervical spine, and wrist.*
2. *Claimant alleges additional injuries to his lower back, left leg, left arm, and psyche. The existence of these injuries is uncontroverted. The impact was so severe that he was thrown about and pinned inside his vehicle.*
3. *The Claimant underwent a Cervical MRI on November 23, 2015 which showed prominent disc bulges and hypertrophy at C5/6 and C6/7 resulting in moderate to severe*

spinal stenosis with contact with the spinal cord. (See Claimant's APA #5, p. 55 – emphasis added)

4. *In support of his claim for a low back injury, Claimant's APA 5, an MRI of the lumbar spine, shows that he had multi-level disc bulging, most prominent at L4/5 with stenosis and subannular fissuring and severe inferior neural foraminal encroachment. (See Claimant's APA #5, pp. 52 – 53) I find that the Claimant's claim for low back injury is valid and find said claim for low back injury to be compensable.*
5. *The Claimant's TTD benefits were terminated on 12/06/2015 based on a post-accident drug test as reflected on the Form 15(II) filed with the Commission on 12/17/2015. There is no evidence that this Form 15 was ever served on the Claimant as required by Reg. 67-504(A), as such, the Claimant contends that benefits were improperly stopped and he is entitled to back benefits from the 12/06/2015, as well as a 25% penalty. (See Claimant's APA #10, p. 77)*
6. *There is no evidence whatsoever that the Claimant was intoxicated at the time of the accident, nor is there any evidence that any alleged intoxication was the proximate cause of the accident. As stated hereinabove, the Claimant's truck was struck from behind while he was at a complete stop. As such, there is nothing the Claimant could have done to avoid the accident.*
7. *Claimant underwent various evaluations and treatments for his admitted and alleged work-related injuries.*
8. *On 02/22/16, Dr. Philip Hodge of Greenville Health System Neurosurgery – Cross Creek opined the Claimant's MRI of the lumbar spine shows an annular tear and disc protrusion without neurologic compression at L4-5 and MRI of the cervical spine shows C5-6 broad-based disc protrusion without neurologic compression and C6-7 broad-based disc protrusion osteophyte lacking neural compression. In addition, Dr. Hodge opined these findings likely represent a combination of chronic disease and acute injury or at the very least, a chronic condition that was exacerbated by his injury. Dr. Hodge further opined Claimant would not benefit from surgery for any of his symptoms and recommended continued non-operative treatment. (Claimant's APA #6, p.59)*

9. *On 08/11/2016 FNP Jennifer F. Turner of Upstate Spine and Neurosurgery Center, PC opines MRI of lumbar spine is unremarkable and no surgical recommendation based on this. In addition, FNP Turner opines there is C5-6 and C6-7 broad-based disc bulging with spinal cord compression and this may be result of accident. FNP Turner also notes Dr. Chittum recommends a C3-7 ACDF surgery. (Claimant's APA #8, p. 72)*
10. *On 10/16/2016, in a psychiatric evaluation for the Claimant, Dr. Patrick B. Mullen of Poinsett Psychiatric Group opined to a reasonable degree of medical certainty that all of Claimant's problems are due to his wreck – both his spinal problems and his depression. (Claimant's APA #9, p. 76)*
11. *The Defendants submitted no evidence or testimony to controvert the findings and conclusions of Dr. Mullen.*
12. *On 11/01/2016, in an IME for the Defendants, Dr. Michael N. Bucci of Piedmont Spine and Neurosurgical Group, PA opined Claimant would likely benefit from Pain Management and epidural steroid injections greater than he (would) from surgery at this time. (Claimant's APA #10, p. 79)*
13. *On 11/22/2016, on a questionnaire for the Claimant, Dr. Bucci opined to a reasonable degree of medical certainty that Claimant is not capable of working at this time in any capacity, nor has he been capable of working since his pain and problems began in his neck and low back following the rear end collision on 10/31/2015. (Claimant's APA #10, p. 81 – emphasis added)*
14. *On 12/07/2016, at the Hearing before the Single Commissioner, Defendants stipulated to providing Claimant with pain management as recommended by Dr. Bucci.*
15. *The Claimant is not at MMI.*
16. *Claimant is entitled to an evaluation and medical treatment by a pain management specialist of the Defendants' choosing, as stipulated to by Defendants at the Hearing. Defendants are to arrange this evaluation and treatment immediately.*
17. *Claimant's severe psyche issues are causally related to his work-related accident and are; therefore, compensable. Claimant is entitled to an evaluation by psychiatrist of the Defendants' choosing for determination of treatment and Defendants are to arrange this evaluation and treatment immediately.*

18. *Claimant's request for an award of TTD based on Defendants not following proper procedure with the filing for Form 15, pursuant to Commission Regulation 67-504, lacks merit as the regulation does not provide for any entitlement to TTD for failing to follow proper procedure pursuant to the regulation.*
19. *The Defendants provided no evidence that either of the purported Forms 15 (12/10/17 or 6/3/16) were ever properly served on the Claimant or his attorney.*
20. *Upon review of the Commission's file, which is a part of the record, I hereby find that the Defendant's filing of the Form 15(II) on 12/17/2015 was timely for the termination of TTD on 12/06/2015. Therefore, defendants were in compliance and are not subject to an assessment of a penalty for failing to file a form, pursuant to 42-19-30 and 42-3-105.*
21. *On 12/07/2016, at the Hearing before the Single Commissioner, the employer testified that Claimant was terminated for not following up on a federally required substance abuse program (SAP) to regain his commercial driver's license, subsequent to his failed drug test, and but for the fact that he was terminated, light duty would have been provided. In addition, the employer testified they sent an SAP package certified mail to the Claimant, but it's the driver's responsibility to follow through with the program. However, the employer failed to provide any evidence that Claimant ever received the information and Claimant testified he was never approached or informed by the employer about completing an SAP. Furthermore, the employer failed to provide any evidence or sworn testimony regarding the company's policy as to the timeframe the Claimant must have completed the SAP by to avoid termination. Therefore, I hereby find Claimant is entitled to an award of TTD on this basis from the date of termination (12/6/15) through the present and continuing at the Compensation Rate of \$766.05 per week.*
22. *Claimant's request for a 25% penalty assessment is hereby denied, as defendants were in compliance with 42-9-260.*

CONCLUSIONS OF LAW

1. *Pursuant to § 42-1-160, the Claimant has sustained a compensable injury by actions arising out of and in the course and scope of his employment with the Defendant, Palmetto State Transport.*

2. *Pursuant to § 42-1-120, the Claimant suffers disability and continues to suffer from same.*
 3. *There is no evidence that the Claimant was ever served with a copy of either of the Forms(s) 15 as required by Reg. 67-504(A).*
 4. *Upon review of the Commission's file, which is a part of the record, I hereby find that the Defendant's filing of the Form 15(II) on 12/17/2015 was timely for the termination of TTD on 12/06/2015. Therefore, defendants were in compliance and are not subject to an assessment of a penalty for failing to file a form, pursuant to 42-19-30 and 42-3-105.*
- Based upon those Findings of Fact and Conclusions of Law, Commissioner Campbell Ordered as follows:*

ORDER

The Claimant is entitled to back payment of Temporary Total Disability Benefits in the amount of \$45,196.95. Further, the Claimant is entitled to continuing Temporary Total Disability Benefits of \$766.05 per week until such time as these benefits are properly terminated in accordance with the South Carolina Workers' Compensation Act.

The Claimant is entitled to pain management and steroid injections as per the stipulation of the Defendants. The Claimant is also entitled to psychiatric evaluation and treatment.

The Findings of Fact and Conclusions of Law set forth hereinabove are hereby incorporated by reference as if repeated verbatim.

Both Parties timely filed Forms 30 and appropriate Exceptions. Briefs and Reply Briefs were likewise submitted by both Parties and duly and thoroughly considered by this Panel. This matter was heard on Oral Argument on April 19, 2017. Based upon the Forms 30, the Briefs of the Parties, and the Oral Arguments of counsel for both Parties, this Panel AFFIRMS the Order of Commissioner Campbell with the following AMMENDMENTS:

FINDING OF FACT No. 22 shall be amended to read as follows:

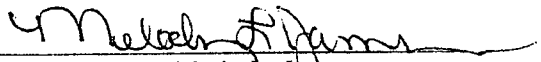
22. Claimant's request for a 25% penalty assessment is hereby denied, as defendants were in compliance with 42-9-260. The Claim was initially denied in good faith as Claimant

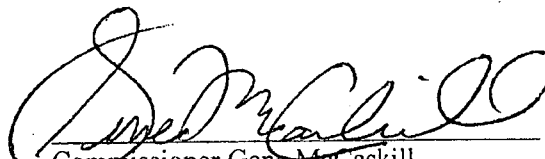
failed a post-accident drug test and contemporaneous medical treatment records placed
Claimant on modified duty.

IT IS SO ORDERED.

Date: 5/31/2017


Commissioner Aisha Taylor
Appellate Panel Chair


Commissioner Melody L. James


Commissioner Gene McCaskill

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 Valerie Deller on June 9, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Herbert Randall,)

Employee/
Claimant)

Vs.)

Palmetto State Transportation,
&
Cherokee Insurance Company)

Employer and
Carrier (defendants).)

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

**ORDER OF
SINGLE COMMISSIONER
W.C.C. File No.: 1516896**

Date of Hearing:

December 7, 2016

Location of Hearing:

Anderson, SC

Claimant represented by:

**Jeffrey D. Ezell
Attorney at Law
Greenville, SC**

Defendants represented by:

**George Gallagher
Attorney at Law
Columbia, SC**

Purpose:

To determine issues as set forth on Form 50/51

Decision and Order:

**Commissioner Mike Campbell
South Carolina Workers' Compensation
Commission**

APA SUBMISSIONS

By the Claimant:

APA 1	Acadian Ambulance	10/31/15	Pages 1- 10
APA 2	Christus Hospital	10/31/15	Pages 11 – 39
APA 3	Chandler Chiropractic	11/02/15 – 11/10/15	Pages 40 – 44
APA 4	Center for Health and Occupational Service	11/11/15 – 12/21/15	Pages 45 – 51
APA 5	Innervision Medical Imaging	11/23/15	Pages 52 – 55
APA 6	Dr. Philip Hodge Neurosurgery Cross Creek	02/22/16	Pages 56 – 66
APA 7	Peace Medical Center	04/18/16	Pages 67 – 69
APA 8	Upstate Spine and Neurosurgery Center	08/11/16	Pages 70 – 72
APA 9	Poinsett Psychiatric Group- Dr. Patrick Mullen	10/19/16	Pages 73 – 76

By the Defendant:

APA 9	Center for Health and Occupational Service	12/21/15 – 01/04/16	Pages 72 - 75

Exhibits by Defendant:

Exhibit 9	Pembroke Drug Testing	10/31/15	Page 76
Exhibit 10	Letter from Adjuster to WCC With Form 15		Pages 77 – 78
Exhibit 11	Deposition Transcript of Claimant	10/10/16	

STIPULATIONS

The parties stipulate the Claimant had an average weekly wage of \$1,495.78 with a corresponding compensation rate of \$766.05.

The Defendants also stipulated that the Claimant is entitled to pain management treatment as recommended by one of their chosen physicians, Dr. Michael Bucci.

STATEMENT OF THE CASE

This matter came before me on the Claimant's Form 50 seeking payment of back Temporary Total Benefits (TTD), payment of ongoing benefits, and medical care for both his physical injuries to his neck, low back, left upper extremity and left lower extremity, and also his psyche.

The Claimant sustained an admitted injury by accident on October 31, 2015, when the tractor trailer he was driving was stopped on the highway. His tractor trailer was struck violently from behind and he sustained and admitted injury to his cervical spine.

The Claimant also contended that the Defendants had improperly stopped payment of benefits by failing to serve him with copies of either of the two (2) Form(s) 15 they allegedly filed in this case. The Claimant contended that failure to serve him with either of these purported Form(s) 15 deprived him of the opportunity to sign Section III of the Form 15 contesting the Defendants' cessation of benefits. As such, Claimant contended that the Defendants had failed to comply with Reg. 67-504(A) and therefore he was entitled not only to back TTD benefits from the date said benefits were stopped (December 6, 2015), along with a twenty five (25%) percent penalty.

The Defendants contended that the benefits were properly stopped because the Claimant failed a post-accident drug screen by testing positive for marijuana. The Claimant contended that his post-accident drug screen had no bearing on the compensability of his case and that the Defendants clearly could not prove that he was intoxicated at the time of the accident, or that any alleged intoxication was the proximate cause of the injury. As such, the Claimant contended that ceasing his benefits based upon the positive post accident drug screen was improper.

The Defendants contended that the Claimant had been released to light duty work and that they would have had said light duty work available had the Claimant not been terminated due to the positive post-accident drug screen. The claimant pointed out that

one of the Defendants' chosen physician, Dr. Michael Bucci, opined that the claimant had been unable to work in *any* capacity since the date of the accident. (See APA #10, p. 81) Further, the Claimant testified, without contradiction by the Defendants, that he was never notified by the Defendants that he was required to complete a Substance Abuse Program (SAP) as a condition of his continued employment.

EVIDENCE IN THE CASE

The Claimant testified as the first witness in the case. He testified that most of his work history has been as a truck driver. He testified briefly as to the facts and circumstances surrounding the accident, the details of which are set forth herein below. He admitted that he failed a post-accident drug screen, having tested positive for marijuana, but denied being intoxicated or in any other way under the influence at the time of the accident. There was no evidence presented that indicated in any way that the claimant was intoxicated at the time of the accident, or that any alleged intoxication was the proximate cause of the Claimant's accident.

The accident involved a rear end collision that occurred while the Claimant was stopped on the highway as a result of a hazard. The Claimant's vehicle was struck violently from behind. As such, there is nothing the Claimant could have done to avoid the accident, and it is clear that, even if he had been intoxicated at the time of the accident, which he was not, said intoxication could not be the proximate cause of the accident. The force of the impact was sufficient that he was actually pinned inside his truck.

The Claimant testified that as a result of the accident, he has significant pain and problems in in neck, low back, left upper extremity and left lower extremity. He has had treatment and/or evaluations with the Christus Hospital in Beaumont, TX. The ER report from Christus Hospital documents the Claimant's complaints of pain in his neck, back, left leg and left hand/arm. (See APA #2, pp. 11 – 14, 17 – 19)

The Claimant was also seen at the Chandler Chiropractic Clinic, the Center for Health and Occupational Services, the Peace Medical Center, Innervision Medical Imaging, Dr. Phillip Hodge, Dr. Chris Chittum, Dr. Patrick Mullen, and Dr. Michael Bucci.

Dr. Phillip Hodge, one of the authorized treating physicians, opined that the Claimant had a chronic condition that was exacerbated by his accident and injury. (See APA #6, p.59) Dr. Chris Chittum had recommended that the Claimant undergo surgery including an Anterior Cervical Discectomy and Fusion at the C/3 – C/7 levels to which the Claimant was agreeable. Dr. Chittum's office also documented his complaints of pain in low back and leg. (See APA #8, pp. 70 – 72) Both Dr. Chittum and Dr. Hodge were authorized treating physicians chosen by the Defendants.

The Claimant was also sent by the Defendants to Dr. Michael Bucci, a Greenville area neurosurgeon with Piedmont Spine and Neurosurgical. Dr. Bucci noted the Claimant's pain in both his low back and neck. As was stipulated to by the Defendants, Dr. Bucci felt that the claimant would benefit from pain management and epidural steroid injections. Dr. Bucci also signed a statement indicating that:

I have examined and treated Herbert Randall and have reviewed His MRI results. It is my medical opinion that Mr. Randall is in need of Pain Management, to include pain medications as well as epidural steroid injections. It is my opinion to a reasonable degree of medical certainty, that:

Mr. Herbert Randall is not capable of working at this time in any capacity, nor has he been capable of working since his pain and problems began in his neck and low back following the rear end collision on October 31, 2015. (See APA #10, pp. 77 – 81)

The Claimant also alleged that he has sustained severe injuries to his psyche, namely severe depression, as a result of the accident, the pain, problems, and limitations placed upon him as a result of the accident, the loss of his chosen vocation, as well as the severe financial stress placed upon him as a result of the fact that he had not received any TTD benefits in one (1) full year. The Claimant lost his home and is now living in a camper in a friend's back yard.

The Claimant was sent by his attorney to Dr. Patrick Mullen, a Greenville psychiatrist. Dr. Mullen evaluated the Claimant and found the following Diagnosis:

AXIS I	Chronic pain disorder; depression, major, secondary to chronic Pain
AXIS II	No diagnosis
AXIS III	Status pose back injury – whiplash

AXIS IV Stressors severe – loss of income, loss of activity, loss of Possessions, loss of vocation
AXIS V Global Assessment of Functioning less than 50

Dr. Mullen also stated “He has no previous psychiatric history and I believe all of his problems are due to the wreck – both his spinal problems and his depression. If he had not had the wreck he would still be driving a truck.” (See APA 9, pp. 73 – 76) The Defendants submitted no evidence of any kind to controvert the findings of Dr. Mullen.

The Claimant testified that his benefits were stopped on December 6, 2015. He testified that he never received any Form 15 indicating the reason for the cessation of his benefits. He further testified that he was never afforded the opportunity to challenge the cessation of his benefits by signing Section III of the Form 15 which would have given him an expedited Hearing.

The Defendants called only one witness, Scott Justice to testify. Mr. Justice testified that the Claimant failed a post-accident drug screen, having tested positive for marijuana. Mr. Justice further testified that the Claimant was terminated for failing to follow up on a federally required substance abuse program (SAP) to regain his commercial drivers’ license (CDL). Mr. Justice testified that but for the fact that he was terminated, light duty work would have been provided.

Additionally, while Mr. Justice claimed that the SAP package was sent to the Claimant via certified mail, the Defendants provided no proof that the Claimant ever received said package, nor that he was ever advised that completion of the SAP was a condition of his continued employment.

Mr. Justice admitted that Palmetto State Transportation had used Cherokee Insurance Company for a considerable number of years. He also admitted that the work done by Cherokee Insurance Company in this matter was done on behalf of Palmetto State Transportation.

The Claimant testified that he was never approached or informed by his employer that he needed to complete the SAP as a condition of his continued employment. Likewise, the Defendant/Employer failed to provide any evidence or sworn testimony regarding the Defendant/Employer’s company policy as to the timeframe within which the Claimant was to have completed the SAP in order to avoid termination. Furthermore,

the Defendants provided no proof whatsoever that the Claimant was ever properly served with either of the Form(s) 15 allegedly filed in this matter.

FINDINGS OF FACT

1. Claimant sustained an admitted injury by accident to his back, cervical spine, and wrist arising out of and in the course and scope of his employment on 10/31/15. The Claimant was driving an 18-wheel tractor/trailer truck in Texas. The time was approximately 1:30 A.M. and the weather was rainy. He was travelling eastbound on Interstate 10 going toward Beaumont, Texas. There had been an accident on the eastbound side, causing traffic to come to a stop. The Claimant was completely stopped in the right lane, and put on his four-way flashers because of the stopped traffic. He was stopped approximately 20 feet from the vehicle in front of him. When the Claimant looked in his mirror he saw another vehicle stopped behind him. Within just a few seconds, he was violently struck in the rear end of the truck by the vehicle that was stopped behind him. The driver of another vehicle struck the vehicle behind the Claimant, continuing into the truck/trailer driven by the Claimant. The impact was so severe, the vehicle behind the Claimant (which was a pickup truck) was totally destroyed, and the force of the impact caused the frame on the Claimant's trailer to break. The police investigating the accident charged the driver with DUI. The impact was so sudden and sharp the Claimant became pinned against the dash of the semi-truck, thus resulting in the injury to his low back, cervical spine, and wrist.
2. Claimant alleges additional injuries to his lower back, left leg, left arm, and psyche. The existence of these injuries is uncontroverted. The impact was so severe that he was thrown about and pinned inside his vehicle.
3. The Claimant underwent a Cervical MRI on November 23, 2015 which showed prominent disc bulges and hypertrophy at C5/6 and C6/7 resulting in moderate to severe spinal stenosis *with contact with the spinal cord*. (See Claimant's APA #5, p. 55 – emphasis added)
4. In support of his claim for a low back injury, Claimant's APA 5, an MRI of the lumbar spine, shows that he had multi-level disc bulging, most prominent at L4/5

with stenosis and subannular fissuring and severe inferior neural foraminal encroachment. **(See Claimant's APA #5, pp. 52 – 53)** I find that the Claimant's claim for low back injury is valid and find said claim for low back injury to be compensable.

5. The Claimant's TTD benefits were terminated on 12/06/2015 based on a post-accident drug test as reflected on the Form 15(II) filed with the Commission on 12/17/2015. There is no evidence that this Form 15 was ever served on the Claimant as required by Reg. 67-504(A), as such, the Claimant contends that benefits were improperly stopped and he is entitled to back benefits from the 12/06/2015, as well as a 25% penalty. **(See Claimant's APA #10, p. 77)**
6. There is no evidence whatsoever that the Claimant was intoxicated at the time of the accident, nor is there any evidence that any alleged intoxication was the proximate cause of the accident. As stated hereinabove, the Claimant's truck was struck from behind while he was at a complete stop. As such, there is nothing the Claimant could have done to avoid the accident.
7. Claimant underwent various evaluations and treatments for his admitted and alleged work-related injuries.
8. On 02/22/16, Dr. Philip Hodge of Greenville Health System Neurosurgery – Cross Creek opined the Claimant's MRI of the lumbar spine shows an annular tear and disc protrusion without neurologic compression at L4-5 and MRI of the cervical spine shows C5-6 broad-based disc protrusion without neurologic compression and C6-7 broad-based disc protrusion osteophyte lacking neural compression. In addition, Dr. Hodge opined these findings likely represent a combination of chronic disease and acute injury or at the very least, a chronic condition that was exacerbated by his injury. Dr. Hodge further opined Claimant would not benefit from surgery for any of his symptoms and recommended continued non-operative treatment. **(Claimant's APA #6, p.59)**
9. On 08/11/2016 FNP Jennifer F. Turner of Upstate Spine and Neurosurgery Center, PC opines MRI of lumbar spine is unremarkable and no surgical

recommendation based on this. In addition, FNP Turner opines there is C5-6 and C6-7 broad-based disc bulging with spinal cord compression and this may be result of accident. FNP Turner also notes Dr. Chittum recommends a C3-7 ACDF surgery. **(Claimant's APA #8, p. 72)**

10. On 10/16/2016, in a psychiatric evaluation for the Claimant, Dr. Patrick B. Mullen of Poinsett Psychiatric Group opined to a reasonable degree of medical certainty that all of Claimant's problems are due to his wreck – both his spinal problems and his depression. **(Claimant's APA #9, p. 76)**
11. The Defendants submitted no evidence or testimony to controvert the findings and conclusions of Dr. Mullen.
12. On 11/01/2016, in an IME for the Defendants, Dr. Michael N. Bucci of Piedmont Spine and Neurosurgical Group, PA opined Claimant would likely benefit from Pain Management and epidural steroid injections greater than he (would) from surgery at this time. **(Claimant's APA #10, p. 79)**
13. On 11/22/2016, on a questionnaire for the Claimant, Dr. Bucci opined to a reasonable degree of medical certainty that Claimant is not capable of working at this time in any capacity, ***nor has he been capable of working since his pain and problems began in his neck and low back following the rear end collision on 10/31/2015.*** **(Claimant's APA #10, p. 81 – emphasis added)**
14. On 12/07/2016, at the Hearing before the Single Commissioner, Defendants stipulated to providing Claimant with pain management as recommended by Dr. Bucci.
15. The Claimant is not at MMI.
16. Claimant is entitled to an evaluation and medical treatment by a pain management specialist of the Defendants' choosing, as stipulated to by Defendants at the Hearing. Defendants are to arrange this evaluation and treatment immediately.
17. Claimant's severe psyche issues are causally related to his work-related accident and are, therefore, compensable. Claimant is entitled to an evaluation by psychiatrist of the Defendants' choosing for determination of treatment and Defendants are to arrange this evaluation and treatment immediately.

18. Claimant's request for an award of TTD based on Defendants not following proper procedure with the filing for Form 15, pursuant to Commission Regulation 67-504, lacks merit as the regulation does not provide for any entitlement to TTD for failing to follow proper procedure pursuant to the regulation.
19. The Defendants provided no evidence that either of the purported Forms 15 (12/10/17 or 6/3/16) were ever properly served on the Claimant or his attorney.
20. Upon review of the Commission's file, which is a part of the record, I hereby find that the Defendant's filing of the Form 15(II) on 12/17/2015 was timely for the termination of TTD on 12/06/2015. Therefore, defendants were in compliance and are not subject to an assessment of a penalty for failing to file a form, pursuant to 42-19-30 and 42-3-105.
21. On 12/07/2016, at the Hearing before the Single Commissioner, the employer testified that Claimant was terminated for not following up on a federally required substance abuse program (SAP) to regain his commercial driver's license, subsequent to his failed drug test, and but for the fact that he was terminated, light duty would have been provided. In addition, the employer testified they sent an SAP package certified mail to the Claimant, but it's the driver's responsibility to follow through with the program. However, the employer failed to provide *any* evidence that Claimant *ever* received the information and Claimant testified he was never approached or informed by the employer about completing an SAP. Furthermore, the employer failed to provide any evidence or sworn testimony regarding the company's policy as to the timeframe the Claimant must have completed the SAP by to avoid termination. Therefore, I hereby find Claimant is entitled to an award of TTD on this basis from the date of termination (12/6/15) through the present and continuing at the Compensation Rate of \$766.05 per week.
22. Claimant's request for a 25% penalty assessment is hereby denied, as defendants were in compliance with 42-9-260.

CONCLUSIONS OF LAW

1. Pursuant to § 42-1-160, the Claimant has sustained a compensable injury by actions arising out of and in the course and scope of his employment with the Defendant, Palmetto State Transport.
2. Pursuant to § 42-1-120, the Claimant suffers disability and continues to suffer from same.
3. There is no evidence that the Claimant was ever served with a copy of either of the Forms(s) 15 as required by Reg. 67-504(A).
4. Upon review of the Commission's file, which is a part of the record, I hereby find that the Defendant's filing of the Form 15(II) on 12/17/2015 was timely for the termination of TTD on 12/06/2015. Therefore, defendants were in compliance and are not subject to an assessment of a penalty for failing to file a form, pursuant to 42-19-30 and 42-3-105.

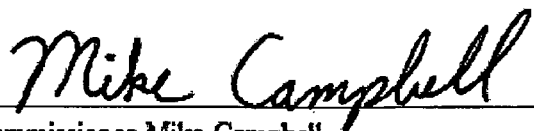
ORDER

The Claimant is entitled to back payment of Temporary Total Disability Benefits in the amount of \$45,196.95. Further, the Claimant is entitled to continuing Temporary Total Disability Benefits of \$766.05 per week until such time as these benefits are properly terminated in accordance with the South Carolina Workers' Compensation Act.

The Claimant is entitled to pain management and steroid injections as per the stipulation of the Defendants. The Claimant is also entitled to psychiatric evaluation and treatment.

The Findings of Fact and Conclusions of Law set forth hereinabove are hereby incorporated by reference as if repeated verbatim.

IT IS SO ORDERED.



Commissioner Mike Campbell

Date: January 26, 2017

Commissioner Mike Campbell
WCC File No: 1516896
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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).

January 26, 2017

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF GREENVILLE	)	COMMISSION
Herbert Randall	)	WCC FILE NO: 1516896
	)	
Employee,	)	
	)	
vs.	)	
	)	
Palmetto State Transportation,	)	CONSENT ORDER
	)	
Employer,	)	
	)	
and	)	
	)	
Cherokee Insurance Company,	)	
	)	
<u>Carrier.</u>	)	

This matter comes before me pursuant to Form 50 filed by the Claimant on February 8, 2016, requesting additional medical care to the claimant. The Claimant is represented by Thomas M. Gagne, Esquire. The Employer/Carrier is represented by M. Stephen Stubley, Esquire. The parties advise the Commission that an agreement has been reached that negates the need to go forward with the hearing at this time. The parties desire the agreement to be embodied into a Consent Order of the Commission. Therefore, the agreement of the parties is as follows:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and the subject matter of the claim.
2. The Carrier has agreed to medical treatment of the authorized treating physician.
3. All other issues will be left in abeyance.
4. The parties agree that the file should be returned to the general files until such time that a Hearing is requested by either party.

Whereas the undersigned Commissioner has reviewed the terms of the consent agreement entered into by the parties and deems the terms to be fair. The parties request that this case be placed back in general files at the Workers' Compensation Commission until such time that either party requests a hearing.

AND SO IT IS ORDERED.

Date: 3/18/16

By: Melinda James
Commissioner

WE SO MOVE AND CONSENT TO THIS ORDER:

Thomas M. Gagne
Thomas Gagne, Esquire
Attorney for Claimant

M. Stephen Stubley
M. Stephen Stubley, Esquire
Attorney for the Defendants

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 Tamara Morris on March 18, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No.: 1516896

Appellate Case No.: 2017-001483

Herbert Randall Respondent/Appellant

v.

Palmetto State Transportation and
Cherokee Insurance Company. Appellants/Respondents

MOTION TO ALLOW LATE FILING

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No.: 1516896

Appellate Case No.: 2017-001483

Herbert Troy Randall.....Respondent/Appellant,

v.

Palmetto State Transportation and
Cherokee Insurance Company
are the.....Appellants/Respondents.

MOTION TO ALLOW LATE FILING

Herbert Troy Randall respectfully asks the Presiding Administrative Law Judge to approve the Motion to Allow Late Filing based on the following conditions:

1. The Respondent/Appellant filed a cross appeal with the Appellate Court as the "Appellant" on July 5, 2017, just a few days after the Appellants/Respondents filed a Notice of Appeal in the matter referenced herein.
2. After the filing of the Initial Brief of the Respondent/Appellant on September 6, 2017, the Appellants/Respondents filed their Initial Brief of on September 26, 2017.
3. It appears the Respondent/Appellant was then supposed to file another Initial Brief of the Appellant/Respondent by October 18, 2017; however, there was some confusion regarding the due date for this filing.
4. Based on the above conditions, the Respondent/Appellant respectfully asks this Honorable Court to allow the late filing of the Initial Brief of the Respondent/Appellant at this time.

Respectfully submitted,



Jeffrey D. Ezell
SC Bar No.: 011827
EZELL LAW FIRM, LLC
15 N. Irvine Street
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jeff@jeffezelllawfirm.com

Attorney for Respondent/Appellant

Other Counsel of Record:

George Gallagher
Speed, Seta, Martin, Trivett & Stublely, LLC
PO Box 11669
Columbia, SC 29211

IT IS SO ORDERED.

Administrative Law Judge
State of South Carolina
Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No.: 1101678
Appellate Case No.: 2013-001499

Herbert Troy Randall

Respondent/Appellant

v.

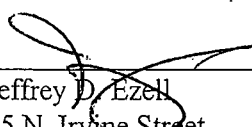
Palmetto State Transportation
and
Cherokee Insurance Company

Appellants/Respondent

PROOF OF SERVICE

I certify that I have served the Motion to Allow Late Filing on George Gallagher by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2017, addressed to Mr. George Gallagher, Speed, Seta, Martin, Trivett & Stubley, LLC, PO Box 11669, Columbia, SC 29211.

October 31, 2017



Jeffrey D. Ezell Bar No.: 011877
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FAX: 864-421-0256
Attorney for the Appellant/Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No.: 1516896

Appellate Case No. 2017-001483

Herbert Randall,
Employee

Respondent/Appellant,

v.

Palmetto State Transportation,
Employer And
Cherokee Insurance Company,
Carrier,

Appellant/Respondents.

**RESPONDENTS' INITIAL BRIEF OF THE
APPELLANT/RESPONDENTS**

George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett & Stubley, LLC
PO Box 11669
Columbia, SC 29211
SC Bar#: 12149
Attorney for Appellants/Respondents

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STATEMENT OF ISSUES ON APPEAL

1. Did the Commission err in finding that Defendants' termination of Appellant's TTD benefits complied with the applicable statute allowing termination of benefits based on good faith denial of the claim for benefits?

2. If the Commission did err, should these alleged technical deficiencies with an administrative form filing requirement justify a windfall of benefits to which Appellant was never entitled on the merits?

STATEMENT OF THE CASE

Herbert Randall ("Appellant") sustained admittedly compensable injuries to his lower back and neck following a motor vehicle accident arising out of and in the course of his employment as an over the road truck driver for Palmetto State Transport ("Palmetto") on October 31, 2015. Specifically, Appellant's fully loaded 18-wheeler truck was stopped on a highway in Texas due to another accident ahead when the vehicle stopped behind him was rear ended by a pickup truck, thereby causing that vehicle to strike his trailer. Appellant received emergency medical evaluation and treatment in Texas. Following discharge from the Emergency Room in Texas, Appellant continued his trip to Illinois where he was administered a post-accident drug screen per Palmetto's company policy at a local facility on November, 4, 2015 (APA p. 76). He was referred to Palmetto's company medical provider at Greenville Memorial Hospital's Center for Occupational Health upon his return to South Carolina on November 11, 2015 (APA p. 45). Thereafter, Respondent initiated temporary total disability ("TTD") benefits.

On November 17, 2015, the results of Appellant's drug screen were certified as positive for marijuana (APA p. 76). Palmetto terminated Appellant's employment based on the positive drug screen. Specifically, Palmetto's Director for Human Resources, Scott Justice, testified that over the road drivers are ineligible under federal law to continue driving following a positive drug screen until they have completed a company sponsored substance abuse program ("SAP"). Justice testified that Palmetto's SAP requirements were sent to Appellant via certified mail. He confirmed Appellant was terminated after he failed to complete the SAP or even respond to Cherokee's efforts to confirm his acknowledgement of the SAP requirement. (Hr. Tr. p. 57 ll. 6-22). Respondent then terminated Appellant's TTD benefits as of December 5, 2015 (See WCC File Form 15 received on 12/17/15). The purported ground for termination of TTD on the Form 15 was "failed post-accident drug test." Justice clarified, however, that TTD benefits were stopped due to termination of Appellant's employment for cause. (Hr. Tr. p. 65 ll. 21-22). Per Mr. Justice, but for Appellant's termination, Palmetto would have been provided Appellant modified work in the trucking terminal's guardhouse checking trucks in and out. (Hr. Tr. p. 58 ll. 22-25).

Appellant's former counsel filed a Form 50 on February 8, 2016 seeking, *inter alia*, reinstatement of TTD benefits; however, the parties entered a Consent Order approved by the Commission dated March 18, 2016 to dispose of the need for Hearing. (See WCC file). The Order

provided for Respondents to continue authorization and financial responsibility for further medical evaluation/treatment with the authorized provider, Dr. Hodge. All other issues, including TTD, were "held in abeyance." (See WCC Order dated 3/18/16). Dr. Hodge previously determined Appellant was not a good surgical candidate. (APA p. 59). Appellant was thereafter seen by another neurosurgeon in April 2016, Dr. Chittum, who recommended ACDF from C3-C7. (APA p. 72). Appellant then retained his current counsel who filed an initial Form 50 Hearing Request in September 2016.

Appellant saw yet another neurosurgeon authorized by Respondents, Dr. Bucci, for a single visit in November 2016. Dr. Bucci concurred with Dr. Hodge that surgery was not indicated, noting most of his pain is axial and not radicular. Dr. Bucci recommended ongoing conservative treatment with a pain management provider (APA p. 79). Dr. Bucci did not initially address work status/restrictions in his narrative report. However, in a medical questionnaire solicited by appellant's current counsel, Dr. Bucci purportedly states that Appellant has been unable to work RETROACTIVELY since his work accident on 10/31/15 to the present and continuing. (APA p. 81). Dr. Hodge, nor Dr. Chittum, ever addressed Appellant's work/disability status. The only work restrictions in place at the time of Appellant's termination in December 2015 were the original "modified duty" restrictions from the occupational health provider, including no lift/push/pull greater than 15 pounds, no climbing, and minimal "static postures." (APA p. 51).

A Hearing pursuant to Appellant's most recent Form 50 was convened before Commissioner Campbell on December 7, 2016. At the Hearing the parties agreed Appellant has not reached MMI. As such, Defendants stipulated to provide pain management evaluation and treatment per Dr. Bucci's recommendation with a provider to be designated by them. Regarding TTD benefits, Appellant first argues that his TTD benefits were improperly terminated by Respondents in violation of S.C. Code § 42-9-260 and WCC Regulation 67-504. Specifically, Appellant submits TTD benefits, plus 25% penalty, should be reinstated as of December 15, 2015 to the present, because: a) Respondents did not "immediately" file the Form 15 confirming the termination of benefits with the Commission; and b) Respondents did not serve the Form 15 on his former counsel. Defendants counter that any alleged technical deficiencies with an administrative form filing requirement do not justify a windfall of benefits to which Appellant was never entitled based on the merits.

In the alternative, Appellant argues that he is still otherwise entitled to TTD benefits based on Dr. Bucci's medical questionnaire opining Appellant has been unable to work since his accident. In response, Defendants submit that an award of TTD cannot be based on a retroactive medical opinion, especially when Dr. Bucci never evaluated or treated Appellant during the period in question. Moreover, Defendants argue, but for Appellant's termination for cause (i.e. failure to acknowledge the SAP requirement to regain his driver eligibility under Federal law), Palmetto could have accommodated the modified duty restrictions from the occupational health provider, which were the only medical restrictions in place during the disputed TTD entitlement period in question.

By Order dated January 26, 2017, Commissioner Campbell found, *inter alia*, that Defendants did not improperly terminate Appellant's TTD benefits in violation of the statute and regulations; therefore, reinstatement of TTD with an award of penalties was not justified. The Commissioner nevertheless found Appellant was entitled to TTD benefits from the date of their previous termination on 12/6/2015 to the present and continuing. The Commissioner's retroactive TTD award appears to be based on Palmetto's alleged failure to provide any evidence that Appellant ever *received* information regarding the SAP requirement, as well as their purported failure to provide evidence of their company policy regarding the timeframe for compliance with the SAP requirement. The Commissioner also ordered further psychological evaluation and treatment.

Both parties cross-appealed the Commissioner's Order to the Full Commission Appellate Panel ("Full Commission"). Appellant appealed the Commissioner's denial to reinstate benefits with penalties based on Defendants alleged failure to comply with statutes and regulations governing proper termination of TTD. Defendants appealed the Commissioner's decision to nevertheless award Appellant retroactive TTD. Defendants did not appeal the running TTD award based on Dr. Bucci's out of work opinion.

By Order dated May 31, 2017, the Full Commission affirmed and amended the Hearing Commissioner's Order with amendments. Specifically, the Commission found that Defendants terminated TTD benefits in "good faith" and complied with applicable statutes and regulations governing such termination. The Full Commission, like the Commissioner, found Appellant was entitled to TTD benefits from the date of their previous termination on 12/6/2015 to the present and continuing. Again, the decision to award retroactive TTD appears to be based on Palmetto's

alleged failure to provide any evidence that Appellant ever *received* information regarding the SAP requirement, as well as their purported failure to provide any evidence of their company policy regarding the timeframe for compliance with SAP.

STANDARD OF REVIEW

Judicial review of a Commission decision is governed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2012). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). The findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992). It is not within the appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999).

ARGUMENT

- 1. The Commission properly found that Respondents termination of TTD benefits complied with the applicable statute allowing termination of benefits based on good faith denial of the claim for benefits.**

The Commission and found that Defendants properly terminated Appellant's TTD benefits in accordance with S.C. Code § 42-9-260 and declined to order reinstatement of TTD and imposition of a 25% penalty on the accrued balance. (See Commission Order). Respondents submit that the Commission's Order is correct on these points, but not for the same reasons he found. *See* SCACR 220 (c) ("The appellate court may affirm any ruling, order, decision or judgment upon any grounds appearing in the Record on Appeal."). Specifically, § 42-9-260 (B)(3) allows termination of TTD benefits within 150 days of notice of the accident when a "good faith investigation by the Employer

reveals grounds for denial of the claim." (emphasis added). This is the statutory ground cited by Defendants on the WCC Form 15 for terminating benefits and filed with the Commission in this case.

Contrary to Appellant's arguments, nothing in § 42-9-260 limits termination of benefits to cases where compensability of the *entire* claim is denied. The term "claim" is not defined by the Act, but Defendants submit it is a generic term applicable to any assertion of entitlement to specific benefits and/or other relief provided for by the Act within the broader context the overall case. For purposes of this statute governing termination of TTD benefits, "denial of the claim" encompasses denial of compensability of the *entire claim*, as well as just a "claim" for *entitlement to TTD benefits*. In other words, the statute does not exclusively require denial of the entire claim to terminate TTD, if grounds for termination of the TTD component only are revealed after benefits have been initiated.

This interpretation is consistent with the overriding purpose for enactment of S.C. Code § 42-9-260 (B)(3). That purpose ostensibly is to encourage carriers to initiate benefits without prejudice as quickly as possible by allowing for a subsequent denial of entitlement to benefits if circumstances reveal otherwise. For example, this application would allow denial of a "claim" for TTD benefit only, while still allowing for provision of medical treatment. Any requirement that compensability of the entire claim be denied before TTD can be terminated would only have the deleterious effect of thwarting the statute's very purpose and causing harm to injured workers in need of important medical treatment. Certainly, the Legislature contemplated the imminently foreseeable case where compensability and entitlement to medical is acknowledged but liability for TTD is disputed. If the Legislature intended for claim compensability and entitlement to TTD benefits to be inextricably linked to the extent that benefits can only be terminated if there are grounds for denying compensability of the entire claim, then they would have presumably codified that intent in the compensability statute. It only makes sense that a statute governing termination of TTD payments- § 42-9-260- would allow termination when entitlement to those benefits is denied and disputed.

Moreover, Respondents' interpretation of S.C. Code § 42-9-260 (B)(3) would allow for termination of benefits initiated in error and/or termination of benefits to which it is subsequently discovered an injured worker is not entitled to receive in the first place. For example, it is

elementary that entitlement to TTD benefits is premised on the inability to earn wages due to a compensable injury, so there is no sound policy reason for disallowing termination of TTD after it is subsequently discovered that an appellant's inability to earn wages was due to some cause other than his compensable injury. *See Pollack v. Southern Wine & Spirits*, 405 S.C. 9, 747 S.E. 2d 430 (2013) (affirming the Commission's denial of TTD benefits where the evidence established that the appellant's incapacity to earn wages was due to his termination for cause, not his work-related injury).

In situations where inability to earn wages may not be due to injury, it would be absurd to allow an injured worker to continue reaping the windfall of benefits to which he was never entitled just because the carrier does not have grounds to deny compensability of his entire claim. Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000); *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994). Again, this scenario is commonplace in the workers' compensation arena, so it only makes sense that there be a mechanism in place to account for it. Defendants submit that mechanism is § 42-9-260 (B)(3).

Further, an analysis of other provisions of S.C. Code § 42-9-260 lends additional support to Respondents' arguments. S.C. Code § 42-9-260(E) provides an employer with the right to request a hearing "at any time to address termination or reduction of temporary disability payments." To implement its statutory mandate, the Commission promulgated the Form 21 to address termination of benefits "for any cause." (See generally the Form 21 (II). A possible basis for termination of benefits "for any cause" on the Form 21 would certainly include termination based on a good faith denial of a claim for TTD benefits only, more specifically, denial of TTD because the incapacity to work is not due to injury. If termination for any just reason can be addressed "at any time" per subsection (E), then the Commission clearly has broad discretion on termination of TTD issues under subsection (B) as well.

Courts generally afford agencies substantial discretion in the interpretation of statutes they are charged with implementing. *See Faile v. S.C. Emp't Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976) ("The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent

reasons."). This discretion would logically extend to determination of what constitutes good faith denial of a "claim." Therefore, § 42-9-260(B)(3) allows termination of TTD benefits based on a good faith denial of entitlement to such benefits, including grounds that appellant's inability to earn wages is due to reasons other than compensable injury.

In this case, Respondents initiated TTD benefits upon Appellant's return to South Carolina following his accident in Texas. After discovery of his termination by Palmetto, the carrier terminated TTD benefits via filing of the WCC Form 15 (II). Again, the Form 15 asserts a good faith denial of the claim for TTD as the reason for termination, specifying "failed post-accident drug test" as the underlying basis. Mr. Justice clarified at the Hearing that TTD benefits were stopped due to termination of Appellant's employment for cause. (Hr. Tr. p. 65 ll. 21-22). The Record establishes that Appellant's positive drug screen initiated the series of events that led to his termination for cause. As such, Appellant's termination of employment for cause is a "good faith" basis for denial of his claim for ongoing TTD when the reason for Appellant's "inability to earn wages" is due to such termination and not his work injury. See Pollack supra. Respondents merely denied entitlement to ongoing TTD benefits, while still acknowledging compensability of the underlying claim and providing medical benefits.

S.C. Code § 42-9-260 (G) provides for imposition of a 25% penalty on the amount of benefits withheld for failure to comply with statutory provisions governing termination of TTD payments. Because § 42-9-260 (B)(3) allows termination of TTD payments based on a good faith denial of entitlement to such benefits, subsection (G)'s penalty provision is simply not applicable to the instant case. For these reasons, the Commission correctly found that Respondents exercised proper grounds for terminating Appellant's TTD benefits pursuant to § 42-9-260 (B)(3). As such, the Commission's denial his request for reinstatement of those benefits, plus the 25% penalty per subsection (G), should be AFFIRMED.

2. Any alleged technical deficiencies with an administrative form filing requirement do not justify a windfall of benefits to which Appellant was never entitled on the merits.

Appellant contends the Commission erred by not reinstating TTD benefits with the 25% penalty per S.C. Code § 42-9-260 (G) because: a) Respondents did not "immediately" file the Form 15 confirming the termination of benefits with the Commission; and b) Respondents did not

serve the Form 15 on his former counsel in accordance with WCC Regulation 67-504. Respondents submit the Commission correctly found that form should not triumph over substance in rejecting Appellant's hyper technical arguments. In Mictronics v. S.C. Dept. of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. Apps. 2001) the Court of Appeals excused a party from an adverse judgment who was technically in default. This holding was based, at least in part, on the fact Mictronics had a meritorious defense to the underlying substantive matter. *Id* at 345 S.C. at 511. In so holding, the Court stated "this is consistent with South Carolina's policy favoring the disposition of issues on their *merits rather than on technicalities*." *Id*.

Mictronics is analogous to the instant case in several important respects. Primarily, both cases involve parties seeking to take advantage of alleged technical procedural deficiencies rather than relying on the substantive merits of the underlying matter. In the instant case, Appellant argues that Respondent's filing of the WCC Form 15 memorializing termination of TTD eleven (11) calendar days after their termination was not filed "immediately" within the meaning of WCC Regulation 67-504. As an initial matter, Respondents point out the timetable for filing the Form 15 following termination of benefits is not specified in the Regulations. Therefore, without any further regulatory guidance the term "immediately" can only be interpreted to mean the filing must be made within a reasonable time frame following termination. Defendants submit there is nothing inherently unreasonable about an administrative form filing confirming termination of TTD benefits within 11 days thereafter. Regardless, the "immediate" filing of the Form 15 with the Commission is merely an administrative requirement that has no bearing whatsoever on the merits. Like Mictronics, the focus in this case should be fixed on the merits and substance, not the process.

As for Appellant's contentions that his former counsel was never served with the Form 15 as required by WCC Regulation 67-504 (a point Defendants concede), he at least raises a more substantial issue than the mere timing of the administrative filing. Nevertheless, his arguments still fall well short of justifying reinstatement of TTD and assessment of penalties. Specifically, Appellant did not suffer any prejudice from Respondents' failure to serve the Form 15 on his former attorney. *See Mictronics supra* (holding "the DOR will suffer no prejudice should this case proceed for a determination on the merits") (emphasis added). Appellant confirmed in his testimony at the Hearing that his former attorney was aware of the termination of his TTD, and the purported grounds for same, within a week thereafter. (Hr. Tr. p. 40 ll. 22-25).

Moreover, contrary to Appellant's assertions, filing a Form 15 (III) Request for Hearing to challenge the *merits* of the termination of his TTD benefits was not his only remedy. In fact, his former attorney actually filed a Form 50 Request for Hearing on February 8, 2016 (less than two months after the termination of TTD on or about December 15, 2015). (See WCC Form 50). His Form 50 requested reinstatement of TTD from the date of accident and continuing. A Hearing was set on March 18, but the parties entered a Consent Agreement to dispose of the Hearing and *holding the TTD issue in abeyance*. (See Consent Order). Thereafter, he could have refiled a Form 50 at any time seeking TTD for any periods alleged. He did not pursue this further until his current counsel filed the Form 50 to initiate the current action before the Commission. (Form 50). Under these circumstances, Appellant's allegations of undue hardship due to Respondents failure to serve him with the Form 15 are simply unfounded, especially when his own counsel agreed to hold the issue of his entitlement to those benefits in abeyance via the Consent Order.

Likewise, Appellant's reliance on Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. Apps. 2006) is untenable. Appellant misapprehends the holding of that case when he states "the Court of Appeals held that the Defendant/Employer was liable for improper termination of TTD benefits because they did not follow the proper procedures set forth in Reg. 67-504." (Appellant's Brief p. 4). In fact, the Court never held that; it merely stated in *obiter dictum* (Latin for "something said in passing" and referring to commentary made by a court that is not necessary to the decision in the case and therefore not precedential. BLACKS LAW DICTIONARY Seventh Edition 2000 p. 879). The Martin court had already determined the carrier in that case lacked proper grounds *on the merits* to terminate Appellant's benefits before engaging in the *dicta* cited by Appellant as authority. Martin at S.E.2d p. 553. As such, Martin is not applicable here.

Since it is abundantly clear that focus should remain on the merits for the termination of the TTD benefits, Appellant's conclusion that "any benefits accrued during a period of unlawful termination would constitute benefits to which Appellant is lawfully entitled" is only partially true. Termination of benefits via an alleged improper procedure does not create entitlement to those TTD benefits withheld; only "inability to earn wages due to injury" (as opposed to other causes) entitles one to TTD. See Pollack supra. Defendants agree that termination of TTD payments per S.C. Code § 42-9-260 to which Appellant is otherwise entitled on the merits is "unlawful" to the

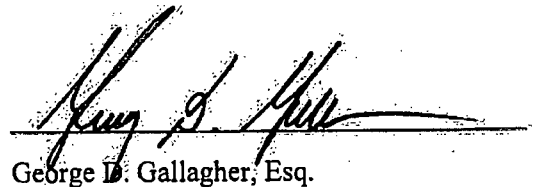
extent that any amounts withheld are subject to the 25% penalty under subsection (G). However, for the reasons previously stated, that is not the situation presented here.

As such, the Commission properly rejected the triumph of form over substance. The Order denying reinstatement of TTD with imposition of penalties due to an alleged "unlawful" termination of benefits, therefore, must be **AFFIRMED**.

CONCLUSION

The Commission correctly denied Appellant's prayer for reinstatement of his TTD payments and imposition of penalties because Defendants complied with S.C. Code § 42-9-260's substantive requirements for termination of benefits. The Commission properly rejected Appellant's hyper technical arguments for form to triumph over substance. As such, the Order on these issues should be **AFFIRMED**.

Respectfully submitted,



George D. Gallagher, Esq.

September 25, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC File No. 1516896

Appellate Case No.: 2017-001483

Herbert Randall
Employee, Claimant

Respondent/Appellant

v.

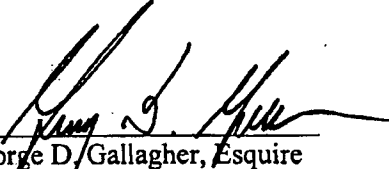
Palmetto State Transportation
And
Cherokee Insurance Company,
Carrier

Appellant/Respondents

PROOF OF SERVICE

I certify that I have served the Respondents' Initial Brief of Appellant/Respondents on Jeffry D. Ezell by depositing a copy of it in the United States Mail, postage prepaid, on September 25, 2017, addressed to Mr. Jeffery D. Ezell, Ezell Law Firm, LLC, 15 Irvine St., Greenville, SC 29601.

September 25, 2017


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September 25, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *Herbert Randall v. Palmetto State Transportation*
WCC No.: 1516896
Claim No.: WC41487
DOA: 10/31/15
Our File No.: 1800-0107

Dear Mrs. Kitchings:

Please find enclosed for filing the original and one copy of the Respondents' Initial Brief of Appellant/Respondents with Proof of Service. I would appreciate it if you would return a clocked copy to me in the self-addressed stamped envelope that I have provided.

By copy of this letter, I am serving the Notice upon all counsel of record.

Sincerely,



George D. Gallagher

GDG/anb
Enclosures

cc: Jeffrey Ezell, Esquire (w/encl)
Michael DeCarolis (via e-mail w/encl)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC File No. 1516896

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Herbert Randall
Employee, Claimant

Respondent/Appellant

v.

Palmetto State Transportation
And
Cherokee Insurance Company,
Carrier

Appellants/Respondent

APPELLANTS' INITIAL BRIEF OF THE APPELLANT/RESPONDENT

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STATEMENT OF THE CASE

Herbert Randall ("Respondent") sustained admittedly compensable injuries to his lower back and neck following a motor vehicle accident arising out of and during the course of his employment as an over the road truck driver for Palmetto State Transport ("Palmetto") on October 31, 2015. Specifically, Respondent's fully loaded 18-wheeler truck was stopped on a highway in Texas due to another accident ahead when a vehicle stopped behind him was rear ended by a pickup truck, thereby causing that vehicle to strike his trailer. Respondent received emergency medical evaluation and treatment in Texas. Following discharge from the Emergency Room in Texas, Respondent continued his trip to Illinois where he was administered a post-accident drug screen per Palmetto's company policy at a local facility on November, 4, 2015 (APA p. 76). He was referred to Palmetto's company medical provider at Greenville Memorial Hospital's Center for Occupational Health upon his return to South Carolina on November 11, 2015 (APA p. 45). Thereafter, the carrier initiated temporary total disability ("TTD") benefits (See WCC Form 15 and WCC eCase file summary of procedural transactions on claim).

On November 17, 2015, the results of Respondent's drug screen were certified as positive for marijuana (APA p. 76). Palmetto terminated Respondent's employment based on the positive drug screen. Specifically, Palmetto's Director for Human Resources, Scott Justice, testified that over the road drivers are ineligible under federal law to continue driving following a positive drug screen until they have completed a company sponsored substance abuse program ("SAP"). Mr. Justice testified that Palmetto's SAP requirements were sent to Respondent via certified mail and there was return receipt in Respondents file (Hr. Tr. p. 54 ll. 18-25). He confirmed Respondent was terminated after he failed to complete the SAP or even respond to Palmetto's efforts to confirm his intentions to complete the SAP requirement. (Hr. Tr. p. 57 ll. 6-22). The carrier then terminated Respondent's TTD benefits effective December 5, 2015 (See WCC File Form 15 received on 12/17/15) based on "good faith denial of the claim." The specific ground for termination of TTD on the Form 15 was "failed post-accident drug test." Mr. Justice clarified that TTD benefits were stopped due to Respondent's termination for cause. (Hr. Tr. p. 65 ll. 21-22). Per Mr. Justice, but for Respondent's termination, Palmetto would have been provided him with modified work in the guardhouse to the terminal checking trucks in and out. (Hr. Tr. p. 58 ll. 22-25).

Respondent's former counsel filed a Form 50 on February 8, 2016 seeking, *inter alia*, reinstatement of TTD benefits; however, the parties entered a Consent Order approved by the Commission dated March 18, 2016 to dispose of the need for Hearing. (See WCC Order). The Order provided for the carrier to continue authorization and financial responsibility for further medical evaluation/treatment with the authorized provider, Dr. Hodge. All other issues, including TTD, were "held in abeyance." (See WCC Order dated 3/18/16). Dr. Hodge previously determined Claimant was not a good surgical candidate. (APA p. 59).

Respondent was thereafter seen by another neurosurgeon in April 2016, Dr. Chittum, who recommended ACDF from C3-C7. (APA p. 72). Respondent then retained his current counsel who filed an initial Form 50 Hearing Request in September 2016.

Respondent saw yet another neurosurgeon authorized by the carrier, Dr. Bucci, for a single visit in November 2016. Dr. Bucci concurred with Dr. Hodge that surgery was not indicated, noting most of his pain is axial and not radicular. Dr. Bucci recommended ongoing conservative treatment with a pain management provider (APA p. 79). Dr. Bucci did not initially address work status/restrictions in his narrative report. However, in a medical questionnaire solicited by claimant's current counsel, Dr. Bucci purportedly states that Respondent has been unable to work RETROACTIVELY since his work accident on 10/31/15 to the present and continuing. (APA p. 81). Dr. Hodge, nor Dr. Chittum, ever addressed Claimant's work/disability status. The only work restrictions in place at the time of Claimant's termination in December 2015 were the original "modified duty" restrictions from the occupational health provider, including no lift/push/pull greater than 15 pounds, no climbing, and minimal "static postures." (APA p. 51), which is consistent with duty Palmetto could have provided in the guardhouse.

A Hearing was convened before Commissioner Mike Campbell on December 7, 2016. At the Hearing the parties agreed Respondent has not reached MMI. As such, the carrier stipulated to provide pain management evaluation and treatment per Dr. Bucci's recommendation with a provider to be designated by them. The carrier also agreed to initiate running TTD benefits from the date of Dr. Bucci's disability note. Regarding entitlement to accrued TTD benefits, Respondent first argued that his TTD benefits were improperly terminated in violation of S.C. Code § 42-9-260(and WCC Regulation 67-504 (A). Specifically, Respondent submits TTD benefits, plus 25% penalty, should be reinstated from the date they were terminated because: a) the carrier did not "immediately" file the Form 15 confirming the termination of benefits with the Commission; and b) the carrier did not serve the Form 15 on him or his former counsel. The Employer/Carrier ("Appellants") counter that any alleged technical deficiencies with an administrative form filing requirement do not justify a windfall of benefits to which Respondent was never entitled based on the merits.

In the alternative, Respondent argues he is still otherwise entitled to TTD benefits based on Dr. Bucci's November 2016 medical questionnaire retroactively opining he has been unable to work since his accident. Appellants counter that an award of TTD cannot be based on a retroactive medical opinion, especially when Dr. Bucci never evaluated or treated Claimant during the alleged period of "disability" in question. Moreover, Appellants argue that, but for the termination of Respondent's employment for cause (i.e. failure to complete or acknowledge the SAP requirement to regain his driver eligibility under Federal law),

Palmetto could have accommodated the modified duty restrictions from the occupational health provider, which were the only medical restrictions in place during the period in question.

By Order dated January 26, 2017, Commissioner Campbell found, *inter alia*, Appellants did not violate applicable statutes and regulations in terminating Respondent's TTD benefits; therefore, reinstatement of TTD with an award of penalties was not justified. The Commissioner nevertheless found Respondent was entitled to TTD benefits from the date of their previous termination on or about December 6, 2015. The Commissioner's retroactive TTD award appears to be based on Palmetto's alleged failure to provide any evidence that Respondent ever *received* information regarding the SAP requirement, as well as their purported failure to provide evidence of their company policy regarding the timeframe for compliance with the SAP requirement.

Both parties cross-appealed the Hearing Commissioner's Order to the Full Commission Appellate Panel ("Panel"). Respondent appealed the Commissioner's denial to reinstate TTD benefits with penalties for alleged improper termination in violation of the statute/regulations. Appellants appealed the award of retroactive TTD on grounds that it is not supported by evidence in the Record. By Order dated June 9, 2017 the Panel affirmed the Hearing Commissioner's Order with modifications. Specifically, the Panel found that Appellants terminated TTD benefits in "good faith." (See Panel's Order dated)

QUESTIONS PRESENTED

- I. Did the Panel err in awarding TTD benefits when Respondent's "inability to earn wages" for the period in question was not due to injury?
- II. Did the Panel rely on clearly erroneous grounds for awarding TTD benefits?
- III. Is the Panel's TTD award otherwise supported by competent evidence in the Record?

ARGUMENTS

- I. **The Panel erred in awarding retroactive TTD benefits because, but for Respondent's termination for cause, Palmetto could have accommodated the modified duty restrictions in place at the time of his termination on an indefinite basis; thus, Claimant was not "disabled" within the meaning of the Act for the period in question.**

S.C. Code § 42-1-120 defines "disability" as the "incapacity *because of injury* to earn the wages which the employee was receiving at the time of the injury in the same or any other employment" (emphasis added). As such, the entitlement to TTD benefits is premised on a nexus between the work-

related injury and the inability to earn wages. In the seminal case of Pollack v. Southern Wine & Spirits, 405 S.C. 9, 747 S.E. 2d 430 (2013), the Supreme Court affirmed the Commission's denial of TTD benefits where the evidence established that the claimant's incapacity to earn wages was due to his termination for cause, not his work-related injury. Thus, an award of TTD is not justified where an employer could have provided work enabling a claimant to earn wages, but was rendered unable to do so because claimant engaged in conduct mandating his termination for cause. Id.

In this case, Palmetto terminated Respondent's employment for cause, specifically, his failure to complete, or even acknowledge, the SAP requirement following his positive drug test for marijuana. It is important to note that Federal law/regulations, not Palmetto's company policy, mandate the SAP for an over the road driver to reinstate his/her commercial driver's license (CDL) following a positive drug screen administered for any reason. Had Respondent not been terminated for his failures, Palmetto could have placed him in the guardhouse to perform modified duty checking in trucks to the terminal, which is consistent with the restrictions from the occupational health provider of no lifting greater than 15 pounds and alternating static postures- i.e. sitting and standing.

The fact that CDL eligibility is not required to work in the guardhouse is irrelevant. Respondent was employed by Palmetto as an over the road driver, continued eligibility for which required completion of the SAP. Modified work in the guardhouse, although available indefinitely, is still transitional by nature. Accepting the guardhouse assignment would not alter Respondent's job title or employment status as a driver. Likewise, the fact Palmetto did not specifically offer the guardhouse position to Respondent prior to his termination is equally immaterial. Palmetto should not be forced to eschew terminating Respondent for valid reasons prior to offering light duty employment out of fear of incurring TTD liability. *See Pollack supra* at p. 434 (allowing entitlement to TTD following termination for cause would "insulate injured employees who engage in misconduct while employed in rehabilitative settings and essentially tie the hands of an employer who has sought to accommodate the employee to the best of its ability. Such an unwarranted construction of the statutory and regulatory language would have the additional and undesirable effect of discouraging employers from endeavoring to accommodate injured workers with light duty work").

Finally, contrary to Respondent's arguments, this case obviously does not implicate the law of refusal, or constructive refusal, of "suitable employment" per S.C. Code § 42-9-190 because Palmetto never got the opportunity to make the guardhouse offer prior to their valid termination of Respondent's employment for cause. Rather, Respondent's alleged inability to earn wages is simply an issue of causation. The Panel clearly erred in awarding TTD benefits accruing after Respondent's termination

because, but for such termination, the evidence in the Record establishes he could have been earning wages in the guardhouse.

II. The logical basis for the Panel's retroactive TTD award is unclear, but to the extent it is based on an underlying premise that Palmetto's termination of Respondent's employment was improper, such premise is clearly erroneous, thus rendering the award an error of law.

Under the Administrative Procedures Act ("APA") S.C. Code § 1-23-310 *et seq* the Court may reverse the Panel's findings if they are "clearly erroneous" or based upon an "error of law." S.C. Code 1-23-380 (g)(4) and (5); *See also Lark v. Bi-Lo, Inc.*, 276 S.C.130, 276 S.E.2d 304 (1981). The Panel's Finding of Fact # 21 outlining the purported basis for the TTD award is confusing or immaterial at best, and wholly illogical at worst. Either way, this finding as the basis for the TTD award is clearly erroneous and affected by an error of law.

As noted earlier, the test for entitlement to TTD benefits is the inability to earn wages due to injury. The Panel's Order never finds that Claimant was "disabled" within the meaning of the Act for the period it awarded TTD. Rather, the award appears to be based entirely on umbrage with Palmetto's termination *procedure*. Specifically, the Panel's Order states that Palmetto cannot prove Claimant ever received the SAP package outlining its requirements, nor did Palmetto present evidence regarding a timeframe for its completion to avoid termination. The Panel merely states, "Claimant is entitled to an award of TTD on this basis from the date of termination." (See Panel's Order). Again, "this basis" apparently refers to alleged deficiencies with the *process* of Palmetto's termination of Respondent's employment, not the underlying substance or merits of the termination. This is error for several reasons.

First, Appellants point out that Scott Justice confirmed the SAP package was mailed to Respondent via certified mail return receipt requested. (Hr. Tr. p. 54). He further stated that he observed the return receipt in Respondent's personnel/employment file. (Hr. Tr. p. 54 ll. 22-25). Mr. Justice also stated that Palmetto's safety director also made several calls to Respondent regarding the SAP that were not returned. (Hr. Tr. p. 55 ll. 15-23). The only substantial evidence in the Record establishes that Respondent received proper notice for the basis of his termination. Regardless, the Panel's issues with the *manner of* Respondent's termination cannot be the basis of an award of TTD. The Court in Pollack supra reiterates the elementary notion that inability to earn wages **due to injury** is the only applicable test for entitlement to TTD benefits. Again, the Panel never finds that Respondent was "disabled" for the period it awards him TTD, which is clear error.

Appellants acknowledge that the Court in Pollack has tasked the Commission with scrutinizing the *basis* for an employer's termination to determine if it is merely a ruse or pretext to avoid TTD liability [CITE]. If the Commission determines that an employer's purported basis for termination totally lacks merit, then a finding that a claimant's incapacity to earn wages is due to injury, as opposed to the alleged termination for cause, may justify an award of TTD. *See Pollack supra*; *See also Seagraves v. Austin Co. of Greensboro*, 472 S.E.2d 397, 123 N.C. App. 228 (N.C. App. 1996) (an employer must first show that the employee was terminated for misconduct or fault, unrelated to the compensable injury, for which a nondisabled employee would ordinarily have been terminated).

In this case, a positive drug test is clearly a serious infraction worthy of discipline for an over the road truck driver tasked with transporting goods on interstate highways. Likewise, the wisdom of federal DOT regulations mandating completion of an SAP for drivers to regain their CDL eligibility is self-evident. In this case, the undisputed evidence establishes Respondent tested positive for marijuana and was terminated after failing to complete, or even acknowledge, Palmetto's efforts to notify him of a required substance abuse program. Although Respondent testified that no one with Palmetto personally told him he had failed a drug screen or that he was being terminated for failing to complete an SAP, he admitted that his attorney at the time notified him of same. (Hr. Tr. p. 45 ll. 23-25- p. 46 ll. 1-2). Moreover, he acknowledged awareness of federal regulations requiring completion of an SAP to regain eligibility to drive again. (Hr. Tr. p. 45 ll. 1-11). Scott Justice confirmed that it's the driver's responsibility to follow through with the program's requirements. (Hr. Tr. p. 54). The Record is devoid of any evidence that Claimant took any initiative to complete the SAP. Finally, Scott Justice confirmed that Claimant's termination was not treated any differently than non-injured drivers Palmetto had terminated in the past for failure to complete an SAP following a positive drug screen. (Hr. Tr. p. 64 ll. 15-25- p. 65 ll. 1-14). *See Seagraves supra*.

For these reasons, the merits of Palmetto's termination of Respondent's employment are simply beyond reproach. The termination was clearly not a ruse or pretext concocted by Palmetto to avoid liability for TTD. As such, there can be no presumption that Respondent's inability to earn wages was due to injury or anything other than a valid termination for cause. The Panel's inferences and musings to the contrary for justifying his TTD award are simply unfounded in the Record and are clearly erroneous under applicable law. As such, the Panel's retroactive award of TTD benefits accruing on or about December 6, 2015 must be REVERSED.

III. The Panel's TTD award is otherwise unsupported by competent evidence in the Record.

It is elementary that findings of fact by the Panel must be supported by substantial evidence in the Record. Lark v. Bi-Lo *supra*. Moreover, substantial evidence is not a mere "scintilla of evidence." Law v. Richland County School District, 270 S.C. 492, 243 S.E.2d 192 (1978) ("substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached to justify its action). This Court has shown an increasing willingness in its recent rulings to scrutinize evidence purportedly relied upon by the Commission to support a denial of benefits. Appellants urge the Court to apply that SAME healthy skepticism here and hold, as a matter of law, that no credence should be given to an opinion rendered nearly a year after the fact that Respondent has been unable to work in any capacity since his accident. This worthless opinion from Dr. Bucci is at best merely a scintilla of evidence suggesting Respondent was "disabled" for the period in question (APA p.)¹ As such, it is not substantial evidence supporting the TTD award and must be rejected.

It is undisputed that **Dr. Bucci never treated or evaluated Respondent's condition during the alleged period of disability in question.** A retroactive opinion on Claimant's work status simply cannot supersede the modified duty restrictions imposed by the occupational health provider who contemporaneously evaluated/treated Respondent (See APA p. 51). This is especially the case when the neurosurgeons who treated/evaluated Respondent during the alleged period of disability- Dr. Hodge and Dr. Chittum- essentially endorsed those restrictions *de facto*. As a matter of law, the Panel should have deferred to the work status opinions of the contemporaneous medical providers who actually evaluated and treated Respondent during the period in question, not a provider who only saw him one time nearly a year after the fact. As explained in the previous sections, Palmetto could have accommodated the modified duty work restrictions but for Claimant's termination for cause. For these reasons, the Panel's retroactive TTD award is not supported by substantial evidence and must be REVERSED.

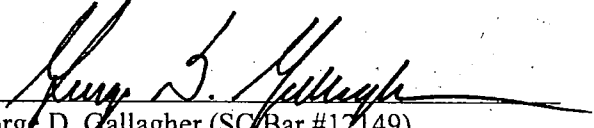
¹ Dr. Bucci's opinion was solicited by Respondent's attorney in preparation for litigation via the typical "check the box" format. Generally, opinions derived from such method are inherently untrustworthy because they lack context and nuance. In addition, the preferred favorable response is typically discernible on its face by the way the question is phrased, thus inducing the provider to simply check that desired answer as the path of least resistance.

CONCLUSION

For all the reasons, the Full Commission Appellate Panel's retroactive award of TTD benefits accruing on December 6, 2015 must be **REVERSED**.

Respectfully submitted,

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September 12, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
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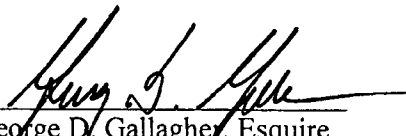
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Appellants/Respondent

PROOF OF SERVICE

I certify that I have served the Appellant Initial Brief of Appellants/Respondent on Jeffery D. Ezell by depositing a copy of it in the United States Mail, postage prepaid, on September 18, 2017, addressed to Mr. Jeffery D. Ezell, Ezell Law Firm, LLC, 15 Irvine St., Greenville, SC 29601.

September 18, 2017


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Appellants/Respondents

**APPELLANTS/RESPONDENT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellants/Respondents join in Respondent/Appellant's proposed designation of evidence and information from the proceedings below to be included in the Record on Appeal, including the transcript of the Hearing before the Hearing Commissioner and all evidentiary submissions admitted pursuant to the APA, and propose the following additional evidence and information also be included:

- 1) Order of the Workers Compensation Commission (Commissioner Beck) dated March, 18, 2016.
- 2) Print-out summary of the Commission's recorded transactions on claim for WCC File # 1516896- Herbert Randall vs. Palmetto State Transportation Inc. from the Commission's eCase system.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC File No. 1516896

Appellate Case No.: 2017-001483

Herbert Randall
Employee, Claimant

Respondent/Appellant

v.

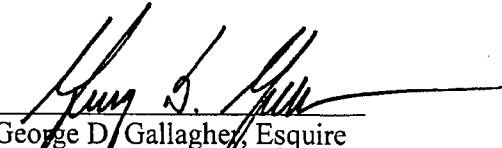
Palmetto State Transportation
And
Cherokee Insurance Company,
Carrier

Appellants/Respondent

PROOF OF SERVICE

I certify that I have served the Designation of Matter to be Included in the Record on Appeal on Jeffery D. Ezell by depositing a copy of it in the United States Mail, postage prepaid, on September 18, 2017, addressed to Mr. Jeffery D. Ezell, Ezell Law Firm, LLC, 15 Irvine St., Greenville, SC 29601.

September 18, 2017


George D. Gallagher, Esquire
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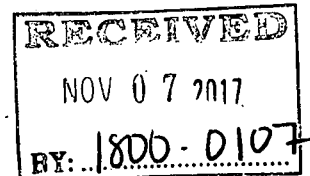
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October 31, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Herbert Randall v. Palmetto State Transportation
Appellate Case No.: 2017-001483



Dear Mrs. Kitchings:

Please find enclosed the original and one (1) copy of the Initial Brief of the Respondent/Appellant in the above referenced matter.

Also, enclosed please find the original and (6) copies of the Motion to Allow Late Filing of the Initial Brief of the Appellant Respondent. If you should have any questions, please do not hesitate to call.

Otherwise, I sincerely hope this letter finds you doing well and I look forward to hearing from you soon.

Sincerely yours,
EZELL LAW FIRM, LLC

A handwritten signature in cursive script that reads "Janet Spruell".

Janet Spruell
Paralegal to Jeffrey D. Ezell

/js
Enclosures
CC: Herbert Randall
George Gallagher, Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No.: 1516896

Appellate Case No.: 2017-001483

Herbert Randall

Employee, Claimant.....Respondent/ Appellant

v.

Palmetto State Transportation and

Cherokee Insurance Company

Carrier.....Appellants/Respondents

RESPONDENT'S INITIAL BRIEF OF THE RESPONDENT/APPELLANT

Jeffrey D. Ezell, SC Bar No.: 011877
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1. THE WORKERS' COMPENSATION COMMISSION ERRED IN FINDING AND/OR CONCLUDING AS A MATTER OF LAW THAT THE RESPONDENTS EMPLOYER/CARRIER COMPLIED WITH REGULATION 67-504(A) AND/OR S.C. CODE SECTIONS 42-9-260.	
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QUESTIONS PRESENTED

- I. DID THE WORKERS' COMPENSATION COMMISSION
ERR IN FINDING AND/OR CONCLUDING THAT THE
RESPONDENTS WERE IN COMPLIANCE WITH REGULATION
67-504 AND/OR S.C. CODE SECTION 42-9-260(B)

STATEMENT OF THE CASE

Troy Herbert Randall, the Claimant in this action, sustained an admitted injury by accident on October 31, 2015. He was driving an 18-Wheeler tractor/trailer for the Defendant/Employer, and was stopped on a highway in Texas due to a wreck ahead of him.

While stopped on the highway with his brakes set and his hazard flashers engaged, he was struck violently from behind. The impact had enough force to break the frame of the tractor he was pulling and pin him against the dashboard of the cab in which he was sitting. (Tr., p. 39 & 23).

The Claimant sustained significant injuries to his back, neck, left leg, left arm and psyche. The Claimant had preexisting scoliosis and his injury and accident aggravated this preexisting condition. (APA #6, p. 59) The Claimant was treated and initially, albeit wrongfully, was given light duty restrictions. Based upon the evidence and testimony, no meaningful offer of light duty employment was ever made by the Defendants. To the contrary, the Defendants initially paid TTD benefits, but said benefits were grossly and wrongfully terminated.

The Claimant admittedly failed a post-accident drug screen, said screen showing a positive result for marijuana. That fact notwithstanding, there is *absolutely no proof whatsoever* that the Claimant was intoxicated in any form or fashion at the time of the accident, nor was there *any* allegation or proof that the marijuana was in any way the proximate cause of the Claimant's accident. As stated hereinabove, the Claimant was stopped on the highway and

struck from behind. As such, there was nothing whatsoever that the Claimant could have done to avoid the accident. (Tr. pp. 23 – 24, See also Finding of Fact #6)

Although the Defendants presented testimony that the Claimant was supposed to complete some sort of Substance Abuse Program (SAP), they produced no evidence to substantiate that the Claimant ever received notice of same. (Tr. p. 26 & 44) Furthermore, the Defendants' witness admitted that he made no personal contact with the Claimant about the SAP. (Tr. p. 55) Likewise, although the Defendants alleged that they sent the SAP information to the Claimant via certified mail, they failed to go so far as to submit into evidence *any* documentation of this allegation – as such, any such allegation is based entirely on hearsay. (Tr. p. 54 – 55, 61, 62)

The Defendant also tried to maintain that the Claimant was terminated because he failed to follow through with the alleged offer of the SAP, but their own witness candidly admitted that the Claimant did *not* need to complete the SAP to perform the light duty work they allegedly offered to him. (Tr. p. 60, 62, 65 – 66)

The Claimant never returned to work for the required 15 days before his TTD benefits were stopped (See SC Code Section 42-9-260(B)). The Claimant was never offered light duty work within his restrictions. (Tr. p. 46 – 48)

Furthermore, and much more problematically, the Defendants failed to comply with Regulation 67-504(A) in that the Defendants never served the Claimant with 2 copies of the Form 15 terminating his TTD benefits. (Tr. p. 28) The Claimant's TTD was stopped on December 5, 2015, and he was without any income whatsoever for that entire time, i.e., more than a year. At the time of the Hearing, due to being forced to go without income for over a

year, the Claimant had lost virtually everything he owned and was reduced to living in a camper in the back yard of the parents of one of his friends. (Tr. p. 33)

Although the Single Commissioner accurately found that the Defendants improperly terminated TTD benefits, the Claimant would argue that, in addition to the Single Commissioner's basis for the finding, i.e., that the Defendants failed to prove that the Claimant was made aware of the alleged necessity that he complete the SAP (See Finding of Fact #21), but also that the Defendants failed to comply with Regulation 67-504(A) such that the Claimant is not only entitled to TTD benefits from December 5, 2015, through the present and continuing. The Claimant would also assert that he is entitled to a 25% penalty on all back/past due benefits due to the Defendants' improper termination of TTD benefits. The Claimant contends that the Single Commissioner erred in finding that the Defendants were in compliance with S.C. Code Section 43-9-260(B).

ARGUMENT

It is the position of the Claimant that the Court of Appeals should review the evidence and testimony presented, and make new Conclusions consistent with the substantial evidence on the record.

As is well settled law in South Carolina, the Workers' Compensation Act is to be construed liberally in favor of the Claimant. Carter v Penny Tire and Recapping Co., 261 S.C. 341, 200 S.E. 2d 64 (1973); Hall v. Desert Aire, Inc. 376 S.C. 338, 656 S.E. 2d 753 (S.C. App. 2007).

The case currently before the Court is almost directly analogous to the case of Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E. 2d 547 (S.C. App. 2006). In Martin, the South Carolina Court of Appeals held that the Defendant/Employer was liable for improper termination of TTD

benefits because they did not follow the procedures set forth in Reg. 67-504. What is more notable, the Martin Court held that benefits were improperly stopped because the Defendant/Employer ***did not file AND serve*** the requisite Form 15 for ***18 days*** following the termination of TTD benefits ***and*** because the Defendant/Employer did not attach the supporting documentation to the Form 15.

In the instant case, the Defendants did not ***file*** the Form 15 for ***11 days***. More notably; however, the Defendants ***did not EVER serve the Form 15 on the Claimant.*** Reg. 67-504(A) ***requires:***

The employer's representative may terminate or suspend temporary Compensation during the first one hundred fifty days after the employer has notice of the injury according to Section 42-9-260. When compensation is terminated or suspended, the employer's representative ***shall*** complete Section 1 and Section II of the Form 15, Temporary Compensation Report. The employer's representative shall file the Form 15 immediately with The Claims Department ***and shall serve two copies of the Form 15 immediately on the Claimant, according to Reg. 67-211 with documentation attached as to the reason for termination or suspension.*** (Emphasis added).

As stated above, the Defendants in the instant case ***never served any*** copies of the Form 15 on the Claimant. (See Finding of Fact #19 and Conclusion of Law #3). As such, they utterly and completely failed to comply with Reg. 67-504, and, are therefore responsible for all TTD benefits.

In this case, the Commission erred in finding that the Defendants were in compliance with S.C. Code Section 42-9-260. More specifically, the Commission's Conclusions of Law Numbers 3 and 4 are directly incongruent. While it is uncontroverted that the Claimant was ***never served with a copy of any Form 15***, the Commission found that the mere ***filing*** of a Form 15 on December 17, 2015, was sufficient to put the Defendants in compliance with Reg. 67-504. Such a finding/conclusion is legally incorrect and without merit.

More specifically, the Regulation is clear that the *mere filing of a Form 15 with the Commission is only half of the requirements*. The operative and important portion of the applicable Regulation, Reg. 67-504, is “*and shall serve two copies of the Form 15 immediately on the Claimant.*” In the case currently before the Court, the Commission both found as a fact, and concluded as a matter of law that the Defendants never served the Claimant with either of the Forms 15 they prepared in this matter. As such, the Defendants absolutely did not comply with Reg. 67-504.

That having been established, Finding of Fact #20, and Conclusion of Law #4 must, of necessity, be overturned. More specifically, the Defendants could not be “in compliance” as the Commission reasoned, if the Claimant was never *served immediately* with two copies of either of the Forms 15. If the Defendants were not “in compliance” with Reg. 67-504, they likewise, could not be “in compliance” with S.C. Code Section 42-9-260.

First of all, the Commission never specified in which component of Section 42-9-260 the Defendants were purportedly in compliance (i.e., (B)(1) - (B)(6)). The Commission did, in fact, find that the SAP issue was sufficiently disproven by the Claimant, so one must assume that he was not basing his decision upon (B)(5). All of the other subsections; however, do not apply, so the Claimant would contend that *any* alleged compliance with Section 42-9-260 is erroneous.

That having been established, the Claimant would further contend that the Commission erred in failing to impose a 25% penalty on the unpaid/improperly terminated TTD benefits. S.C. Code Section 42-9-260(G) specifically provides for such a penalty and, as such, the Defendants should be liable not only for the \$45,196.95 improperly withheld, but also for the 25% penalty upon same.

Finally, the Commission's ruling that the applicable Regulation, Reg. 67-504, does not provide for the continued TTD because the Regulation "does not provide for any entitlement to TTD for failing to follow proper procedure pursuant to the regulation" is misguided. It only stands to reason that Reg. 67-504 provides the *only lawful manner for the termination of TTD benefits*.

As such, if the Defendants failed to comply with the proper procedure for termination of benefits, any unlawful termination outside the mechanism(s) set forth in the Regulation would be improper. If benefits are not properly stopped, then, by necessity, any benefits accrued during a period of lawful termination *would constitute benefits to which the Claimant is still lawfully entitled*. To hold otherwise would give the Defendants no incentive whatsoever to follow proper procedures for the termination of benefits.

The Claimant would also contend that Finding of Fact No. 22, as amended by the Full Commission, is inaccurate and legally invalid. The Commission claims that the claim was initially denied in good faith as Claimant failed a post-accident drug screen and contemporaneous medical treatment placed him at modified duty. This is invalid as it is a blatant misconstruction of Section 42-9-260(B)(3). As stated hereinabove, there is *no evidence of intoxication*. As such, the mere fact that the Claimant failed a post-accident drug screen does not provide a valid basis for the denial of the claim.

If some causative link could be made between the use of any illicit substance by the Claimant, and the Claimant's injury, then perhaps Finding of Fact No. 22 could be proper. As relates to the only evidence in the record, however, there is no showing by the Defendants linking the failed post-accident drug screen and the Claimant's serious accident and resulting

serious injuries. As such, Finding of Fact No. 22, even as amended by the Full Commission, is legally invalid and is not supported by the substantial evidence on the record.

Accordingly, the Claimant would contend that he is entitled to TTD benefits from December 15, 2015, through the Hearing, and through the present and continuing, not only because, as was found by the Single Commissioner, the Defendant failed to properly make the Claimant aware of the SAP issue, but also because the Defendants clearly failed to comply with both Reg. 67-504 and S.C. Code Section 42-9-260. Likewise, pursuant to Section 42-9-260(G), the Claimant is entitled to a 25% penalty for the improper termination of benefits.

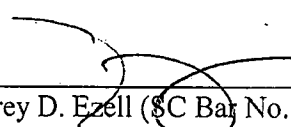
CONCLUSION

In this action, the Defendants clearly mishandled the Claimant's TTD benefits in a disturbing and unlawful way. While the Commission correctly found that the benefits were terminated improperly, the conclusion he arrived at overlooked the clear meaning and purpose of both SC Code Section 42-9-260 and Regulation 67-504. What the Single Commissioner failed to recognize is that these two pieces of legislation were clearly and specifically promulgated to protect claimants from the very type of misconduct which occurred in this case.

By failing to serve the Claimant in this case with the requisite two (2) copies of the Forms 15 allegedly prepared and filed in this case, the Defendants deprived the Claimant of the ability to promptly contest their improper termination of TTD benefits. This misconduct had the terrible effect of forcing the Claimant to go without income of any kind for well over a year. As a result, the Claimant has suffered not only medically, but also financially. This has had the impact of both physical disability and mental disability which has rendered this Claimant homeless and penniless.

Based upon the Defendant's failure to comply with *both* SC Code Section 42-9-260 *and* Reg. 67-504, the Claimant is entitled not only to back TTD benefits from the December 5, 2015 date of termination, but also to the 25% penalty provided for in the South Carolina Workers' Compensation Act. Said penalty was specifically provided to discourage the very type of unlawful conduct displayed by the Defendants in this matter. To hold otherwise would both defy the plain meaning of this Statute and Regulation, and deprive the Claimant of the benefits, and bonuses, to which he is lawfully entitled based upon these Defendants' unlawful conduct.

Respectfully submitted,



Jeffrey D. Ezell (SC Bar No. 0011877)
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(864) 421-0015
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ATTORNEY FOR THE APPELLANT

Greenville, SC

9/25/17, 2017

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Appellate Panel, Workers' Compensation Commission

WCC File No: 1516896

Appellate Case No: 2017-001483

Herbert Troy Randall

Appellant

v.

Palmetto State Transportation
And
Cherokee Insurance Company

Respondents.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Order of Single Commissioner December 7, 2016;
2. Order of Full Commission April 19, 2017;
3. Form 50;
4. Form 51;
5. Form 30;
6. Form 15;
7. Transcript of Single Commission Hearing;
8. Transcript of Full Commission Hearing;
9. Transcript of Claimant's Deposition October 10, 2016;
10. Form 58 – Pre-Hearing Brief, Medical Evidence and Witnesses; and
11. Claimant's APAs 1 - 10

I certify that this designation contains no matter which is irrelevant to this appeal.

August 25, 2017

/s/ Jeffrey D. Ezell

Jeffrey D. Ezell SC Bar No.: 011877

Ezell Law Firm, LLC

15 N. Irvine Street

Greenville, South Carolina 29601

PH: (864) 421-0015

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Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Aisha Taylor, Commissioner

RECEIVED

JUL 06 2017

SC Court of Appeals

SCWCC File No. 1516896

Herbert Randall,.....Respondent.

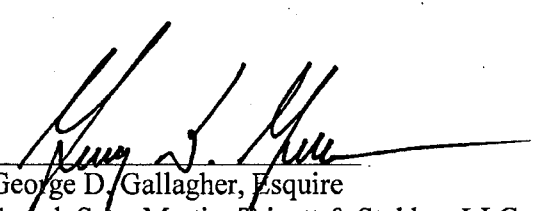
v.

Palmetto State Transportation, Employer, and Cherokee Ins. Co.,
Carrier.....Appellants.

NOTICE OF APPEAL

Palmetto State Transportation and Cherokee Insurance Company appeal the Order of the Honorable Aisha Taylor, Panel Chair, of the Appellate Panel of the Worker's Compensation Commission dated May 31, 2017. Appellants received written notice of entry of this order on June 9, 2017.

June 30, 2017


George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett & Stubley, LLC
PO Box 11669
Columbia, SC 29211
(803) 748-2919
Attorney for Appellants

RECEIVED
JUL 11 2017
BY: **ANB**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Aisha Taylor, Commissioner

SCWCC File No. 1516896

Herbert Randall,.....Respondent.

v.

Palmetto State Transportation, Employer, and Cherokee Ins. Co.,
Carrier.....Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the attorney of record for Herbert Randall as well as the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on June 30, 2017, addressed as follows:

Jeffrey Ezell, Esquire
15 N. Irvine Street
Greenville, SC 29601

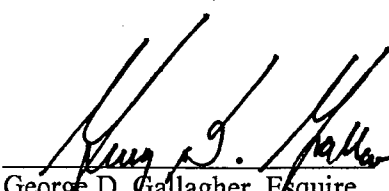
The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

RECEIVED

JUL 06 2017

SC Court of Appeals

June 30, 2017


George D. Gallagher, Esquire
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Columbia, SC 29211
(803) 748-2919
Attorney for Appellants

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY-APPELLATE PANEL, WORKERS' COMPENSATION
COMMISSION

WCC File No.: 1516896

Herbert Troy Randall.....Appellant,

v.

Palmetto State Transportation and
Cherokee Insurance Company
are the.....Respondents.

NOTICE OF APPEAL

Herbert Troy Randall appeals the Decision and Order of the South Carolina Workers' Compensation Commission's Appellate Panel dated May 31, 2017. Appellant received written notice of this Order on June 9, 2017.

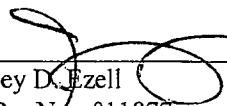
Pursuant to S.C. Code Ann. §42-17-60 (Supp. 2009), Appellant states the following grounds for the appeal as well as the alleged errors of law:

1. The Commission erred in finding and concluding that Respondents did not fail to comply with Reg. 67-504(A) in that they never served a copy of a Form 15 on the Appellant as required by the Regulation.
2. The Commission erred in failing to find that the Respondents failed to comply with Reg. 67-504(A) in that they never served a copy of a Form 15 on the Appellant.
3. The Commission erred in failing to impose a 25% penalty on the Respondents for failure to comply with Reg. 67-504.

4. The Commission erred as a matter of law in finding that the Respondents were in compliance with S.C. Code §42-9-260.
5. The Commission erred in finding and concluding that the Appellant's failed drug test constituted proper grounds for termination of TTD Benefits.
6. The Commission erred in finding and concluding that the Respondents properly terminated TTD Benefits.
7. The Commission erred as a matter of law in failing to assess a penalty against the Respondents for improper termination of TTD Benefits.
8. The Commission erred as a matter of law, and as a matter of fact, in its construction and/or application of SC Code Sections 42-19-30 and 42-3-105.
9. The Commission erred as a matter of law, and as a matter of fact, in its construction and/or application of Reg. 67-504.
10. Given that the Hearing Commissioner specifically found that "There is no evidence that the Appellant was ever served with a copy of either of the Form(s) 15 as required by Reg. 67-504(A)", the Commission erred as a matter of law, and as a matter of fact, in failing to find that the Appellant was entitled to TTD Benefits from December 6, 2015, through the present and continuing, as well as a 25% penalty, as the Respondents were not in compliance with Reg. 67-504.
11. The Commission erred in finding and concluding that the Appellant's request for an award of TTD benefits, as well as the 25% penalty upon same, lacked merit.
12. The Commission erred as a matter of law, and as a matter of fact, in finding and/or concluding that the Appellant was not entitled to a 25% penalty on the back TTD Benefits.

13. The Commission erred in finding and concluding that the Form 15(II) filed on December 17, 2015, was timely for the termination of TTD benefits.

Respectfully submitted,



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Attorney for Appellant

Other Counsel of Record:

George Gallagher
Speed, Seta, Martin, Trivett & Stubley, LLC
PO Box 11669
Columbia, SC 29211

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No.: 1101678
Appellate Case No.: 2013-001499

Herbert Troy Randall

Appellant

v.

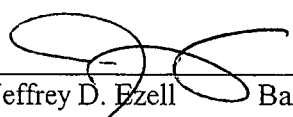
Palmetto State Transportation
and
Cherokee Insurance Company

Respondents

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on George Gallagher by depositing a copy of it in the United States Mail, postage prepaid, on July 5, 2017, addressed to Mr. George Gallagher, Speed, Seta, Martin, Trivett & Stubley, LLC, PO Box 11669, Columbia, SC 29211.

July 5, 2017



Jeffrey D. Ezell Bar No.: 011877
15 N. Irvine Street
Greenville, SC 29601
PH: 864-421-0015
FAX: 864-421-0256
Attorney for the Appellant

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1516896

Herbert Troy Randall	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Palmetto State Transport,	)	FULL COMMISSION REPLY BRIEF
	)	OF THE APPELLANT
Employer,	)	
	)	
And	)	
	)	
Cherokee Insurance Company	)	
	)	
Carrier,	)	
	)	
Defendants	)	

STATEMENT OF THE CASE

Troy Herbert Randall, the Claimant in this action, sustained an admitted injury by accident on October 31, 2015. He was driving an 18 Wheeler tractor/trailer for the Defendant/Employer, and was stopped on a highway in Texas due to a wreck ahead of him.

While stopped on the highway with his brakes set and his hazard flashers engaged, he was struck violently from behind. The impact had enough force to break the frame of the tractor he was pulling and pin him against the dashboard of the cab in which he was sitting. (Tr., p. 39 & 23).

The Claimant sustained significant injuries to his back, neck, left leg, left arm and psyche. The Claimant had preexisting scoliosis and his injury and accident aggravated this preexisting condition. (APA #6, p. 59) The Claimant was treated and initially, albeit

wrongfully, was given light duty restrictions. Based upon the evidence and testimony, no meaningful offer of light duty employment was ever made by the Defendants. To the contrary, the Defendants initially paid TTD benefits, but said benefits were grossly and wrongfully terminated.

The Claimant admittedly failed a post-accident drug screen, said screen showing a positive result for marijuana. That fact notwithstanding, there is *absolutely no proof whatsoever* that the Claimant was intoxicated in any form or fashion at the time of the accident, nor was there *any* allegation or proof that the marijuana was in any way the proximate cause of the Claimant's accident. As stated hereinabove, the Claimant was stopped on the highway and struck from behind. As such, there was nothing whatsoever that the Claimant could have done to avoid the accident. (Tr. pp. 23 – 24, See also Finding of Fact #6)

Although the Defendants presented testimony that the Claimant was supposed to complete some sort of Substance Abuse Program (SAP), they produced no evidence to substantiate that the Claimant ever received notice of same. (Tr. p. 26 & 44) Furthermore, the Defendants' witness admitted that he made no personal contact with the Claimant about the SAP. (Tr. p. 55) Likewise, although the Defendants alleged that they sent the SAP information to the Claimant via certified mail, they failed to go so far as to submit into evidence any documentation of this allegation – as such, any such allegation is based entirely on hearsay. (Tr. p. 54 – 55, 61, 62)

The Defendant also tried to maintain that the Claimant was terminated because he failed to follow through with the alleged offer of the SAP, but their own witness candidly

admitted that the Claimant did *not* need to complete the SAP to perform the light duty work they allegedly offered to him. (Tr. p. 60, 62, 65 – 66)

The Claimant never returned to work for the required 15 days before his TTD benefits were stopped (See SC Code Section 42-9-260(B)). The Claimant was never offered light duty work within his restrictions. (Tr. p. 46 – 48)

Furthermore, and much more problematically, the Defendants failed to comply with Regulation 67-504(A) in that the Defendants never served the Claimant with 2 copies of the Form 15 terminating his TTD benefits. (Tr. p. 28) The Claimant's TTD was stopped on December 5, 2015, and he was without any income whatsoever for that entire time. At the time of the Hearing, the Claimant lost virtually everything he owned and was reduced to living in a camper in the back yard of the parents of one of his friends. (Tr. p. 33)

Although the Single Commissioner accurately found that the Defendants improperly terminated TTD benefits, the Claimant would argue that, in addition to the Single Commissioner's basis for the finding, i.e., that the Defendants failed to prove that the Claimant was made aware of the alleged necessity that he complete the SAP (See Finding of Fact #21), but also that the Defendants failed to comply with Regulation 67-504(A) such that the Claimant is not only entitled to TTD benefits from December 5, 2015, through the present and continuing. The Claimant would also assert that he is entitled to a 25% penalty on all back/past due benefits due to the Defendants' improper termination of TTD benefits. The Claimant contends that the Single Commissioner erred in finding that the Defendants were in compliance with S.C. Code Section 43-9-260(B).

ARGUMENT

It is the position of the Claimant that the Full Commission should review the evidence and testimony presented, and make new Findings and Conclusions consistent with the evidence on the record. The Claimant would contend that solid grounds are present that would warrant the Full Commission making its own Findings of Fact and Conclusions of Law consistent with substantial evidence and, of necessity, inconsistent with the erroneous findings of the Single Commissioner. Pack vs. State Department of Transportation, 381 S.C. 526, 673 S.E. 2d 461, (S.C.App. 2009).

As is well settled law in South Carolina, the Workers Compensation Act is to be construed liberally in favor of the claimant. Carter v. Penny Tire and Recapping Co., 261 S.C. 341, 200 S.E.2d 64 (1973); Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C.App.2007). The law in South Carolina is also clear that "In workers' compensation cases, the Full Commission is the ultimate fact finder", DeBruhl v. Kershaw County Sheriff's Department, 303 S.C. 20, 397 S.E.2d 782 (S.C.App.1990).

I. The Defendant's Contention that they could have provided the Claimant with modified duty work had no bearing on the outcome of this matter as the Defendants terminated the Claimant even though nothing about the purported grounds for his termination would have prevented him from performing the modified duty work they claim to have had for him.

The Defendants claim that their basis for terminating the Claimant's TTD was valid. Although much of the error in this contention has already been addressed in the Claimant's Appeal Brief, an additional item bears examination. The Defendants claim to have had modified duty work available for the Claimant that consisted of sitting in a guard house and checking trucks in and out.

The Defendants claim to have terminated the Claimant because he could not drive a truck due to a positive post-accident drug screen, and the Claimant's purported failure to complete a required Substance Abuse Program (SAP). As stated hereinabove, although the Defendants alleged that they provided the Claimant with information regarding this mandatory program, they offered no proof of same, i.e., no Return Receipt from the alleged Certified Mail, no Certificate of Service, etc.... As such, they presented nothing more than thin hearsay at the Hearing before Commissioner Campbell. *It is the Claimant's position that not only were TTD benefits improperly terminated, but his employment was also improperly terminated.*

Furthermore, and perhaps more importantly, the completion of the SAP program is only mandatory to allow a driver who fails a drug screen to return to over the road driving – *there is no such SAP requirement for an employee to sit in a guard house.* As such, by terminating the Claimant's employment, the Defendant deprived the Claimant of the opportunity to perform the alleged modified duty work. Additionally, had the Defendants allowed the Claimant to do this light duty work, he would have been of necessity, a "captive audience" such that they could put this allegedly mandatory SAP information directly in the Claimant's hands.

II. The Defendant's contention that the Hearing Commissioner erred in finding that the Claimant is entitled to retroactive TTD is without merit.

Counsel for the Defendants notes in Argument II that the Finding of Fact Number 21 is illogical is without merit. The Defendants, in a variety of ways – many of which were addressed in the Claimant's initial Appeal Brief – improperly terminated not only the Claimant, but also the Claimant's TTD benefits.

In his Order at Finding of Fact Number 21, Commissioner Campbell finds that the Defendants essentially failed to provide any proof that the allegedly mandatory nature of the SAP requirement was ever provided to the Claimant. Without such proof, it is clear that the Claimant had no idea what requirements were ever placed upon him regarding this SAP program, and its impact on his return to work status.

If the Claimant was unaware of what he was allegedly required to do in order to return to work, he clearly could not have knowingly violated any such requirement. As such, any termination based upon the actions or inactions of a clearly confused and ill-informed Claimant would be improper. It logically follows that any termination of TTD based upon a termination of employment that was improperly executed would likewise be improper and same was well-reasoned and properly found by Commissioner Campbell.

**III. The Defendant's contention that the TTD award is
not supported by competent medical evidence
is unfounded.**

Contrary to the Defendant's assertions, there is excellent medical evidence to support the TTD award and it came from *Dr. Bucci, the Defendants' own chosen neurosurgeon*. The Defendants are correct that a General Practitioner, with no specialized neurosurgical training, claimed the Claimant was able to do limited duty work, however, at that time, the medical evidence upon which later opinions indicating the Claimant was totally disabled was *not yet available*.

On November 11, 2015, less than two weeks after the accident the Defendants' chosen "occupational" provider, opined that the Claimant could do modified duty work – *but this opinion did not even come from a medical doctor – it came from a NURSE PRACTITIONER, Lorrette Mitchum*. (APA 4, pg. 46)

Subsequent to that, on **November 23, 2015**, an MRI was performed and, based upon that MRI, Dr. Chittum, a neurosurgeon, wanted to perform fairly extensive surgery. (APA 8, pg. 72) Likewise, as stated above, Dr. Bucci examined and evaluated the Claimant at the Defendants' request, and ultimately opined that the Claimant was totally disabled, and had been *since the time of the accident*. (APA 10, pg. 81) This conclusion is uncontroverted *by any other neurosurgical opinion*. To claim that Dr. Chittum and/or Dr. Bucci "endorsed" the thinly reasoned opinion of a Nurse Practitioner is folly.

At the time the Claimant was seen by both Dr. Chittum and Dr. Bucci, the Claimant was already out of work due to the Defendants' improper termination of the Claimant's employment. As such, there was no need to address his work status. It was not until the evaluation of the Claimant by Dr. Bucci that anyone, in this case the Claimant, ever asked a neurosurgeon about the Claimant's work status.

When the question was posed directly to Dr. Bucci, he, based upon his evaluation, *and the MRI that was not available at the time the Defendants' Nurse Practitioner made her "finding"*, properly opined that the Claimant was totally disabled and had been since the date of the accident. (APA 10, pg. 81) Again, it is *very important* to note that Dr. Bucci was a physician *specifically chosen by the Defendants, i.e., he was NOT a physician chosen by the Claimant or Claimant's counsel*. As such, his opinion regarding work status should be given *considerably more weight* than the opinion of a Nurse Practitioner with little or no diagnostic information available to her.

IV. The Defendant's contention that the Claimant is
Not entitled to psychological treatment
is unfounded.

The Defendants' contention that the Claimant is not entitled to psychological care is illogical and poorly reasoned. The Claimant at the time of the Hearing had been improperly denied TTD for nearly a year. In addition to the chronic pain from which he clearly suffered due to the sluggish and haphazard way the Defendants had handled his medical care and treatment, the Defendants' denial of TTD benefits also had a crushing impact on the Claimant financially.

The Claimant testified that he is essentially homeless and has been reduced to living in a camper in a friend's backyard. His car was in danger of being repossessed, as was the Claimant's wife's car. As noted by his Average Weekly Wage and Compensation Rate, the claimant had been a fairly high wage earner and all of that came to a grinding halt when he was injured in the course of his employment and the Defendants then decided to clearly mishandle his claim. The Claimant was severely depressed due to both his pain, and his financial demise.

The opinion of Dr. Mullen is that the Claimant was severely depressed due to the aforementioned misdeeds of the Defendants.¹ (APA 9, pg. 76) The need for treatment is essentially self-evident in Dr. Mullen's evaluation and findings. Dr. Mullen finds that the Claimant is depressed for several reasons and it only stands to reason that treatment of the Claimant's depression would tend to lessen his period of disability. On that premise

¹ Even though Dr. Bucci, the Defendants' chosen neurosurgeon, had recommended Pain Management on November 1, 2016, said Pain Management has only just been scheduled and the Claimant will not even be seen for this much needed treatment until April 5, 2017, a full *156 days later*.

alone, the Hearing Commissioner's Finding that the Claimant is in need of psychiatric and/or psychological treatment is well founded and should be affirmed.

CONCLUSION

The Hearing Commissioner properly found that the Defendants both improperly terminated the Claimant's employment as well as his TTD benefits. Although Claimant maintains that there are additional reasons why the termination of TTD benefits was improper, the Claimant would also assert that the reasons behind the Hearing Commissioners Findings and Conclusions are valid and therefore the Order of the Single Commissioner should be affirmed.

Respectfully submitted,

s/Jeffrey D. Ezell

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Greenville, SC

March 29, 2017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1516596

Herbert Randall,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Palmetto State Transportation,	)	CERTIFICATE OF
	)	SERVICE
Employer,	)	
	)	
And	)	
	)	
Cherokee Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants	)	

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she 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 §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Judicial Director	Mr. George Gallagher
SCWCC	Speed Seta
PO Box 1715	PO Box 11669
Columbia, SC 29202-1715	Columbia, SC 29211

DOCUMENT: Full Commission Reply Brief of the Appellant

DATE MAILED: March 29, 2017

Janet Spruell

Janet Spruell
Paralegal to Jeffrey D. Ezell

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ROBERT E. HORNER (SC & NC), of counsel

March 21, 2017

The Honorable Amy Bracy
Judicial Director
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RE: *Herbert Randall v. Palmetto State Transportation*
WCC No.: 1516896
Claim No.: WC41487
DOA: 10/31/15
Our File No.: 1800-0107

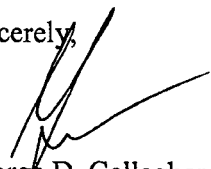
Dear Ms. Bracy:

Enclosed for filing please find the Defendants' Respondents Brief to the Full Commission in the above-referenced matter.

By copy of this letter, I am serving a copy of this letter and Certificate of Services Jeffrey Ezell, counsel, I am serving him with a copy of same.

Thank you for your assistance in this matter.

Sincerely,


George D. Gallagher

GDG/dlw

cc: Jeffrey Ezell, Esquire (w/encl)
Michael DeCarolis (w/encl)

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF GREENVILLE	)	COMMISSION
	)	
Herbert Randall	)	WCC FILE NO: 1516896
	)	
Employee,	)	
	)	
vs.	)	
	)	
Palmetto State Transportation,	)	DEFENDANTS' RESPONDENTS BRIEF
	)	TO THE FULL COMMISSION
Employer,	)	
	)	
and	)	
	)	
Cherokee Insurance Company,	)	
	)	
Carrier,	)	
	)	
<u>Defendants.</u>	)	

SCWCC

APR 03 2017

JUDICIAL

STATEMENT OF THE CASE

Claimant sustained admittedly compensable injuries to his lower back and neck following a motor vehicle accident arising out of and in the course of his employment as an over the road truck driver for Palmetto State Transport ("Palmetto") on October 31, 2015. Specifically, Claimant's fully loaded 18-wheeler truck was stopped on a highway in Texas due to another accident ahead when the vehicle stopped behind him was rear ended by a pickup truck, thereby causing that vehicle to strike his trailer. Claimant received emergency medical evaluation and treatment in Texas. Following discharge from the Emergency Room in Texas, Claimant continued his trip to Illinois where he was administered a post-accident drug screen per Palmetto's company policy at a local facility on November, 4, 2015 (APA p. 76). He was referred to Palmetto's company medical

provider at Greenville Memorial Hospital's Center for Occupational Health upon his return to South Carolina on November 11, 2015 (APA p. 45). Thereafter, the carrier initiated TTD benefits.

On November 17, 2015, the results of Claimant's drug screen were certified as positive for marijuana (APA p. 76). Palmetto terminated Claimant's employment based on the positive drug screen. Specifically, Palmetto's Director for Human Resources, Scott Justice, testified that over the road drivers are ineligible under federal law to continue driving following a positive drug screen until they have completed a company sponsored substance abuse program ("SAP"). Mr. Justice testified that Palmetto's SAP requirements were sent to Claimant via certified mail. He confirmed Claimant was terminated after he failed to complete the SAP or even respond to Cherokee's efforts to confirm his acknowledgement of the SAP requirement. (Hr. Tr. p. 57 ll. 6-22). The carrier then terminated Claimant's TTD benefits as of December 5, 2015 (See WCC File Form 15 received on 12/17/15). The purported ground for termination of TTD on the Form 15 was "failed post-accident drug test." Mr. Justice clarified, however, that TTD benefits were stopped due to termination of Claimant's employment for cause. (Hr. Tr. p. 65 ll. 21-22). Per Mr. Justice, but for Claimant's termination, Palmetto would have been provided Claimant modified work in the guardhouse to the terminal checking trucks in and out. (Hr. Tr. p. 58 ll. 22-25).

Claimant's former counsel filed a Form 50 on February 8, 2016 seeking, *inter alia*, reinstatement of TTD benefits; however, the parties entered a Consent Order approved by the Commission dated March 18, 2016 to dispose of the need for Hearing. (See WCC file). The Order provided for the carrier to continue authorization and financial responsibility for further medical evaluation/treatment with the authorized provider, Dr. Hodge. All other issues, including TTD, were "held in abeyance." (See WCC Order dated 3/18/16). Dr. Hodge previously determined Claimant was not a good surgical candidate. (APA p. 59). Claimant was thereafter seen by another neurosurgeon in April 2016, Dr. Chittum, who recommended ACDF from C3-C7. (APA p. 72). Claimant then retained his current counsel who filed an initial Form 50 Hearing Request in September 2016.

Claimant saw yet another neurosurgeon authorized by the carrier, Dr. Bucci, for a single visit in November 2016. Dr. Bucci concurred with Dr. Hodge that surgery was not indicated, noting most of his pain is axial and not radicular. Dr. Bucci recommended ongoing conservative treatment with a pain management provider (APA p. 79). Dr. Bucci did not initially address work

status/restrictions in his narrative report. However, in a medical questionnaire solicited by claimant's current counsel, Dr. Bucci purportedly states that Claimant has been unable to work RETROACTIVELY since his work accident on 10/31/15 to the present and continuing. (APA p. 81). Dr. Hodge, nor Dr. Chittum, ever addressed Claimant's work/disability status. The only work restrictions in place at the time of Claimant's termination in December 2015 were the original "modified duty" restrictions from the occupational health provider, including no lift/push/pull greater than 15 pounds, no climbing, and minimal "static postures." (APA p. 51).

A Hearing pursuant to Claimant's most recent Form 50 was convened before Commissioner Campbell on December 7, 2016. At the Hearing the parties agreed Claimant has not reached MMI. As such, Defendants stipulated to provide pain management evaluation and treatment per Dr. Bucci's recommendation with a provider to be designated by them. Claimant also argues he has sustained a compensable psychological overlay injury per an opinion from Dr. Patrick Mullen. Defendants deny that Claimant is entitled to further psychological treatment since Dr. Mullen never recommended any specific treatment in his report.

Regarding TTD benefits, Claimant first argues that his TTD benefits were improperly terminated by the Carrier in violation of S.C. Code § 42-9-260 and WCC Regulation 67-504. Specifically, Claimant submits TTD benefits, plus 25% penalty, should be reinstated as of December 15, 2015 to the present, because: a) the carrier did not "immediately" file the Form 15 confirming the termination of benefits with the Commission; and b) the carrier did not serve the Form 15 on his former counsel. Defendants counter that any alleged technical deficiencies with an administrative form filing requirement do not justify a windfall of benefits to which Claimant was never entitled based on the merits.

In the alternative, Claimant argues that he is still otherwise entitled to TTD benefits based on Dr. Bucci's medical questionnaire opining Claimant has been unable to work since his accident. In response, Defendants submit that an award of TTD cannot be based on a retroactive medical opinion, especially when Dr. Bucci never evaluated or treated Claimant during the period in question. Moreover, Defendants argue, but for Claimant's termination for cause (i.e. failure to acknowledge the SAP requirement to regain his driver eligibility under Federal law), Palmetto could have accommodated the modified duty restrictions from the occupational health provider,

which were the only medical restrictions in place during the disputed TTD entitlement period in question.

By Order dated January 26, 2017, Commissioner Campbell found, *inter alia*, that Defendants did not improperly terminate Claimant's TTD benefits in violation of the statute and regulations; therefore, reinstatement of TTD with an award of penalties was not justified. The Commissioner nevertheless found Claimant was entitled to TTD benefits from the date of their previous termination on 12/6/2015 to the present and continuing. The Commissioner's retroactive TTD award appears to be based on Palmetto's alleged failure to provide any evidence that Claimant ever *received* information regarding the SAP requirement, as well as their purported failure to provide evidence of their company policy regarding the timeframe for compliance with the SAP requirement. The Commissioner also ordered further psychological evaluation and treatment.

Both parties have now timely cross-appealed the Commissioner's Order to the Full Commission Appellate Panel. Claimant has appealed the Commissioner's denial to reinstate benefits with penalties based on Defendants alleged failure to comply with statutes and regulations governing proper termination of TTD. Defendants have appealed the Commissioner's decision to nevertheless award Claimant retroactive TTD. Defendants did not appeal the running TTD award based on Dr. Bucci's out of work opinion.

STANDARD OF REVIEW

It is undisputed that the Full Commission Appellate Panel is the ultimate finder of fact in worker's compensation matters. DeBruhl v. Kershaw County Sherriff's Dept., 303 S.C. 20, 397 S.E.2d 782 (Ct. App. 1990). Upon a petition for review of a Hearing Commissioner's award/order, the Full Commission shall weight the evidence presented at the Hearing and, if good grounds be shown, makes its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. Pack. V. State Dept. of Transportation, 381, SC 526, 673 S.E.2d 461 (Ct. App. 2009). It is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give deference to the hearing commissioner's opinion of a witness's credibility. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (SC 1967). SCACR 220(c) provides that an appellate court may affirm any ruling, order, decision, or judgement based

on any ground appearing in the Record, not necessarily the same reasoning relied upon by the court below.

ARGUMENTS

I. The Defendants termination of Claimant's TTD benefits complied with the applicable statute allowing termination of benefits based on good faith denial of the claim for benefits.

The Hearing Commissioner found that Defendants properly terminated Claimant's TTD benefits in accordance with S.C. Code § 42-9-260 and declined to order reinstatement of TTD and imposition of a 25% penalty on the accrued balance. (See Hearing Commissioner's Findings of Fact #18 and #20). Defendants agree that the Commissioner's Order is correct on these points, but not for the same reasons he found. *See* SCACR 220 (c). Specifically, § 42-9-260 (B)(3) allows termination of TTD benefits within 150 days of notice of the accident when a "good faith investigation by the Employer reveals grounds for denial of the claim." (emphasis added). This is the statutory ground cited by Defendants on the WCC Form 15 for terminating benefits and filed with the Commission in this case.

Contrary to Claimant's arguments, nothing in § 42-9-260 limits termination of benefits to cases where compensability of the *entire* claim is denied. The term "claim" is not defined by the Act, but Defendants submit it is a generic term applicable to any assertion of entitlement to any specific benefits and/or other relief provided for by the Act within the broader context the overall case. For purposes of this statute governing termination of TTD benefits, "denial of the claim" encompasses denial of compensability of the *entire claim*, as well as just a "claim" for *entitlement to TTD benefits*. In other words, the statute does not exclusively require denial of the entire claim to terminate TTD, if grounds for termination of the TTD component only are revealed after benefits have been initiated.

This interpretation is consistent with the overriding purpose for enactment of S.C. Code § 42-9-260 (B)(3). That purpose ostensibly was to encourage carriers to initiate benefits without prejudice as quickly as possible by allowing for a subsequent denial of entitlement to benefits if circumstances reveal otherwise. For example, this application would allow denial of a "claim" for TTD benefit only, while still allowing for provision of medical treatment. Any requirement that

compensability of the entire claim be denied before TTD can be terminated would only have the deleterious effect of thwarting the statute's very purpose and causing harm to claimant's in need of important medical treatment. Certainly, the Legislature contemplated the imminently foreseeable case where compensability and entitlement to medical is acknowledged but liability for TTD is disputed. If the legislature intended for claim compensability and entitlement to TTD benefits to be inextricably linked to the extent that benefits can only be terminated if there are grounds for denying compensability, then they would have presumably codified that intent in the compensability statute. It only makes sense that a statute governing termination of TTD payments would allow termination when entitlement to those benefits is denied and disputed.

Moreover, Defendants' interpretation of S.C. Code § 42-9-260 (B)(3) would allow for termination of benefits initiated in error and/or termination of benefits to which it is subsequently discovered claimant is not entitled to receive in the first place. For example, it is elementary that entitlement to TTD benefits is premised on the inability to earn wages due to a compensable injury, so there is no sound policy reason for disallowing termination of TTD after it is subsequently discovered that a claimant's inability to earn wages was due to some cause other than his compensable injury. See Pollack v. Southern Wine & Spirits, 405 S.C. 9, 747 S.E. 2d 430 (2013) (affirming the Commission's denial of TTD benefits where the evidence established that the claimant's incapacity to earn wages was due to his termination for cause, not his work-related injury).

In situations where a claimant's inability to earn wages may not be due to injury, it would be absurd to allow him to continue reaping the windfall of benefits to which he was never entitled just because the carrier does not have grounds to deny compensability of his entire claim. Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994). Again, this scenario is commonplace in the workers' compensation arena, so it only makes sense that there be a mechanism in place to account for it. Defendants submit that mechanism is § 42-9-260 (B)(3).

Further, an analysis of other provisions of S.C. Code § 42-9-260 lends additional support to Defendants' arguments. S.C. Code § 42-9-260(E) provides an employer with the right to request

a hearing “at any time to address termination or reduction of temporary disability payments.” To implement its statutory mandate, the Commission promulgated the Form 21 to address termination of benefits “**for any cause**” and at “**any time**.” (See generally the Form 21 (II). A possible basis for termination of benefits “for any cause” on the Form 21 would certainly include termination based on a good faith denial of a claim for TTD benefits only, more specifically, denial of TTD because the incapacity to work is not due to injury. If termination for any just reason can be addressed “at any time” per subsection (E), then the Commission clearly has broad discretion on termination of TTD issues under subsection (B) as well.

Courts generally afford agencies substantial discretion in the interpretation of statutes they are charged with implementing. See Faile v. S.C. Emp't Sec. Comm'n, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976) (“The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons.”). This discretion would logically extend to determination of what constitutes good faith denial of a “claim.” Therefore, § 42-9-260(B)(3) allows termination of TTD benefits based on a good faith denial of entitlement to such benefits, including grounds that claimant’s inability to earn wages is due to reasons other than compensable injury.

In this case, the carrier initiated TTD benefits upon Claimant’s return to South Carolina following his accident in Texas. After discovery of his termination by Palmetto, TTD benefits were terminated via filing of the Form 15 (II). Again, the Form 15 purports good faith denial of the claim as the reason for termination, and specifying “failed post-accident drug test” as the underlying basis. Mr. Justice clarified at the Hearing that TTD benefits were stopped due to termination of Claimant’s employment for cause. (Hr. Tr. p. 65 ll. 21-22). However, the Record likewise reflects that Claimant’s positive drug screen initiated the series of events that led to his termination for cause. As such, Defendants submit that Claimant’s termination of employment for cause is a “good faith” basis for denial of his claim for ongoing TTD when the reason for Claimant’s “inability to earn wages” is due to the termination and not his work injury. Defendants merely denied entitlement to ongoing TTD benefits, while still acknowledging compensability of the underlying claim and providing medical benefits.

S.C. Code § 42-9-260 (G) provides for imposition of a 25% penalty on the amount of benefits withheld for failure to comply with statutory provisions governing termination of TTD payments.

Because § 42-9-260 (B)(3) allows termination of TTD payments based on good faith denial of entitlement to such benefits, subsection (G) is simply not applicable. For the aforementioned reasons, the Hearing Commissioner correctly found that Defendants exercised proper grounds for terminating Claimant's TTD benefits pursuant to § 42-9-260 (B)(3). As such, his denial of Claimant's request for reinstatement of those benefits, plus the 25% penalty per subsection (G), should be AFFIRMED.

II. Any alleged technical deficiencies with an administrative form filing requirement do not justify a windfall of benefits to which Claimant was never entitled on the merits.

Claimant contends the Commissioner erred by not reinstating TTD benefits with the 25% penalty per S.C. Code § 42-9-260 (G) because: a) the carrier did not "immediately" file the Form 15 confirming the termination of benefits with the Commission; and b) the carrier did not serve the Form 15 on his former counsel in accordance with WCC Regulation 67-504. Defendants submit that Commissioner Campbell correctly found that form should not triumph over substance in his rejection of claimant's hyper technical arguments. In Micronics v. S.C. Dept. of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. Apps. 2001) the Court of Appeals excused a party from an adverse judgment who was technically in default. This holding was based, at least in part, on the fact Micronics had a meritorious defense to the underlying substantive matter. *Id* at 345 S.C. at 511. In so holding, the Court stated "this is consistent with South Carolina's policy favoring the disposition of issues on their *merits rather than on technicalities*." *Id*.

Micronics is analogous to the instant case in several important respects. Primarily, both cases involve parties seeking to take advantage of a technical procedural violation, rather than relying on the substantive merits of the underlying matter. In the instant case, Claimant argues that the carrier's filing of the WCC Form 15 memorializing termination of TTD with the Commission 11 calendar days after their termination date was not filed "immediately" under the Regulation 67-504. As an initial matter, Defendants point out the timetable for filing the Form 15 following termination of benefits is not specified in the Regulations. Therefore, without any further regulatory guidance the term "immediately" can only be interpreted to mean filing must be made within a reasonable time frame following termination. Defendants submit there is nothing inherently unreasonable about an administrative form filing confirming termination of TTD benefits

within 11 days thereafter. Regardless, the “immediate” filing of the Form 15 with the Commission is merely an administrative requirement that has no bearing whatsoever on the merits. Like Mictronics, the focus in this case should be fixed on the merits and substance, not the process.

As for Claimant’s contentions that his counsel was never served with the Form 15 as required by WCC Regulation 67-504, a point Defendants concede, he at least raises a more substantial issue than the mere timing of the administrative filing. Nevertheless, his arguments still fall well short of justifying reinstatement of TTD. Specifically, Claimant did not suffer any prejudice from the Defendant’s failure to serve the Form 15 on his former attorney. See Mictronics supra (holding “the DOR will suffer no prejudice should this case proceed for a determination on the merits”)(emphasis added). Specifically, Claimant confirmed in his testimony at the Hearing that his former attorney was aware of the termination of his TTD and the purported grounds for same within a week thereafter. (Hr. Tr. p. 40 ll. 22-25). Moreover, contrary to Claimant’s assertions, filing a Form 15 (III) Request for Hearing to challenge the *merits* of the termination of TTD was not his only remedy. In fact, his former attorney filed a Form 50 Request for Hearing on February 8, 2016 (less than two months after the termination of TTD on or about December 15, 2015). His Form 50 requested an award of TTD from the date of accident and continuing. A Hearing was set on March 18, but the parties entered a Consent Agreement to dispose of the Hearing and holding the TTD issue in abeyance. Thereafter, he could have refiled a Form 50 at any time seeking TTD for any periods alleged. He did not pursue this further until his current counsel filed the Form 50 to initiate the current action before the Commission. Under these circumstances, Claimant’s allegations of undue hardship due to Defendants failure to comply with the WCC Regulation 67-504 are simply unfounded.

Likewise, Claimant’s reliance on Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. Apps. 2006) is untenable. Claimant misapprehends the holding of that case when he states “the Court of Appeals held that the Defendant/Employer was liable for improper termination of TTD benefits because they did not follow the proper procedures set forth in Reg. 67-504.” (Claimant’s Brief p. 4). In fact, the Court never held that; it merely stated in *obiter dictum* (Latin for “something said in passing” and referring to commentary made by a court that is not necessary to the decision in the case and therefore not precedential. BLACKS LAW DICTIONARY Seventh Edition 2000 p. 879). The Martin court had already determined that the carrier in that case lacked

proper grounds *on the merits* to terminate Claimant's benefits before engaging in the *dicta* cited by Claimant as authority. Martin at S.E.2d p. 553. As such, Claimant's reliance on Martin is misplaced.

Since it is abundantly clear that focus should remain on the merits for the termination of Claimant's TTD, Claimant's conclusion that "any benefits accrued during a period of unlawful termination would constitute benefits to which Claimant is lawfully entitled" is only partially true. Termination of benefits via an alleged improper procedure does not create entitlement to those TTD benefits withheld; only "inability to earn wages due to injury" (as opposed to other causes) entitles one to TTD. See Pollack supra. Defendants agree that termination of TTD payments per S.C. Code § 42-9-260 to which Claimant is otherwise entitled on the merits is "unlawful" to the extent that any amounts withheld are subject to the 25% penalty under subsection (G). However, that is not the situation presented here.

For these reasons, Commissioner Campbell properly rejected the triumph of form over substance. His Order denying reinstatement of TTD and imposition of penalties due to an alleged "unlawful" termination of benefits, therefore, must be AFFIRMED.

CONCLUSION

Commissioner Campbell correctly denied Claimant's prayer for reinstatement of his TTD payments and imposition of penalties because Defendants substantially complied with S.C. Code § 42-9-260's substantive requirements for termination of benefits. The Commissioner properly rejected Claimant's hyper technical arguments for form to triumph over substance. As such, his Order on these issues should be AFFIRMED.

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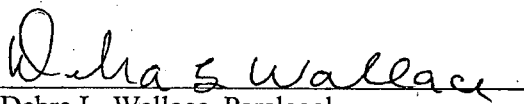
March 30, 2017

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Defendants' Respondents' Brief, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 30 day of March, 2017.

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March 21, 2017

The Honorable Amy Bracy
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Columbia, SC 29202-1715

RE: *Herbert Randall v. Palmetto State Transportation*

WCC No.: 1516896

Claim No.: WC41487

DOA: 10/31/15

Our File No.: 1800-0107

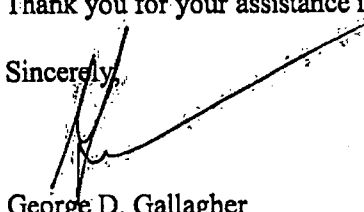
Dear Ms. Bracy:

Enclosed for filing please find the Appellant Brief to the Full Commission in the above-referenced matter.

By copy of this letter, I am serving a copy of this letter and Certificate of Services Jeffrey Ezell, counsel, I am serving him with a copy of same.

Thank you for your assistance in this matter.

Sincerely,


George D. Gallagher

GDG/dlw

cc: Jeffrey Ezell, Esquire (w/encl)
Michael DeCarolis (w/encl)

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF GREENVILLE	)	COMMISSION
	)	
Herbert Randall	)	WCC FILE NO: 1516896
	)	
Employee,	)	
	)	
vs.	)	
	)	
Palmetto State Transportation,	)	CARRIER/EMPLOYER APPELLANT BRIEF
	)	
Employer,	)	
	)	
and	)	
	)	
Cherokee Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

SCWCC
MAR 23 2017
JUDICIAL

STATEMENT OF THE CASE

Claimant sustained admittedly compensable injuries to his lower back and neck following a motor vehicle accident arising out of and in the course of his employment as an over the road truck driver for Palmetto State Transport ("Palmetto") on October 31, 2015. Specifically, Claimant's fully loaded 18-wheeler truck was stopped on a highway in Texas due to another accident ahead when the vehicle stopped behind him was rear ended by a pickup truck, thereby causing that vehicle to strike his trailer. Claimant received emergency medical evaluation and treatment in Texas. Following discharge from the Emergency Room in Texas, Claimant continued his trip to Illinois where he was administered a post-accident drug screen per Palmetto's company policy at a local facility on November, 4, 2015 (APA p. 76). He was referred to Palmetto's company medical provider at Greenville Memorial Hospital's Center for Occupational Health upon his return to South Carolina on November 11, 2015 (APA p. 45). Thereafter, the carrier initiated TTD benefits.

On November 17, 2015, the results of Claimant's drug screen were certified as positive for marijuana (APA p. 76). Palmetto terminated Claimant's employment based on the positive drug screen. Specifically, Palmetto's Director for Human Resources, Scott Justice, testified that over the road drivers are ineligible under federal law to continue driving following a positive drug screen until they have completed a company sponsored substance abuse program ("SAP"). Mr. Justice testified that Palmetto's SAP requirements were sent to Claimant via certified mail. He confirmed Claimant was terminated after he failed to complete the SAP or even respond to Cherokee's efforts to confirm his acknowledgement of the SAP requirement. (Hr. Tr. p. 57 ll. 6-22). The carrier then terminated Claimant's TTD benefits as of December 5, 2015 (See WCC File Form 15 received on 12/17/15). The purported ground for termination of TTD on the Form 15 was "failed post-accident drug test." Mr. Justice clarified, however, that TTD benefits were stopped due to Claimant's termination. (Hr. Tr. p. 65 ll. 21-22). Per Mr. Justice, but for Claimant's termination, Palmetto would have been provided Claimant modified work in the guardhouse to the terminal checking trucks in and out. (Hr. Tr. p. 58 ll. 22-25).

Claimant's former counsel filed a Form 50 on February 8, 2016 seeking, *inter alia*, reinstatement of TTD benefits; however, the parties entered a Consent Order approved by the Commission dated March 18, 2016 to dispose of the need for Hearing. (See WCC file). The Order provided for the carrier to continue authorization and financial responsibility for further medical evaluation/treatment with the authorized provider, Dr. Hodge. All other issues, including TTD, were "held in abeyance." (See WCC Order dated 3/18/16). Dr. Hodge previously determined Claimant was not a good surgical candidate. (APA p. 59). Claimant was thereafter seen by another neurosurgeon in April 2016, Dr. Chittum, who recommended ACDF from C3-C7. (APA p. 72). Claimant then retained his current counsel who filed an initial Form 50 Hearing Request in September 2016.

Claimant saw yet another neurosurgeon authorized by the carrier, Dr. Bucci, for a single visit in November 2016. Dr. Bucci concurred with Dr. Hodge that surgery was not indicated, noting most of his pain is axial and not radicular. Dr. Bucci recommended ongoing conservative treatment with a pain management provider (APA p. 79). Dr. Bucci did not initially address work status/restrictions in his narrative report. However, in a medical questionnaire solicited by claimant's current counsel, Dr. Bucci purportedly states that Claimant has been unable to work RETROACTIVELY since his work accident on 10/31/15 to the present and continuing. (APA p. 81). Dr. Hodge, nor Dr. Chittum, ever addressed Claimant's work/disability status. The only work restrictions in place at the time of Claimant's termination in December 2015 were the original "modified duty" restrictions from the occupational health provider, including no lift/push/pull greater than 15 pounds, no climbing, and minimal "static postures." (APA p. 51).

A Hearing pursuant to Claimant's most recent Form 50 was convened before Commissioner Campbell on December 7, 2016. At the Hearing the parties agreed Claimant has not reached MMI. As such, Defendants stipulated to provide pain management evaluation and treatment per Dr. Bucci's recommendation with a provider to be designated by them. Claimant also argues he has sustained a compensable psychological overlay injury per an opinion from Dr. Patrick Mullen. Defendants deny that Claimant is entitled to further psychological treatment since Dr. Mullen never recommended any specific treatment in his report. Regarding TTD benefits, Claimant first argues that his TTD benefits were improperly terminated by the Carrier in violation of S.C. Code § 42-9-260 and WCC Regulation 67-504. Specifically, Claimant submits TTD benefits, plus 25% penalty, should be reinstated as of December 15, 2015 to the present, because: a) the carrier did not "immediately" file the Form 15 confirming the termination of benefits with the Commission; and b) the carrier did not serve the Form 15 on him or his former counsel. Defendants counter that any alleged technical deficiencies with an administrative form filing requirement do not justify a windfall of benefits to which Claimant was never entitled based on the merits.

In the alternative, Claimant argues that he is still otherwise entitled to TTD benefits based on Dr. Bucci's medical questionnaire opining Claimant has been unable to work since his accident. In response, Defendants submit that an award of TTD cannot be based on a retroactive medical opinion, especially when Dr. Bucci never evaluated or treated Claimant during the period in question. Moreover, Defendants argue, but for Claimant's termination for cause (i.e. failure to acknowledge the SAP requirement to regain his driver eligibility under Federal law), Palmetto could have accommodated the modified duty restrictions from the occupational health provider, which were the only medical restrictions in place during the disputed TTD entitlement period in question.

By Order dated January 26, 2017, Commissioner Campbell found, *inter alia*, that Defendants did not improperly terminate Claimant's TTD benefits in violation of the statute and regulations; therefore, reinstatement of TTD with an award of penalties was not justified. The Commissioner nevertheless found Claimant was entitled to TTD benefits from the date of their previous termination on 12/6/2015 to the present and continuing. The Commissioner's retroactive TTD award appears to be based on Palmetto's alleged failure to provide any evidence that Claimant ever *received* information regarding the SAP requirement, as well as their purported failure to provide evidence of their company policy regarding the timeframe for compliance with the SAP requirement. The Commissioner also ordered further psychological evaluation and treatment.

Both parties have now timely cross-appealed the Commissioner's Order to the Full Commission Appellate Panel. Claimant appeals the Commissioner's denial to reinstate benefits with penalties for

improper termination in violation of statute/regulations. Defendants appeal the order for psychological treatment, as well as the award of retroactive TTD on grounds that neither are supported by evidence in the Record. Defendants did not appeal the running TTD award based on Dr. Bucci's out of work opinion.

ARGUMENTS

- I. The Hearing Commissioner erred by awarding retroactive TTD benefits because, but for Claimant's termination for cause, Palmetto could have accommodated the modified duty restrictions in place at the time of his termination on an indefinite basis; thus, Claimant was not "disabled" within the meaning of the Act for the period in question.

S.C. Code § 42-1-120 defines "disability" as the "incapacity *because of injury* to earn the wages which the employee was receiving at the time of the injury in the same or any other employment" (emphasis added). As such, the entitlement to TTD benefits is premised on a nexus between the work-related injury and the inability to earn wages. In the seminal case of Pollack v. Southern Wine & Spirits, 405 S.C. 9, 747 S.E. 2d 430 (2013), the Supreme Court affirmed the Commission's denial of TTD benefits where the evidence established that the claimant's incapacity to earn wages was due to his termination for cause, not his work-related injury. Thus, an award of TTD is not justified where an employer could have provided work enabling a claimant to earn wages, but was rendered unable to do so because claimant engaged in conduct mandating his termination for cause. *Id.*

In this case, Palmetto terminated Claimant's employment for cause, specifically, his failure to complete, or even acknowledge, the SAP requirement following his positive drug test for marijuana. It is important to note that Federal law/regulations, not Palmetto's company policy, mandate the SAP for an over the road driver to reinstate his/her commercial driver's license (CDL) following a positive drug screen administered for any reason. Had Claimant not been terminated for his failures, Palmetto could have placed him in the guardhouse to perform modified duty checking in trucks to the terminal, which is consistent with the restrictions from the occupational health provider of no lifting greater than 15 pounds and alternating static postures- i.e. sitting and standing.

The fact that CDL eligibility is not required to work in the guardhouse is irrelevant. Claimant was employed by Palmetto as an over the road driver, continued eligibility for which required completion of the SAP. Modified work in the guardhouse, although available indefinitely, is still transitional by nature. Accepting the guardhouse assignment would not alter Claimant's job title or employment status as a driver. Likewise, the fact Palmetto did not specifically offer the guardhouse position to Claimant prior to his termination is equally immaterial. Palmetto should not be forced to eschew terminating

Claimant for valid reasons prior to offering light duty employment out of fear of incurring TTD liability. See Pollack supra at p. 434 (allowing entitlement to TTD following termination for cause would “insulate injured employees who engage in misconduct while employed in rehabilitative settings and essentially tie the hands of an employer who has sought to accommodate the employee to the best of its ability. Such an unwarranted construction of the statutory and regulatory language would have the additional and undesirable effect of discouraging employers from endeavoring to accommodate injured workers with light duty work”).

Finally, contrary to Claimant’s arguments at the Hearing, this case obviously does not implicate the law of refusal, or constructive refusal, of “suitable employment” per S.C. Code § 42-9-190 since it is undisputed Palmetto never got the opportunity to make the guardhouse offer prior to their valid termination of Claimant’s employment for cause. Rather, Claimant’s alleged inability to earn wages is simply an issue of causation. The Hearing Commissioner clearly erred in awarding TTD benefits following Claimant’s termination because, but for such termination, the evidence in the Record establishes he could have been earning wages in the guardhouse.

II. The logical basis for the Hearing Commissioner’s retroactive TTD award is unclear, but to the extent it may be based on an underlying premise that Palmetto’s termination of Claimant’s employment was without cause, such premise is clearly erroneous.

The Hearing Commissioner’s Finding of Fact # 21 outlining the basis for his TTD award is merely confusing at best and wholly illogical at worst. As noted earlier, the test for entitlement to TTD benefits is inability to earn wages due to injury. The Commissioner’s Order never finds that Claimant was “disabled” within the meaning of the Act for the period he awards TTD. Rather, the award appears to be based entirely on his umbrage with Palmetto’s termination procedure. Specifically, he notes that Palmetto cannot prove Claimant ever received the SAP package outlining its requirements, nor did Palmetto present evidence regarding a timeframe for its completion to avoid termination. The Commissioner simply states, “Claimant is entitled to an award of TTD on this basis from the date of termination.”

Defendants first point out that Scott Justice confirmed the SAP package was mailed to Claimant via certified mail return receipt requested. (Hr. Tr. p. 54). He further stated that he observed the return receipt in Claimant’s personnel/employment file. (Hr. Tr. p. 54 ll. 22-25). Mr. Justice also stated that Palmetto’s safety director also made several calls to Claimant regarding the SAP that were not returned. (Hr. Tr. p. 55 ll. 15-23). The preponderance of the evidence establishes that Claimant had notice of his

termination. Regardless, the Commissioner's issues with the way Palmetto terminated Claimant's employment cannot be the basis of an award of TTD. Defendants acknowledge that the Court in Pollack has tasked the Commission with scrutinizing the *basis for* an employer's denial of TTD benefits to determine if a purported termination for cause is merely a ruse or pretext to avoid liability. If the Commission determines that an employer's purported basis for termination totally lacks merit, then a finding that a claimant's incapacity to earn wages is due to injury, as opposed to the alleged termination for cause, may justify an award of TTD. *See Pollack supra*; *See also Seagraves v. Austin Co. of Greensboro*, 472 S.E.2d 397, 123 N.C. App. 228 (N.C. App. 1996) (an employer must first show that the employee was terminated for misconduct or fault, unrelated to the compensable injury, for which a nondisabled employee would ordinarily have been terminated).

In this case, a positive drug test is clearly a serious infraction worthy of discipline for an over the road truck driver tasked with transporting goods on interstate highways. Likewise, the wisdom of federal DOT regulations mandating completion of an SAP for drivers to regain their CDL eligibility is self-evident. In this case, the undisputed evidence establishes that Claimant failed to complete the program or even acknowledge Palmetto's efforts to notify him of same. Although Claimant testified that no one with Palmetto personally told him he had failed a drug screen or that he was being terminated for failing to complete an SAP, he admitted that his attorney at the time notified him of same. (Hr. Tr. p. 45 ll. 23-25- p. 46 ll. 1-2). Moreover, Claimant acknowledged that he was aware of federal regulations requiring completion of an SAP to regain eligibility to drive again. (Hr. Tr. p 45 ll. 1-11). Scott Justice Disputed Claimant's account that he never received notice of the SAP requirements from Palmetto. He testified that the SAP package was mailed to Claimant via certified mail with a return receipt. He further confirmed that it's the driver's responsibility to follow through with the program's requirements. (Hr. Tr. p. 54). The Record is devoid of any evidence that Claimant took any initiative to complete the SAP. Finally, Scott Justice confirmed that Claimant's termination was not treated any differently than non-injured drivers Palmetto had terminated in the past for failure to complete an SAP following a positive drug screen. (Hr. Tr. p. 64 ll. 15-25- p. 65 ll. 1-14).

For these reasons, the legitimacy of Palmetto's termination of Claimant's employment is simply beyond reproach. The termination was clearly not a ruse or pretext concocted by Palmetto simply to avoid liability for TTD. As such, there can be no presumption that Claimant's inability to earn wages was due to injury or anything other than a valid termination for cause. The Hearing Commissioner's inferences and musings to the contrary for justifying his TTD award are simply unfounded in the Record.

III. The Commissioner's TTD award is otherwise unsupported by competent medical evidence in the Record.

The only scintilla of medical evidence in the Record indicating Claimant was "disabled" for the period in question is the retroactive work status opinion from Dr. Bucci that was solicited by Claimant's attorney. Little weight should be given to Dr. Bucci's opinion on this point. First, Dr. Bucci's opinion was solicited via the typical "check the box" format. Generally, opinions derived from that method are inherently untrustworthy because they lack context and nuance. In addition, the preferred favorable response is typically discernible on its face by the way the question is phrased, thus inducing the provider to simply check that desired answer as the path of least resistance.

Next, the Commission should reject out of hand any opinion that retroactively declares Claimant has been unable to work when Dr. Bucci never previously treated or evaluated Claimant's condition. Moreover, a retroactive opinion on Claimant's work status CANNOT trump the contemporaneous modified duty restrictions imposed by the occupational health provider (See APA p. 51), especially when the subsequent neurosurgeons who treated/evaluated Claimant- Dr. Hodge and Dr. Chittum- essentially endorsed those restrictions *de facto*. The Commission should defer to the work status opinions of the providers who evaluated and treated Claimant during the period in question, not a provider who saw him one time after the fact. As explained in the previous sections, Palmetto could have accommodated the modified duty work restrictions but for Claimant's termination for cause. Therefore, the Commissioner's retroactive TTD award must be reversed.

IV. The Commissioner's Order for further psychological evaluation/treatment is unsupported by medical evidence in the Record.

S.C. Code § 42-15-60 states that an award for medical evaluation treatment after ten (10) weeks from the date of injury must be based on expert medical evidence stated to a reasonable degree of medical certainty. In Hartzell v. Palmetto Collision, Opinion No. 5457, the Court of Appeals reversed a Commission award of further medical benefits for a back injury when Claimant did not secure a medical opinion stating that such treatment was necessary. The Court noted the statute limits the Commission's discretion to order further medical treatment beyond 10 weeks from the injury.

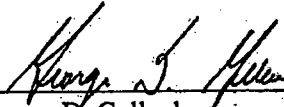
In this case, Claimant was referred by his attorney for a psychological evaluation with Dr. Patrick Mullen. (APA pp. 73-76). Dr. Mullen opines that Claimant suffers from a psychological overlay injury stemming from his accident and physical injuries. HOWEVER, Dr. Mullen never recommends further psychological treatment or opines that Claimant has not reached MMI. Without a medical opinion to that effect, the Commissioner's order for further evaluation/treatment fails to meet the statutory

standard mandated. Given the heightened standard requiring an opinion stated to a reasonable degree of medical certainty, the Commission cannot rely upon mere implication to justify an award for further medical benefits either. As such, the Commissioner's order on this point must be reversed.

CONCLUSION

For all the foregoing reasons, the Hearing Commissioner's award of TTD benefits from December 6, 2015 until on or about December 7, 2016 must be **REVERSED**. In addition, the Commissioner's order for further psychological evaluation/treatment must be **REVERSED**.

By:


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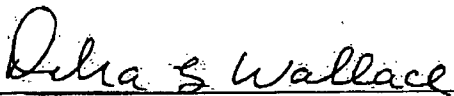
March 20, 2017

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Appellant Herbert Randall Appellant Brief, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 21 day of March 2017.

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Attorneys for Defendants

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1516896

Herbert Troy Randall	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Palmetto State Transport,	)	FULL COMMISSION BRIEF
	)	OF THE APPELLANT
Employer,	)	
	)	
And	)	
	)	
Cherokee Insurance Company	)	
	)	
Carrier,	)	
	)	
Defendants	)	

STATEMENT OF THE CASE

Troy Herbert Randall, the Claimant in this action, sustained an admitted injury by accident on October 31, 2015. He was driving an 18 Wheeler tractor/trailer for the Defendant/Employer, and was stopped on a highway in Texas due to a wreck ahead of him.

While stopped on the highway with his brakes set and his hazard flashers engaged, he was struck violently from behind. The impact had enough force to break the frame of the tractor he was pulling and pin him against the dashboard of the cab in which he was sitting. (Tr., p. 39 & 23).

The Claimant sustained significant injuries to his back, neck, left leg, left arm and psyche. The Claimant had preexisting scoliosis and his injury and accident aggravated this preexisting condition. (APA #6, p. 59) The Claimant was treated and initially, albeit

wrongfully, was given light duty restrictions. Based upon the evidence and testimony, no meaningful offer of light duty employment was ever made by the Defendants. To the contrary, the Defendants initially paid TTD benefits, but said benefits were grossly and wrongfully terminated.

The Claimant admittedly failed a post-accident drug screen, said screen showing a positive result for marijuana. That fact notwithstanding, there is *absolutely no proof whatsoever* that the Claimant was intoxicated in any form or fashion at the time of the accident, nor was there *any* allegation or proof that the marijuana was in any way the proximate cause of the Claimant's accident. As stated hereinabove, the Claimant was stopped on the highway and struck from behind. As such, there was nothing whatsoever that the Claimant could have done to avoid the accident. (Tr. pp. 23 – 24, See also Finding of Fact #6)

Although the Defendants presented testimony that the Claimant was supposed to complete some sort of Substance Abuse Program (SAP), they produced no evidence to substantiate that the Claimant ever received notice of same. (Tr. p. 26 & 44) Furthermore, the Defendants' witness admitted that he made no personal contact with the Claimant about the SAP. (Tr. p. 55) Likewise, although the Defendants alleged that they sent the SAP information to the Claimant via certified mail, they failed to go so far as to submit into evidence any documentation of this allegation – as such, any such allegation is based entirely on hearsay. (Tr. p. 54 – 55, 61, 62)

The Defendant also tried to maintain that the Claimant was terminated because he failed to follow through with the alleged offer of the SAP, but their own witness candidly

admitted that the Claimant did *not* need to complete the SAP to perform the light duty work they allegedly offered to him. (Tr. p. 60, 62, 65 – 66)

The Claimant never returned to work for the required 15 days before his TTD benefits were stopped (See SC Code Section 42-9-260(B)). The Claimant was never offered light duty work within his restrictions. (Tr. p. 46 – 48)

Furthermore, and much more problematically, the Defendants failed to comply with Regulation 67-504(A) in that the Defendants never served the Claimant with 2 copies of the Form 15 terminating his TTD benefits. (Tr. p. 28) The Claimant's TTD was stopped on December 5, 2015, and he was without any income whatsoever for that entire time. At the time of the Hearing, the Claimant lost virtually everything he owned and was reduced to living in a camper in the back yard of the parents of one of his friends. (Tr. p. 33)

Although the Single Commissioner accurately found that the Defendants improperly terminated TTD benefits, the Claimant would argue that, in addition to the Single Commissioner's basis for the finding, i.e., that the Defendants failed to prove that the Claimant was made aware of the alleged necessity that he complete the SAP (See Finding of Fact #21), but also that the Defendants failed to comply with Regulation 67-504(A) such that the Claimant is not only entitled to TTD benefits from December 5, 2015, through the present and continuing. The Claimant would also assert that he is entitled to a 25% penalty on all back/past due benefits due to the Defendants' improper termination of TTD benefits. The Claimant contends that the Single Commissioner erred in finding that the Defendants were in compliance with S.C. Code Section 43-9-260(B).

ARGUMENT

It is the position of the Claimant that the Full Commission should review the evidence and testimony presented, and make new Findings and Conclusions consistent with the evidence on the record. The Claimant would contend that solid grounds are present that would warrant the Full Commission making its own Findings of Fact and Conclusions of Law consistent with substantial evidence and, of necessity, inconsistent with the erroneous findings of the Single Commissioner. Pack vs. State Department of Transportation, 381 S.C. 526, 673 S.E. 2d 461, (S.C.App. 2009).

As is well settled law in South Carolina, the Workers Compensation Act is to be construed liberally in favor of the claimant. Carter v. Penny Tire and Recapping Co., 261 S.C. 341, 200 S.E.2d 64 (1973); Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C.App.2007). The law in South Carolina is also clear that "In workers' compensation cases, the Full Commission is the ultimate fact finder", DeBruhl v. Kershaw County Sheriff's Department, 303 S.C. 20, 397 S.E.2d 782 (S.C.App.1990).

The case currently before the Full Commission is almost directly analogous to the case of Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (S.C.App.2006). In Martin, the South Carolina Court of Appeals held that the Defendant/Employer was liable for improper termination of TTD benefits because they did not follow the procedures set for in Reg. 67-504. What is more notable, the Martin Court held that benefits were improperly stopped because the Defendant/Employer *did not file AND serve* the requisite Form 15 for *18 days* following the termination of TTD benefits *and* because the Defendant/Employer did not attach the supporting documentation to the Form 15.

~ In the instant case, the Defendants did not *file* the Form 15 for *11 days*. More notably, however, the Defendants *did not EVER serve the Form 15 on the Claimant*.

Reg. 67-504(A) *requires*:

The employer's representative may terminate or suspend temporary compensation during the first one hundred fifty days after the employer has notice of the injury according to Section 42-9-260. When compensation is terminated or suspended, the employer's representative *shall* complete Section I and Section II of the Form 15, Temporary Compensation Report. The employer's representative shall file the Form 15 immediately with the Claims Department *and shall serve two copies of the Form 15 immediately on the Claimant according to Reg. 67-211 with documentation attached as to the reason for termination or suspension.* (Emphsais added)

As stated above, the Defendants in the instant case *never served any* copies of the Form 15 on the Claimant. (See Finding of Fact #19 and Conclusion of Law # 3) As such, they utterly and completely failed to comply with Reg. 67-504 and are therefore responsible for all TTD benefits.

In this case, the Single Commissioner erred in finding that the Defendants were in compliance with S.C.Code Section 42-9-260. More specifically, the Commissioner's Conclusions of Law Numbers 3 and 4 are directly incongruent. While it is uncontroverted that the Claimant was *never served with a copy of any Form 15*, the Single Commissioner found that the mere *filing* of a Form 15 on December 17, 2015, was sufficient to put the Defendants in compliance with Reg. 67-504. Such a finding/conclusion is without merit.

More specifically, the Regulation is clear that that *mere filing of a Form 15 with the Commission is only half of the requirements*. The operative and important portion of the applicable Regulation, Reg. 67-504, is "*and shall serve two copies of the Form 15 immediately on the Claimant*". In the case currently before the Full Commission, the

Single Commissioner both found as a fact, and concluded as a matter of law, that the Defendants never *served* the Claimant with either of the Forms 15 they prepared in this matter. As such, the Defendants absolutely did not comply with Reg. 67-504.

That having been established, Finding of Fact #20, and Conclusion of Law #4 must, of necessity, be overturned. More specifically, the Defendants could not be “in compliance” as the Single Commissioner reasoned, if the Claimant was never *served immediately* with two copies of either of the Forms 15. If the Defendants were not “in compliance” with Reg. 67-504, they likewise could not be “in compliance” with S.C. Code Section 42-9-260.

First of all, the Single Commissioner never specified in which component of Section 42-9-260 the Defendants were purportedly in compliance (i.e., (B)(1) – (B)(6)). The Commissioner did, in fact, find that the SAP issue was sufficiently disproven by the Claimant, so one must assume that he was not basing his decision upon (B)(5). All of the other subsections, however, do not apply, so the Claimant would contend that *any* alleged compliance with Section 42-9-260 is erroneous.

That having been established, the Claimant would further contend that the Single Commissioner erred in failing to impose a 25% penalty on the unpaid/improperly terminated TTD benefits. S.C.Code Section 42-9-260(G) specifically provides for such a penalty and, as such, the Defendants should be liable not only for the \$45,196.95 improperly withheld, but also for the 25% penalty upon same.

Finally, the Single Commissioner’s ruling that the applicable Regulation, Reg. 67-504, does not provide for continued TTD because the Regulation “does not provide for

any entitlement to TTD for failing to follow proper procedure pursuant to the regulation” is misguided. It only stands to reason that Reg. 67-504 provides the *only lawful manner for the termination of TTD benefits*.

As such, if the Defendants failed to comply with the proper procedure for termination of benefits, any unlawful termination outside the mechanism(s) set forth in the Regulation would be improper. If benefits are not properly stopped, then, by necessity, any benefits accrued during a period of unlawful termination *would constitute benefits to which the Claimant is still lawfully entitled*. To hold otherwise would give the Defendants no incentive whatsoever to follow proper procedures for the termination of benefits.

Accordingly, the Claimant would contend that he is entitled to TTD benefits from December 5, 2015, through the Hearing, and through the present and continuing, not only because, as was found by the Single Commissioner, the Defendant failed to properly make the Claimant aware of the SAP issue, but also because the Defendants clearly failed to comply with both Reg. 67-504 and S.C. Code Section 42-9-260. Likewise, pursuant to Section 42-9-260(G), the Claimant is entitled to a 25% penalty for the improper termination of benefits.

CONCLUSION

In this action, the Defendants clearly mishandled the Claimant’s TTD benefits in a disturbing and unlawful way. While the Single Commissioner correctly found that the benefits were terminated improperly, the conclusion he arrived at overlooked the clear meaning and purpose of both SC Code Section 42-9-260 and Regulation 67-504. What

the Single Commissioner failed to recognize is that these two pieces of legislation were clearly and specifically promulgated to protect claimants from the very type of misconduct which occurred in this case.

By failing to serve the Claimant in this case with the requisite two (2) copies of the Forms 15 allegedly prepared and filed in this case, the Defendants deprived the Claimant of the ability to promptly contest their improper termination of TTD benefits. This misconduct had the terrible effect of forcing the Claimant to go without income of any kind for well over a year. As a result, the Claimant has suffered not only medically, but also financially. This has had the impact of both physical disability and mental disability which has rendered this Claimant homeless and penniless.

Based upon the Defendants' failure to comply with *both* SC Code Section 42-9-260 *and* Reg. 67-504, the Claimant is entitled not only to back TTD benefits from the December 5, 2015, date of termination, but also to the 25% penalty provided for in the South Carolina Workers Compensation Act. Said penalty was specifically provided to discourage the very type of unlawful conduct displayed by the Defendants in this matter. To hold otherwise would both defy the plain meaning of this Statute and Regulation, and deprive the Claimant of the benefits, and bonuses, to which he is lawfully entitled based upon these Defendants' unlawful conduct.

As such, the Full Commission should make Findings and Conclusions consistent with the Claimant's argument in this regard, and order both the back TTD benefits and the 25% penalty upon same.

Respectfully submitted,

s/Jeffrey D. Ezell

Jeffrey D. Ezell
EZELL LAW FIRM, LLC
15 North Irvine St.
Greenville, SC 29601
(864) 421-0015
(864) 421-0256 (fax)
Attorney for the Claimant

Greenville, SC

March 16, 2017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1516596

Herbert Randall,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Palmetto State Transportation,	)	CERTIFICATE OF
	)	SERVICE
Employer,	)	
	)	
And	)	
	)	
Cherokee Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants	)	

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she 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 §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Judicial Director
SCWCC
PO Box 1715
Columbia, SC 29202-1715

Mr. George Gallagher
Speed Seta
PO Box 11669
Columbia, SC 29211

DOCUMENT: Appellant's Appeal Brief

DATE MAILED: March 16, 2017

Janet Spruell

Janet Spruell
Paralegal to Jeffrey D. Ezell

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC

ATTORNEYS AT LAW

WALLACE SPEED (GA & TN)
LESLI R. SETA (GA & FL)
SETH C. MARTIN (GA & FL)
ERIC L. TRIVETT (GA)
M. STEPHEN STUBLEY (SC)
STEPHANIE A. ROCKWELL (GA & TN)
JAMES E.L. FICKLING (SC & NC)

REPLY TO
P.O. BOX 11669
COLUMBIA, SOUTH CAROLINA 29211
PHONE (803) 748-2919
FAX (803) 748-2735
www.Speed-Seta.com

ALEXANDER ADKINS (GA)
HUNTER CHANDLER (GA & TN)
MELISSA CRUZ (GA)
C. BENTON HILBURN (GA)
JASON A. LANAHAN (GA)
ERICA LOUDIN (SC)
ANDREA S. OWEN (GA)
BRITTANY SCHWANITZ (GA)
DANIELLE TAYLOR (GA)
BRITTANY BELL TURNER (GA & FL)

GRANT LANFORD (GA & FL), of counsel
TOM PATTERSON (GA & AL), of counsel
GEORGE GALLAGHER (SC), of counsel
BOB HORNER (SC & NC), of counsel

October 20, 2016

The Honorable Mike Campbell
Commissioner
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

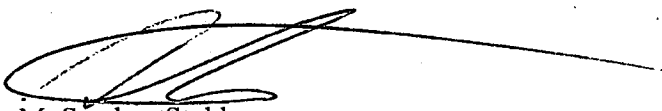
RE: *Herbert Randall v. Palmetto State Transportation*
WCC No.: 1516596
Claim No.: WC41487
DOA: 10/31/15
Our File No.: 1800-0107

Dear Commissioner Campbell:

Enclosed please find the Defendant's Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports.

By copy of this letter to claimant's attorney, Jeffrey Ezell, I am serving him with the Pre-Hearing Brief and Notice of Witnesses and copies of all medical reports we intend to submit pursuant to the Administrative Procedures Act via U.S. regular mail.

Sincerely,



M. Stephen Stubley

MSS/dlw
Enclosures

cc: Jeffrey Ezell, Esquire (w/encl)
Michael DeCarolis (w/encl)



Claimant's Name: Herbert Randall Employer's Name: Palmetto State Transportation
Address: 6 Embury Street Address: 1050 Park West Blvd.
City: Taylors State: SC Zip: 29687 City: Greenville State: SC Zip: 29611
Home Phone: (864) 517-8169 Work Phone: () Carrier: Cherokee Insurance Co.
Preparer's Name: M. Stephen Stubley, Esquire Preparer's Phone #: (803) 748-2919

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$766.05 2. AWW: \$1,495.78 Date of Injury: 10/31/2015
3. Type of injury and body part(s): Admit cervical injury
4. Facts in controversy: Whether or not Employer/Carrier is entitled to terminate TTD; whether or not the Employer/Carrier is entitled to any credit for overpayment of TTD; Defendants have scheduled an evaluation on November 1, 2016 with Dr. Buccì to determine necessity of additional medical care.
5. Legal issues involved: See number 4. 42-9-210, and all issued raised in Form 51 and Form 21
6. Unusual aspects: The claimant was released to light duty and failed a post injury drug screen. The Employer has a Zero Tolerance Drug policy. But for his failed drug screen. Light duty would have been available. Dr. Hodge and Dr. Galle refused to see the claimant for additional medical care and multiple requests were made to his prior attorney for assistance. The Defendants have arranged for an evaluation with Dr. Buccì for November 1, 2016 in order to address additional medical treatment and current work status.
7. Witnesses (designate if expert):* Scott Justice and any other representative of the employer; the Claimant and any witnesses listed by the Claimant.
(The Defendants reserve the right to cross-examine any expert submitted by the claimant pursuant to 1-23-330 (3). The Defendants reserve the right to amended their Pre-hearing brief upon receipt of additional information.
8. Exhibits: Claimant's deposition transcript; drug test; Letter to WCC from adjuster with Form 15
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Phillip Hodge, Neurosurgery Cross Creek, 111 Doctors Drive Greenville, SC 29605 and Dr. Galle, Center for Health and Occupational Services,, 1020 Grove Road, Greenville, SC
11. Impairment rating(s); body part(s); physician and date of opinion:
12. I am amending my Form 50/51 in the following manner: N/A

☐ **Mediation**

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

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

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

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

address 15 N. Irvine Street, Greenville, SC 29601 **on the** 20th **day of** October, 2016 by; ☒ **first class postage** ☐ **certified mail** ☐ **personal service.**

Signature: [Signature] Email: sstubbley@speed-seta.com
Date of hearing: October 26, 2016 (Commissioner Campbell) Time needed for hearing: 1 hour

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

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF GREENVILLE	)	COMMISSION
Herbert Randall,	)	WCC FILE NO: 1516896
	)	
Employee,	)	
	)	
vs.	)	
	)	NOTICE OF WITNESSES
Palmetto State Transportation,	)	AND WRITTEN REPORT(S) PHYSICIAN
	)	OR OTHER EVIDENCE TO BE
Employer,	)	INTRODUCED ON BEHALF OF
	)	THE EMPLOYER/CARRIER
and	)	
	)	
Cherokee Insurance Company,	)	
	)	
Carrier.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
THE CLAIMANT'S ATTORNEY JEFFREY EZELL:

YOU ARE HEREBY NOTIFIED THAT THE employer/carrier, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physicians or other evidence on behalf of the employer/carrier, to wit:

TAB	NAME OF PHYSICIAN/OTHER	DATE OF REPORTS	NO.
8.	Center for Health & Occupational Services	12/21/15 – 1/4/16	72 - 75

EXH #	EXHIBIT	DATED	PAGE NOS.
9.	Pembroke Drug Testing	10/31/15	76
10.	Letter from adjuster to WCC with Form 15		77 - 78
11.	Deposition transcript of claimant	10/10/16	

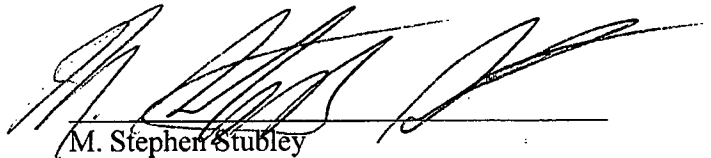
YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the employer/carrier:

Scott Justice and any other representative of the employer. The Claimant and/or any witness named by the Claimant. The Defendants reserve the right to cross-examine any expert submitted by the claimant pursuant to 1-23-330(3).



M. Stephen Stubley
Speed, Seta, Martin, Trivett & Stubley, LLC
Post Office Box 11669
Columbia, South Carolina 29211
(803) 748-2919

Columbia, South Carolina

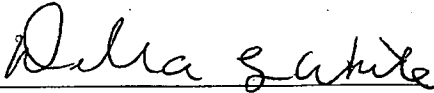
October ____, 2016

CERTIFICATE OF SERVICE

Debra L. White, states that she is a paralegal for Speed, Seta, Martin, Trivett & Stubley, LLC, with offices in Columbia, South Carolina. This is to certify that a copy of the foregoing Pre-Hearing Brief, Notice of Witnesses and medical records, have been served upon the claimant, by placing a copy of the same in the United States mail, first class postage prepaid, addressed to him at his office as shown below this the 20 day of October, 2016 as follows:

The Honorable Mike Campbell, Commissioner
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Jeffrey Ezell, Esquire
15 N. Irvine Street
Greenville, SC 29601


Debra L. White, Paralegal
Speed, Seta, Martin, Trivett & Stubley, LLC
Post Office Box 11669
Columbia, SC 29211

(803) 748-2919

**GREENVILLE
HEALTH SYSTEM**Center for Health &
Occupational Services1020 Grove Road
Greenville, SC 29605
(864) 455-2300 P
(864) 455-2399 F
ghs.org**OUTPATIENT VISIT**Name: Herbert Randall
DOB: 08/16/62Date of Service: 01/04/16
Date of Injury: 11/11/15

SUBJECTIVE: Patient is six weeks after his injury. He had a motor vehicle accident. His truck was hit while he was driving his truck. He was hit from the back after the impact of the third car and the small car in the middle hit the truck. He was seen in the hospital and also referred to us from there. MRI was done and shows C7 to T1 spondylosis with osteoarthritic change throughout and scoliosis. There is also severe spinal stenosis at C6-7. L4-5 with annular fissuring, mild to moderate spinal stenosis, lateral and neuroforaminal encroachment at the level of L2-3. Right central proximal foraminal bulge at the level of L2-3. Multilevel disc bulges are there in the lower lumbar area. Overall picture of degenerative spondylosis. He claims that his pain today is 10/10. The pain is going down the legs occasionally, but he also feels the neck pain. He is doing physical therapy and hydrotherapy. He said it makes it worse. The medications are controlling the pain, but he states he is not satisfied with the medications, that they are not controlling his pain appropriately. At this time, the medications he is taking are naproxen, Flexeril and Norco. He has finished his last dosage.

PAST MEDICAL HISTORY: Significant for scoliosis, cervical and thoracic spine. He denies that he had lower back pain. He had been treated by a chiropractor starting at the age of 14. He has also been treated by an outside primary care facility.

OBJECTIVE: Blood pressure 134/77. Heart rate 74. Respirations 18. Temperature 97.0. Weight 175 pounds. Well-developed, well-nourished male with mild distress of back pain. Skin: Normal turgor, no nodules or lesions. Hair and nails are normal. No abnormal lymph nodes. Head is normocephalic. Vision, hearing, pharynx, mouth are normal. Neck is held flexed with increased kyphosis in the cervical area. The patient can transfer from standing to sitting and from sitting to standing positions without gait problems, holding his neck flexed. Attempt to extend the back is difficult. There is no radiating pain to the upper extremities. There is tenderness at L10, L4, L12 area. There is mild tenderness on C7 to T1. There is tenderness on L2-3 and L5 area on both sides. He is able to flex only about 40-50 degrees on the lower back. Extension of the lower back is associated with pain. Straight leg raising is 30-40 degrees bilaterally, sitting and standing. Deep tendon reflexes are normal. There is no neurovascular abnormality in upper or lower extremities.

ASSESSMENT: Lower back pain. Cervical pain. Thoracic region pain. Cervical and thoracic region pain has improved. Lower back pain still remains the same. Cervical spondylosis, scoliosis, multiple disc protrusions, lower back spondylosis L3 to L5, multilevel disc protrusions on MRI.

PLAN: Again we discussed his condition and the patient was adamant that his pain in the lower back is due to the motor vehicle accident. He does physical therapy, but he said physical therapy sometimes increases the pain, although he is doing hydrotherapy. He said his pain level today is 10/10 on the lower back. The patient was given another #30 tablets of Norco 5/325. He was also ordered today gabapentin 200 mg to be taken twice a day, and naproxen 500 mg to be taken twice a day, #20 tablets. Patient was last time referred to a neurosurgeon for consultation for whether this back pain has to do with the normal chronic degenerative conditions or the strain/sprain of the motor vehicle accident. At this point, I think the sprain/strain must have

Name: Herbert Randall
DOB: 08/16/62

Date of Service: 01/04/16
Page 2

been resolved with conservative treatment and therapy, but the predisposing conditions remain the same. The lower back pain is not well controlled. So we want the second opinion by the neurosurgeon to decide whether the sprain/strain have been resolving or additional information is that these changes are not caused by the motor vehicle accident, but were throughout the spine is a predisposing condition for his medical condition. So we are waiting for the neurosurgeon feedback/second opinion for decision to release him for occupational medicine clinic.

Mef D. Galle, MD, MPH
MDG/bis/nkd 01/05/16

C: Palmetto State Transportation, Scott Justice, 1050 Park West Boulevard, Greenville, SC 29611

Amel Galle MD MPH
01/05/2016

JAN 06 2016

**GREENVILLE
HEALTH SYSTEM**Center for Health &
Occupational Services1020 Grove Road
Greenville, SC 29605
(864) 455-2300 P
(864) 455-2399 F
ghs.org**OUTPATIENT VISIT**Name: Herbert Randall
DOB: 08/16/62Date of Service: 12/21/15
Date of Injury: 11/11/15

SUBJECTIVE: Patient had a motor vehicle accident on 11/11/15. He presented to us with lower back pain, left wrist, left knee, left shoulder and cervical area pain. He was seen in the hospital with x-rays and MRI and was given pain medications. This is his third follow-up. Patient takes Flexeril, Medrol Dosepak, and Norco as ordered. He still complains of pain in the thoracic area and lower back of 7/10. He has been in physical therapy and said that is not helping him at all. He said the physical therapy is aggravating his pain.

MRI was done before he was sent to us for follow-up. It shows C7 to T1 there is spondylosis. There is also scoliosis and severe spinal stenosis from C6 to C7 levels. He had also multilevel disc bulging prominent at L4-5 with annular fissuring, mild to moderate spinal stenosis, and lateral neuroforaminal encroachment at the level of L2-3, right central proximal foraminal bulge at the level of L2-3. There is no spinal stenosis at the level of L2-3. In general, he had degenerative spondylosis with multilevel disc bulges and the motor vehicle accident could not be the cause of this pathology going on with the degenerative spondylosis.

PAST MEDICAL HISTORY: He said he has only scoliosis of the cervical and thoracic spine, for which he had been visiting his chiropractor since that age of 14. No other chronic conditions, heart disease, DM or previous injuries.

MEDICATIONS: He is not taking any medications. The only medications he takes are naproxen, Flexeril and Norco, which was ordered at this time.

ALLERGIES: HE is not allergic to any medications.

OBJECTIVE: Blood pressure 127/87. Pulse 74. Weight 175 pounds. Temperature 98.2. Well-developed, well-nourished male in mild distress because of pain. Skin: Normal turgor, no nodules or lesions. Hair and nails are normal. No abnormal lymph nodes. Head is normocephalic. Vision and hearing are normal. Pharynx is normal. Neck is held flexed with increased kyphosis on the cervical and thoracic spine. The patient can transfer from standing to sitting and from sitting to standing without any gait problems. Chest is clear to auscultation. Diaphragm moves symmetrically on respiration. He has deep palpation of the L10-L12 and also on paraspinal areas he feels tenderness. There is also mild tenderness along the C7-T1 area and L2-3 down to L5 area. He is able to do straight leg raising. Sensation is intact. Neurovascular is intact in the upper and lower extremities. Motor function is normal in the lower extremities. Sensation is normal in the lower extremities. He is able to do straight leg raising sitting and standing.

ASSESSMENT: Lower back pain, cervical pain and thoracic region pain. Cervical spine sprain/strain. Cervical spondylosis, scoliosis, multiple disc protrusions, lower back spondylosis, L3 to L5 multilevel disc protrusions.

DEC 28 2015

02/29/2016 11:16060T0038004

Name: Herbert Randall
DOB: 08/16/62

Date of Service: 12/21/15
Page 2

PLAN: Again we discussed today about his cervical, thoracic and lower back pain. The patient associated this pain with the accident he sustained on 11/11/15. He denies that he had any type of pain in the past, although he said he has been visiting a chiropractor in the past. He said he had scoliosis and some changes in the back, but the pain was aggravated by the motor vehicle accident. He did go to physical therapy, but reports that this physical therapy is not helping him at all. He had been also taking NSAID and Flexeril, and on his last visit also prescribed him Medrol Dosepak and Norco. I would like to refer this patient to a neurosurgeon to decide and get a second opinion in terms of whether this pain has been there in the past or if this is just aggravated by the motor vehicle accident. We have been treating the strain/sprain, but the pathology of spondylosis, multiple layer disc problems in the cervical and thoracic spine, and also in the lower back lumbar spine, were there several years prior to this motor vehicle accident. In terms of the motor vehicle accident, he was driving a truck. He was hit at the back by a second car. Actually, the initiating accident was caused by a third car on the back, which hit the second one, and the second one hit the truck. Therefore, the nature of the injury indicates probably the pathology of the pain is not due to the motor vehicle accident. So we would like to get a second opinion as to treatment of sprain/strain of the back and cervical area which was aggravated by the motor vehicle accident and the pathology of spondylosis, disc bulges and degenerative pathology is there prior to the accident.

Mef D. Galle, MD, MPH

MDG/bts/nkd 12/22/15

C: Palmetto State Transportation, WC Claims, 1050 Park West Blvd, Greenville, SC 2611

Omni D Galle MD MPH

1600-0107



Drug Testing System
Lab Results Report: drugtest
11/17/2015

Employee: RANDELL, HERBERT
Employee Number: XXXXX1321
Employer: ADP/PALMETTO STATE TRANSPORTATION
1050 PARK WEST BLVD
Greenville, SC 29611
Employer Number: 206722
Location: PALMETTO STATE TRANSPORTATION
Location Code: 1055633
Ordering Account Number: Z9207191
COC Number: 2025122357
Specimen ID: 2025122357-123106288
Reason: POST ACCIDENT
Modality: DOT - FMCSA
Date Collected: 10/31/2015
Collection Site: IL5469 IL5469 Mobile Health Solutions On Site ONLY Tier 5
Collection Site Address: 12172 S IL ROUTE 47 112 Huntley, IL 601429619
Collection Site Phone: (312) 833-3110
Lab Received: 11/4/2015
Lab Reported: 11/5/2015
Date COC Rec: 11/4/2015
MRO Verified: 11/17/2015 by maresiah.jackson
Date Reported: 11/17/2015

Result: POSITIVE

Product Class:	Urine Test
Drug Class:	Result
6-MONOACETYL MORPHINE	NEGATIVE
AMPHETAMINES	NEGATIVE
COCAINE	NEGATIVE
ECSTASY/MDA/MDA	NEGATIVE
MARIJUANA	POSITIVE
OPiates	NEGATIVE
PCP	NEGATIVE

NOTE: All positive drug test results have been verified through GC/MS confirmation tests. Alcohol test results are confirmed by GC only.
Laboratory: ALERE

Charles O. Smith, M.D., MEDICAL REVIEW OFFICER

Medical Review Office
7500 W 110th St
SUITE 400A
OVERLAND PARK, KS 66225
Phone: (888) 102-2261 Fax: (913) 479-4029

The substance abuse testing services are provided by Pembroke ADP Screening and Selection Services, Inc. ("ADP") is not a drug testing company. For questions or information about the substance abuse testing services, contact Pembroke at: (804) 346-1010.

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Cherokee Insurance Company
P.O. Box 159
Warren, Michigan 48090
(800) 201-0450
Fax: (586)939-8720

June 3, 2016

South Carolina Workers' Compensation Commission
1612 Marion St.
PO Box 1715
Columbia, SC 29202-1715

RE: Claimant: Herbert Randall
 WCC File #: 1516896
 Claim Number: WC41487
 Date of Loss: 10/31/2015

To Whom It May Concern:

Please accept the enclosed Form 15, Sec. II on the claim for Herbert Randall. Temporary total disability benefits were terminated as light duty was available, but the claimant failed a drug screen. The claimant's prior attorney, Thomas Gagne, was advised of the termination and basis for same.

I have enclosed an extra copy of the form and ask that a copy be stamped and returned to Cherokee Insurance Company for our records.

Thank you in advance for your anticipated cooperation. If further information is needed, please feel free to contact me.

Sincerely,

Michael DeCarolis
Claims Representative
(800) 201-0450 x 3426

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: **1516896**
Carrier File #: **WC41487**
Carrier Code #: **1101**
Employer FEIN #: **57-0940376**

Claimant's Name: Randall, Herbert SSN: 342 - 60 - 1321 Employer's Name: Palmetto State Transportation
Address: 6 Embury Street Address: 1050 Parkwest Blvd
City: Taylors State: SC Zip: 29687 City: Greenville State: SC Zip: 29611
Home Phone: (864) 517-8169 Work Phone: () - Insurance Carrier: Cherokee Insurance Company
Preparer's Name: Michael DeCarolls Law Firm: n/a Preparer's Phone #: (800) 201-0450

Date of injury: 10/31/2015 (m/d/yyyy)
(m/d/yyyy)

Date of Notice to Employer of Injury: 10/31/2015

I. **Payment of Temporary Compensation** Check one: ☐ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☐ A. Temporary Total at the compensation rate of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment was _____ (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of \$_____ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a **Form 155** with the **Form 18**, which shall be filed six months after the date of injury and each six months thereafter until the file is closed.
For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before Injury	\$
- Current weekly wage	\$
= Difference in wages before Injury and now	\$ 0.00
x .6667	\$ 0.00
Temporary Partial Compensation Rate	\$ 0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. **Termination of Temporary Compensation** Temporary compensation payments were stopped on 12/5/2015 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a **Form 17**.
- ☒ Based on a good faith investigation, the claim is denied. Reason for denial: failed post accident drug test
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☒ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

[Signature]
Signature of Claims Administrator

6/3/2016
Date (m/d/yyyy)

III. **Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:**

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION.
I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: **Form 15(II)** ☐ Has ☐ Has not been received.

Signature of Claimant or Legal Representative

Date (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

WCC Form # 15
Rev. 10/04

15

TEMPORARY COMPENSATION REPORT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Richard A. Hartzell, Employee, Respondent,

v.

Palmetto Collision, LLC, Employer, Appellant,

and

South Carolina Workers' Compensation Uninsured
Employer's Fund, Respondent.

Appellate Case No. 2012-211870

Appeal From The Workers' Compensation Commission

Opinion No. 5457

Submitted September 1, 2016 – Filed November 23, 2016

AFFIRMED IN PART AND REVERSED IN PART

Kirsten Leslie Barr and Harold Eugene Trask, both of
Trask & Howell, LLC, of Mt. Pleasant, and David Alan
Westerlund, Jr., of Shelly Leeke Law Firm, LLC, of
North Charleston, all for Appellant.

Kerry W. Koon, of Charleston, for Respondent Richard
A. Hartzell; Lisa C. Glover, of Columbia, for Respondent
S.C. Uninsured Employers Fund.

WILLIAMS, J.: This workers' compensation action comes before this court after our supreme court's decision in *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 785 S.E.2d 194 (2016), with instructions on remand to address Palmetto Collision, LLC's (Palmetto) remaining assignments of error. Palmetto argues the Appellate Panel of the South Carolina Workers' Compensation Commission (the Appellate Panel) erred in (1) failing to provide a conclusion of law to satisfy section 42-1-160 of the South Carolina Code (2015), and vaguely finding Richard Hartzell sustained an injury to his back; and (2) awarding Hartzell medical treatment in contravention of subsection 42-15-60(A) of the South Carolina Code (2015). We affirm in part and reverse in part.

FACTS/PROCEDURAL HISTORY

Hartzell, a fifty-year-old auto body paint technician, worked at Palmetto in early 2009. When cleaning Palmetto's shop on or around February 25, 2009, Hartzell claimed he injured his back while moving tires, rims, and heavy frame equipment. Hartzell testified that he began experiencing lower back pain the afternoon after completing the work and felt very sore in his lower back the following day.

According to Hartzell, he notified Mike Stallings, Palmetto's owner, the day after the alleged injury that he was "pretty sore," and he "must have hurt [himself]." Hartzell testified that Stallings suggested he visit the emergency room if he was having trouble with his back; however, he did not seek medical treatment at that time. Soon thereafter, Palmetto no longer had work for Hartzell, and he left his employment on March 20, 2009. Hartzell noted that, although he and Stallings talked about his back injury during the last weeks of his employment, he never further discussed the injury or sought reimbursement for medical expenses from Palmetto. On April 1, 2009, Hartzell visited a chiropractor, Dr. H. Austin Murray, and reported a job-related lower back injury that occurred on February 25, 2009, on the intake health form.¹

¹ In an April 2, 2009 narrative report, Dr. Murray wrote that Hartzell stated his back injury was not caused by a work accident. Dr. Murray, however, later wrote that Hartzell's symptoms did begin on February 25, 2009, the date of his alleged injury at Palmetto's shop.

On May 10, 2010, Hartzell filed a Form 50, alleging a partial permanent injury to his back while moving an auto frame machine on approximately February 25, 2009. Palmetto denied the claim by raising several defenses. The single commissioner held a hearing on the matter and issued an order, in which she found (1) Palmetto was subject to the South Carolina Workers' Compensation Act² (the Act) because it regularly employed four or more employees; (2) Hartzell sustained an injury by accident to his back on or about February 25, 2009; and (3) Hartzell timely reported the injury to Stallings.

Based upon these findings, the single commissioner found Hartzell was entitled to "medical, surgical, and other authorized treatment" and ordered a medical evaluation to determine whether he (1) was at maximum medical improvement (MMI), and (2) required any additional medical treatment or benefits under the Act resulting therefrom. On March 26, 2012, the Appellate Panel affirmed the single commissioner's decision.

Palmetto subsequently appealed to this court, arguing the Appellate Panel erred in (1) determining Palmetto regularly employed four or more employees, (2) finding Hartzell accidentally injured his back and failing to make any conclusion of law thereon, (3) concluding Hartzell timely reported the injury and failing to make any conclusion of law thereon, and (4) awarding Hartzell medical benefits for the injury.

In an opinion issued on October 9, 2013, this court reversed the award of benefits to Hartzell. See *Hartzell v. Palmetto Collision, LLC*, 406 S.C. 233, 249, 750 S.E.2d 97, 105 (Ct. App. 2013) (per curiam). As a preliminary matter, the court of appeals found Palmetto regularly employed enough employees to come under the jurisdiction of the Act. *Id.* at 245, 750 S.E.2d at 103. Nevertheless, the court held the Appellate Panel erred in finding that Hartzell provided timely notice of his injury within ninety days to Palmetto because such conclusion was not supported by substantial evidence in the record. *Id.* at 246–48, 750 S.E.2d at 103–05. Determining that its reversal on the notice issue was dispositive, the court declined to address Palmetto's remaining arguments. *Id.* at 248, 750 S.E.2d at 105.

Our supreme court granted Hartzell's petition for a writ of certiorari and reversed. See *Hartzell*, 415 S.C. at 623, 785 S.E.2d at 197. According to the supreme court,

² S.C. Code Ann. §§ 42-1-10 through -19-50 (2015 & Supp. 2015).

Hartzell's testimony in which he stated he told Stallings that he was "pretty sore" and that he "must have hurt [himself]" the previous day was substantial evidence supporting the Appellate Panel's finding that he timely reported his alleged injury. *Id.* The court then remanded the case to this court with instructions to consider Palmetto's remaining assignments of error. *Id.* at 624, 785 S.E.2d at 198.

ISSUES ON APPEAL

- I. Did the Appellate Panel err in failing to provide a conclusion of law with respect to section 42-1-160 and vaguely finding Hartzell sustained an injury?
- II. Did the Appellate Panel err in awarding Hartzell medical treatment in contravention of subsection 42-15-60(A)?

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act³ (APA) governs the standard of judicial review in workers' compensation cases. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Under the APA, this court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 610–11 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

Normally, the proper interpretation of a statute is a question of law subject to de novo review. *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010). However, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Dunton v. S.C. Bd. of Exam'rs In Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

³ S.C. Code Ann. §§ 1-23-310 through -400 (2005 & Supp. 2015).

LAW/ANALYSIS

I. Hartzell's Injury

Palmetto first argues the Appellate Panel erred in failing to provide a conclusion of law with respect to section 42-1-160 and in vaguely finding Hartzell sustained an injury. We disagree.

To be compensable under the Act, an injury by accident must be one "arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (2015). "In general, whether an accident arises out of and is in the course and scope of employment is a question of fact for the [Appellate Panel]." *Whigham v. Jackson Dawson Commc'ns*, 410 S.C. 131, 135, 763 S.E.2d 420, 422 (2014). However, when no material facts are disputed, whether an accident is compensable is a question of law. *Id.*

In this case, the facts surrounding Hartzell's alleged back injury were clearly disputed by the parties. Therefore, we reject Palmetto's contention that the Appellate Panel erred in failing to include a conclusion of law with respect to subsection 42-1-160(A) because whether Hartzell's alleged injury is compensable was a question of fact. *See id.*; *see also Rhodes v. Guignard Brick Works*, 245 S.C. 304, 307, 140 S.E.2d 487, 488 (1965) (holding the commission's finding that deceased employee's heart attack did not arise from his employment within the meaning of workers' compensation law was a finding of fact, not a conclusion of law).

We also disagree with Palmetto's argument that the Appellate Panel's order violates the APA because its findings surrounding Hartzell's alleged injury were not sufficiently detailed to allow for meaningful review by this court. The APA requires that "[a] final decision . . . include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." S.C. Code Ann. § 1-23-350 (2005). Moreover, the Appellate Panel's findings of fact must be sufficiently detailed to enable the appellate court to determine whether the evidence supports the findings and whether the law was properly applied to those findings. *Frame v. Resort Servs. Inc.*, 357 S.C. 520, 531, 593 S.E.2d 491, 497 (Ct. App. 2004).

In a section addressing the evidence, the Appellate Panel recounted Hartzell's testimony, which it found "more credible on the issue of the fact, and reporting, of the injury." Hartzell testified that, to access his toolbox more easily, he cleaned up Palmetto's shop by moving tires, rims, and a heavy frame machine with steel posts and chains weighing approximately two to three hundred pounds. After he tilted the frame machine back on its wheels and moved it, Hartzell testified he began having pain in his lower back, which later became worse. The Appellate Panel stated in its findings of fact that, "[b]ased upon the medical records and testimony, . . . [Hartzell] sustained an injury by accident *to his back on or about February 25, 2009, while moving a heavy frame machine while cleaning up [Palmetto's] shop.*" (emphasis added). Thus, we find the order complies with the APA because it includes a clear and concise statement of the facts supporting the Appellate Panel's finding that Hartzell suffered an injury. See § 1-23-350.

Nonetheless, Palmetto also argues the record does not contain substantial evidence to support the Appellate Panel's finding that Hartzell suffered an injury. Palmetto specifically notes Hartzell never asked for medical treatment during his employment and that Dr. Murray's narrative report stated that his condition "was not caused by a work or automobile accident." However, upon our examination of Hartzell's testimony—which the Appellate Panel found to be more credible—along with his health intake form reporting a job-related injury and Dr. Murray's narrative report stating Hartzell's symptoms began on February 25, 2009, we find that substantial evidence exists supporting the Appellate Panel's finding that Hartzell injured his back by accident at Palmetto's shop. See *Shealy*, 341 S.C. at 455, 535 S.E.2d at 442.

Therefore, we affirm the Appellate Panel's finding that Hartzell suffered a compensable injury under the Act.

II. Subsection 42-15-60(A)

Palmetto next contends the Appellate Panel erred in awarding medical benefits without expert medical evidence in contravention of subsection 42-15-60(A). We agree.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "The [General Assembly]'s intent should be ascertained primarily

from the plain language of the statute." *Ex parte Cannon*, 385 S.C. 643, 655, 685 S.E.2d 814, 821 (Ct. App. 2009) (quoting *Georgia-Carolina Bail Bonds, Inc. v. Cty. of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003)). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007). "If, however, the language of the statute gives rise to doubt or uncertainty as to legislative intent, the construing court looks to the statute's language as a whole in light of its manifest purpose." *Ex parte Cannon*, 385 S.C. at 655, 685 S.E.2d at 821. "The construing court may additionally look to the legislative history when determining the legislative intent." *Id.*

Prior to 2007, section 42-15-60 provided the following regarding an employer's responsibility for medical expenses in workers' compensation cases:

Medical, surgical, hospital and other treatment, including medical and surgical supplies . . . may reasonably be required, for a period not exceeding ten weeks from the date of an injury to effect a cure or give relief and for such additional time as in the judgment of the Commission will tend to lessen the period of disability In case of a controversy arising between employer and employee, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary.

Hall v. United Rentals, Inc., 371 S.C. 69, 81–82, 636 S.E.2d 876, 883 (Ct. App. 2006) (emphasis omitted) (quoting S.C. Code Ann. § 42-15-60 (Supp. 2005)). Thus, an employer's liability for medical expenses was capped at ten weeks after an injury, but the Act afforded the Appellate Panel great discretion in its ability to award benefits beyond this period when it determined treatment would tend to lessen the period of a claimant's disability. *See id.* at 82, 636 S.E.2d at 883; *see also Dykes v. Daniel Constr. Co.*, 262 S.C. 98, 109, 202 S.E.2d 646, 652 (1974) ("[T]here is no liability on the part of an employer to furnish medical treatment to an injured employee beyond ten weeks from the date of injury unless in the judgment of the Commission it 'will tend to lessen the period of disability.'" (quoting Code of Laws of S.C. § 72-305 (1962))).

In 2007, however, the General Assembly passed significant workers' compensation reform and amended section 42-15-60 to its current form. *See* Act No. 111, 2007 S.C. Acts 627–28. The statute now provides, in pertinent part, the following:

The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability *as evidenced by expert medical evidence stated to a reasonable degree of medical certainty*.

S.C. Code Ann. § 42-15-60(A) (2015) (emphasis added). Therefore, while retaining the employer's ten-week liability period, the General Assembly added a requirement for expert medical evidence to support an award of additional treatment and limited the Appellate Panel's broad discretion to order such treatment in a case or controversy between the employer and the employee. *See id.*

In its order, however, the Appellate Panel concluded "the requirement of expert medical evidence is not triggered unless the employer has complied with the Act by providing medical treatment for the initial ten (10) week period after the date of injury." The Appellate Panel also stated, and Hartzell argues on appeal, that to construe section 42-15-60 otherwise would impermissibly shift the burden of providing initial treatment and the medical evidence to the claimant.

We find compelling reasons to reject the Appellate Panel's statutory interpretation. *See Dunton*, 291 S.C. at 223, 353 S.E.2d at 133 (holding the appellate court will not overrule an agency's statutory construction absent compelling reasons). First, the legislative history and a plain reading of the statute reveal that an employer's responsibility for providing medical treatment to covered employees under the Act is limited to ten weeks following an injury. To hold an employer liable for medical expenses beyond this time period, the Appellate Panel must decide that, based upon a heightened standard of medical evidence, additional treatment would tend to lessen the claimant's period of disability. *See* § 42-15-60(A).

Second, we find the Appellate Panel's construction leads to an absurd result in which the statute would only require claimants who immediately report injuries within ten weeks to produce expert medical evidence to receive additional medical treatment while allowing claimants who file a Form 50 after more than ten weeks to receive treatment without producing such evidence. *See Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (stating that statutes should not be construed so as to lead to an absurd result that could not have been intended by the General Assembly). Indeed, as a practical matter, an employer simply cannot comply with the ten-week treatment provision of section 42-15-160(A) if the employee does not promptly report the injury. *Cf. Mintz v. Fiske-Carter Constr. Co.*, 218 S.C. 409, 414, 63 S.E.2d 50, 52 (1951) (stating the requirement of prompt notice in workers' compensation cases enables the employer to "furnish medical care [to] the employee . . . to minimize the disability and consequen[t] liability upon the employer").

Last, contrary to the Appellate Panel's public policy concerns, the General Assembly has placed the burden upon the claimant to prove entitlement to worker's compensation benefits. *See Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998) ("The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture[,] or speculation.").

In the instant case, it is undisputed that Hartzell never requested medical treatment or expenses from Palmetto. Because more than ten weeks had elapsed since Hartzell's alleged injury and the Appellate Panel did not support its decision with expert medical evidence, we find it erred when it awarded medical benefits in contravention of subsection 42-15-60(A). Therefore, we reverse the Appellate Panel on this issue.

CONCLUSION

Based on the foregoing, the Appellate Panel's decision is

AFFIRMED IN PART and REVERSED IN PART.⁴

THOMAS and GEATHERS, JJ., concur.

⁴ We decide this case without oral argument pursuant to Rule 215, SCACR.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Report run: 12/08/16 10:59

Report Criteria: Case Status

Upload File

Appeal a Fine

Ask a Question

Case #	Caption	Date of Injury	Carrier	Attorney for Defendant	Attorney for Claimant	Status
1516896	HERBERT RANDALL -VS- PALMETTO STATE TRANSPORTATION CO INC	10/31/15	Cherokee Insurance Company 34200 Mound Road Sterling Heights MI 48310 pkeene@cherokeeinsurance.com (800) 201-0450	FOR: Cherokee Insurance Company M. Stephen Stubbley Speed, Seta, Martin, Trivett & Stubbley, LLC PO Box 11669 Columbia SC 29211 sstubbley@speed-seta.com (803) 748-2919	Jeffrey D. Ezell Ezell Law Firm, LLC 15 N. Irvine Street Greenville SC 29601 jeff@jeffezelllawfirm.com (864) 421-0015 Thomas M. Gagne Was released 05/23/16.	11/15/16 Notice Printed 11/15/16 Scheduled for Hearing 11/15/16 Hearing Postponed 11/07/16 Form 18 Received 10/25/16 Notice Printed 10/25/16 Scheduled for Hearing 10/25/16 Hearing Postponed 10/20/16 Pre-Hearing Brief Uploaded through eCase by M. STEPHEN STUBBLEY (CAR) 09/21/16 Notice Printed 09/21/16 Scheduled for Hearing 09/21/16 Hearing Postponed 09/14/16 Pre-Hearing Brief Uploaded through eCase by JEFFREY D. EZELL (CLT) 07/14/16 Notice Printed 07/14/16 Scheduled for Hearing 07/14/16 Hearing Postponed 07/13/16 Notice Printed 07/13/16 Scheduled for Hearing 07/12/16 Hearing Schedule Pending 07/12/16 Form 51 Timely 07/05/16 Form 51/53/55 Received

						06/02/16 Form 50 Hearing requested 05/23/16 Order Served 05/23/16 Order Assigned to be Written 05/16/16 Attorney Fee Petition Received 05/12/16 Claim Reviewed by Examiner 04/26/16 Form 18 Received 03/18/16 Order Assigned to be Written 03/18/16 Order Served 03/17/16 Consent Order filed 03/16/16 Hearing Schedule Pending 03/16/16 Form 51 Not Received to Date 02/22/16 Form 50 Hearing requested 12/17/15 Temp. Comp. Award Terminated 12/17/15 Temp. Comp. Award Started 12/15/15 Form 20 Received 11/18/15 EDI First Report received

Ezell Law Firm, LLC

15 N. Irvine Street, Greenville, SC 29601
PH: 864-421-0015 Fax: 864-421-0256
www.ezelllawfirmgreenville.com

Jeffrey D. Ezell
Attorney at Law
jeff@jeffezelllawfirm.com
864-419-4337 (Cell)

Janet Spruell
Paralegal
janet.spruell@jeffezelllawfirm.com

September 14, 2016

The Honorable Mike Campbell
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

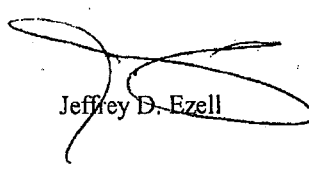
RE: Herbert Randall vs. Palmetto State Transportation
WCC File No.: 1516896

Dear Commissioner Campbell:

Enclosed please find the Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports to be introduced as Direct Evidence on behalf of the Claimant.

By copy of this letter, I am serving Defense Counsel with notice of same.

Sincerely yours,
EZELL LAW FIRM, LLC



Jeffrey D. Ezell

JDE/js
Enclosures
CC: Herbert Randall
M. Stephen Stuble

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1516896

Herbert Randall,

Employee/Claimant

vs.

Palmetto State Transportation,

Employer

And

Cherokee Insurance Company,

Carrier/Defendants

NOTICE OF WITNESSES AND
WRITTEN REPORTS/PHYSICIANS
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND M. STEPHEN
STUBLEY, ATTORNEY FOR THE DEFENDANT(S).

HEARING DATE: SEPTEMBER 29, 2016, 11:00 A.M.

YOU ARE HERBY NOTIFIED THAT pursuant to the provisions of the South Carolina
Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), and
Amended Regulation 67-612, the following medical reports are submitted as direct evidence:

APA NO.	PROVIDER	DATES OF SERVICE	PAGES
1	Acadian Ambulance Service	10/31/2015	1-10
2	Christus Hospital	10/31/2015	11-39
3	Chandler Chiropractic	11/02/15-11/10/15	40-44
4	Center for Health and Occupational Service	11/11/2015-12/21/2015	45-51
5	Innervision Medical Imaging	11/23/2015	52-55
6	Dr. Philip Hodge, Neurosurgery Cross Creek	02/22/2016	56-66
7	Peace Medical Center	04/18/2016	67-69
8	Upstate Spine and Neurosurgery Center, PC	08/11/2016	70-72

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YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted for the purposes of cross examination.

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: Claimant; Claimant's Wife; Claimant reserves the right to amend.

Respectfully Submitted on Behalf of
The Moving Party.
EZELL LAW FIRM, LLC



Jeffrey D. Ezell SC Bar No.: 011877
ATTORNEY FOR THE CLAIMANT
15 N. Irvine Street
Greenville, SC 29601
864-421-0015 FAX: 864-421-0256
Email: jeff@jeffezelllawfirm.com

Date: 5/14/16

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0221840

Herbert Randall,

Employee/Claimant

vs.

Palmetto State Transportation,

Employer

And

Cherokee Insurance Company,

Carrier/Defendants

CERTIFICATE OF SERVICE

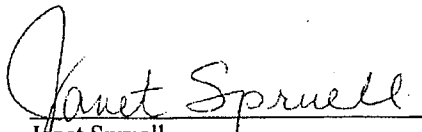
The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law and that she served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: The Honorable Mike Campbell
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Mr. M. Stephen Stublely
McKay, Cauthen, Settana and Stublely
PO Box 7217
Columbia, SC 29201

DOCUMENT: Form 58 – Pre-Hearing Brief and Written Reports/Physicians or Other Evidence to be Introduced on Behalf of Claimant

DATE MAILED: September 14, 2016


Janet Spruell
Paralegal to Jeffrey D. Ezell



Claimant's Name: Herbert Randall Employer's Name: Palmetto State Transportation
Address: PO Box 1871 Address: 1050 West Park Blvd.
City: Taylors State: SC Zip: 29687 City: Greenville State: SC Zip: 29611
Home Phone: (864) 517-8169 Work Phone: (864) 682-3800 Carrier: Cherokee Insurance Company
Preparer's Name: Jeffrey D. Ezell Preparer's Phone #: (864) 421-0015

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 784.03 2. AWW: \$1,495.78 Date of Injury: 10/31/2015
3. Type of injury and body part(s): Left Lower Extremity, Left Upper Extremity, Spine, Left Hand, Psyche
4. Facts in controversy: Compensability; Entitlement to past and ongoing TTD benefits; Entitlement to surgical intervention

The Defendant Employer/Carrier was paying Temporary Total Disability Benefits; however, same has been discontinued effective December 5, 2015. The pain, limitations, loss of wages and the inability to perform his normal daily duties have caused the Claimant serious psychological injury in addition to the injuries he sustained to his LLE, LUE, Spine, and Left Hand.

The Claimant has been denied any additional medical treatment since the cessation of his TTD Benefits in December 2015 and the lack of treatment/care has seriously impaired his ability to recover from the injuries he sustained in the accident giving rise to this claim.

5. Legal issues involved: See No. 4 Above.
6. Unusual aspects: See No. 4 Above.
7. Witnesses (designate if expert):* Claimant, Claimant's Wife; Claimant reserves the right to amend.
8. Exhibits: Medical Reports.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached

10. Name, address, and specialty, if any, of the treating physician:
Christus Hospital, 2830 Calder Avenue, Beaumont, TX 77702; Chandler Chiropractic Clinic, 1109 South Church Street, Greenville, SC 29605; Center for Health and Occupational Services, 1020 Grove Road, Greenville, SC 29605; Peace Medical Center - Scuffletown, 220 Scuffletown Rd., Simpsonville, SC 29681; Innervision Medical Imaging/Grove, 1 Cannon Drive, Greenville, SC 29605; Neurosurgery Cross Creek, 111 Doctor's Drive, Greenville, SC 29605; Dr. Christopher Chittum, Upstate Spine and Neurosurgery, 1075 Boiling Springs Rd., Spartanburg, SC 29303; Dr. Patrick B. Mullen, Poinsett Psychiatric, 3C Cleveland Court, Greenville, SC 29607 (appointment not scheduled until October 19, 2016); Claimant reserves the right to amend.

11. Impairment rating(s); body part(s); physician and date of opinion: Impairment rating is premature at this time.
12. I am amending my Form 50/51 in the following manner: Added Psyche to claim.

☒ **Mediation**

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to M. Stephen Stubley

Address PO Box 7217, Columbia, SC 29201 on the 14th day of Sept. 2016 by; ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature] Email: jeff@jeffezellawfirm.com
Date of hearing: September 29, 2016, 11:00 A.M. Time needed for hearing: 1 hour

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

WCC Form # 58

Revised 7/13

58

PRE-HEARING BRIEF

APA 1

Acadian Ambulance Service

10/31/2015

Page 1-10

Dept 1871 7418450315122
PO BOX 4115
CONCORD CA 94524

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

RETURN SERVICE REQUESTED

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

HERBERT RANDALL
6 EMBRY ST
TAYLORS SC 29687-3627



CUSTOMER SERVICE CENTER, INC.
PO BOX 954029
LAKE MARY, FL 32795-4029
A BILLING SERVICE COMPANY

BILLING INVOICE

January 4, 2016 - 00438962 - N

AMOUNT DUE: \$1,750.00
ACCOUNT #: 00438962
PIN #: 54987

We continue to have an open balance on your account - your immediate attention is required.

Please contact our office as soon as possible with any insurance information you may have toll free at (866) 912-2455. If you do not have any insurance, mail your payment using the bottom portion of this letter and the included return envelope.

If you require a pay plan to resolve your account, or would like to make your payment over the phone, please contact our customer service department at (866) 912-2455. To pay by electronic check (ACH) or credit card (Visa, MasterCard or Discover), you will need to have your Account # and Pin # listed above to complete the payment process.

Sincerely,

Customer Service Center

ACCT #	CLIENT NAME	FOR	SVC-DATE	BALANCE
00438962	ACADIAN AMBULANCE SERVICE	HERBERT RANDALL	10/31/15	\$1750.00
TOTAL:				\$1,750.00

Include this portion with your check

\$ _____ Payment amount enclosed

CUSTOMER SERVICE CENTER, INC.
P O BOX 954029
LAKE MARY FL 32795-4029

ACADIAN AMBULANCE SERVICE
CLIENT INVOICE #: A2333337
Acct#: 00438962-N

AMOUNT \$1,750.00

CLC002-1231-877404989-00176-175

HERBERT RANDALL

Prehospital Care Report Summary

Acadian Ambulance Services

RECEIVED
DEC 16 2015

Date: 10/31/2015 Call #: 0074 Booklet: 51625852 Branch: Southwest LA Time Zone: America/Chicago

Call Information:

Disposition: Treated/Transported
Unit #: 0409 - 409, Ground-Ambulance Trip Type: N/A
Incident Facility:
Incident Location: 110 E - Vidor, TX 77662 (ORANGE County)
Incident Type: Scene of Accident or Acute Event - Street/Hwy

BY: ---- # Patients Transported

In My Unit: 2
Patients at Scene: 3

Receiving Facility: St Elizabeth Hosp-Beaumont-5182 (Hospital) - 2830 Calder St - Beaumont, TX 77702
Facility Address: 2830 Calder St - Beaumont, TX 77702
Destination Type: N/A
Dest. Reason: Nearest Facility
Registration #: N/A

Call Received: 02:41:15
Dispatched: 02:41:48
En Route: 02:42:03
On Scene: 03:05:39
Patient Contact: 03:06:00
Left Scene: 03:23:18
At Destination: 03:54:00
Transfer of Care: N/A
In Service: 04:26:08

Loaded Mileage: 19.5 (Total Mileage: 19.5)
Crew Members: Laura Jones, EMT Paramedic(DOC); Joshua Freeman, EMT Basic(DS)(DH)

Time On Scene: 18 Min
Time to Destination: 72 Min
Total Time of Run: 104 Min

Moved to Amb By: Stretcher Transport Position: Supine From Amb By:

Call Origin: 911 Lights/Siren: Scene-Not used / Destination-Not used

Patient Information:

Name: HERB RANDALL
Address: 6 EMBRY - Taylors, SC 29687
Phone: (864) 517-8169
Email:
SSN: 342-60-1321
Driver License:

DOB: 08/16/1962
Gender: Male
Age: 53 Years
Weight: 180.0 lbs, Broselow:

Other Contact Info

Name: Phone: Cell Phone:
Relationship:

Current Meds: None
Env Allergies: NKA
Med Allergies: NKDA
PENICILLIN

Comments:
Comments:
Comments:

Patient Physician: Louie Valasco

Advanced Directives:

PMH: Other

Comment: SCOLIOSIS

Payer Information:

Priority: Primary Name: Self Pay - Non-member Type: Self Pay Policy #: 342-60-1321 Group #:
Policy Holder: HERB RANDALL, 6 EMBRY, Apt Taylors, SC 29687 Phone: DOB: 08/16/1962
Relationship of Patient to Insured:

Recurring Scheduled Transports - Medical Need/History:

Primary Condition: N/A

Secondary Condition:

Bed Confined

Behavioral

Other

N/A

N/A

None

Airway Monitoring

N/A

Physical Limitations:

Paralysis

Amputations

Fractures / Dislocations

None

None

None

12/16/15 12:29

Confidential PHI - © 2000-2015 Physio-Control - HealthEMS® 10/31/2015 Call# 0074 BK 51625852 - 1 of 9

PCR 1 of 1

Paresis (Includes Weakness)

None

Wounds

N/A

Contractures

N/A

or Physical Limitations

None

Clinical:

Medical Need: Required Stretcher

Onset Date/Time: 10/31/15 02:41:00

Dispatch Reason (EMD): 29 Traffic Accidents

Chief Complaint: Back Pain, neck pain, left leg pain, left wrist pa

Provider Impression: Trauma Injury

Mechanism of Injury: MVA To MV

Protocol 1: Spinal Immobilization

Protocol 2: Pain Management

Assessments:

Time	Employee	Type	Summary
		ABC	Airway: Patent Breathing: Normal Quality: Unlabored Lung Sounds: Left: Clear Lung Sounds: Right: Clear Skin Color: Normal Skin Temperature: Normal Skin Condition: Normal Edema: None Cap Refill: < 2 Seconds
		Injury	Injury - Back Location Modifier: Cervical - Left, Cervical - Midline, Cervical - Right, External, Internal, Left, Lumbar - Left, Lumbar - Midline, Lumbar - Right, Right Injury: Pain Injury Modifier:
		Injury	Injury - Lower Leg Location Modifier: Internal, Left Injury: Pain Injury Modifier:
		Head To Toe	Head and Neck: Left Eye: Reactive Right Eye: Reactive
		Neurological	AVPU: Alert

Vitals:

Time	Employee	Summary
		Rhythm 1: NSR Rhythm 2: NSR
03:06:00		Glasgow Coma Score: E (4) + V (5) + M (6) = 15
03:14:26	Jones, Laura	BP: 165/ 105 Pulse: 72 Resp: 25 SPO2: 88 Pain: 8
03:37:14	Jones, Laura	BP: 160/ 106 Pulse: 70 Resp: 28 SPO2: 98
03:54:00		Glasgow Coma Score: E (4) + V (5) + M (6) = 15
03:54:23	Jones, Laura	BP: 142/ 100 Pulse: 74 Resp: 24 SPO2: 98 Pain: 6

Treatments/Medications:

12/16/15 12:29

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10/31/2015 Call# 0074 BK: 51625852 - 2 of 9

PCR 1 of 1

Time	Employee	Summary
03:07:00	Jones, Laura	Treatment- ALS Assessment Performed Attempts: N/A Success: Yes
03:09:00	Freeman, Joshua	Treatment- Spinal Immobilization With C-Collar Attempts: N/A Success: Yes
03:21:00	Jones, Laura	Treatment- ECG: 4-Lead Attempts: N/A Success: Yes
03:27:00	Jones, Laura	Treatment- IV Procedure Attempts: N/A Success: Yes Medication - Fentanyl Dose: 50 Unit: mcg Route: Intravenous Attempts: N/A Success: Yes
03:37:00	Jones, Laura	Treatment- Contact Receiving Hospital Attempts: N/A Success: Yes

Supply

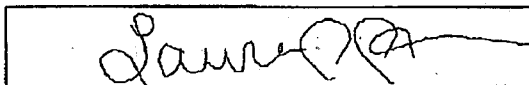
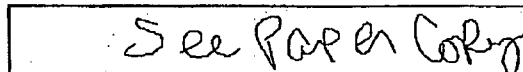
Qty Supply

Medications Wasted:

Time	Employee	Medication	Amt Wasted	Unit	Box #	Seal #
03:27	L. Jones	Fentanyl	50	mcg	409	035387-0652

Medication Wasted Signature - laura jones

Medication Wasted Witnessed Signature - none available

Vehicle Accident/Safety Equipment:

Areas of Impact:

Driver Side:

Passenger Side:

Front:

Rear: Driver Rear, Passenger Rear

Exterior Damage: Minor

Interior Damage: None

Extrication Required: No

Airbags Deployed:

Safety Equipment: Lap Belt, Shoulder Belt

Patient Position: Sitting

Patient Ejected:

Driver/Passenger: Driver

Vehicle Type: Semi

Cellular Phone: None

Posted Speed Limit: 75

EKG Device Incident Number: 2015103103125500-UNIT 409

FlexFields:

FlexField	Value
ePCR - Patient Status	3
ePCR - Was your patient admitted to the hospital?	Unknown
ePCR - Patient Belongings:	WALLET, SHOES, PHONE
ePCR - Patient Belongings Left With:	PT IN HALL BED

Patient Info: Last Name - Is This Patient A Veteran? No

Patient Info: Last Name - Is This An Employment Related Accident? No

MVA Documentation - Mechanism of Injury

12/16/15 12:29

Confidential PHI - © 2000-2015 Physio-Control - HealthEMS® 10/31/2015 Call# 0074 BK 51625352 - 3 of 9

PCR 1 of 1

Drivers Name
Forces Involved
Mechanism of Injury

same
High (Speed greater than 40 mph)
Deformity greater than 18 inches in vehicle

03:21 Flow Chart: Treatment ECG: 4-Lead - ECG Normal Sinus Rhythm
RHYTHM INTERPRETATION

IV Documentation - 03:27 Flow Chart: Treatment IV Procedure Fentanyl

IV CATHETER SIZE

20g

IV SITE

Wrist-Left

IV/IO Tubing Size

Saline Lock

IV FLOW RATE

Saline Lock

IV/IO LINE PATENCY CONFIRMATION

Line Is Free Flowing with no Signs of Infiltration

Narrative History Text:

53 Y/O M PT, SEMI DRIVER, REAR ENDED BY ANOTHER VEHICLE. MINOR DAMAGE. PT CC OF PAIN TO BACK AND NECK DOWN INTO LEFT LEG, HX OF UNCORRECTED SCOLIOSIS. NO LOC. EXTRICATED AND SPINAL IMMOBILIZED THE PT. NEURO INTACT. OTHER EXAM FINDINGS, VITALS AND TREATMENTS AS NOTED. CONTACTED REC NO ORDERS. TRANSPORTED WITHOUT INCIDENT. CARE RELEASED TO ER STAFF AND PHYSICIAN.

Auth Signature: Yes Privacy Sig: Yes Unable to Sign: No Refused to Sign: No

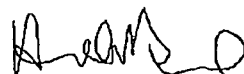
Signature Image(s):

Authorization Signature - HERB RANDALL - 10/31/2015 04:27

"I hereby assign and authorize direct payment to Acadian Ambulance Service (AAS) with regard to all of my rights and benefits under any of my existing policies of insurance providing coverage and payment for any and all expenses incurred as a result of services and treatment rendered by AAS, whether in the past, now or in the future. I understand that any health insurance policies of which I am covered are secondary payers to any of my existing liability policies that will cover ambulance transportation in the event of an accident-related claim. I further direct any of my medical insurers to pay directly to AAS all sums due under the applicable policies of all services rendered to me by AAS, whether in the past, now or in the future. To the extent of services provided, I do hereby assign AAS any and all rights I may have against any of my medical insurers allowing AAS any and all causes of action I may have against my medical insurers for their (insurer's) failure to pay the charges attributable to services rendered by AAS. The assignment of the right(s) is limited as described above, and is not to be considered as a subrogation or assignment of any rights or causes of action I or AAS may have against any other third party who may be responsible for payment of the charges incurred and LSA-R.S. 9:4751 et seq." "I authorize any holder of medical or other information pertaining to me, including AAS, to release this information to AAS, the Social Security Administration or any other of its affiliates or subsidiaries, or any other institution or person for purposes of treatment, payment and healthcare operations, including but not limited to a determination as to whether I am qualified to receive Medicare benefits for payment of charges incurred for any related claims, whether in the past, now or in the future. I further authorize a copy of this form to be used in lieu of the original." I further understand and recognize that my obligation for charges not paid, within 30 days from demand, is a personal and heritable obligation. In the event that payment is not tendered timely, I will be assessed a 1.5% monthly finance charge on any unpaid balance. I further acknowledge and understand that in the event a third party claim or suit is filed on my behalf, I remain responsible for the full amount due and owing, which will not be subject to any reductions for attorney fees. In the event AAS files suit for collection of any past due amounts I may owe, I agree to pay all costs associated with the collection proceedings including but not limited to 25% of the principle amount as attorney fees* as well as all costs of court and accumulated interest or in accordance with state applicable law." I understand and acknowledge that I am personally responsible for any charges including but not limited to base rate, mileage and any ancillaries for services not paid by any insurer(s), including but not limited to, treatment without transport and services deemed not medically necessary or for convenience. I understand that prior payments by an insurer do not guarantee additional payments. I hereby acknowledge that I have been provided with a copy of Acadian Ambulance's Notice of Privacy Practices on this date. I hereby agree that Acadian Ambulance or their designated agent may contact me in regards to my bill and leave a message regarding same on any type of answering device utilizing the following means: telephone, mobile or otherwise; live voice message; pre-recorded message; automatic dialing device; email; text message; and any other reasonable means of communication, written or oral. *Not applicable to Texas

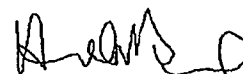
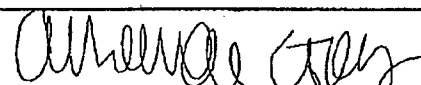
Privacy Notice Signature - HERB RANDALL - 10/31/2015 04:27

"I hereby assign and authorize direct payment to Acadian Ambulance Service (AAS) with regard to all of my rights and benefits under any of my existing policies of insurance providing coverage and payment for any and all expenses incurred as a result of services and treatment rendered by AAS, whether in the past, now or in the future. I understand that any health insurance policies of which I am covered are secondary payers to any of my existing liability policies that will cover ambulance transportation in the event of an accident-related claim. I further direct any of my medical insurers to pay directly to AAS all sums due under the applicable policies of all services rendered to me by AAS, whether in the past, now or in the future. To the extent of services provided, I do hereby assign AAS any and all rights I may have against any of my medical insurers allowing AAS any and all causes of action I may have against my medical insurers for their (insurer's) failure to pay the charges attributable to services rendered by AAS. The assignment of the right(s) is limited as described above, and is not to be considered as a subrogation or assignment of any rights or causes of action I or AAS may have against any other third party who may be responsible for payment of the charges incurred and LSA-R.S. 9:4751 et seq." "I authorize any holder of medical or other information pertaining to me, including AAS, to release this information to AAS, the Social Security Administration or any other of its affiliates or subsidiaries, or any other institution or person for purposes of treatment, payment and healthcare operations, including but not limited to a determination as to whether I am qualified to receive Medicare benefits for payment of charges incurred for any related claims, whether in the past, now or in the future. I further authorize a copy of this form to be used in lieu of the original." I further understand and recognize that my obligation for charges not paid, within 30 days from demand, is a personal and heritable obligation. In the event that payment is not tendered timely, I will be assessed a 1.5% monthly finance charge on any unpaid balance. I further acknowledge and understand that in the event a third party claim or suit is filed on my behalf, I remain responsible for the full amount due and owing, which will not be subject to any reductions for attorney fees. In the event AAS files suit for collection of any past due amounts I may owe, I agree to pay all costs associated with the collection proceedings including but not limited to 25% of the principle amount as attorney fees* as well as all costs of court and accumulated interest or in accordance with state applicable law." I understand and acknowledge that I am personally responsible for any charges including but not limited to base rate, mileage and any ancillaries for services not paid by any insurer(s), including but not limited to, treatment without transport and services deemed not medically necessary or for convenience. I understand that prior payments by an insurer do not guarantee additional payments. I hereby acknowledge that I have been provided with a copy of Acadian Ambulance's Notice of Privacy Practices on this date. I hereby agree that Acadian Ambulance or their designated agent may contact me in regards to my bill and leave a message regarding same on any type of answering device utilizing the following means: telephone, mobile or otherwise; live voice message; pre-recorded message; automatic dialing device; email; text message; and any other reasonable means of communication, written or oral. *Not applicable to Texas

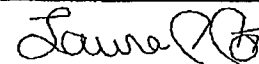


Receiving RN / MD Signature - amanda - 10/31/2015 04:29

(Must accompany Medic's Signature if no Patient OR Patient Representative signature can be obtained) I certify that our Institution has furnished care or other services to the above named patient. In the event that you are unable to obtain the patient's signature or the signature of an authorized Patient Representative, I hereby sign on the patient's behalf.



Technician Signature - Jones, Laura J - 10/31/2015 04:27



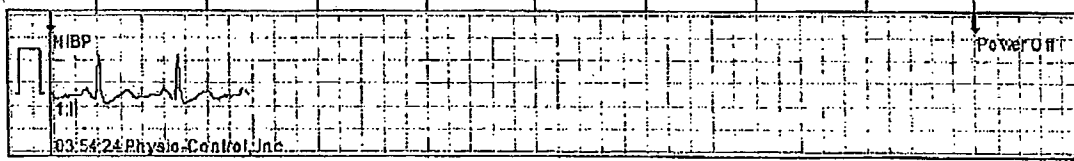
On Scene Condition Code: 780.99 (Pain, severe not otherwise specified in this list)

Agency Definable Field 1: 852603~946416~AUS Agency Definable Field 2: N/A

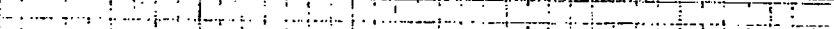
General Comments: N/A

Prehospital Care Report Summary

Date: 10/31/2015 Call #: 0074 Booklet: 51625852



Date:10/31/2015 Call #: 0074 Booklet:51625852



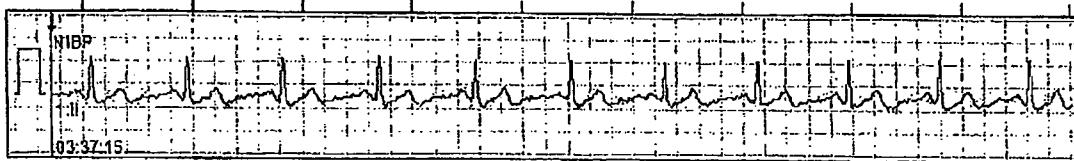
N1BP

1:1

03:21:09

Prehospital Care Report Summary

Date: 10/31/2015 Call #: 0074 Booklet: 51625852



Date:10/31/2015 Call #: 0074 Booklet:51625852

NIBP

03-14-26

APA 2

Christus Hospital

10/31/2015

Pages 11 - 39

12

- see diagram
- rib tenderness / palpable fracture (R/L)
- crepitus / subcutaneous emphysema
- splinting / paradoxical movements
- decreased breath sounds (R/L)
- wheezes / rales / rhonchi (R/L)
- tachycardia / bradycardia

sen diagram
 tenderness / guarding / rebound :
 generalized RUQ LUQ RLQ LLQ
 mass

- perineal hematoma
- blood at urethral meatus
- catheter present
- vaginal bleeding
- bladder fullness / tenderness
- decreased rectal tone

- facial asymmetry
- unsteady / ataxic gait
- sensory / motor deficits
- repeats questions



see diagram
 ecchymosis / laceration
 crepitus / diaphoresis
 pressure ulcer: location
 depth / stage: 1 2 3 4 5

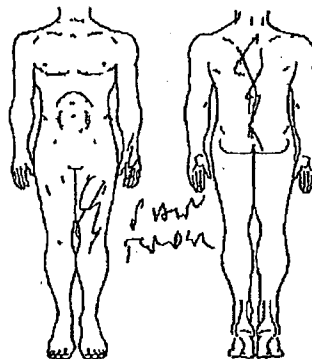
see diagram
CVA tenderness* (R/L)
vertebral point tenderness
muscle spasm / limited ROM

- see diagram
- bony point-tenderness (R/L)
- painful/unable to bear weight (R/L)
- pulse deficit (R/L)

Joint Exam

- limited ROM / ligaments laxity (R/L)
- joint effusion (R/L)

Circle positives, backslash negatives.



length _____ cm location _____
linear saddle irregular flap avulsion intersecur / muscle
clean contaminated moderately / heavily _____
distal NVT: neuro / vasc intact no tendon injury
anesthesia: local topical _____ lidocaine / bupivacaine epi / bicarb
digital block _____

SUBCUT. # _____ -0 _____
OTHER. # _____ -0 _____

splint Volar OCL / Ortho-glass / Plaster Aluminum-foam _____
 Volar Thumb strap Ulnar Wrist Sugar-Tong Cock-up _____
 Long-leg Short-leg Air splint Boot buddy taped _____
 strap knee immobilized clonide strap ace wrap crutches _____
 applied by ED Physician / APP / Tech / Nurse _____
 examined post splint application NY intact alignment good _____
 fracture care follow-up. < 24hrs / > 24hrs _____

Time _____ unchanged Improved re-examined

ME01043404 AB0001903028 AE.EDMADMAZ
RANDALL, HERR
10/31/2015 M 08/16/1962 53Y 1Y
GERHARDT, HERNAN MD

X-RAYS: Head, Extremities & Spine (also on pg 4)

X-rays done: skull facial spine: C T L S
R shoulder clavicle humerus elbow forearm wrist hand
L shoulder clavicle humerus elbow forearm wrist hand

R hip femur knee lower leg ankle foot toes
L hip femur knee lower leg ankle foot toes

Interpretation: ☐ By me ☐ Viewed by me ☐ Disc'd w/ radiologist
☐ Films viewed by me ☐ By radiologist
___ nml / NAD ___ no fracture ___ nml alignment ___ no FB
abnml: fracture / dislocation (see below) STS effusion fat pad vgn
DJD FB

Skull / Facial Fracture: ("DETAILS NEEDED")
Skull: frontal parietal temporal occipital basilar ant mid post
R/L linear comminuted depressed

Facial: nasal orbit maxilla maxilla zygoma LeFort: I II III
R/L mandible ramus angle body condyle subcondyle symphysis

Upper Extremity Fracture: ("DETAILS NEEDED")
Clavicle: proximal shaft distal: nondisplaced displaced ant post
R/L
Humerus: proximal: articular head surgical neck 2 parts 3 4
R/L tuberosity: greater lesser
shaft: transverse oblique spiral segmental comminuted
distal: supracondylar simple comminuted
condyle: medial lat intercondylar transcondylar
apicondyle: medial lateral
n/d
Radius: proximal: head neck torus
R/L shaft: transverse oblique spiral segmental comminuted
Galeazzi's greenstick "bent bone"
distal: Cole's Smith's Barton's intra-articular torus styloid
n/d
Ulna: proximal: olecranon coronoid process: intra-articular torus
R/L shaft: transverse oblique spiral segmental comminuted
Monteggia's greenstick "bent bone"
distal: styloid transverse oblique comminuted torus
n/d
Carpal: navicular: prox 1/2 mid 1/2 distal 1/2 triquetrum lunate
R/L capitate hamate pisiform trapezium trapezoid
n/d
Metacarpal: 1st 2nd 3rd 4th 5th: base shaft neck head
R/L Bennett's Rolando's
n/d

Upper Extremity Dislocation:
R/L Shoulder: anterior posterior inferior
R/L AC joint: post inf displaced: 100%-200% >200%
R/L Elbow: ant post med lat radial head ant post med lat
R/L Wrist: distal radioulnar radiocarpal midcarpal
carpometacarpal 1st 2nd 3rd 4th 5th

(n=non-displaced d=displaced)

Spine Fracture: ("DETAILS NEEDED")
C1 fx: arch: ant post burst (Jefferson fx) lateral mass
*: stable unstable nondisplaced displaced

C2 fx: dens: type I II III extension teardrop
traumatic spondylo (hangman fx): type I II III
*: stable unstable nondisplaced displaced

C T L S: wedge teardrop burst spinous process
*: stable unstable nondisplaced displaced

O T L S: wedge teardrop burst spinous process
*: stable unstable nondisplaced displaced

Lower Extremity Fracture: ("DETAILS NEEDED")
Femur: head: articular surface neck: subcapital transcervical base
R/L intertrochanteric greater troch lesser troch subtroch
shaft: transverse oblique spiral segmental comminuted
distal: supracondylar: w/ intercondylar
condyle: medial lateral transcondylar
n/d
Patella: longitudinal transverse comminuted osteochondral
R/L n/d
Tibia: proximal: spine tuberosity condyle medial lateral
R/L shaft: transverse oblique spiral segmental comminuted
distal: med malleolus pilon torus
n/d
Fibula: proximal: linear avulsion stress Masonnauve torus
R/L shaft: transverse oblique spiral segmental comminuted
distal: lat malleolus comminuted torus
n/d
Ankle: lat malleolus med malleolus
R/L bimalleolar trimalleolar distal tibial pilon
n/d
Foot: calcaneus: body ant process tuberosity
R/L extra-articular intra-articular
talus: head neck body distal post process lat process
extra-articular intra-articular avulsion chip fx
navicular cuboid cuneiform: medial middle lateral
metatarsal 1st 2nd 3rd 4th 5th
toe: 1st 2nd 3rd 4th 5th: prox phalanx middle distal
n/d

Lower Extremity Dislocation:
R/L Hip: central posterior anterior: obturator pubic iliac
R/L Patella: medial lateral
R/L Knee: anterior posterior medial lateral rotatory
R/L Ankle/Foot: subtalar midtarsal transmetatarsal Lisfranc
R/L Toe: 1st 2nd 3rd 4th 5th: MTP PIP IP DIP

HB01043404 AE0001903020 AR. ERMAT
RANDELL, HERB
10/31/2015 M 09/16/1962 53Y
GERHARDT, HERMAN MD



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979-63-18 1478
a26, m

XRAY/CT cont

Xrays done: ☒ CXR ☐ nb ☐ sternum ☐ abdomen ☐ pelvis
CT done: ☒ chest ☐ abdomen ☐ pelvis ☐ C-spine

Interpretation: ☐ By me ☐ Viewed by me ☐ Discd w/ radiologist
☐ Films viewed by me ☐ By radiologist

nm/ (NAD) no pneumothorax ☒ normal heart size ☐ normal mediastinum
abnmt: fracture (see below) STS DJD FB
R/L hemithorax pneumothorax tension pulm contusion

Fracture: (**DETAILS NEEDED) ☒ Ribs ☐ Sternum ☐ Pelvis
Ribs: R/L single multiple ☒ Sternum: body manubrium xiphoid ☒ Pelvis: R/L pubis superior ramus inferior ramus
R/L ischium avulsion ramus tuberosity: displaced
R/L acetabulum: ant wall medial post dome: displaced
R/L ilium wing ant sup spine ant inf spine: avulsion comminuted linear: displaced

Sacrum: transverse: displaced: ant post upper comminuted
vertical fx thru ala foramen spinal canal: displaced: mid sv

Ultrasound / FAST Exam: heart / pericardium abdomen
Interpretation: ☐ By me ☐ By radiologist ☐ Performed by me
☐ Films viewed by me ☐ By radiologist

nm/ (NAD)
abnmt:

LABS

CBC	Chemistries	UA	ETOH
normal except	normal except	normal except	TOX
WBC	Na		
Hgb	K		
Hct	Cl	HCG	PT/PTT
Platelets	CO2	sodium / urina	INR
	Gluc	POS NEG	
	BUN		
	Creat		

Pulse Ox % on RA/ LO, Interp: nm/ hypox Time:

EKG

RHYTHM STRIP Rate: Rhythm: NSR
EKG ☐ Interp. by me ☐ Viewed by me ☐ Discd w/ cardiologist
nm/ (NAD) nm/ intervals nm/ axis nm/ QRS nm/ ST/T
Rate: Rhythm: NSR sinus tach A-fib

not / changed from: repeat EKG: unchanged /

PROGRESS - Cont

Time 0745 ☐ unchanged ☐ improved ☐ re-examined

+ BP Screen - > 18 y / screening / follow-up documented

measure exclusions: not eligible / not indicated / contraindicated

Discussed with Dr. Additional history from
will see patient in ED / hospital / office family paramedics
Counselled patient / family regarding Rx given
lab / rx results diagnosis need for follow-up
Smoking Cessation: discussed plan / triggers / challenges / gave Rx time

CRIT CARE TIME (excluding separately billable procedures)

30-74 min 75-104 min

Initial visit unless marked: ☐ subsequent ☐ sequelae

CLINICAL IMPRESSION

backslash differentials considered

Skin (**R/L; FB; specify anatomy)
Laceration:
Abrasion:
Contusion:
Burns: thermal electrical
chemical:
accident self-harm assault unk
1st area: %
2nd area: %
3rd area: %
Total BSA: %

Strain (**R/L; specify anatomy)
Spinal (**R/L; except for spine specify joint & ligament)
Spine: C T L
Ortho (See Xrays/CT)
Fracture / Dislocation: closed / open

CV/Resp (See Xrays/CT)
Aorta transection: abd thorac
Cardiac arrest
Cardiac contusion
R/L Hemothorax
R/L Pneumothorax tension
R/L Pulmonary: contusion lac
Respiratory arrest

Abdomen / GI / GU
Hemoperitoneum
Liver: contusion
lac: cm stellate multiple
Spleen: contusion: <2cm >2cm
lac: <1cm 1-3cm >3cm
Pancreas:
head: contusion lac: sm med lg
body: contusion lac: sm med lg
tail: contusion lac: sm med lg
Kidney: R/L:
contusion: <2cm >2cm
lac: <1cm 1-3cm >3cm
Neuro (See HPI & PE)
Concussion
R/L Cerebral: contusion lac
traumatic hemorrhage
R/L Epidural Subdural
Traumatic SAH
LOC: unknown flow sec <min
sec / mins unk time
Cord injury: incomplete complete
level C #
T: #
L: # sacral

Suture
Other
Diaphragm rupture
Shock: traumatic hypovolemic
Crush injury to:
Amputations: partial complete:
fa.
at level:
Tooth #: fx avulsion sublux

DISPOSITION TIME: ☒ L ☐ admit ☐ transfer ☐ discharge
☐ observation POA pressure ulcer / UTI (if any)
☐ pending work-up ☐ admitting MD notification ☐ transfer acceptance
CONDITION: ☐ unchanged ☐ improved ☐ stable
☐ EMTALA EMC present ☐ EMTALA EMC absent
Care transferred to Dr. Time:

Acting as scribe for Dr. / NP / PA

RESIDENT / PA / NP RTT #
ATTENDING NOTE: Please see resident / APP note for details
Resident / APP's history reviewed. Patient interviewed and examined by me.
HPI:
My personal exam reveals:
I agree with assessment and care plan, and confirm the diagnosis(es) above. With exception of:
☐ I have reviewed the documentation by the scribe. The notes accurately reflect work and decisions made by me.

PHYSICIAN SIGNATURE: RTT #
PHYSICIAN SIGNATURE: RTT #
☐ Template Complete ☐ See Addendum (Dictated / Template #

NR01043404 AR0001903028 AE: ED/MTA/OK
RANDALL, HARRIS
10/31/2015 M 08/16/1962 53Y Y
GERHARDT, BERMAN MD

SSSSSSSS

DATE: 11/01/15 @ 2048
USER: SCRIPTER

Southeast Texas EDM *LIVE*
Complete ED Record

PAGE 1

Patient: RANDALL, HERB
ED Provider: GERHARDT, HERMAN MD
Admitting Doctor:

Age/Sex: 53/M
Birthdate: 08/16/1962

Acct No: AE0001903028
Unit No: ME01043404

Demographics

6 EMBRE ST
TAYLORS, SC 29687
(864) 517-8169
Insurance: UNINSURED TIER 1 > 4008
Next of Kin: RANDALL, JULIE
Relation: WIFE 01
Phone: (864) 517-8169

PCP:
Family Doctor:
Referring:

ED Physician: GERHARDT, HERMAN MD, ST
Practitioner:
Nurse: Christophe X Miles, RN, RN

Arrival Date/Time: 10/31/15 - 0404
Triage Date/Time: 10/31/15 - 0444
Date of Birth: 08/16/1962

Stated Complaint: MVA
Chief Complaint: MVC w/Injury

Priority: 3

Past Medical History

Past Medical History

Occurred
Date Time User
10/31/15 0447 Amanda J Guy, RN, RN

Recorded
Date Time User
10/31/15 0447 Amanda J Guy, RN, RN

Hx Neurological Disorders N; Hx of Respiratory Disorders N; Hx of Cardiac Disorder N;
Hx Endocrine Disorders N; Hx Gastrointestinal Disorders N; Hx Genitourinary Disorders N;
Hx Reproductive Disorders N; Hx Miscellaneous Medical Problems Y, Comment SCOLIOSIS;
Hx Surgeries N; Hx Cancer N

Allergy/Adverse Reaction
Penicillins

Type Severity Date
Allergy Unknown 10/31/15

Height/Weight

ENTERED		HEIGHT		WEIGHT		MEASUREMENT
DATE	TIME	IMPERIAL	METRIC	IMPERIAL	METRIC	METHOD
10/31/15	0506	5 ft 8.00 in	172.72 cm	173 lbs 0 oz	78.47 kg	Stated

Vital Signs

Vital Signs - Adult

Occurred
Date Time User
10/31/15 0505 David L Cazares

Recorded
Date Time User
10/31/15 0506 David L Cazares

Systolic 142
Diastolic 6
Mean Arterial Pressure 51
Pulse Rate (adult) 63
Respiratory Rate 18

Patient: RANDALL, HERB

#####

DATE: 11/01/15 @ 2048
USER: SCRIPTER

Southeast Texas EDM *LIVE*
Complete ED Record

PAGE 2

Patient: RANDALL, HERB
ED Provider: GERHARDT, HERMAN MD
Admitting Doctor:

Age/Sex: 53/M
Birthdate: 08/16/1962

Acct No: AE0001903028
Unit No: ME01043404

Pulse Oximetry 99
Temperature (Fahrenheit) 97.4

Prescription/Reported Meds
Tramadol (Ultram) 50 Mg Tab
50 MG PO EVERY 6 HOURS, #20 TAB

Type	Issued	Provider	Entered
Rx	10/31/15	GERHEX1	10/31/15

Departure

Primary Impression:
Wrist sprain
Secondary Impressions:
Motor vehicle accident with minor trauma
Back sprain
Sprain and strain
Disposition: HOME, SELF-CARE 01
Comment:
Condition: Stable

Departure Date/Time: 10/31/15 - 1040

Referrals:

Pt Instructions: DI for Wrist Sprain, DI for Muscle Strain, DI for Back Spasm

Departure Forms: Procedures & Tests Performed, Work/School Release

Additional Diagnoses

Diag:
Addtl 2:
Addtl 1:
Addtl 3:

Additional Instructions

RECHECK INCREASING ABDOMINAL PAIN, CHEST PAIN, SHORT OF BREATH.

Assessments

Adult Triage Assessment

Occurred			Recorded		
Date	Time	User	Date	Time	User
10/31/15	0444	Amanda J Guy, RN, RN	10/31/15	0447	Amanda J Guy, RN, RN

Visit Information: Reason for Visit PT ARRIVES VIA ACADIAN EMS POST MVA..PT WAS RESTRAINED DRIVER IN 18 WHEELER..18 WHEELER WAS REAR ENDED..PT HAS HISTORY OF SCOLIOSIS AND C/O LOWER BACK PAIN, PAIN RADIATING DOWN LEFT LEG, LEFT WRIST PAIN..PT RECEIVED FENTANYL 50 MCG IV, 20G LEFT HAND..AAOX4, NO LOC..IMMOBILIZED WITH BACKBOARD AND C-COLLAR..;
Isolation Precautions Screen: Symptoms None; Travel outside U.S. in past 30 days? N;
Rapid Assessment: Airway Patent; Breathing Unlabored; Circulation Pink; Deficit Alert;
Glasgow Coma Scale: Glasgow Coma Scale Eye Opening Spontaneous; Glasgow Coma Scale Verbal Oriented; Glasgow Coma Scale Motor Obeys Commands; Glasgow Coma Scale Total 15;
Communication: Preferred Spoken Language: English; Preferred Written Language: English;
EMS Information: EMS Service/Unit Number ACADIAN; Type of Transportation EMS Ground;
Prehospital Interventions C-Collar, IV's Initiated, Spine Board, Medications Given;
ESI Level: ED Priority Level ESI-3 Urgent

Patient: RANDALL, HERB

SSSSSSSS

DATE: 11/01/15 @ 2048
USER: SCRIPTER

Southeast Texas EDM *LIVE*
Complete ED Record

PAGE 3

Patient: RANDALL, HERB
ED Provider: GERHARDT, HERMAN MD
Admitting Doctor:

Age/Sex: 53/M
Birthdate: 08/16/1962

Acct No: AE0001903028
Unit No: ME01043404

Height/Weight

Occurred			Recorded		
Date	Time	User	Date	Time	User
10/31/15	0506	David L Cazares	10/31/15	0506	David L Cazares

Height: Height (Feet) 5; Height (Inches) 8; Height (Calculated Centimeters) 172.72; Weight: Weight (Pounds) 173; Weight (Calculated Kilograms) 78.47; Weight (Calculated Grams) 78471.48; Weight Measurement Method Stated

Primary Assessment (All Age)

Occurred			Recorded		
Date	Time	User	Date	Time	User
10/31/15	0518	Amanda J Guy, RN, RN	10/31/15	0519	Amanda J Guy, RN, RN

Airway Assessment: Airway Assessment Patent; Airway Support Device None;
Breathing Assessment: Breathing Assessment Spontaneous; Respiratory Effort Non-Labored;
Respiratory Depth Normal; Respiratory Pattern Regular; Chest Expansion Symmetrical;
Oxygen Delivery Method Room Air; Trachea Midline; Chest Wall Intact; Breath Sounds:
Location Bilateral; Modifier Anterior, Lateral; Phase Inspiratory & Expiratory;
Breath Sounds Clear; Circulatory Assessment: Skin Color Normal for Ethnicity;
Skin Temperature Warm; Skin Moisture Dry; Capillary Refill Less Than 3 Seconds; Hemorrhage N;
Glasgow Coma Scale: Glasgow Coma Scale Eye Opening Spontaneous; Glasgow Coma Scale Verbal
Oriented; Glasgow Coma Scale Motor Obeys Commands; Glasgow Coma Scale Total 15

ED General Reassessment

Occurred			Recorded		
Date	Time	User	Date	Time	User
10/31/15	0520	Amanda J Guy, RN, RN	10/31/15	0520	Amanda J Guy, RN, RN

Reassessment: ED General Reassessment ED Provider at Bedside;
Other Reassessment Information DR GERHARDT AT BEDSIDE EVAL PT

Screening (20yrs - 120yrs)

Occurred			Recorded		
Date	Time	User	Date	Time	User
10/31/15	0524	Amanda J Guy, RN, RN	10/31/15	0525	Amanda J Guy, RN, RN

Immunizations: Tetanus Status Greater Than 10 Years; Influenza Vaccine:
HX of Influenza Vaccine No; Pneumococcal Vaccine: HX of Pneumococcal Vaccine No;
Infection Control Screening: Hx Tuberculosis N; TB Screening No Risk Factors;
Respiratory Disease Screening None; Abuse Screening:
Have You Recently Been Threatened or Hurt by Anyone? N; Do You Feel Safe Where You Live? Y;
Do You Live Alone? N; Behavior Appropriate, Cooperative; Substance Use Screening:
Hx Tobacco Use Y, Comment 2 PPD; Hx Alcohol Use N; Hx Recreational Drug Use N

ED General Reassessment

Occurred			Recorded		
Date	Time	User	Date	Time	User
10/31/15	0525	Amanda J Guy, RN, RN	10/31/15	0526	Amanda J Guy, RN, RN

Patient: RANDALL, HERB

#####

DATE: 11/01/15 @ 2048
USER: SCRIPTER

Southeast Texas EDM *LIVE*
Complete ED Record

PAGE 4

Patient: RANDALL, HERB
ED Provider: GERHARDT, HERMAN MD
Admitting Doctor:

Age/Sex: 53/M
Birthdate: 08/16/1962

Acct No: AE0001903028
Unit No: ME01043404

Reassessment: ED General Reassessment ED Provider at Bedside;
Other Reassessment Information DR GERHARDT AT BEDSIDE EVAL PT..REMOVED FROM
BACKBOARD..C-COLLAR REMAINS IN PLACE

Disposition Assessment

Occurred	Recorded
Date Time User	Date Time User
10/31/15 0930 Christophe X Miles, RN, RN	10/31/15 1040 Christophe X Miles, RN, RN

Blood Pressure: Blood Pressure Systolic 130; Blood Pressure Diastolic 69;
Pulse, Respirations, Temperature: Pulse Rate 65; Respiratory Rate 18;
Temperature (Fahrenheit) 97.8; Temperature (Calculated Celsius) 36.55848;
O2 Sat by Pulse Oximetry 99; Glasgow Coma Scale: Glasgow Coma Scale Eye Opening Spontaneous;
Glasgow Coma Scale Verbal Oriented; Glasgow Coma Scale Motor Obeys Commands;
Glasgow Coma Scale Total 15; Patient Health Summary:
Was patient given referral for follow-up care? Y;
Patient Health Summary printed for the patient? Y;
Pt/Fm/Caregiver Expressed Understanding of Portal Enrollment Y; Patient Disposition:
Patient Disposition Discharged from Facility; IV Assessment/Intervention: Modifier Left;
IV Site Hand; Invasive Line Type Peripheral IV; Number of Lumens Single Lumen;
Invasive Line Discontinued IV Discontinued, Dressing Applied, Bleeding Controlled,
Catheter Tip Intact; Invasive Line Discontinuation Reason Per MD Order;
Site Dressing Observation Dry, Reinforced, Intact, Gauze; Patient Tolerance of Procedure
Good; Transport: Mode of Discharge from ED Ambulatory; Patient Valuables:
Patient Valuables To Patient; Patient Instructions: Instructions Given To Patient;
Type of Instructions Medication, Diagnosis Specific, Activity, Follow Up, Diet, General;
Understanding of Instructions Verbal, Written, Return Demonstration

Status Event History

Status Event History:
10/31/15 0404 Reception
0444 Triage
0448 Pt in Room
0526 PROV Assmt
0651 Pt Reg
1040 Final Trk Remove

Medications Administered in ED

***** DISCONTINUED MEDICATIONS *****

OMNIPaque 300 MG/ML	100 ML	IV	AS DIRECTED	PRN
IOHEXOL INJ 300 MG/ML	Start 10/31/15 0535	Stop: 10/31/15 0536	RX:E007444113	
No administrations were electronically documented for this order				

Label Comment: FOR DIAGNOSTIC TESTING

OMNIPaque 240 MG/ML	50 ML	PO	AS DIRECTED	PRN
IOHEXOL INJ 240 MG/ML	Start 10/31/15 0535	Stop: 10/31/15 0536	RX:E007444114	
No administrations were electronically documented for this order				

Label Comment: FOR DIAGNOSTIC TESTING

Patient: RANDALL, HERB

SSSSSSSS

DATE: 11/01/15 @ 2048
USER: SCRIPTER

Southeast Texas EDM *LIVE*
Complete ED Record

PAGE 5

Patient: RANDALL, HERB
ED Provider: GERHARDT, HERMAN MD
Admitting Doctor:

Age/Sex: 53/M
Birthdate: 08/16/1962

Acct No: AE0001903028
Unit No: ME01043404

Dose Instruction: Mix in 950 mL of water

NS 50 ML IV AS DIRECTED PRN
NACL 0.9% Start 10/31/15 0535 Stop: 10/31/15 0540 RX:E007444115
No administrations were electronically documented for this order

Label Comment: FOR DIAGNOSTIC TESTING

OMNIPaque 300 MG/ML 100 ML .ROUTE .STK-MED ONE
IOHEXOL INJ 300 MG/ML Start 10/31/15 0551 Stop: 10/31/15 0552 RX:E007444118
No administrations were electronically documented for this order

NS 50 ML .ROUTE .STK-MED ONE
NACL 0.9% Start 10/31/15 0551 Stop: 10/31/15 0552 RX:E007444119
No administrations were electronically documented for this order

KEY - Reason for NOT GIVEN:

IV Spreadsheet

Patient: RANDALL, HERB

SSSSSSSS

Prehospital Care Report Summary

Acadian Ambulance Services

AE1903028
T

Date: 10/31/2015 Call #: 0074 Booklet: 51625832 Branch: Southwest LA Time Zone: America/Chicago

Call Information:		# Patients Transported	
Disposition: Treated/Transported		In My Unit:	2
Unit #: 0409 - 409, Ground-Ambulance Trip Type: N/A		# Patients at Scene:	3
Run Type to Scene: Emergency			
Incident Facility:		Call Received:	02 41 15
Incident Location: 110 E - Vidor, TX 77682 (ORANGE County)		Dispatched:	02 41 48
Incident Type: Scene of Accident or Acute Event - Street/Hwy		En Route:	02 42 03
		On Scene:	03 05 39
Receiving Facility: St Elizabeth Hosp-Beaumont-5182 (Hospital) - 2830 Calder St - Beaumont, TX 77702		Patient Contact:	03 06 00
Facility Address: 2830 Calder St - Beaumont, TX 77702		Left Scene:	03 23 18
Destination Type: N/A		At Destination:	03 54 00
Dest. Reason: Nearest Facility		Transfer of Care:	N/A
Registration #: N/A		In Service:	04 26 08
Loaded Mileage: 19.5 (Total Mileage: 19.5)		Time On Scene:	18 Min
Crew Members: Laura Jones, EMT Paramedic(DOC), Joshua Freeman, EMT Basic(DS)(DH)		Time to Destination:	72 Min
		Total Time of Run:	104 Min

Moved to Amb By: Stretcher Transport Position: Supine From Amb By:

Call Origin: 911 Lights/Siren: Scene-Not used / Destination-Not used

Patient Information:

Name: HERB RANDALL	DOB: 08/16/1962
Address: 6 EMBRY - Taylors, SC 29667	Gender: Male
Phone: (864) 517-8169	Age: 53 Years
Email:	Weight: 160.0 lbs, Broselow:
SSN: 342-60-1321	
Driver License:	

Other Contact Info

Name: **Phone:** **Cell Phone:**

Relationship:

Current Meds: None **Comments:**

Env Allergies: NKA **Comments:**

Med Allergies: NKDA **Comments:**

PENICILLIN

Patient Physician: louie valasco

Advanced Directives:

PMH: Other

Comment: SCOLIOSIS

Payer Information:

Priority: Primary	Name: Self Pay - Non-member	Type: Self Pay	Policy #: 342-60-1321	Group #:
Policy Holder: HERB RANDALL, 6 EMBRY, Apt Taylors, SC 29667		Phone:		DOB: 08/16/1962
Relationship of Patient to Insured:				

Recurring Scheduled Transports - Medical Need/History:

Primary Condition: N/A

Secondary Condition:

Bed Confined:

N/A

Behavioral:

N/A

Other:

None

Airway Monitoring:

N/A

Physical Limitations:

Paralysis:

None

Amputations:

None

Fractures / Dislocations:

None

10/31/15 18:35

Confidential PHI - © 2000-2015 Software - HealthEMSS 10/31/2015 Call# 0074 BK 51625832 1 of 3

PCR 1 of 3

SSSSSSSS

21

Perseus (Includes Weakness)

None

Wounds

N/A

Contractures

N/A

Other Physical Limitations

None

Clinical:

Medical Need: Required Stretcher

Onset Date/Time: 10/31/15 02:41:00

Dispatch Reason (EMD): 29 Traffic Accidents

Chief Complaint: Back Pain, neck pain, left leg pain left wrist pa

Provider Impression: Trauma Injury

Mechanism of Injury: MVA To MV

Protocol 1: Spinal Immobilization

Protocol 2: Pain Management

Assessments:

Time	Employee	Type	Summary
		ABC	Airway: Patent Breathing: Normal Quality: Unlabored Lung Sounds: Left: Clear Lung Sounds: Right: Clear Skin Color: Normal Skin Temperature: Normal Skin Condition: Normal Edema: None Cap Refill: < 2 Seconds
		Injury	Injury - Back Location Modifier: Cervical - Left, Cervical - Midline, Cervical - Right, External, Internal, Left, Lumbar - Left, Lumbar - Midline, Lumbar - Right, Right Injury: Pain Injury Modifier:
		Injury	Injury - Lower Leg Location Modifier: Internal, Left Injury: Pain Injury Modifier:
		Head To Toe	Head and Neck: Left Eye: Reactive Right Eye: Reactive
		Neurological	AVPU: Alert

Vitals:

Time	Employee	Summary
		Rhythm 1: NSR Rhythm 2: NSR
03:06:00		Glasgow Coma Score: E (4) + V (5) + M (6) = 15
03:14:26	Jones, Laura	BP: 165/106 Pulse: 72 Resp: 26 SPO2: 86 Pain: 8
03:37:14	Jones, Laura	BP: 160/108 Pulse: 70 Resp: 28 SPO2: 88
03:54:00		Glasgow Coma Score: E (4) + V (5) + M (6) = 15
03:54:23	Jones, Laura	BP: 142/100 Pulse: 74 Resp: 24 SPO2: 98 Pain: 6

Treatments/Medications:

10/31/15 18:46

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10/31/2015 Call# 0074 BK - 620632 - 2 of 8

PCR 1 of 3

SSSSSSSS

Time	Employee	Summary
03 07 00	Jones, Laura	Treatment- ALS Assessment Performed Attempts: N/A Success: Yes Level: ALS1
03 09 00	Freeman, Joshua	Treatment- Spinal Immobilization With C-Collar Attempts: N/A Success: Yes Level: BLS
03 21 00	Jones, Laura	Treatment- ECG: 4-Lead Attempts: N/A Success: Yes Level: ALS1
03 27 00	Jones, Laura	Treatment- IV Procedure Attempts: N/A Success: Yes Level: ALS1 Medication - Fentanyl Dose: 50 Unit: mcg Route: Intravenous Attempts: N/A Success: Yes Level: ALS1
03 37 00	Jones, Laura	Treatment- Contact Receiving Hospital Attempts: N/A Success: Yes Level: BLS

Supply

Qty. Supply

Medications Wasted:

Time Employee Medication
03 27 L Jones Fentanyl

Amt Wasted Unit Box # Seal #
50 mcg 409 035387-0852

Medication Wasted Signature - laura jones

Medication Wasted Witnessed Signature - none available

Laura Jones

See Paper Copy

Vehicle Accident/Safety Equipment:

Areas of Impact:

Driver Side:

Passenger Side:

Front:

Rear: Driver Rear, Passenger Rear

Exterior Damage: Minor

Interior Damage: None

Extraction Required: No

Airbags Deployed:

Safety Equipment: Lap Belt, Shoulder Belt

Patient Position: Sitting

Patient Ejected:

Driver/Passenger: Driver

Vehicle Type: Semi

Cellular Phone: None

Posted Speed Limit: 75

EKG Device Incident Number: 2015103103125500-UNIT 409

FlexFields:

FlexField	Value
ePCR - Patient Status	3
ePCR - Was your patient admitted to the hospital?	Unknown
ePCR - Patient Belongings	WALLET, SHOES, PHONE
ePCR - Patient Belongings Left With	PT IN HALL BED

Patient Info Last Name - Is This Patient A Veteran? No

10/31/15 16:45

Confidential PHI - 2000-2015 Serials - HealthENUS 10/31/2015 Call 0674 BK 51023052 - 3 of 6

PCR # 15

SSSSSSSS

Patient Info Last Name - Is This An Employment Related Accident? No

MVA Documentation - Mechanism of Injury

Drivers Name same
Forces involved High (Speed greater than 40 mph)
Mechanism of Injury Deformity greater than 18 inches in vehicle

03 21 Flow Chart Treatment ECG 4-Lead - ECG Normal Sinus Rhythm
RHYTHM INTERPRETATION

IV Documentation - 03:27 Flow Chart: Treatment IV Procedure Fentanyl

IV CATHETER SIZE 20g
IV SITE Wrist-Left
IV/IO Tubing Size Saline Lock
IV FLOW RATE Saline Lock
IV/IO LINE PATENCY CONFIRMATION Line is Free Flowing with no Signs of Infiltration

Narrative History Text:

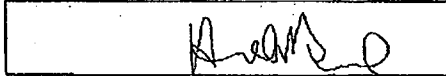
63 Y/O M PT, SEMI DRIVER, REAR ENDED BY ANOTHER VEHICLE. MINOR DAMAGE PT CC OF PAIN TO BACK AND NECK DOWN INTO LEFT LEG, HX OF UNCORRECTED SCOLIOSIS NO LOC EXTRICATED AND SPINAL IMMOBILIZED THE PT NEURO INTACT. OTHER EXAM FINDINGS, VITALS AND TREATMENTS AS NOTED CONTACTED REC NO ORDERS TRANSPORTED WITHOUT INCIDENT CARE RELEASED TO ER STAFF AND PHYSICIAN

Auth Signature: Yes Privacy Sig: Yes Unable to Sign: No Refused to Sign: No

Signature Image(s):

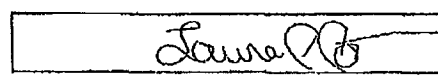
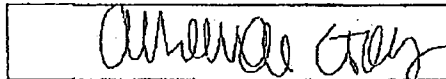
Authorization Signature - HERB RANDALL - 10/31/2015 04 27

Privacy Notice Signature - HERB RANDALL - 10/31/2015 04 27



Receiving RN / MD Signature - amanda - 10/31/2015 04 29

Technician Signature - Jones, Laura J - 10/31/2015 04 27



On Scene Condition Code: 780.99 (Pain, severe not otherwise specified in this list)

SSSSSSSS

Date:10/31/2015 Call #: 0074 Booklet:51625852

NIBP
03-21-09

\$\$\$\$\$\$\$\$

Prehospital Care Report Summary

Date: 10/31/2015 Call #: 0074 Booklet: 51625852



10/31/15 18:45

Confidential PHI C. 2000-2015 Sanjour - Health EMS

10/31/2015 Call# 0074 BK 51625852 - 8 of 8

PCR 1 of 3

SSSSSSSS

Date:10/31/2015 Call #: 0074 Booklet:51625852

10/31.10 16 25

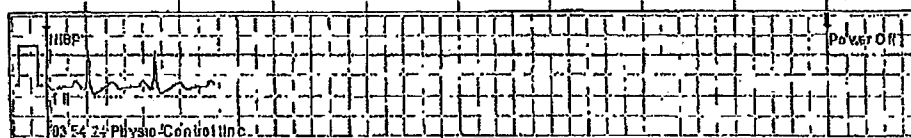
CONFIDENTIAL PHJ 4 2000-2015 Sams - HealthEHSB *WCV2016 Cmt# 007- BK 51026052 - 7 of 8

FCR, of 3

§§§§§§§§§§

Prehospital Care Report Summary

Date:10/31/2015 Call #: 0074 Booklet:51625852



10/31/15 16:45

Comdte 4nd PHU - C 2000-2015 Session - HupbEh:52 10/31/2015 Call# 0074 BK 51625852 - 8 of 8

PCR 1 of 3

SSSSSSSS

DATE: 11/01/15 @ 0901
USER: BKG DAEMON

Southwest Texas @ "LIVE"
Patient Order Summary By Discharge Date Excluding Verb/Tel/Write

LOCATION: AE.EDMAIN
PATIENT: #50001903028 - RANDALL, HERB
UNIT #: ME01043404

DATE/TIME BEGINS: 10/31/15 0536

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15	0536	COMPUTERIZED TOMOGRA	CT HEAD w/ BRAIN NO CONTR	1031-0014 Stat	1 Resulted	10/31/15	0531
GERHEX1		GERHARDT, HERMAN MD	HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:
Diagnosis Code:
Reason for Exam: MVC
Additional Order Instructions:

DIRECTIONS:	STOP DATE/TIME:	DEVICE	ORDER SET: BAK0.01 - ED: Initial	
DATE	TIME	USER	EVENT	
1	10/31/15	0536	HERMAN GERHARDT, MD	order entered in POM by HERMAN GERHARDT, MD
2	10/31/15	0536	HERMAN GERHARDT, MD	order source is PROVIDER - signature is necessary for entry
3	10/31/15	0536	HERMAN GERHARDT, MD	order signed by GERHARDT, HERMAN MD
4	10/31/15	0536	System	order transmitted
5	10/31/15	0537	System	order's status changed from TRANS to LOGGED
6	10/31/15	0537	System	quantity edited via ITS: old value -
7	10/31/15	0613	Andrew J Myers	order's status changed from LOGGED to TAKEN
8	10/31/15	0800	BKG DAEMON	order's status changed from TAKEN to RESULT
9	10/31/15	0812	Jamie S Kelly, RN	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15	0536	COMPUTERIZED TOMOGRA	CT CERVICAL SPINE NO CONTR	1031-0015 Stat	1 Resulted	10/31/15	0531
GERHEX1		GERHARDT, HERMAN MD	HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:
Diagnosis Code:
Reason for Exam: MVC
Additional Order Instructions:

DIRECTIONS:	STOP DATE/TIME:	DEVICE	ORDER SET: BAK0.01 - ED: Initial	
DATE	TIME	USER	EVENT	
1	10/31/15	0536	HERMAN GERHARDT, MD	order entered in POM by HERMAN GERHARDT, MD
2	10/31/15	0536	HERMAN GERHARDT, MD	order source is PROVIDER - signature is necessary for entry
3	10/31/15	0536	HERMAN GERHARDT, MD	order signed by GERHARDT, HERMAN MD
4	10/31/15	0536	System	order transmitted
5	10/31/15	0537	System	order's status changed from TRANS to LOGGED
6	10/31/15	0537	System	quantity edited via ITS: old value -
7	10/31/15	0614	Andrew J Myers	order's status changed from LOGGED to TAKEN
8	10/31/15	0800	BKG DAEMON	order's status changed from TAKEN to RESULT
9	10/31/15	0812	Jamie S Kelly, RN	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15	0536	COMPUTERIZED TOMOGRA	CT ABD / PEL W IV CONTRAST	1031-0015 Stat	1 Resulted	10/31/15	0531
GERHEX1		GERHARDT, HERMAN MD	HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:
Diagnosis Code:

DATE: 11/01/15 @ 0501
USER: BRG DAEMON

LOCATION: AE.EDMAIN
PATIENT: AS0001903028 - RANDALL,HERB
UNIT #: ME01043404

Southwest Texas OE *LIVE*
Patient Order Summary By Discharge Date Excluding Verb/Tel/Write

DATE/TIME BEGINS: 10/31/15 0536

Reason for Exam: MVC
Enteral Contrast
Focus of Exam
Additional Order Instructions:

DIRECTIONS:			STOP DATE/TIME:	DEVICE	ORDER SET: E210.01 - ED: Initial
DATE	TIME	USER			EVENT
1	10/31/15 0536	HERMAN GERHARDT, MD		ESE10712883	order entered in POM by HERMAN GERHARDT, MD
2	10/31/15 0536	HERMAN GERHARDT, MD		ESE10712883	order source is PROVIDER - signature is necessary for entry
3	10/31/15 0536	HERMAN GERHARDT, MD		ESE10712883	order signed by GERHARDT,HERMAN MD
4	10/31/15 0536	HERMAN GERHARDT, MD		JEMEM303	Generated Refill Entry: CTABPWC
5	10/31/15 0536	System		JEMEM315	order transmitted
6	10/31/15 0537	System		JEMEM315	order's status changed from TRANS to LOGGED
7	10/31/15 0537	System		JEMEM315	quantity edited via ITS: old value -
8	10/31/15 0614	Andrew J Myers		JEMEM315	order's status changed from LOGGED to TAKEN
9	10/31/15 0800	BRG DAEMON		JEMEM315	order's status changed from TAKEN to RESULT
10	10/31/15 0812	Janie S Kelly, RN		JEMEM301	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15 0536		RADIOLOGY DIAGNOSTIC	XR THORACIC SPINE 2V	1031-0041 Stat	1 Resulted	10/31/15	0531
GERHEM		GERHARDT,HERMAN MD	HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:

Diagnosis Code:
Reason for Exam: MVC
Exam done portable?
Additional Order Instructions:

DIRECTIONS:			STOP DATE/TIME:	DEVICE	ORDER SET: E210.01 - ED: Initial
DATE	TIME	USER			EVENT
1	10/31/15 0536	HERMAN GERHARDT, MD		ESE10712883	order entered in POM by HERMAN GERHARDT, MD
2	10/31/15 0536	HERMAN GERHARDT, MD		ESE10712883	order source is PROVIDER - signature is necessary for entry
3	10/31/15 0536	HERMAN GERHARDT, MD		ESE10712883	order signed by GERHARDT,HERMAN MD
4	10/31/15 0536	System		JEMEM315	order transmitted
5	10/31/15 0537	System		JEMEM315	order's status changed from TRANS to LOGGED
6	10/31/15 0537	System		JEMEM315	quantity edited via ITS: old value -
7	10/31/15 0640	Marsha L Brousseard		JEMEM315	order's status changed from LOGGED to TAKEN
8	10/31/15 0800	BRG DAEMON		JEMEM315	order's status changed from TAKEN to RESULT
9	10/31/15 0812	Janie S Kelly, RN		JEMEM301	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15 0536		RADIOLOGY DIAGNOSTIC	XR CHEST 1V (CXRL)	1031-0042 Stat	1 Resulted	10/31/15	0531
GERHEM		GERHARDT,HERMAN MD	HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:

Diagnosis Code:
Reason for Exam: MVC
Exam done portable?
Additional Order Instructions:

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DATE: 11/01/15 @ 0901
USER: BKG DAEMON

LOCATION: AE-EDMAIN
PATIENT: AE0001909028 - RANDALL, KERS
UNIT #: ME01043404

Southeast Texas CE - LIVE
Patient Order Summary By Discharge Data Excluding Verb/Tal/Write

DATE/TIME BEGINS: 10/31/15 0536

DIRECTIONS:	STOP DATE/TIME:	DEVICE	ORDER SET: EAI0.01 - ED: Initial
DATE TIME USER			EVENT
1 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712883	order entered in POM by HERMAN GERHARDT, MD
2 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712893	order source is PROVIDER - signature is necessary for entry
3 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712883	order Signed by GERHARDT, HERMAN MD
4 10/31/15 0536 System		IEMEM315	order transmitted
5 10/31/15 0537 System		IEMEM315	order's status changed from TRANS to LOGGED
6 10/31/15 0537 System		IEMEM315	quantity edited via ITS: old value -
7 10/31/15 0640 Marsha L Broussard		IEMEM315	order's status changed from LOGGED to TAKEN
8 10/31/15 0800 BKG DAEMON		IEMEM315	order's status changed from TAKEN to RESULT
9 10/31/15 0812 Janie S Kelly, RN		IEMEM301	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CEG FROM SOURCE			
10/31/15 0536 RADIOLOGY DIAGNOSTIC			XR WRIST 3V	1031-0043 Stat	1 Resulted	10/31/15 0531	
GERHARDT, HERMAN MD			HERMAN GERHARDT, MD	C CE PROVIDER			

CANCEL COMMENT:

Diagnosis Code:
Reason for Exam: MVC
LEFT or RIGHT? LEFT
Additional Order Instructions: Navicular view

DIRECTIONS:	STOP DATE/TIME:	DEVICE	ORDER SET: EAI0.01 - ED: Initial
DATE TIME USER			EVENT
1 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712883	order entered in POM by HERMAN GERHARDT, MD
2 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712893	order source is PROVIDER - signature is necessary for entry
3 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712883	order Signed by GERHARDT, HERMAN MD
4 10/31/15 0536 System		IEMEM315	order transmitted
5 10/31/15 0537 System		IEMEM315	order's status changed from TRANS to LOGGED
6 10/31/15 0537 System		IEMEM315	quantity edited via ITS: old value -
7 10/31/15 0640 Marsha L Broussard		IEMEM315	order's status changed from LOGGED to TAKEN
8 10/31/15 0800 BKG DAEMON		IEMEM315	order's status changed from TAKEN to RESULT
9 10/31/15 0812 Janie S Kelly, RN		IEMEM301	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CEG FROM SOURCE			
10/31/15 0536 RADIOLOGY DIAGNOSTIC			XR HAND 3V	1031-0044 Stat	1 Resulted	10/31/15 0531	
GERHARDT, HERMAN MD			HERMAN GERHARDT, MD	C CE PROVIDER			

CANCEL COMMENT:

Diagnosis Code:
Reason for Exam: MVC
LEFT or RIGHT? LEFT
Additional Order Instructions:

DIRECTIONS:	STOP DATE/TIME:	DEVICE	ORDER SET: EAI0.01 - ED: Initial
DATE TIME USER			EVENT
1 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712883	order entered in POM by HERMAN GERHARDT, MD
2 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712893	order source is PROVIDER - signature is necessary for entry
3 10/31/15 0536 HERMAN GERHARDT, MD		ESE10712883	order Signed by GERHARDT, HERMAN MD
4 10/31/15 0536 System		IEMEM315	order transmitted

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DATE: 11/01/15 @ 0901
USER: BKG DAEON

Southeast Texas CE *LIVE*
Patient Order Summary By Discharge Date Excluding Verb/Tel/Write

LOCATION: AE-EDMAIN
PATIENT: AE0001903029 - RANDALL,HERB
UNIT 4: ME01043404

DATE/TIME BEGINS: 10/31/15 0536

5	10/31/15 0537	System	ITEMM315	order's status changed from TRANS to LOGGED
6	10/31/15 0537	System	ITEMM315	quantity edited via ITS: old value -
7	10/31/15 0640	Marsha L Broussard	ITEMM315	order's status changed from LOGGED to TAKEN
8	10/31/15 0800	BKG DAEON	ITEMM315	order's status changed from TAKEN to RESULT
9	10/31/15 0812	Janie S Kelly, RN	ITEMM301	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15 0536		RADIOLOGY DIAGNOSTIC	NR FEMUR RV	1031-0045 Stat	1 Resulted	10/31/15 0531	
GERHARDT, HERMAN MD			HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:

Diagnosis Code:
Reason for Exam: MVC
LEFT or RIGHT? LEFT
Exam done portable?
Additional Order Instructions:

DIRECTIONS:	STOP DATE/TIME:	DEVICE	ORDER SET: EAI0.01 - ED: Initial
DATE	TIME	USER	EVENT
1	10/31/15 0536	HERMAN GERHARDT, MD	Order entered in POM by HERMAN GERHARDT, MD
2	10/31/15 0536	HERMAN GERHARDT, MD	order source is PROVIDER - signature is necessary for entry
3	10/31/15 0536	HERMAN GERHARDT, MD	order Signed by GERHARDT, HERMAN MD
4	10/31/15 0536	System	order transmitted
5	10/31/15 0537	System	order's status changed from TRANS to LOGGED
6	10/31/15 0537	System	quantity edited via ITS: old value -
7	10/31/15 0640	Marsha L Broussard	order's status changed from LOGGED to TAKEN
8	10/31/15 0800	BKG DAEON	order's status changed from TAKEN to RESULT
9	10/31/15 0812	Janie S Kelly, RN	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15 0536		PHARMACY	OMNIPAQUE 300 MG/ML	1031-0499	1 Complete	10/31/15 0535	
GERHARDT, HERMAN MD			HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:

DIRECTIONS: STOP DATE/TIME: ORDER SET: -

MEDICATION DOSE PER
Discontinued 10/31/15 0536 100 ML
OMNIPAQUE 300 MG/ML

CLINICAL INDICATION

ROUTE	SIG	SCHED	PRN REASON
IV	AS DIRECTED	PRN	SEE LABEL COMMENTS

DAYS HOURS TOT VOL DOSES

Comment: Reached Stop Date
Comment: FOR DIAGNOSTIC TESTING
DATE TIME USER

DEVICE EVENT

66666666

DATE: 11/01/15 @ 0901
USER: BKS DAEON

Southwest Texas OE - LIVE
Patient Order Summary By Discharge Date Excluding Verb/Tel/Write

LOCATION: AE-EDMAIN
PATIENT: AE0001903025 - RANDALL, HERS
UNIT #: ME01043604

DATE/TIME BEGINS: 10/31/15 0536

1	10/31/15 0536	HERMAN GERHARDT, MD	ESE10712883	order entered in POM by HERMAN GERHARDT, MD
2	10/31/15 0536	HERMAN GERHARDT, MD	ESE10712883	order source is PROVIDER - signature is necessary for entry
3	10/31/15 0536	HERMAN GERHARDT, MD	ESE10712883	order signed by GERHARDT, HERMAN MD
4	10/31/15 0536	HERMAN GERHARDT, MD	ITEM3303	Result of Reflex Entry: CTABFWC
5	10/31/15 0536	System	ITEM3315	order transmitted
6	10/31/15 0536	System	ITEM3315	order's status changed from TRANS to LOGGED
7	10/31/15 0536	Tom X Stubblefield	ITEM3315	order's status changed from LOGGED to IN PRO
8	10/31/15 0539	PHARMGJOB	ITEM3315	order's status changed from IN PRO to COMP
9	10/31/15 0812	Janie S Kelly, RN	ITEM3301	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15 0536		PHARMACY	CANTIPACUE 240 MG/ML	1031-0500	1 Complete	10/31/15 0536	
GERHARDT, HERMAN MD			HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:

DIRECTIONS: STOP DATE/TIME: ORDER SET: -

MEDICATION DOSE PER

Discontinued 10/31/15 0536
CANTIPACUE 240 MG/ML 30 ML

CLINICAL INDICATION

Dose: Mix in 350 mL of water
ROUTE SIG SCHED PRN REASON
PO AS DIRECTED PRN SEE LABEL COMMENTS

DAYS HOURS TOT VCL DOSES

Comment: Reached Stop Date

Comment: FOR DIAGNOSTIC TESTING

DATE	TIME	USER	DEVICE	EVENT
1	10/31/15 0536	HERMAN GERHARDT, MD	ESE10712883	order entered in POM by HERMAN GERHARDT, MD
2	10/31/15 0536	HERMAN GERHARDT, MD	ESE10712883	order source is PROVIDER - signature is necessary for entry
3	10/31/15 0536	HERMAN GERHARDT, MD	ESE10712883	order signed by GERHARDT, HERMAN MD
4	10/31/15 0536	HERMAN GERHARDT, MD	ITEM3303	Result of Reflex Entry: CTABFWC
5	10/31/15 0536	System	ITEM3315	order transmitted
6	10/31/15 0536	System	ITEM3315	order's status changed from TRANS to LOGGED
7	10/31/15 0539	Tom X Stubblefield	ITEM3315	order's status changed from LOGGED to IN PRO
8	10/31/15 0539	PHARMGJOB	ITEM3315	order's status changed from IN PRO to COMP
9	10/31/15 0812	Janie S Kelly, RN	ITEM3301	order acknowledged via PCS Status Board

DATE	TIME	CATEGORY	PROCEDURE	ORDER NUM PRI	QTY STATUS	DATE	TIME
ORD DOCTOR			ORDERED BY	CHG FROM SOURCE			
10/31/15 0536		PHARMACY	Intravenous Fluids	1031-0501	1 Complete	10/31/15 0536	
GERHARDT, HERMAN MD			HERMAN GERHARDT, MD	C OE PROVIDER			

CANCEL COMMENT:

DIRECTIONS: STOP DATE/TIME: ORDER SET: -

55555555

DATE: 11/01/15 8:00:01
USER: BKG DAEMON

Southwest Texas Of "LIVE"
Patient Order Summary By Discharge Date Excluding Verb/Tel/Write

LOCATION: AE.EDMAIN
PATIENT: K00001903028 - RANDALL, MERS
UNIT #: ME01043404

DATE/TIME BEGINS: 10/31/15 0536

MEDICATION
Discontinued 10/31/15 0540
<Bag 1> Rate: 2 MLS/SEC
NS
Comment: FOR DIAGNOSTIC TESTING
ROUTE SIG SCHED PRN REASON
IV AS DIRECTED PRN IV FLUSH

DAYS HOURS TOT VOL BAGS
0 0.10

Comments: Reached Stop Date

DATE	TIME	USER
10/31/15	0536	HERMAN GERHARDT, MD
10/31/15	0536	HERMAN GERHARDT, MD
10/31/15	0536	HERMAN GERHARDT, MD
10/31/15	0536	HERMAN GERHARDT, MD
10/31/15	0536	System
10/31/15	0536	System
10/31/15	0539	Tom X Stubbiefield
10/31/15	0540	PHABKGJVB
10/31/15	0812	Janie S Kelly, RN

DEVICE
ESE10712883
ESE10712883
ESE10712883
IEMEM303
IEMEM315
IEMEM315
IEMEM315
IEMEM315
IEMEM301

EVENT
order entered in POM by HERMAN GERHARDT, MD
order source is PROVIDER - signature is necessary for entry
order signed by GERHARDT, HERMAN MD
Result of Reflex Entry: CTABWC
order transmitted
order's status changed from TRANS to LOGGED
order's status changed from LOGGED to IN PRO
order's status changed from IN PRO to COMP
order acknowledged via PCS Status Board

DATE TIME CATEGORY
ORD DOCTOR
10/31/15 0551 PHARMACY
UDC, VENT, VENT, UDC
CANCEL COMMENT:

PROCEDURE
ORDERED BY
OMNIPRAQUE 300 MG/ML
Andrew J Myers BRADT

ORDER NUM PRI
CIG FROM SOURCE
1031-0517
C URM:

QTY STATUS DATE TIME
Complete 10/31/15 0551

MEDICATION
One Time Medication
Discontinued 10/31/15 0552
OMNIPRAQUE 300 MG/ML

DOSE PER
100 ML

CLINICAL INDICATION

ROUTE SIG SCHED PRN REASON
ROUTE .STK-MED ONE

DAYS HOURS TOT VOL DOSES
0 0.03

Comments: DC'd by AND00283

DATE	TIME	USER
10/31/15	0551	Andrew J Myers
10/31/15	0551	Andrew J Myers
10/31/15	0552	PHABKGJVB
10/31/15	0812	Janie S Kelly, RN

DEVICE
IEMEM310
IEMEM316
IEMEM315
IEMEM301

EVENT
order entered in PRA by Andrew J Myers
order's status changed from IN PRO to COMP
order edited by PRA
order acknowledged via PCS Status Board

DATE TIME CATEGORY
ORD DOCTOR
10/31/15 0551 PHARMACY

PROCEDURE
ORDERED BY
Intravenous Fluids

ORDER NUM PRI
CIG FROM SOURCE
1031-0518

QTY STATUS DATE TIME
Complete 10/31/15 0551

SSSSSSSS

DATE: 11/01/15 @ 0901
USER: BKS DAEMON

Southeast Texas CP +LIVE+
Patient Order Summary By Discharge Date Excluding Verb/Tel/Write

LOCATION: AE.EDMUN
PATIENT: A50001903028 - RANDALL, HERB
UNIT #: ME01043404

DATE/TIME BEGINS: 10/31/15 0551

UDC.VEND VEND.UDC
CANCEL COMMENT:

Andrew J Myers RRADT C UDM

MEDICATION

One Time Medication
Discontinued 10/31/15 0552
<Bag 1> Rate: As Directed

NS Vol: 50 ML
ROUTE SIG SCHED PRN REASON
.ROUTE .STK-MED ONE

DAYS HOURS TOT VOL PAGE
0 0.03

Comment: PC'd by AND00283

DATE	TIME	USER
1 10/31/15 0551		Andrew J Myers
2 10/31/15 0551		Andrew J Myers
3 10/31/15 0552		FRANKGJOS
4 10/31/15 0812		Janie S Kelly, RN

DEVICE
IEMEM310
IEMEM315
IEMEM315
IEMEM301

EVENT
order entered in BHA by Andrew J Myers
order's status changed from IN PRG to COMP
order edited by ZHA
order acknowledged via PC\$ Status Board

Christus Hospital St. Elizabeth
2830 Calder Street
Beaumont, TX 77702
409-899-7157

Signed

Pt Name: RANDALL, HERB
08/16/1962 / 53 Y / M
MR: ME01043404
Acct: AE0001903028
Pt Location: AE.EDMAIN
Ordering Phy: GERHARDT, HERMAN MD

Exam Date and Time: 10/31/15 0531
Exam: 1031-0014 CT/HEADorBRAIN WO CONT
1031-0015 CT/SPINE CERVICAL WO CONT
1031-0016 CT/CT ABD PELVIS W CONTRAST
1031-0041 DX/SPINE THORACIC 2V
1031-0042 DX/CHEST 1 VIEW
1031-0043 DX/WRIST COMPLETE MIN 3V
1031-0044 DX/HAND COMPLETE MIN 3V
1031-0045 DX/FEMUR 2V
Exam CPT: 70450; 71010; 72070; 72125; 73110; 73130; 73550; 74177
Report# RAD 1031-0057
Requisition# 15-0219778, 15-0219779, 15-0219780, 15-0219781, ...

CT brain without contrast
CT cervical spine without contrast
CT abdomen and pelvis without contrast
Chest one-view
Thoracic spine two views
Left femur two views
Left hand three views
Left wrist three views

Clinical history: MVC.

Findings:

CT brain:

No acute intracranial hemorrhage identified. No acute territorial infarct, extra-axial collections, hydrocephalus, mass effect or midline shift, or other acute intracranial abnormalities identified. Bilateral mastoid air cell opacification could reflect a nonspecific mastoid effusions or mastoiditis. Calvarium appears intact.

CT cervical spine:

No acute cervical spine fracture or dislocation. Cervical spine degenerative changes most pronounced at C6-C7 and C7 with mild disc space narrowing and ventral osteophytes. Minimal retrolisthesis of C4-C5 with mild broad-based posterior disc bulge at this level. Mild to moderate broad based posterior disc bulge at C5-C6 with mild central canal narrowing

RANDALL, HERB

ME01043404

AE0001903028

SSSSSSSS

suspected. No prevertebral soft tissue swelling.

CT abdomen/pelvis:

No acute findings in the imaged lung bases. Mild focal scarring right lower lobe. Left hemidiaphragm is elevated. No definite left diaphragmatic defects identified. Small subcentimeter low attenuating foci of the right hepatic lobe, too small to characterize but probably cysts. Tiny hepatic calcified granuloma. Small left renal lower pole cyst.

Gallbladder, pancreas, spleen, adrenals and kidneys otherwise show no acute or suspicious findings. Distended urinary bladder with mild dependent low attenuating foci on excretory phase images possibly nonspecific debris. Clinical correlation is needed. Clinically correlate for hematuria. Urinary bladder is normal in contour without contrast extravasation. No suspicious filling defects otherwise detected within the opacified urinary tract.

No free air, fluid or adenopathy identified. Normal appendix. Atherosclerosis abdominal aorta and branch vessels without aneurysmal change. No retroperitoneal hematoma. There are degenerative changes of the spine. The osseous structures appear intact.

Chest one-view: Elevated left hemidiaphragm. No pulmonary edema, consolidation, effusion or pneumothorax. Heart size appears prominent, possibly spurious due to low lung volumes. The osseous structures appear intact.

Left hand and wrist: No acute fracture or dislocation of the left hand or wrist. Osseous alignment and positioning appear intact. No unexpected retained radiopaque foreign bodies identified. A peripheral IV is in position at the dorsal aspect of the wrist.

Thoracic spine two views: Multilevel ventral wedging/loss of height of the mid to lower thoracic vertebral bodies, chronic in appearance and most pronounced at T8 - T10. There are multilevel thoracic spine degenerative changes most pronounced at the mid - lower thoracic spine. The upper thoracic spine is obscured by the patient's overlying shoulders on the lateral image, limited in evaluation. If the patient has continued or progressive focal thoracic back pain, consider CT or MR correlation on follow-up.

Left femur: No acute fracture or dislocation identified. Osseous alignment and positioning appear intact. No unexpected retained radiopaque foreign bodies identified. Vascular calcifications are present at the posterior aspect of the left thigh.

Impression:

1. Possible nonspecific debris within the urinary bladder lumen. Clinically correlate for hematuria and with urinalysis. Otherwise, no acute intra-abdominal/pelvic abnormalities detected.
2. No acute intrathoracic abnormalities are identified.
3. No acute intracranial abnormalities and no acute cervical spine fracture or dislocation detected.
4. No acute fracture or dislocation of the left hand/wrist, thoracic spine, and left femur.
5. Other nonacute and chronic findings as discussed.

Emergent interpretation.

Dictated By: DIMAALA, JAMES E MD
Signed By: DIMAALA, JAMES E MD

SXQ
D: 10/31/15 0733
T: 10/31/15 0756
S: 10/31/15 0759

cc: GERHARDT, HERMAN MD;
Admitting MD: Patient Status: REG ER
Ordering Phy: GERHARDT, HERMAN MD Admit Service Date: 10/31/15
Attending MD: Discharge Service Date:
Radiology Report Report #: RAD 1031-0057

RANDALL, HERB

ME01043404

AE0001903028

SSSSSSSS

Mar. 22, 2016 11:37AM
CHRISTUS
 Hospital
 St. Elizabeth
 P.O. Box 040080
 Dallas, TX 75204

Itemized Bill of Charges

No. 2678 P. 1/2

TYPE OF BILL	DATE OF BILL	PAGE NO.
FINAL	11/05/15	1 of 1

PATIENT NAME	PATIENT NUMBER	SEX	AGE	ADMISSION DATE	DISCHARGE DATE	DAY
RANDALL, HERB	AE0001903028			10/31/15	10/31/15	11/05/15
INSURANCE COMPANY NAME	GROUP NUMBER	POLICY NUMBER		PAYMENT AMOUNT		

GUARANTOR NAME AND ADDRESS	RANDALL, HERB 6 EMBRY ST TAYLORS SC 29687	☐ Discover ☐ American Express	☐ MasterCard ☐ Visa	Card Number _____ Expiration Date _____
		Signature _____ Please Detach and Return This Portion with Your Remittance		

DATE	BILL CODE	DESCRIPTION	CHARGE CATEGORY	UNIT PRICE	QTY	TOTAL CHARGES
10/31/15	*** 2000003098	250 PHARMACY GENERAL *** SODIUM CHLORIDE 0.9%; NACL 0.9% 50 ML BAG			1	85.00
						85.00
10/31/15	*** 4100000122	320 RADIOLOGY DIAG GENERAL *** X-RAY EXAM OF THORACIC SPINE			1	538.00
10/31/15	4100000196	X-RAY EXAM OF WRIST			1	492.00
10/31/15	4100000168	X-RAY EXAM OF HAND			1	517.00
10/31/15	4100000165	X-RAY EXAM OF THIGH			1	599.00
						2146.00
10/31/15	*** 4100000145	324 RADIOLOGY DIAG CHEST XRAY *** CHEST X-RAY			1	562.00
						562.00
10/31/15	*** 4200000006	351 CAT SCAN HEAD *** CT HEAD/BRAIN W/O DYE			1	1865.00
						1865.00
10/31/15	*** 4200000033	352 CAT SCAN BODY *** CT SPINE CERVICAL WO CONTRAST			1	2139.00
10/31/15	4200000286	CT ABD & PELVIS W CONTRAST			1	3201.00
						5340.00
10/31/15	*** 5700000180	450 EMERGENCY ROOM GENERAL *** EMERGENCY DEPT VISIT			1	1603.00
						1603.00
10/31/15	*** 2000006608	636 DRUG SPEC ID DETAIL CODING *** IOHEXOL INJ 300MG/ML (100 ML); IOHEXOL INJ 300 MG/ML (100 ML)			1	619.00
						619.00

HOSPITAL LIEN FILED
 CALL 888-280-2838

INSURANCE
 BENEFITS
 ASSIGNED TO HOSPITAL

TOTAL CHARGES:

PATIENT NUMBER AE0001903028	Please refer to this Patient Number on all inquiries and correspondence. Additional Patient Billing may be necessary for any charges not posted when this bill is prepared, or if any insurance carriers do not pay any amount of the amounts shown. Please Retain for Your Records	TOTAL AMOUNT DUE 12220.00

APA 3

Chandler Chiropractic

11/02/2015 – 11/10/2015

Pages 40 – 44

Chandler Chiropractic Clinic

1109 South Church St., Greenville, SC, 29605
Phone: (864)-370-2200 Fax: (864)-370-3663
Email: chandlerchiro@bellsouth.net

RECEIVED
DEC 18 2015

BY: _____
Jeanne M. Green, D.C.
Sheryl L. Manges, D.C.

December 15, 2015

Thomas Gagne
Attorney at Law
101 Chapman St
Greenville SC 29605

Re: Herbert Troy Randall
DOA: 10/31/15
Patient No. 6282

Dear Mr. Gagne,
Mr. Herbert Randall first entered into this office on 11/02/15 for examination and treatment for injuries sustained in an automobile accident which occurred on 10/31/15.

Chief Symptoms

Neck pain	Left shoulder pain
Low back pain	Left wrist pain
Upper back pain	Upper back pain
Right/left arm pain	

Examination

The usual orthopedic, neurological, and chiropractic tests were performed on this patient. These tests aided me to arrive at a diagnostic impression, which is contained in another sub-section. All cervical and lumbar ranges of motion were painful and limited. Palpable tenderness and muscle spasms were noted in the

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cervical, thoracic and lumbar areas. Right and left shoulder depressor tests tested positive for cervicals. Right and left sacral restriction and right and left straight leg raise tests tested positive for lumbar.

X-Ray Examination

X-rays were taken of the cervical, thoracic and lumbar areas. All were negative to fractures and dislocations.

Diagnosis

Cervical sprain/strain S13.4xxA

Lumbar sprain/strain S33.3xxA

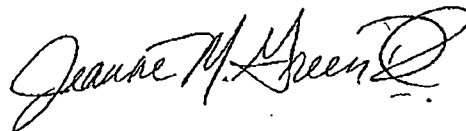
Thoracic sprain/strain S23.3xxA

Summary

Mr. Randall's treatment has consisted of spinal manipulation, trigger point therapy, moist heat, and electrical muscle stimulation. Mr. Randall was last seen on 11/10/2015. At this time although improved, he continued to have pain and symptoms. He was instructed to follow up with his primary care physician. Due to the nature of this injury, she may expect future exacerbations of pain and symptoms.

If I may be of further assistance, please contact me at your convenience.

Sincerely,



Jeanne M. Green D.C.

JMG/rn

Chandler Chiropractic

1109 S. Church Street
Greenville SC 29605-3856
(864) 370-2200

December 15, 2015

Federal ID # 03-0388808

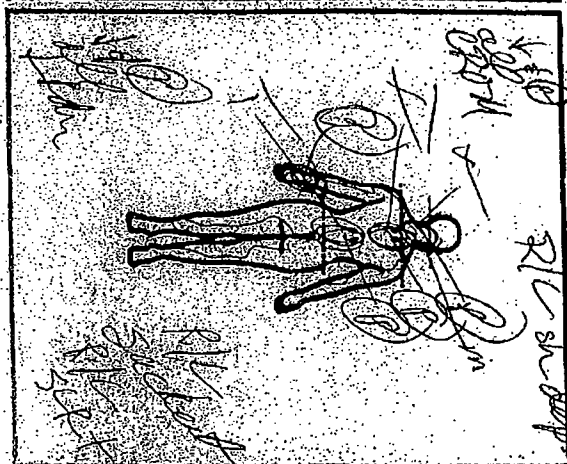
Patient #: 6282
RE: Herbert T. Randall
Insurance ID:

Diagnosis For Accident On 11/02/15
S13.4XXA Sprain of ligaments of cervical spine, initial encounter
S23.3XXD Sprain of ligaments of thoracic spine, subsequent encounter
S33.8XXA Sprain of unspecified parts of lumbar spine and pelvis, initial encounter

Date	Service Descriptions	Charge	Receipt	Total
11/02/15	72052 X-ray Cervical Davis 7 views	350.00		350.00
11/02/15	72070 X-ray Thoracic 14x17 2 views	180.00		510.00
11/02/15	72100 X-ray Lumbosacral 14x17 2 views	180.00		670.00
11/02/15	99202 Examination, Complex	95.00		785.00
11/02/15	98941 CMT; 3-4 Regions	42.00		807.00
11/02/15	97010 Hot Pack; One Area	20.00		827.00
11/02/15	97014 Elec Stimulation, Manual	20.00		847.00
11/02/15	9714059 Manual Therapy	25.00		872.00
11/04/15	98941 CMT; 3-4 Regions	42.00		914.00
11/04/15	97010 Hot Pack; One Area	20.00		934.00
11/04/15	97014 Elec Stimulation, Manual	20.00		954.00
11/04/15	9714059 Manual Therapy	25.00		979.00
11/05/15	98941 CMT; 3-4 Regions	42.00		1021.00
11/05/15	97010 Hot Pack; One Area	20.00		1041.00
11/05/15	97014 Elec Stimulation, Manual	20.00		1081.00
11/05/15	9714059 Manual Therapy	25.00		1086.00
11/06/15	98941 CMT; 3-4 Regions	42.00		1128.00
11/06/15	97010 Hot Pack; One Area	20.00		1148.00
11/06/15	97014 Elec Stimulation, Manual	20.00		1168.00
11/06/15	9714059 Manual Therapy	25.00		1193.00
11/09/15	98941 CMT; 3-4 Regions	42.00		1235.00
11/09/15	97010 Hot Pack; One Area	20.00		1255.00
11/09/15	97014 Elec Stimulation, Manual	20.00		1275.00
11/09/15	9714059 Manual Therapy	25.00		1300.00
11/10/15	98941 CMT; 3-4 Regions	42.00		1342.00
11/10/15	97010 Hot Pack; One Area	20.00		1362.00
11/10/15	97014 Elec Stimulation, Manual	20.00		1382.00
11/10/15	9714059 Manual Therapy	25.00		1407.00
		\$1407.00	\$0.00	\$1407.00

REVENUE ASSIGNED

ACCOUNT HISTORY _____
DOA 10/31/15 _____
ATTORNEY/ADJ _____
CLAIM # _____
CONTACT _____
NUMBER _____
DATE FILED _____

[illegible][illegible]

Name: Herbert "Troy" Randall
Street: 6 Embury Street
City/State/Zip: TAYLORS, SC 29687
Home Phone: 864-672-3800
Work Phone: 864-517-8168
SS#: 342-60-1321
DOB: 8/16/1962
Referred By: Samantha
Patient Number: 6282

PE

[illegible]

T/E	S	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	Next Appointment	NOTES	X-RAYS?
1	11/2/15	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/			
2	11/4/15	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/				
3	11/5/15	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/				
4	11/6/15	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/				
5	11/9/15	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/				
6	11/10/15	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/				
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22																										

ORTHOPEDIC SUPPLIES:

PATIENT NAME: Herbert Randall
 PATIENT NUMBER: 6282

upper trunk 50%

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APA 4

Center for Health and Occupational Services

11/11/2015 – 12/21/2015

Pages 45 – 51



**GREENVILLE
HEALTH SYSTEM**

Center for Health &
Occupational Services

1020 Grove Road
Greenville, SC 29605
(864) 455-2300 P
(864) 455-2399 F
ghs.org

OUTPATIENT VISIT

Name: Herbert Troy Randall
DOB: 08/16/62

Date of Service: 11/11/15
Date of Injury: 10/31/15

SUBJECTIVE: The patient states he was driving his 18-wheeler in Texas on the interstate and the traffic was stopped due to traffic. A pickup truck came from behind at a high rate of speed, according to the patient, and struck a pickup truck that was behind his vehicle, which subsequently struck the back of his trailer. The impact caused the patient to be thrust forward and apparently, he slipped down and forward in the seat, under the seatbelt, and his left knee had hit the dashboard. He states he had immediate numbness in both legs. When EMS arrived, he was able to get out of the cab of the truck and was placed on a backboard with cervical spine immobilization and taken by ambulance to the emergency room. According to him, he was evaluated there, having had x-rays of his cervical spine and lumbar spine, and possible left wrist. He was treated and released. He was given a prescription for #20 Ultram, which he states did not help with the pain at all.

He complains of the following: Neck pain down to the upper part of his back and the low part of his back. His left shoulder and wrist, and his whole left side, including the left leg, which the left leg and the left hand are intermittently numb with tingling sensation. He also stated that he had right knee contusion, but this has improved. His right foot, which was initially completely numb, has now resolved. He has been going to his chiropractor, Dr. Green at Showder Chiropractic, who has been working to get his spine back in place. He states that she obtained x-rays that said he had severe problems in his neck and severe lower spine problems. He has not been able to work since the accident.

PAST MEDICAL HISTORY: Reviewed. The only medical problem he reports is scoliosis. He states he has been seeing a chiropractor since the age of 14. He states he has never had any problem with his scoliosis until this accident.

MEDICATIONS: Takes no medications on a regular basis.

ALLERGIES: No known drug allergies.

OBJECTIVE: Weight 175 pounds. Height 68 inches. Blood pressure 154/93. Pulse 74. Respirations 16. Temperature 98 degrees orally. Pain rating 10 on a scale of 0-10. Generally, patient sits and stands in a bent-over posture with his thoracic spine flexed forward and his neck flexed forward and his chin almost all the way onto his sternum. He maintains this posture most of the time during the examination. His gait was observed as steady. With much encouragement, he is able to stand in a completely upright posture, but maintains it only for a few seconds, stating that it is very uncomfortable to stand up straight. **HEENT:** Eyes PERL. EOMs intact. Sclerae are clear. Nares patent. Mucous membranes moist. Neck is supple, but he does complain of pain and tenderness in the entire cervical area and the upper thoracic region of his back. Lung fields are clear to auscultation. Heart rate is regular with S1-S2 heard without murmurs. Abdomen is soft, nontender. Bowel sounds are physiologic.

DEC 04 2015

Name: Herbert Troy Randall
DOB: 08/16/62

Date of Service: 11/11/15
Page 2

Back is examined. He does have the above demonstrated thoracic kyphotic-appearing spine, although this is postural. I do not see a significant amount of scoliosis, although there may be some in the thoracic spine. The lumbar spine he is tender to palpation over the entire lower back, including the paraspinous muscles bilaterally and into the SI region as well. Straight leg raises are negative and deep tendon reflexes at the knees are +3 bilaterally, as well as the biceps reflexes are +2 bilaterally. There is no clonus. He has subjective numbness in a stocking glove pattern of his left leg from about the knee down. Dorsalis pedis and posterior tibialis pulses are +2 and symmetrical. Capillary refill distally is less than 3 seconds. His left hand and wrist are examined. Although they are normal in appearance, he does have a significant amount of eczema on both palms. He complains of severe pain with movement of the wrist and pain and tenderness on the ulnar styloid aspect of the wrist dorsally. He can completely extend his fingers and gives poor grip effort on the left, and states he is unable to completely flex his fingers. He complains of the long and ring fingers of the left hand being painful, and also reports swelling, although this is not evident on exam.

ASSESSMENT: Neck and low back pain, right and left shoulder pain, both hips, both legs, left foot, left hand pain status post MVA.

PLAN: I did recommend and completed paperwork for physical therapy for this patient. I did advise him that physical therapy is recommended by this provider, and if he is under the care of the Center for Health and Occupational Services, it is not advisable to see a chiropractor. He had inquired about an MRI, stating that his attorney had recommended this. I did discuss with him the plan at this time would be to undergo physical therapy and medications as prescribed, and follow up in 10-14 days. I also did discuss work restrictions. Basically, no driving of a commercial motor vehicle, and lifting restrictions of 10 pounds. I wrote a prescription for diclofenac 50 mg, #30, one p.o. t.i.d. with food for pain, and also cyclobenzaprine 5 mg p.o. t.i.d. as needed for muscle spasm. I also encouraged him to do some gentle stretching exercises and to try to maintain normal posture as much as possible. The patient was reluctant to undergo physical therapy, stating that it would not "fix" the problem, and I again reiterated that this is our recommendation at this time. He should return here in 10-14 days for recheck.

Addendum: After discussion of this patient with colleagues, the decision was made to proceed with ordering MRI of the cervical and lumbar spine to further delineate any pathology. This will be ordered. The patient can go ahead and proceed with physical therapy in the meantime, pending the results.

Lorette Mitchem, ANP
Lorette Mitchem, ANP

LM/nkd/bts 11/12/15

C: Palmetto State Transportation, 1050 Park West Blvd., Greenville, SC 29611

DEC 04 2015

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GHS Center for Health and Occupational Services 1020 Grove Road Greenville, SC 29605 Phone (864) 455-2300 Fax (864) 455-2399	Name <u>Herbert Randall</u> DOB <u>8/16/62</u> Company <u>Palmetto State Transportation</u> Date of Injury <u>10/3/15</u>
Diagnosis: <u>neck & low back pain, (lumbosacral) (Dis)nersthesias</u> Medications: <u>Diclofenac 50mg TID, Cycloclimoprene 5 mg TID</u>	
Work Status: May return to work on <u>11-11-2015</u> ☐ Full Duty ☒ Modified Duty: [None = N] [Rarely = R] [Occasional = O] [Frequently = F] [As Tolerated = AT] ☒ Lift, push or pull no more than <u>10</u> lbs. [] ☐ Bend or Twist [] ☐ Walk and Stand [] ☒ Sit/Stand as needed. ☐ No climbing ladders or work at unprotected heights. ☐ Forceful or Repetitive use of (right/left) hand and arm [] ☐ Overhead use of (right/left) arm [] ☐ Squat or kneel [] ☐ Awkward or Static postures [] ☐ No use of _____ ☒ No operating heavy machinery or Commercial Motor Vehicle. ☐ Elevate affected area ☐ Use crutches as needed. ☐ Use _____ splint. ☐ Other _____	
Instructions: ☒ Stay active during your recovery. ☒ Use over the counter pain relievers by package directions and/or follow prescription directions. ☒ Report any problems with medications to your provider. ☒ Apply ice or heat to the affected areas as needed. ☐ Begin gentle stretches as demonstrated in clinic or in your self care handout. ☐ Elevate the affected area to reduce swelling. ☐ Wash wound with soap and water _____ times per day. ☐ Apply antibiotic ointment. ☐ Keep bandage clean and dry. ☐ Seek care for any signs of infection including increasing redness, swelling, pain, or drainage. ☒ Other: <u>Physical Therapy 10-11 days - Dr. Kepner</u>	
Follow Up: ☒ Appointment Date: _____ Time: _____ Provider: <u>Time</u> <u>RTD</u> <i>*will call patient with appt</i> ☐ Maximum Medical Improvement: Contact your employer prior to making further appointments. ☐ Referral to _____: You will be contacted with and appointment.	
Physician/NP: <u>H. J. Smith M.D.</u> Date: <u>11-11-2015</u>	

Return Yellow Copy to your Employer

Revised 1/24/14

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GREENVIEW HEALTH *May 2015* *1053602599* *FG2461135*

Center for Health & Occupational Service
Brown Road • Greenville, SC 29615
(404) 455-2300 P • (864) 455-2391

Brian C. Swartz, MD, MPH
NPI# 1497018193 • DEA# 854550388

Sharon K. Harisell, FNP-BC
NPI# 181069776

Jennifer Thompson, FNP-BC
NPI# 172073214

Name: **HERBERT RANDAL** DOB: **8/16/62**

Address: _____ Date: **12-01-15**

Tamper-resistant features include: *800 mg 1 tablet P.O. qd for 2 times day*
VOID pantograph, along with refill indicator

30
1 tablet P.O. qd
2017

AS

SUBSTITUTION PERMITTED

Client brought
to us.

AS

GREENVILLE HEALTH'S **EMT** **MD, M.D.** **Center for Health & Occupational Services**
 1000 Road - Greenville, SC 29605
 1-855-230-0777 • (864) 455-2399

Brian C. Swartz, MD, MPH NPI# 1497018493 • DEAB 85455336
 Sharen K. Harrell, FNP-BC NPI# 1497018493
 Jennifer Thompson, FNP-BC NPI# 1497018493

Name: Randall, Hubert DOB: 8/16/1962
 Address: _____ Date: 12/10/2015

Our permanent features include safety paper with uniform background color and a QR pontograph, along with refill indicator.

R **NORCO** (5/325) **-2** tablets **2-2 times a day**
16 days **30 tablets** **16 days**
Medrol pak **take per package**
#1 pack **instruction**
☒ Refill **0** times
3 **flexeril** **10mg** **1 tablet** **at night**
#10 **at night**

DISPENSE AS WRITTEN SUBSTITUTION PERMITTED

Robert Cobb

GHS Center for Health and Occupational Services 1020 Grove Road Greenville, SC 29605 Phone (864)455-2300 Fax (864) 455-2399	Name <u>Randall, Hubert</u> DOB <u>8-16-62</u> Company <u>Palmetto State Transportation</u> Date of Injury <u>10-31-15</u>
Diagnosis: <u>Lower Back Strain (strain lumbar stenosis) facet annularly</u> <u>flexion & extension</u>	
Medications: <u>NORCO, flexair & muscle pain d. p.c.</u>	
Work Status: May return to work on <u>12/10/2015</u> ☐ Full Duty ☒ Modified Duty: [None = N] [Rarely = R] [Occasional = O] [Frequently = F] [As Tolerated = AT] ☐ Lift, push or pull no more than <u>15</u> lbs. [R] ☐ Bend or Twist [R] ☐ Walk and Stand [] ☐ Sit/Stand as needed. ☒ No climbing ladders or work at unprotected heights. ☐ Forceful or Repetitive use of (right/left) hand and arm [] ☐ Overhead use of (right/left) arm [] ☐ Squat or kneel [] ☒ Awkward or Static postures [] ☐ No use of _____ ☐ No operating heavy machinery or Commercial Motor Vehicle. ☐ Elevate affected area _____ ☐ Use crutches as needed. ☐ Use _____ splint. ☐ Other _____	
Instructions: ☐ Stay active during your recovery. ☐ Use over the counter pain relievers by package directions and/or follow prescription directions. ☒ Report any problems with medications to your provider. ☒ Apply ice or heat to the affected areas as needed. ☐ Begin gentle stretches as demonstrated in clinic or in your self care handout. ☐ Elevate the affected area to reduce swelling. ☐ Wash wound with soap and water _____ times per day. ☐ Apply antibiotic ointment. ☐ Keep bandage clean and dry. ☐ Seek care for any signs of infection including increasing redness, swelling, pain, or drainage. ☐ Other: <u>Continue with PT therapy</u>	
Follow Up: ☒ Appointment Date: <u>12/21/15 Mon.</u> Time: <u>9:00 am</u> Provider: <u>Gallie</u> ☐ Maximum Medical Improvement: Contact your employer prior to making further appointments. ☐ Referral to _____ You will be contacted with and appointment.	
Physician/NP: <u>Cheryl Gallie</u> Date: <u>12/10/2015</u>	

Return Yellow Copy to your Employer

Revised 1/24/14

GHS Center for Health and Occupational Services 1020 Grove Road Greenville, SC 29605 Phone (864) 455-2300 Fax (864) 455-2399	Name <u>Randall, Herbert</u> DOB <u>8/16/62</u> Company <u>Palmatto State Transformation</u> Date of Injury <u>10/31/15</u>
Diagnosis: <u>Cervical & Lower Back pain</u> (Cervical Spondylosis, Sciatica, STSC protrusion - Medications: <u>ADRCO 3/325</u> <u>13-15</u> <u>multiple DIS protrusions</u> <u>Washburn</u> <u>Plavix 10mg</u>	
Work Status: May return to work on _____ ☐ Full Duty ☒ Modified Duty: [None = N] [Rarely = R] [Occasional = O] [Frequently = F] [As Tolerated = AT] ☒ Lift, push or pull no more than <u>15</u> lbs. [<u>0</u>] ☒ Bend or Twist [<u>R</u>] ☐ Walk and Stand [] ☐ Sit/Stand as needed. ☒ No climbing ladders or work at unprotected heights. ☐ Forceful or Repetitive use of (right/left) hand and arm [] ☐ Overhead use of (right/left) arm [] ☐ Squat or kneel [] ☒ Awkward or Static postures [] ☐ No use of _____ ☐ No operating heavy machinery or Commercial Motor Vehicle. ☐ Elevate affected area _____ ☐ Use crutches as needed. ☐ Use _____ splint. ☒ Other: <u>Consult with Neurosurgeon</u>	
Instructions: <u>2nd opinion about neck strain vs pre-diagnosis spinal condition</u> ☐ Stay active during your recovery. ☐ Use over the counter pain relievers by package directions and/or follow prescription directions. ☒ Report any problems with medications to your provider. ☒ Apply ice or heat to the affected areas as needed. <u>10-20 mins x 3 times day</u> ☐ Begin gentle stretches as demonstrated in clinic or in your self care handout. ☐ Elevate the affected area to reduce swelling. ☐ Wash wound with soap and water _____ times per day. ☐ Apply antibiotic ointment. ☐ Keep bandage clean and dry. ☐ Seek care for any signs of infection including increasing redness, swelling, pain, or drainage. ☐ Other: <u>Continue with physical therapy</u>	
Follow Up: ☒ Appointment Date: <u>11/12 weeks</u> Time: <u>9:30 AM</u> Provider: <u>Gall</u> ☐ Maximum Medical Improvement: Contact your employer prior to making further appointments. ☐ Referral to _____ You will be contacted with and appointment.	
Physician/NP: <u>Dan Gall</u> Date: <u>12/21/2015</u>	

Return Yellow Copy to your Employer

Revised 1/24/14

APA 5

Innervision Medical Imaging

11/23/2015

Pages 52 – 55



SOUTH CAROLINA DIAGNOSTIC IMAGING

Innervision Medical Imaging Grove
#1 Cannon Drive Greenville, SC 29605
p: (864) 242-2020 f: (864) 240-5776

PATIENT: RANDALL, HERBERT
DOB: 08/16/1962
MRN: 1109541
PHONE: 864-517-8169 (Home)
PHYSICIAN: HELEN MITCHEM, NP
EXAM DATE: 11/23/2015

EXAM: MR-Lumbar Spine without contrast

REASON FOR EXAM: lbp

TECHNIQUE: Multiplanar imaging of the lumbar spine was performed using a posterior phased-array coil configuration in a 1.5 Tesla magnet. T1, T2 and T2 fat-suppressed spin-echo sequences were utilized.

FINDINGS: No acute or suspicious vertebral body signal abnormality is seen.

There is mild disc narrowing at L4-5.

The conus appears normal.

No compressive disc bulge is noted at L1-2.

The L2-3 level demonstrates a mild right-central to proximal foraminal focal bulge. There is mild inferior neural foraminal encroachment. There is no significant spinal stenosis.

Contralateral neural foramen is patent.

L3-4 level demonstrates minimal disc bulge. No significant spinal stenosis. Minimal inferior neural foraminal encroachment.

L4-5 level demonstrates a uniform disc bulge with subannular fissuring. There is ligamentum flavum buckling and facet arthropathy. Mild-moderate spinal stenosis with moderate lateral recess stenosis is seen. There is severe inferior neural foraminal encroachment.

L5-S1 level demonstrates no compressive disc bulge, significant spinal stenosis or neural foraminal encroachment.

Incidental note of a lower pole cyst of the left kidney measuring 1.3 cm.

CONCLUSION:

1. Multilevel disc bulging most prominent at L4-5 which exhibits subannular fissuring, mild-to-moderate spinal stenosis with moderate lateral recess stenosis and severe bilateral inferior neural foraminal stenosis.
2. Mild L2-3 right-central to proximal foraminal bulge. No significant spinal stenosis. Mild inferior neural foraminal encroachment on the right.
3. Lower pole left renal cyst.

Martin Ruocco, PHD., MD

MR/11h

PATIENT: RANDALL, HERBERT
DOB: 08/16/1962
EXAM: MR-Lumbar Spine without contrast
EXAM DATE: 11/23/2015

DD: 11/23/2015 08:47 A
DT: 11/23/2015 09:54 A
Accession#: 08-2203132 VS#: 120651749 CS#: 1675993
CC:

Electronically Signed and Reviewed by Martin Ruocco, PHD., MD 11/23/2015 11:49 A

PATIENT: RANDALL, HERBERT
DOB: 08/16/1962
EXAM: MR-Cervical Spine without contrast
EXAM DATE: 11/23/2015

MR/llh
DD: 11/23/2015 08:44 A
DT: 11/23/2015 09:36 A
Accession#: 08-2203130 VS#: 120651742 CS#: 1675986
CC:

Electronically Signed and Reviewed by Martin Ruocco, PHD., MD 11/23/2015 11:49 A



SOUTH CAROLINA DIAGNOSTIC IMAGING

Innervision Medical Imaging Grove
#1 Cannon Drive Greenville, SC 29605
p: (864) 242-2020 f: (864) 240-5776

PATIENT: RANDALL, HERBERT
DOB: 08/16/1962
MRN: 1109541
PHONE: 864-517-8169 (Home)
PHYSICIAN: HELEN MITCHEM, NP
EXAM DATE: 11/23/2015

EXAM: MR-Cervical Spine without contrast

REASON FOR EXAM: cervicalgia

TECHNIQUE: Multiplanar imaging of the cervical spine was performed using a posterior phased-array coil configuration in a 1.5 Tesla magnet. T1, T2, STIR spin echo and T2* gradient echo pulse sequences were utilized.

FINDINGS: No acute or suspicious vertebral body signal abnormality is seen.

Mild-to-moderate disc narrowing is noted at C6-7.

The cord signal appears normal.

C2-3 level appears normal.

C3-4 level demonstrates left-sided uncovertebral hypertrophy with underlying disc bulge. There is severe left neural foraminal encroachment. There is no significant spinal stenosis. The contralateral neural foramen is patent.

C4-5 level demonstrates a mild disc bulge with uncovertebral hypertrophy left side slightly greater than right. There is slight asymmetry of the disc bulge left side greater than right. Minimal spinal stenosis. Minimal-to-mild left neural foraminal encroachment. Minimal right neural foraminal encroachment.

A prominent disc bulge/osteophyte complex occurs at C5-6 which results in moderate-to-severe spinal stenosis. There is a superimposed focal bulge extending from the center of the disc annulus to the proximal right neural foramen. Uncovertebral hypertrophy is noted. There is moderate bilateral neural foraminal stenosis.

A similarly-prominent disc bulge is noted at C6-7 with uncovertebral hypertrophy. The disc bulge is more concentric compared to the C5-6 level. There is moderate-to-severe spinal stenosis. There is contact with cord but no cord signal abnormality. Moderate-to-severe neural foraminal encroachment is noted.

C7-T1 level demonstrates no disc bulge.

CONCLUSION: Prominent disc bulges with uncovertebral hypertrophy at C5-6 and C6-7 resulting in moderate-to-severe spinal stenosis with contact with the cord. There is no evidence of cord signal abnormality however. Bilateral neural foraminal encroachment. Refer above.

Martin Ruocco, PHD., MD

APA 6

**Neurosurgery – Cross Creek
Dr. Philip Hodge**

02/22/2016

Pages 56 – 66



GREENVILLE HEALTH SYSTEM

NEUROSURGERY CROSS CREEK 111
111 Doctors Drive
Greenville SC 29605-5608
Phone: 864-797-7150
Fax: 864-797-7155

Herbert Troy Randall

2/22/2016 9:20 AM Office Visit

MRN: 971060839

Description: Male DOB: 8/18/1962

Provider: Philip Julius Hodge, MD

Department: Neurosurg Crossck 111

Diagnoses

Protrusion of lumbar intervertebral disc - Primary

ICD-9-CM: 722.10

ICD-10-CM: M51.26

Protrusion of cervical intervertebral disc

ICD-9-CM: 722.0

ICD-10-CM: M50.20

Reason for Visit

Work Related Injury

10.31.2015. Patient is a 18-wheel truck driver. Patient was involved in a MVA He was hit from the back after the impact of the third car and the small car in the middle hit the truck.

New Patient

Cervical and Lumbar MRI completed on 11.23.2015

Progress Notes

Philip Julius Hodge, MD at 2/22/2016 9:30 AM

Status: Signed

Progress Note 2/22/2016

Subjective:

Subjective

Herbert Troy Randall is a 53 y.o. male. Chief Complaint

Patient presents with

- Work Related Injury**

10.31.2015. Patient is a 18-wheel truck driver. Patient was involved in a MVA He was hit from the back after the impact of the third car and the small car in the middle hit the truck.

- New Patient**

Cervical and Lumbar MRI completed on 11.23.2015

HPI Work comp injury: 10/31/2015. Involved in MVA. Experiencing back and neck pain. Currently undergoing physical therapy. He had 4 to 5 adjustments by chiropractor following accident.

Review of Systems

Constitutional: Positive for fatigue.

HENT: Positive for hearing loss.

Ring in ear

Musculoskeletal: Positive for back pain and neck pain.

Loss of muscle strength

Objective:

Imaging: Innervision - 11/23/15 - Cervical - C6-7 broad based disc protrusion and to lesser degree C5-6 disc protrusion. Lumbar MRI - L4-5 annular tear and small disc protrusion - CD with patient.

Objective

Physical Exam Constitutional: He appears well-developed and well-nourished.

Cardiovascular: Normal rate and regular rhythm.

Pulmonary/Chest: Effort normal and breath sounds normal.

Neurological: He is alert. Gait normal.

Reflex Scores:

Tricep reflexes are 2+ on the right side and 2+ on the left side.

Bicep reflexes are 2+ on the right side and 2+ on the left side.

Brachioradialis reflexes are 2+ on the right side and 2+ on the left side.

Patellar reflexes are 2+ on the right side and 2+ on the left side.

Achilles reflexes are 2+ on the right side and 2+ on the left side.

Neurologic Exam

Cranial Nerves

Cranial nerves II through XII intact.

Motor Exam

Muscle bulk: normal

Strength

Right neck flexion: 5/5

Left neck flexion: 5/5

Right neck extension: 5/5

Left neck extension: 5/5

Right deltoid: 5/5

Left deltoid: 5/5

Right biceps: 5/5

Left biceps: 5/5

Right triceps: 5/5

Left triceps: 5/5

Right wrist flexion: 5/5

Left wrist flexion: 5/5

Right wrist extension: 5/5

Left wrist extension: 5/5

Right interossei: 5/5

Left interossei: 5/5

Right abdominals: 5/5

Left abdominals: 5/5

Right iliopsoas: 5/5

Left iliopsoas: 5/5

Right quadriceps: 5/5

Left quadriceps: 5/5

Right hamstring: 5/5

Left hamstring: 5/5

Right glutei: 5/5

Left glutei: 5/5

Right anterior tibial: 5/5

Left anterior tibial: 5/5

Right posterior tibial: 5/5

Left posterior tibial: 5/5

Right peroneal: 5/5

Left peroneal: 5/5

Right gastroc: 5/5

Left gastroc: 5/5

Gait, Coordination, and Reflexes

Gait

Gait: normal

Reflexes

Right brachioradialis: 2+

Left brachioradialis: 2+

Right biceps: 2+

Left biceps: 2+

Right triceps: 2+

Left triceps: 2+

Right patellar: 2+

Left patellar: 2+

Right achilles: 2+

Left achilles: 2+

Right grip: 2+

Left grip: 2+

Right Hoffman: absent

Right ankle clonus: present (1 beat of clonus)

Orthopaedic Exams

Left Knee Exam

Strength

Quadriceps (SLR at 0): 5

Hamstring: 5

Right Knee Exam

Strength

Quadriceps (SLR at 0): 5

Hamstring: 5

Neck Exam

Reflexes

Brachioradialis - Right: 2+

Brachioradialis - Left: 2+

Triceps - Right: 2+

Triceps - Left: 2+

Biceps - Left: 2+

Back Exam

Reflexes

Patellar - Right: 2+

Patellar - Left: 2+

Achilles - Right: 2+

Achilles - Left: 2+

Assessment



Assessment/Plan:**Problem List Items Addressed This Visit****Musculoskeletal and Integument****Protrusion of lumbar intervertebral disc - Primary**

Mr. Randall has neck and back pain after a work-related injury on 10/31/2015. He was driving a tractor trailer and was hit by a motor vehicle. He has been treated by chiropractor for a short time followed by physical therapy. He has also been managed by CHOS with medication. MRI of the lumbar spine shows an annular tear and disc protrusion without neurologic compression at L4-5. His cervical spine MRI shows C5-C6 broad based disc protrusion without neurologic compression and a C6-C7 broad-based disc protrusion with osteophyte lacking neural compression. These findings likely represent a combination of chronic disease and acute injury. At the very least, he has a chronic condition that was exacerbated by his injury. I do not feel that he would benefit from surgery for any of the symptoms or findings noted above. I would recommend continued nonoperative treatment.

Protrusion of cervical intervertebral disc

See above.

Preventive:

MED RECONCILIATION: Pt. Ed: Current Meds Verified: Current meds/immunizations reviewed, including purpose with pt. Med Recon list given to pt/family. Pt advised to discard old med lists and provide all providers with current list at each visit and carry list with them in case of emergency.

Revision History**Vitals**

BP	Pulse	Ht	Wt	BMI	Smoking Status
143/85 mmHg	75	1.727 m (5' 8")	84.369 kg (186 lb)	28.29 kg/m ²	Current Every Day Smoker

Immunizations Administered on Date of Encounter - 2/22/2016

Never Reviewed

No immunizations on file.

Medications

These changes are accurate as of: 2/22/16 11:59 PM. If you have any questions, ask your nurse or doctor.

Continue Taking These Medications**Instructions**

naproxen 500 mg tablet

Refills: 0

Commonly known as: NAPROSYN

Allergies as of 2/22/2016

Reviewed On: 2/22/2016 By: Tiffany Washington Glaster

Allergen	Noted	Reaction Type	Reactions	Deletion Reason
Penicillins	02/22/2016			

Problem List as of 2/22/2016

Protrusion of cervical intervertebral disc
Protrusion of lumbar intervertebral disc

History

Date Reviewed:

Last Reviewed by GLASTER, TIFFANY on 2/22/2016

Medical History

Diagnosis

Hearing loss

Family History

Problem	Relation	Age of Onset	Comments
No known problems for Brother, Father, Maternal Aunt, Maternal Grandfather, Maternal Grandmother, Maternal Uncle, Mother, Paternal Aunt, Paternal Grandfather, Paternal Grandmother, Paternal Uncle, Sister.			

Substances and Sexuality

Smoking Status	Amount
Current Every Day Smoker	0 packs/day for 0 years

Smokeless Tobacco Status
Unknown

Alcohol Use	Amount
Yes	N/A

Drug Use	Frequency
No	N/A

Sexually Active	Partners
Not Asked	N/A

All Flowsheet Templates (all recorded)

Custom Formula Data
Encounter Vitals
Travel and Exposure Screening

BestPractice Advisories

Click to view BestPractice Advisory history

Encounter-Level Documents - 02/22/2016:

Scan on 2/26/2016 1:40 PM by Jennifer White : SEN 2016.02.22 PAIN SHEET
Scan on 2/26/2016 1:40 PM by Jennifer White : SEN 2016.02.22 REFERRAL
Scan on 2/26/2016 1:40 PM by Jennifer White : SEN 2016.02.22 HEALTH HISTORY

Provider Information

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Encounter Provider	Authorizing Provider
Philip Julius Hodge, MD	Philip Julius Hodge, MD
Encounter Coverage and Financial Information	
Click to view encounter coverage and financials including charges and LOS.	

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GREENVILLE
HEALTH SYSTEM
Southeastern Neurosurgical
& Spine Institute

New Patient Health History
(No Previous HPI)

In order for us to obtain a complete medical history, it is important for you to fill out this form as completely as possible. This is very important information. Please fill out every item. It is important for your doctor to know that you have carefully reviewed every area of this form. This information will be entered into the computer and you are welcomed to a copy of the report if you wish.

Patient's Last Name RANDALL First HERBERT MI I Preferred Name HERB
Patient's SSN 342-60-1321 Patient's Date of Birth 08-16-1962 Male ☒ Female ☐ Race Cauc

Pharmacy Preference (include location) _____

Name of Primary Care (Family) Physician _____ Name of referring physician _____

Are you taking any kind of medication now? (This includes prescription, over-the-counter or herbal medications) ☐ No ☒ Yes

If yes, please list below and include dosage if you know it.

Medication	Dosage	Frequency
<u>ID Protein</u>	<u>400 mg</u>	<u>3 x daily</u>

Are you allergic to any medications? ☒ No ☐ Yes

If yes, please list below:

Name of Medication	Type of Reaction
<u>PCN</u>	<u>Severe</u>

Non Medication Allergies

Are you allergic to seafood? ☒ No ☐ Yes

If yes, what reaction do you have? N/A

Are you allergic to things that touch your skin, such as latex, tape, metal? ☒ No ☐ Yes ☐ Latex ☐ Tape ☐ Metal

If yes, what reaction do you have? N/A

List any and all doctors you are currently seeing and why:

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**GREENVILLE
HEALTH SYSTEM**

Southeastern Neurosurgical
& Spine Institute

Social Security # 342-60-1321

Date of Birth 08-16-1962

Have you ever been diagnosed with any major health problems; including but not limited to the following?

Diseases:

Measles If yes, what year _____
German Measles If yes, what year _____
Mumps If yes, what year _____
Scarlet Fever If yes, what year _____
Pancreatitis If yes, what year _____

Diverticulitis If yes, what year _____
Reflux If yes, what year _____
Hepatitis If yes, what year _____
Hernia If yes, what year _____
Stomach Ulcer If yes, what year _____

Cancer: Type _____

If yes, what year _____

Eyes:

Cataracts If yes, what year _____
Glaucoma If yes, what year _____
Retinal Detachment If yes, what year _____

Kidney & Gender Problems:

Renal Failure If yes, what year _____
Prostate Enlargement If yes, what year _____
Are you pregnant Yes / No _____

Ears:

Hearing loss from aging If yes, what year _____
Hearing loss from trauma If yes, what year _____
Hearing loss unknown cause If yes, what year X

Skin & Breast:

Psoriasis If yes, what year _____
Shingles If yes, what year _____

Brain & Nervous:

Epilepsy If yes, what year _____
Stroke If yes, what year _____

Glands, Hormones & Sugar Control:

Diabetes (Type _____) If yes, what year _____
Gallbladder If yes, what year _____
Thyroid Deficiency If yes, what year _____
Thyroid Excess If yes, what year _____

Heart & Blood Vessels:

Angina If yes, what year _____
Cerebral Vascular Accident If yes, what year _____
Heart Attack If yes, what year _____
Heart Disease If yes, what year _____
High Blood Pressure If yes, what year _____
Pericarditis If yes, what year _____
Blood Clots In Arms or Legs If yes, what year _____

Blood & Lymph Node Problems:

Anemia If yes, what year _____

Lungs & Respiratory:

Tuberculosis If yes, what year _____
Asthma If yes, what year _____
Chronic Bronchitis If yes, what year _____

Allergies, Immune & Infections:

HIV If yes, what year _____
Infectious mononucleosis If yes, what year _____

Stomach & Digestive:

Cirrhosis or Enlarged Liver If yes, what year _____

Other: Please Specify _____

Surgeries & Hospitalizations:

Have you been hospitalized (not for surgery)? ☐ No ☐ Yes

If yes, list hospitalizations, the reason for admission and date: _____

Have you had surgery? ☐ No ☐ Yes

If yes, list any surgeries and date they occurred: _____



**GREENVILLE
HEALTH SYSTEM**
Southeastern Neurosurgical
& Spine Institute

Social Security # 342-60-1321 Date of Birth 08-16-1962

Have you had problems with anesthesia (numbing or being put to sleep)? ☐ No ☐ Yes
If yes, please list what sort of problem(s) occurred: _____

Family History:

Specific Anesthesia Problem ☐ Mother ☐ Father ☐ Sibling

Brain & Nervous:

Dementia ☐ Mother ☐ Father ☐ Sibling

Neurologic Disease ☐ Mother ☐ Father ☐ Sibling

Stroke ☐ Mother ☐ Father ☐ Sibling

Bones, Joints & Muscles:

Arthritis ☐ Mother ☐ Father ☐ Sibling

Osteoporosis ☐ Mother ☐ Father ☐ Sibling

Heart & Blood Vessels:

Heart Disease ☐ Mother ☐ Father ☐ Sibling

High Blood Pressure ☐ Mother ☐ Father ☐ Sibling

Lungs & Respiratory:

Lung Cancer ☐ Mother ☐ Father ☐ Sibling

Asthma ☐ Mother ☐ Father ☐ Sibling

Other: _____

Social History:

Place of employment: Palmetto State Transportation

Occupation: OTR DRIVER Retired? ☐ No ☐ Yes

Marital Status: ☒ Married ☐ Divorced ☐ Widowed

Do you smoke or use other types of tobacco products? ☐ No ☒ Yes

If yes, type of tobacco _____ Cigarettes per day 1 pack

Have you had any type of alcoholic beverage in the past year? ☐ No ☒ Yes

If yes, how often? BEER - 1 BEER EVERY 3 MONTHS

Hand dominance: ☒ Right ☐ Left

Home situation: ☐ Alone ☒ Spouse ☐ Children ☐ Mother ☐ Father ☐ Nursing Home ☐ Assisted Living

Review of Systems: List any problems you have or have recently had in the follow areas:

General Health (Fatigue, Fever, Unintentional weight loss, Unintentional weight gain, or other problems) ☐ No ☒ Yes

If yes, please list problems. FATIGUE / PAIN

Eye and Ear (Loss of vision, Hearing loss, Ringing in ears, or other problems) ☐ No ☒ Yes

If yes, please list problems. HEARING - RINGING & GENERAL LOSS OF HEARING

Heart and Blood Vessels (Chest pain, Irregular heart beat, Shortness of breath, or other problems) ☒ No ☐ Yes

If yes, please list problems. _____

Lungs and Respiratory System (Shortness of breath, Frequent cough, Wheezing, or other problems) ☒ No ☐ Yes

If yes, please list problems. _____

Stomach and Digestive System (Abdominal pain, Diarrhea, Heartburn, Nausea, Vomiting, or other problems) ☒ No ☐ Yes

If yes, please list problems. _____

Kidney or Bladder or Sexual Health

Male: (Loss of sexual interest, Change in urinating pattern or other problems) ☒ No ☐ Yes

If yes, please list problems. _____

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**GREENVILLE
HEALTH SYSTEM**
Southeastern Neurosurgical
& Spine Institute

Social Security # 342-600-1321 Date of Birth 08-16-1962

Female: (Unusual menstrual bleeding, Stress Incontinence or other problems) ☒ No ☐ Yes
If yes, please list problems. N/A

Bones, Joints and Muscles (Painful joints, Loss of muscle strength, Swelling of joints) ☐ No ☒ Yes
If yes, please list problems. Loss of strength

Skin and Breast (Discharge from nipples, Rash, or other problems) ☒ No ☐ Yes
If yes, please list problems. _____

Brain or Nervous System (Difficulty remembering, Loss of consciousness, Seizures, or other problems) ☒ No ☐ Yes
If yes, please list problems. NA

Mental and Emotional Health (Nervousness, Depression, or other problems) ☒ No ☐ Yes
If yes, please list problems. NA

Blood or Lymph Nodes (Excessive bleeding, Easy bruising, or other problems) ☒ No ☐ Yes
If yes, please list problems. _____

Allergies, Infections, and Immune System (Abnormal infections, Hives, or other problems) ☒ No ☐ Yes
If yes, please list problems. _____

This information is very important for us to have for your treatment. Thank you very much for filling out these forms completely.

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**GREENVILLE
HEALTH SYSTEM**
Southeastern Neurosurgical
& Spine Institute

Date of Service 02-22-2016

Patient's Name Harbour T. Randall Date of Birth 08-16-1962

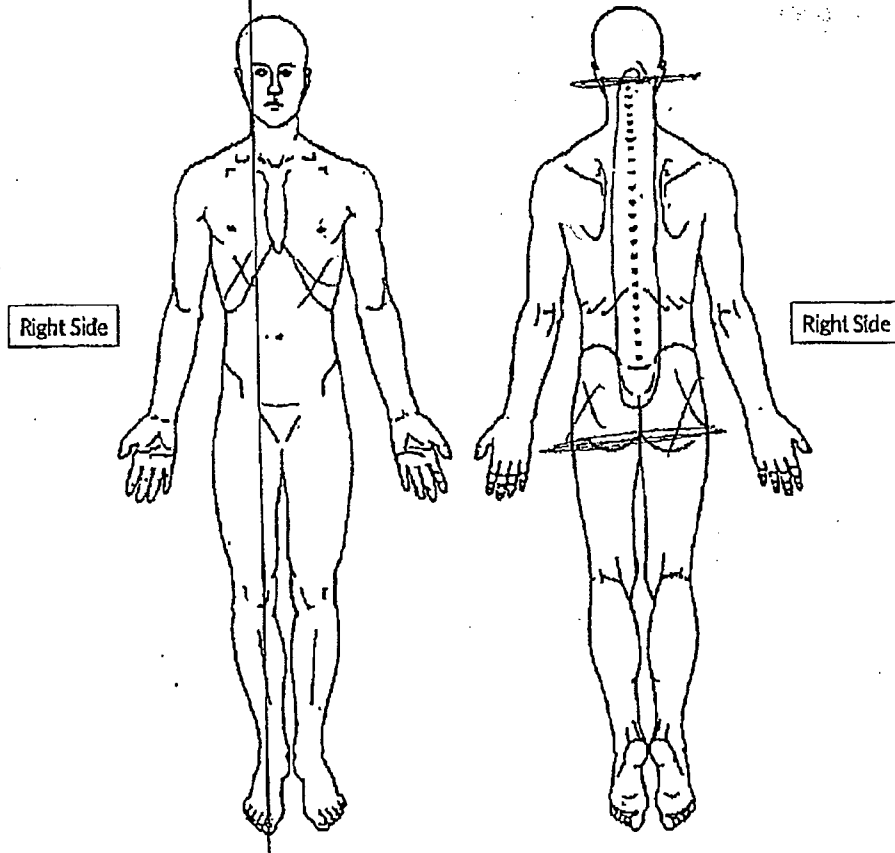
Are you currently experiencing pain? Yes ☒ No ☐

If yes, please indicate your pain intensity on a scale of 1 to 10. (0 = None)

0 1 2 3 4 5 6 7 8 9 10

Mark the area on your body where you feel the described sensations. Use the appropriate symbol. Mark areas of radiation. Include all affected areas.

====	0000	xxxx	////
Numbness ==	Pins & Needles 0000	Burning xxxx	Stabbing ////
====	0000	xxxx	////



lde

APA 7

Peace Medical Center

04/18/2016

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peace medical center

Randall, Herbert

63 Y. old Male, DOB: 08/16/1952

Account Number: 26068

PO Box 1871, Taylors, SC 29687

Home: 864-517-8169

Guarantor: Randall, Herbert Insurance: Self Pay

Appointment Facility: Peace Medical Center, Greenville

Naveen R. Saxena

04/18/2016

Current Medications

None

Past Medical History

No Medical History

Surgical History

No Surgical History documented

Family History

No Family History documented

Allergies

NKDA

Hospitalization/Major

Diagnosis: Procedure

No Hospitalization History

Review of Systems

General/Constitutional

Change in appetite denies.

Fatigue denies. Sleep disturbance denies.

Weight change denies.

Allergy/Immunology

Stains allergies denies. Skin

allergies denies.

Ophthalmologic

Blurred vision denies.

ENT

Decreased hearing denies.

Respiratory

Asthenia denies. Cough denies.

Shortness of breath denies.

Wheezing denies.

Cardiovascular

Chest pain denies. Dizziness denies.

Swelling/Edema denies. Heart

Palpitations denies.

Gastrointestinal

Abdominal pain denies. Blood in

stool denies. Constipation denies.

Diarrhea denies.

Genitourinary

Reason for Appointment

1. Workers Comp/ Dr Bridges
2. C/o severe back pain.

History of Present Illness

*** DIAGNOSIS:**

Follow up Follow up on all diagnosis noted on Chart note.

*** MED REFFILLS:**

MED REFFILLS None Needed.

*** TEST RESULTS:**

LABS Not Done prior to visit.

Back Pain:

Location: lumbar area of back Upper back - thoracic. Duration: since MVA where pt rear-ended in a semi truck in October 31 2015, severity 9/10.

Vital Signs

HR 84/min, BP 144/81 mm Hg, Ht 5 ft 8 in, Wt 175 lbs, BMI 26.61
Index, Oxygen sat 96 %.

Examination

General Examination:

GENERAL APPEARANCE: alert, well hydrated. Older male, uncomfortable due to pain. HEAD: normocephalic. EYES: No significant change from previous exam. NECK/THYROID: limited range of motion, pain with flexion. SKIN: large raised circular scaly hypertrophic lesion on R forearm. HEART: S1, S2 normal. LUNGS: clear to auscultation.

bilaterally. BACK: Kyphoscoliosis, scoliosis to the RIGHT, paraspinal muscle spasm on the RIGHT, paraspinal muscle spasm on the LEFT, tender over multiple muscle-joint points. EXTREMITIES: no edema; NEUROLOGIC: nonfocal, alert and oriented, slow gait.

Assessments

1. Dorsalgia, unspecified - M54.9 (Primary)
2. Cervicgia - M54.2
3. Elevated blood pressure reading, without diagnosis of hypertension - R03.0
4. Muscle spasm of back - M62.830
5. Malignant neoplasm of connective and soft tissue of right upper limb, including shoulder - C49.11

Patient: Randall, Herbert DOB: 08/16/1952 Progress Note: Naveen R. Saxena 04/18/2016

Note generated by eClinicalWorks EMR/EMR Practice Management (www.eClinicalWorks.com)

Dysuria/Difficulty urinating denies.
Urinary Incontinence denies.
Musculoskeletal:
Back Pain Admits to entire back,
not allowing pt to straighten spine.
Painful joints denies. Swollen
joints denies. Muscle Weakness denies.
Skin:
Dry skin denies. Rash denies.
Neurologic:
Balance difficulty denies. Gait
abnormality denies. Headache denies.
Psychiatric:
Anxiety denies. Depressed
mood denies.

Treatment

1. Dorsalgia, unspecified

Notes: severe pain post mya; pt has taken Ibuprof, 800mg, Flexeril 10mg,
Tramadol 50mg and Diclofenac 50mg DR with no relief; pt has done
PT water therapy and 4 sessions with chiro with no yield; Injection
determined as best mode for relief however not covered financially.

2. Cervicalgia

Notes: injection recommended due to no relief with multiple meds,
chiro sessions and PT.

3. Elevated blood-pressure reading, without diagnosis of hypertension

Notes: Blood pressure reviewed and diet and other therapies
addressed.

4. Muscle spasm of back

Notes: Notes: severe pain post mya; pt has taken Ibuprof, 800mg,
Flexeril 10mg, Tramadol 50mg and Diclofenac 50mg DR with no relief;
pt has done PT water therapy and 4 sessions with chiro with no yield;
Injection determined as best mode for relief however not covered
financially.

5. Malignant neoplasm of connective and soft tissue of right upper limb, including shoulder

Notes: recommend eval. by dermatologist asap for tx.

Preventive Medicine

TIME SPENT IN ROOM: Intensity of visit / length of visit: Medium
intensity visit, 16-25 minutes.

Follow Up

1 Week



Electronically signed by Naveen Saxena, MD on 04/25/2016
at 11:59 PM EDT

Sign off status: Completed

Peace Medical Center Saffordtown
220 Saffordtown Rd
Simpsonville, SC 29681-7202
Tel: 864-233-2744
Fax: 864-331-2896

Patient: Randall, Herbert DOB: 08/16/1962 Progress Note: Naveen R. Saxena 04/18/2016

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

APA 8

Upstate Spine and Neurosurgery Center, PC

08/11/2016

Pages 70 - 72

Upstate Spine and Neurosurgery Center, PC

1075 Bolling Springs Road
Spartanburg, SC 29303
Phone: (864) 883-7265
Fax: (864) 591-0422

HERBERT T RANDALL**Patient #: 196969****DOB: 08/16/1962 (54 years)****Date of Encounter: 08/11/2016 02:31 PM****History of Present Illness**

The patient is a 53 year old male who presents to the practice today for a transition into care. The patient is transitioning into care from self referral.
Additional reasons for visit:

Pain is described as the following:

The onset of the pain has been sudden following an incident at work (patient was driving his semi truck when he was hit from behind on October 31, 2015.) and has been occurring in constant pattern for 10 months. The course has been gradually worsening. The pain is described as moderate to severe. The pain is described as being located in the neck and lower back, radiates to the right lower extremity. The problem is aggravated by daily activities, movement, sitting, walking and lying down. The symptoms are relieved by : nothing. There has been associated weakness, while there has been no associated paresthesias or numbness. Previous diagnostic tests have included MRI (lumbosacral). Treatment included analgesics, muscle relaxant, anti-inflammatory medication, heat, ice, physical therapy and chiropractic adjustments. There is no previous spine surgery. The pain interferes with work, daily activities and leisure activities.

History**Allergy**

Penicillin

Past Medical

Cancer

Social

Alcohol Use: Rarely (less than 1 drink per month)

Marital Status/Living Situation: Married

Current Work/Study Status: Disabled

Tobacco Use: Current every day smoker, Smokes 1 pack of cigarettes per day

Medications

No Current Medications.

Medications Reconciled.

Family

Mother: Deceased, Age of Death 77. Cause of Death, Med. Complication

Father: Deceased, Age of Death 44. Cause of Death, Auto Accident

Cancer: Sister

Arthritis: Mother

Past Surgical

Skin Cancer

Review of Systems

General Not Present- Chills, Fever, Weight Gain > 10lbs. and Weight Loss > 10lbs.,

Skin Present- Skin problems. Not Present- Itching and Rash,

HEENT Present- Eye Pain and Visual Disturbances, Not Present- Headache, Hearing Loss, Seasonal Allergies, Sinus Problems, Tinnitus and Visual Loss.

Neck Not Present- Neck Mass and Swollen Glands.

Respiratory Not Present- Chronic Cough and Difficulty Breathing.

Cardiovascular Not Present- Chest Pain, Palpitations and Swelling of Extremities.

Gastrointestinal Not Present- Abdominal Pain and Change in Bowel Habits.

Male Genitourinary Not Present- Change in Bladder Habits and Dysuria.

Musculoskeletal Not Present- Fasciculations and Muscle Atrophy.

Neurological Present- Headaches. Not Present- Syncope, Tremor and Unsteadiness.

Endocrine Not Present- Cold Intolerance, Heat Intolerance and Thyroid Problems.

Hematology Not Present- Abnormal Bleeding, Easy Bruising, Enlarged Lymph Nodes and Petechiae.

**HERBERT T RANDALL****Patient #: 196969****DOB: 08/16/1962 (54 years)**

Tuesday, August 30, 2016

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AUG. 30. 2016 2:35PM 8645910422

NO. 9513 P. 3/4

Vital Signs

Date:	08/11/2016 02:54 PM	Height:	148 in	Note:	-
Temperature:		Weight:	180 lb		
Pulse:	72	Waist:			
Respirations:		BMI:	5.78 kg/m ²		
Peak Flow:		BSA:	2.92 m ²		

Blood Pressure: 145/94
Reading Type: Manual

Date:	08/11/2016 02:31 PM	Height:	68 in	Note:	-
Temperature:		Weight:	180 lb		
Pulse:		Waist:			
Respirations:		BMI:	27.37 kg/m ²		
Peak Flow:		BSA:	1.98 m ²		

Blood Pressure:
Reading Type: Manual

Physical Exam

General

Mental Status - Appropriate.
Build & Nutrition - Well nourished and Well developed.
Voice - Hoarse.

Head and Neck

Face - Global Assessment - atraumatic.
Neck - Global Assessment - normal alignment.
Thyroid - Gland Characteristics - no palpable enlargement.

Eye

Eyeball - Bilateral - Normal.
Pupil - Bilateral - Normal.

PNMT

Ears - Assessment of Hearing - Hearing is intact.
Mouth and Throat - Oral Cavity/Oropharynx - Oropharynx - normal, no evidence of airway distress observed.

Chest and Lung Exam

Inspection - Shape - Normal. Movements - Symmetrical. Accessory muscles - No use of accessory muscles in breathing.

Cardiovascular

Inspection - Carotid artery - Bilateral - Inspection Normal.

Neurologic

Neurologic evaluation reveals - normal attention span and ability to concentrate, able to name objects and repeat phrases.
Appropriate fund of knowledge and normal coordination.
Cranial Nerves - Normal II - XII.
Reflexes (Dermatomes) - 3/2 Brisk - Left Knee (L2-4) and Right Knee (L2-4).

HERBERT T RANDALL

Patient #: 196969

DOB: 08/16/1962 (54 years)

Tuesday, August 30, 2016

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Neuropsychiatric

Mental status exam performed with findings of - Oriented X3 with appropriate mood and affect.

Musculoskeletal

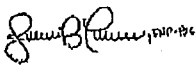
Global Assessment - Strength - Normal - Note: Unable to fully assess due to severe pain.
Spine/Ribs/Pelvis - Gait and Station - Normal Exam - normal gait and normal station. **Cervical Spine** - Examination of the cervical spine reveals - no known fractures or deformities. **Lumbosacral Spine** - Examination of the lumbosacral spine reveals - no known fractures or deformities. **Functional Testing** - positive straight leg raise, right and positive straight leg raise, left.

Assessment & Plan (JENNIFER F TURNER FNP-BC; 08/11/2016 03:57 AM)**Neck pain (M54.2)**Current Plans:**Degeneration of intervertebral disc of cervical region (M50.30)**Current Plans:**Back pain, lumbosacral (M54.5)**Current Plans:

- Reviewed MRI - Lumbar Spine

Spondylosis of cervical joint without myelopathy (M47.812)Current Plans:**Stenosis of lateral recess of cervical spine (M48.02)**Current Plans:

- Patient Education: Neck problems: spasms - diagnosis and treatment
- Patient Education: Low back pain: diagnosis and treatment
- How to access health information online
- Reviewed MRI - Cervical Spine
- **DISCUSSION:** Patient presents with chief complaint of neck pain with radiation to skull (severe headaches) and burning between shoulder blades. Low back pain with right lateral thigh pain. Symptoms began immediately following an accident at work (patient was in Texas driving his semi truck when he was hit from behind). Unable to fully perform physical exam due to severe pain. Positive SLR bilaterally (L>R). Brisk reflexes. MRI of lumbar spine (Innervision) is unremarkable. No surgical recommendation based on this. MRI of cervical spine (Innervision) reveals large left sided C3/4 disc osteophyte complex with severe narrowing of NF. This is a chronic problem. There is C5/6 and C6/7 broad based disc bulging with spinal cord compression. This may be result of accident. Dr. Chittum recommends a C3-7 ACDF. Much time was spent explaining risks, benefits, alternatives, and expectations of surgery. Pt wishes to proceed with surgery at this time.
- Follow up as needed



JENNIFER F TURNER FNP-BC

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1516896

Herbert Randall,)
)
Claimant,)
)
v.)
)
Palmetto State)
Transportation,)
)
Employer,)
)
and)
)
Cherokee Insurance,)
)
Carrier/Defendants.)
-----)

COPY

FULL COMMISSION HEARING

Wednesday, April 19, 2017
9:35 a.m. - 10:06 a.m.

The Full Commission Hearing was heard before Commissioners Melody L. James, Gene McCaskill, and Aisha Taylor at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 19th day of April, 2017, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

Jeffrey D. Ezell, Esquire
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15 North Irvine Street
Greenville, South Carolina 29601
Attorney for the Claimant

George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett & Stubley
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Columbia, South Carolina 29201
Attorney for the Defendant

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COURT REPORTER: Today is April, 19, 2017. This is South Carolina Workers' Compensation Case Number 1516896. This is the case of Herbert Randall, claimant, versus Palmetto State Transportation, employer, and Cherokee Insurance, carrier.

This is a cross appeal. The first appellant is the claimant, represented by Jeffrey D. Ezell. The second appellant is the defendant, represented by George D. Gallagher.

Each side is allowed ten minutes for oral argument and the appellant, three minutes in reply. You're requested to argue the grounds of exception and stay within the record.

COMMISSIONER TAYLOR: Okay. And, gentlemen, as this is a cross appeal, you will have ten minutes to argue and both have three minutes in rebuttal.

MR. EZELL: Okay. Great. Thank you so much.

COMMISSIONER TAYLOR: All right. Mr. Ezell?

ORAL ARGUMENT BY MR. EZELL:

MR. EZELL: May it please the Commission. By way of background, this is an incident that happened in October of 2015. Troy Randall, the claimant, was an over-the-road truck driver for



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1 Palmetto State Transport. He was actually
 2 stopped on a highway in Texas. Apparently,
 3 there was a wreck on the road, and the entire
 4 lanes were shut down. He had his air brakes
 5 set and his flashers on. He was struck from
 6 behind while he was stopped with pretty
 7 significant violent force. It broke the frame
 8 of the trailer he was pulling and pinned him
 9 inside the cab of the truck he was driving. So
 10 he had to be cut out of the truck. He drove
 11 himself back to South Carolina.
 12 He was sent for an evaluation by the
 13 defendants. And it's important to know that
 14 this evaluation was performed initially by a
 15 nurse practitioner, not by a physician. At the
 16 time, the nurse practitioner saw him, there had
 17 been very little diagnostic work done
 18 whatsoever. I think there may have been some
 19 plain film X-rays. But subsequent to her
 20 evaluation, there was an MRI performed. That's
 21 important because the nurse practitioner gave
 22 him a light-duty or modified-duty note, in
 23 other words, claiming he could work modified
 24 duty. She did that -- again, not a
 25 full-fledged physician, certainly not a



1 neurosurgeon, but she basically said he could
2 work modified duty, and the modified situation
3 was fairly straightforward.

4 Subsequent to that, the MRI was performed.
5 Subsequent to that, he was seen by three
6 different neurosurgeons at the defendant's
7 request. It's important to note that one of
8 the neurosurgeons chosen by the defendants was
9 a Dr. Chittum. He recommended fairly
10 significant surgery. So, obviously, this was
11 a considerably more problematic injury than the
12 nurse practitioner might have seen it to be.

13 Now, admittedly, Troy failed the post-accident
14 drug screen for marijuana, but there's
15 absolutely no evidence whatsoever that that
16 drug screen or the marijuana that was in his
17 system when that drug screen was performed
18 played any causal role in the accident, and I
19 don't think that they ever -- certainly never
20 pled intoxication as a defense. As I stated
21 before, he was stopped. He could have been
22 knee-walking-blind drunk, and it would still
23 have had no causal connection to his injury.
24 His car was -- or his truck was stopped and
25 struck from behind. Straight, intoxicated, or



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1 sober, he couldn't have avoided it. But any
2 event ---

3 **COMMISSIONER McCASKILL:** Do we know what type of
4 drug screen?

5 **MR. EZELL:** It was -- all I know, it was a urine
6 screen.

7 **COMMISSIONER McCASKILL:** Urine screen.

8 **MR. EZELL:** It was not a ten panel hair strand test.

9 **COMMISSIONER McCASKILL:** Okay. Thank you.

10 **MR. EZELL:** Okay. The modified-duty work that he
11 was cleared to do by this nurse practitioner
12 was basically guard gate work, checking trucks
13 in and out of the Palmetto Transport facility.
14 That did not require a CDL. There was no
15 requirement that his CDL be in place in order
16 to sit in the guardhouse and check trucks in.
17 The defendants pointed out that because of the
18 postaccident drug screen, he had to, by law,
19 complete a substance abuse program or SAP,
20 S-A-P. Again, that SAP or S-A-P was not
21 necessary for him to sit in the guardhouse, but
22 it would have been necessary to return to
23 over-the-road driving.
24 The defendants maintain that they sent that to
25 him. He's testified, without reservation, that



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1 he never received it. The defendants claim
2 they sent it certified mail. But despite the
3 importance of that proof, they didn't bother to
4 submit the certified return receipt as evidence
5 or bring it to the hearing.

6 Again, Troy indicated and testified under oath
7 that he'd never received anything about the
8 SAP. He never got the chance to do the
9 modified-duty work, and I would also point out
10 that that's kind of important because if he had
11 been given that modified-duty work, they
12 wouldn't have had to mail the SAP information
13 to him certified mail. They could have placed
14 it right in his hands. He would have been on
15 the property in the guardhouse. Someone could
16 have walked it out there. That never happened.
17 It's undisputed that what happened in this case
18 subsequent to that because I want to point
19 out -- and I apologize I didn't make -- mention
20 it -- the defendant started temporary total
21 disability benefits. He got a couple weeks of
22 TTD. They then shut him down once the
23 postaccident drug screen came in. This is
24 where the rubber meets the road. It's
25 undisputed that the defendants did not comply



1 with Regulation 67-604(A). The Form 15 was
 2 never served on the claimant. 67-604(A)
 3 requires the employer's representative shall
 4 file the Form 15 with the claims department and
 5 shall serve two copies of the Form 15
 6 immediately on the claimant, according to
 7 Regulation 67-211, with documentation attached
 8 as to the reason of the termination. It's
 9 absolutely undisputed that this did not occur.
 10 The other thing I would point out is that
 11 this -- the purpose of this requirement is to
 12 prevent exactly what happened in this case.
 13 Serving the Form 15 gives the claimant three
 14 things: the notice as to the termination of
 15 TTD, knowledge of the purported reason for the
 16 termination of TTD, and opportunity to contest
 17 the termination. If he never got a Form 15, he
 18 could never sign the bottom and file it, asking
 19 for an emergency hearing. If he'd had that
 20 chance, we could have hashed out the TTD issue
 21 early on, and he would not have gone over a
 22 year without benefits. And if you look at the
 23 Form 20 and the average weekly wage and comp
 24 rate, this was a high-wage earner. He was at
 25 the max comp rate, earning good money as an



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1 over-the-road truck driver. He went from a
2 good wage earner to zero. He went, like I
3 said, nearly a year, and it left him destitute
4 and nearly homeless. He was, as of the time of
5 the hearing and I believe still as of today,
6 living in a camper in the backyard of the
7 friend -- the parents of a friend of his.

8 The other thing I would point out in addition
9 to the violation of 67-604 is the violation of
10 42-9-260. 42-9-260 has six different ways a
11 TTD can be stopped within 150 days. None of
12 them apply here. Now, the defendants have
13 tried to hang their hat on Subsection 3 where
14 it says that their good faith investigation it
15 reveals grounds for denial of the claim. There
16 aren't any grounds for denial of claim here.
17 They never pled intoxication as a defense.

18 COMMISSIONER TAYLOR: Well, let me ask you a
19 question. Because I think there is a gap in
20 that time period, right? Because you're saying
21 what they pled on maybe a 51, or something like
22 that, versus what they found as a result of the
23 investigation. I don't think that they both
24 mean the same thing.

25 MR. EZELL: Well, and I'm glad you brought that up



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1 because that is an important point. In order
2 to file the Form 15 terminating benefits
3 pursuant to 67-604, one of the six grounds of
4 42-9-260 have to be met. In other words,
5 there's six grounds in 42-9-260 that allow
6 reasons why TTD can be stopped within the first
7 150 days. They're claiming that it was Ground
8 Number 3, good faith denial for -- a good faith
9 reason for denial of the claim.

10 **COMMISSIONER TAYLOR:** Right.

11 **MR. EZELL:** And if you read the defendant's brief,
12 you know, they say, well, the act doesn't
13 define what "claim" is. And that's kind of
14 reminiscent to me of the old Bill Clinton, that
15 depends on what your definition of "is" is.

16 **COMMISSIONER TAYLOR:** Uh-huh.

17 **MR. EZELL:** A claim is a claim. That's about as
18 obvious a term in the workers' compensation
19 context as it possibly can be. So denying the
20 claim would require some reason that meant he
21 was not entitled to anything. Not entitled to
22 TTD but not entitled to TTD, not entitled to
23 medical benefits. They continued to provide
24 medical benefits. They just stopped his TTD.

25 **COMMISSIONER TAYLOR:** Uh-huh.



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1 MR. EZELL: So they weren't denying the claim. If
2 they were denying the claim, they would have
3 stopped everything. If there's no claim, no
4 valid claim, then they don't owe medical
5 benefits. But you're ---

6 COMMISSIONER JAMES: But they're stopping it because
7 of Pollack, is what their position is?

8 MR. EZELL: And I understand that, but I think
9 that's misguided. The difficulty is you
10 can't -- a claim can't be partially compensable
11 and partially not compensable.

12 MR. GALLAGHER: Yes, it can.

13 MR. EZELL: In other words, if a claim is -- if a
14 claimant is entitled to medical benefits but
15 there's a basis to deny the claim, then you
16 deny everything. You deny medical; you deny
17 TTD. In this case, they're claiming that the
18 good faith denial for the basis of the claim
19 was the positive accident -- postaccident drug
20 screen. That's what -- that was actually what
21 was on their Form 15. And they pointed they
22 submitted two Forms 15. Didn't serve Troy with
23 either one of them. But they submitted two of
24 them. And ultimately the reason they put for
25 the -- for stopping benefits was failed



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1 positive postaccident drug screen. They can't
2 and didn't prove that the drug screen had
3 anything to do with his injury. No causal
4 connection. For intoxication to be a reason to
5 deny the claim, there has to be a causal
6 connection between the accident and the injury
7 and the intoxication.

8 COMMISSIONER JAMES: Well, let's go down the other
9 road ---

10 MR. EZELL: Sure.

11 COMMISSIONER JAMES: --- and present your argument
12 as far as if Pollack applies is to whether the
13 disability is a result of the accident or the
14 disability is a result of some other action by
15 the employer for the failed drug screen.

16 MR. EZELL: I'm not sure I follow you. I'm sorry,
17 ma'am.

18 COMMISSIONER JAMES: Okay. Well, all right. The
19 technicalities of 67-504 are a different issue
20 of 49-9-260, but I'm asking to you address.
21 Pollack basically says that, you know, the
22 disability needs to be as a result of the
23 accident.

24 MR. EZELL: Right.

25 COMMISSIONER JAMES: It refers back to the statute.



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1 So -- and maybe I misunderstand the defendant's
2 position. But my understanding is, is that
3 it's -- the reason for the stopping of the
4 temporary total was for Pollack for the failure
5 to comply with the drug screen and then the
6 subsequent SAP, or substance -- whatever
7 the ---

8 MR. EZELL: Right.

9 COMMISSIONER JAMES: --- name of that program is.

10 MR. EZELL: Right. Well, and if I'm understanding
11 your question correctly, I think that the
12 deference between this case and Pollack is that
13 they're trying to hang their entire hat on TTD
14 on the drug screen but not on anything else.
15 And if the only thing they have is a good faith
16 denial for the basis of the claim is the
17 positive postaccident drug screen, they didn't
18 present any evidence that that was the reason
19 for the -- a good faith reason for the denial.
20 All the Form 15 said it was failed
21 postpositive -- or failed postaccident drug
22 screen. Is it -- have I used up all my time?

23 COMMISSIONER TAYLOR: Yes.

24 MR. EZELL: Okay.

25 COMMISSIONER TAYLOR: But you'll have three more



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1 minutes in rebuttal.

2 MR. EZELL: Okay.

3 COMMISSIONER TAYLOR: All right. Thank you, sir.

4 MR. EZELL: It always goes faster when you're
5 standing up there.

6 COMMISSIONER TAYLOR: It does.

7 MR. GALLAGHER: When you're sitting down, this takes
8 forever.

9 MR. EZELL: And when you're standing up there, it
10 goes really fast. I know I'm chomping at the
11 bit here.

12 MR. GALLAGHER: No. Let me -- before we begin, can
13 I can I just clarify, do I use my three minutes
14 now to rebut his?

15 COMMISSIONER TAYLOR: No.

16 MR. GALLAGHER: Okay.

17 COMMISSIONER TAYLOR: However you want to do it is
18 fine.

19 MR. GALLAGHER: Okay. All right. Well, let me do
20 that first, just since ---

21 COMMISSIONER TAYLOR: Sure.

22 MR. GALLAGHER: --- that's on everybody's mind.

23 COMMISSIONER TAYLOR: Okay.

24 ORAL ARGUMENT BY MR. GALLAGHER:

25 MR. GALLAGHER: I think -- two things, Number 1, I



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1 think what our position was regarding the
2 termination, they place a lot of significance
3 on the technical violations of the regulation
4 regarding the timing of the filing and the lack
5 of service to the claimant. I would submit
6 that those, you know, administrative
7 deficiencies, if they're even deficiencies,
8 these things -- the Form 15 was filed within
9 ten days of the termination. Regulation says
10 immediately. I don't know that ten days is
11 necessarily inherently unreasonable.

12 But regarding the service, it wasn't served,
13 but he had an attorney at the time, Tom Gagne.
14 The record's clear. Mr. Randall admitted at
15 the hearing that he knew why his benefits were
16 terminated, at the purportedly why they were
17 terminated. He obviously didn't agree with
18 that. His attorney had filed a Form 50 at the
19 time to reinstate TTD was an issue that was
20 pled. So basically no prejudice to the
21 claimant for those alleged technical
22 deficiencies. So that's the first thing.

23 The second thing -- and this is where it gets
24 into an interesting interpretation, what seems
25 like a kind of run-of-the-mill case kind of

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1 turns into a very interesting issue regarding
 2 good faith denial of the claim. I would
 3 submit, contrary to Mr. Ezell, that a "claim"
 4 is a generic term. A claim refers to any
 5 assertion of a right or entitlement to relief
 6 for benefits under the act, which could
 7 encompass many things. It could -- TTD.
 8 Obviously, you can be entitled to TTD and not
 9 be entitled to the medical and vice versa.
 10 And so I believe that the good faith denial
 11 exception provided by the statute applies to
 12 the good faith denial of the claim for TTD, not
 13 for the overall claim compensability. I think
 14 that interpretation makes a lot more sense if
 15 you consider the fact that the whole
 16 implementation or the whole reason that that
 17 procedure was in place, it was clearly meant to
 18 encourage carriers to initiate TTD first and
 19 ask questions later.
 20 So why you want to impose a stricter
 21 interpretation that would hamper that and say
 22 that a carrier can't deny us, in good faith,
 23 someone's entitlement to TTD? Unless they deny
 24 the compensability of the whole claim, that
 25 doesn't make any sense to me. So I would



1 submit that that is a proper ground and that
2 the good faith basis for the denial of the
3 claim for TTD, as you mentioned, Commissioner
4 James, is Pollack, essentially. That is
5 basically a Pollack case. So our position that
6 but for the fact that he was terminated for
7 cause, that this employer would have provided
8 him with light duty within the guardshack..

9 Commissioner Campbell placed a great deal of
10 emphasis and importance on -- and you can read
11 his order. And I think he -- I think to
12 understand what his reasoning was, he just
13 didn't, with all due respect, didn't connect
14 the logical dots as perhaps like he should
15 have. I think what he's saying is that he
16 didn't like the way the termination went down.
17 Okay. You know, he evidently believed the
18 claimant, that he didn't receive notice of this
19 substance abuse program. And, of course,
20 there's evidence in the record where our guy
21 said, look, we sent it to him. I didn't bring
22 the return receipt, but I saw it. I mean, we
23 sent it.

24 COMMISSIONER McCASKILL: But can't you understand why
25 he would have a question about that when he



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1 didn't get the service of the 15?

2 MR. GALLAGHER: Sure. Well, I understand that.
3 We're talking about two different entities
4 here, employer and carrier.

5 COMMISSIONER McCASKILL: Well, I'm not ---

6 MR. GALLAGHER: Yeah, I understand his concern but
7 however ---

8 COMMISSIONER McCASKILL: You'd think, to serve notice
9 of the 15, obviously it's perfectly logical for
10 him to say, well, if he didn't do that, it's
11 believable to me. But you didn't do the other.

12 MR. GALLAGHER: Well, that would be important if
13 this were an employment security commission.
14 And you're looking at the basis for the
15 termination ---

16 COMMISSIONER McCASKILL: Now, I disagree with that,
17 but go ahead.

18 MR. GALLAGHER: I think, as Commissioner James
19 pointed out, the entitlement to TTD is premised
20 upon the inability to earn wages due to injury.
21 Okay. Pollack makes very clear that if the
22 reason you're unable to earn wages is due to
23 something other than the injury, for example,
24 termination for cause, then you're not entitled
25 to TTD.



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1 And that's the situation we have here, but for
2 the fact that he was terminated. And nobody,
3 I don't think, disputes the wisdom of the
4 policy of terminating over-the-road truck
5 drives who test positive. They have to
6 complete some sort of substance abuse program
7 in order to regain their eligibility.

8 Mr. Ezell brings up a very good point about,
9 you know, he didn't need this in order to go in
10 the guardhouse. And that's a good point. I
11 would submit that's irrelevant, however,
12 because work in the guardhouse is transitional.
13 He's still an over-the-road truck driver. His
14 employment is as an over-the-road truck driver.
15 And in order to maintain his status as an
16 over-the-road truck driver independent of his
17 transitional work status, he has to complete
18 the substance abuse program.

19 **COMMISSIONER JAMES:** One of the questions in the
20 transcript about his knowledge as to the
21 policies of the company and generally as an
22 over-the-road truck driver with his CDL of
23 knowing that he cannot be an over-the-road
24 driver and consume marijuana, and was there
25 anything also about -- anything about the



1 program? Was he aware of that independently
2 from the notice?

3 MR. GALLAGHER: Ma'am, I believe the testimony from
4 him -- and I did cross-examine on that point --
5 my recollection was, Commissioner, is that he
6 was aware that he had to complete a substance
7 abuse program in order to regain his driver
8 eligibility. He was aware that that was the
9 reason for his -- the termination of his
10 employment. And, again, we got into a little
11 bit of issue regarding he had former counsel
12 involved, and he admitted, you know, I'm
13 talking to my counsel about these things. And
14 so there was concern about privilege and stuff
15 like that. But I think he -- the record
16 overall, I think, is very clear that he was
17 aware of the program's requirements.
18 So I think when you look at this as a Pollack
19 issue, the question you gotta ask yourself --
20 and Pollack Court makes very clear that in
21 these kind of situations where you're relying
22 upon the argument that the termination for
23 cause is the reason for your inability to work
24 and not the injury, you have to carefully
25 examine the situation and determine whether or



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1 not the termination was just simply pretextual
 2 to avoid liability.
 3 Two things I would point out: This case was
 4 not clearly perhaps not handled appropriately
 5 by the claims adjustor. So that actually
 6 supports my position because the right hand
 7 doesn't know what the left hand was doing. So
 8 the termination of benefits had nothing to do
 9 with the employment issue until after the fact.
 10 Okay. These -- there was no -- these were
 11 independent decisions. Okay. And that
 12 actually, even though I'm admitting that my
 13 client may not have handled this
 14 administratively the way that it should have
 15 been handled, it actually reinforced the
 16 position there wasn't any collusion to
 17 terminate this guy's benefits in order to stop
 18 them and fire him as a pretext for doing so.
 19 So you look here. You have a valid
 20 termination. This isn't like, oh, you were
 21 five minutes late, and you've done that
 22 throughout your career and you never got fired.
 23 Now all of a sudden, you do. This is clearly
 24 not a pretext. This is a federal -- this isn't
 25 even Palmetto's company policy. This is



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1 federal law mandating that you are required to
 2 complete a substance abuse program. The wisdom
 3 of that, I don't think, is beyond reproach. So
 4 this isn't a pretextual. This isn't a ruse to
 5 avoid liability. The fact that the
 6 Commissioner took umbrage with the way that the
 7 termination went down, again, maybe there's
 8 some relevance to the underlying case. But as
 9 Commissioner James pointed out, I mean, the
 10 fact that he was aware that there was a
 11 substance abuse program that he had to complete
 12 in order to regain his eligibility, you know,
 13 it kind of washes out the notion that there was
 14 anything that would ---

15 COMMISSIONER TAYLOR: And ---

16 MR. GALLAGHER: --- materially affect a Pollack
 17 analysis.

18 COMMISSIONER TAYLOR: And that's important, and I'm
 19 gonna -- I need to look at it exactly how it
 20 happened on the -- in the transcript during the
 21 cross. And it might take me a little -- I
 22 don't want to use up your time. But if that is
 23 the case and the testimony was that, then I
 24 guess that would make one of those findings of
 25 fact in the particular order actually



1 incorrect. Because there's one specific
2 order -- there's one specific finding that
3 says -- hold on. Let me pull it up.

4 COMMISSIONER JAMES: And while you're looking for
5 that, let me ask you another question then.

6 MR. GALLAGHER: Yes, ma'am.

7 COMMISSIONER JAMES: What about the facts that --
8 even if we -- and I can see this argued by each
9 of you in a different way -- but what if we
10 decide that it is Pollacks applicable and his
11 disability was a result of his marijuana use
12 and the policies and the federal law, et
13 cetera, et cetera. What about the facts that
14 the carrier wasn't in compliance with the reg
15 or the statute for the termination of his
16 benefits?

17 MR. GALLAGHER: Well, I think that the -- first of
18 all, I think that the -- again, I think an
19 administrative deficiency does not -- that's
20 kind of the form-over-substance argument.

21 COMMISSIONER JAMES: So you're saying it's an
22 administerial requirement?

23 MR. GALLAGHER: I think the administrative form
24 filing is in terms of the timing of it.

25 COMMISSIONER JAMES: The reg.



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1 MR. GALLAGHER: The reg? Well, I'm talking about
2 the reg -- you're talking about the reg
3 requirement ---

4 COMMISSIONER JAMES: Well, I'm talking about both,
5 but you're basically saying that it's an
6 administerial duty as opposed to ---

7 MR. GALLAGHER: Well, partially. I would say that I
8 would -- that's part of what I'm saying. I
9 would also just point out, however, that an
10 administrative deficiency, form over
11 substance -- is form over substance. It does
12 not justify entitlement to benefits on the
13 merits that you weren't otherwise entitled to.
14 In other words ---

15 COMMISSIONER JAMES: So let me make sure I follow
16 you. So if he's not entitled to it in the
17 first place, there's not a violation with the
18 25 percent being imposed. But if he was
19 entitled to it, then you're gonna be found in
20 violation?

21 MR. GALLAGHER: Yes, ma'am.

22 COMMISSIONER JAMES: But from an administrative
23 practice, that's ---

24 MR. GALLAGHER: Right.

25 COMMISSIONER JAMES: --- that's -- right. Okay.



1 I'm just trying to follow both of you.

2 MR. GALLAGHER: I would say an administrative
3 deficiency does create an entitlement to
4 benefits that you weren't ever entitled to
5 receive in the first place on the merits ---

6 COMMISSIONER JAMES: Okay.

7 MR. GALLAGHER: --- is what I'm saying. And I
8 believe my -- I heard the buzzer go so ---

9 COMMISSIONER TAYLOR: Yes. Thank you. You'll still
10 have three more minutes.

11 MR. GALLAGHER: Thank you.

12 REPLY BY MR. EZELL:

13 MR. EZELL: I'm gonna go as fast as I can. Page 44
14 of the transcripts, Mr. Gallagher's
15 cross-examination: Is it your testimony, sir,
16 or your position that Palmetto Transport never
17 approached you about completing some type of
18 program in order to gain your eligibility to
19 continue over-the-road driving after ---

20 No, they didn't.

21 --- after you failed your drug screen? Did
22 anybody at Palmetto State Transport ever tell
23 you you had a positive drug screen?

24 No, they didn't.

25 To say it's form over substance is ---



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1 COMMISSIONER JAMES: He didn't know he had a
2 positive drug screen?

3 MR. EZELL: Not until he was terminated.

4 COMMISSIONER JAMES: Okay. But he knew it when he
5 was terminated?

6 MR. EZELL: When he was terminated. But prior to
7 that, he complete the SAP because he didn't
8 know any of this until they terminated him.

9 COMMISSIONER JAMES: Okay.

10 MR. EZELL: As Commissioner McCaskill pointed out,
11 he never got the SAP stuff. So real fast,
12 right hand didn't know what the left hand is
13 doing. That's not Troy's fault. That's their
14 fault. Administrative form over substance,
15 that deprived Troy of the right to at least
16 have a hearing. He might have lost the
17 hearing, but he at least had the right to an
18 immediate hearing under Form 15-3 to get that
19 thing. When they didn't file it, he was
20 deprived of that right. He went without TTD
21 for a year.

22 COMMISSIONER JAMES: Was he represented at the time?

23 MR. EZELL: He was, but it didn't serve it on him or
24 the other attorney.

25 COMMISSIONER TAYLOR: But wasn't there a Form 50



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1 pending?

2 MR. EZELL: I don't recall. I don't believe it was
3 a Form 50 hearing request.

4 COMMISSIONER TAYLOR: Okay. Mr. Gallagher argued
5 that there was already a Form 50 on the issues
6 pending, so I don't think he was deprived
7 because it would have been the same hearing.
8 It would have been either a 15 Section 3 or a
9 50.

10 MR. EZELL: But the grounds for the termination of
11 TTD would have been clear.

12 COMMISSIONER JAMES: But the attorneys were aware of
13 the 15 and the Part 3 that the attorney can
14 fill out and sent it off.

15 MR. EZELL: The attorney was never served with a 15.

16 COMMISSIONER JAMES: Well ...

17 MR. EZELL: This is an administrative agency. An
18 administrative requirement is to protect the
19 claimants.

20 COMMISSIONER TAYLOR: Well, the 15 that we have in
21 the file says -- it's filed. It was filed
22 here, and there's a signature under the line
23 saying that it was properly served on the
24 claimant. Now, if the claimant was
25 represented, then it would have been served on



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1 the attorney. I understand that nobody brought
2 proof to the hearing about it, but I don't know
3 that that's required if they signed the form
4 and filed it with the Commission saying they
5 did it. It's kind of like a certificate of
6 service.

7 MR. EZELL: But that didn't do that. They didn't
8 serve it. 67-2-11 requires a certificate of
9 service. They didn't have one. And the reg
10 reads, shall be served pursuant to 67-2-11. It
11 wasn't done that way.

12 COMMISSIONER TAYLOR: But do we only know that it
13 wasn't -- or are you arguing that it wasn't
14 done that way because no one submitted a
15 copy ---

16 MR. EZELL: We're arguing that it was -- the only
17 testimony on the record was that it was never
18 received.

19 COMMISSIONER TAYLOR: By the claimant.

20 MR. EZELL: By the claimant.

21 COMMISSIONER TAYLOR: Correct. But he had counsel,
22 so he wouldn't have received it.

23 MR. EZELL: He -- the counsel would have received
24 it. They didn't have any proof that it was
25 ever served.



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1 COMMISSIONER TAYLOR: See, that's my question though.
 2 You're wanting us to infer that something
 3 wasn't served when someone signed a certificate
 4 saying that they served it.
 5 MR. EZELL: My understanding -- and I would have to
 6 search the transcript -- but I don't believe
 7 the defendant's ever contended that they served
 8 it.
 9 COMMISSIONER JAMES: Well, the 15 ---
 10 COMMISSIONER TAYLOR: Says they served it.
 11 COMMISSIONER JAMES: --- says that it's served,
 12 which is in a Commission file, which is part of
 13 the record.
 14 MR. EZELL: I'm sorry.
 15 COMMISSIONER TAYLOR: No. That's fine. And I'll
 16 give you more time.
 17 MR. EZELL: Okay.
 18 COMMISSIONER TAYLOR: And I don't know -- I mean, I
 19 don't know that -- it's not controlling the
 20 day, but it's just an issue. It's like you --
 21 part of the Commissioner's findings that's on
 22 appeal today says there was no proof that it
 23 was ever served. This -- they couldn't produce
 24 any evidence that it was served. But my
 25 question is: Is it the filing of the 15, in



1 and of itself, with the signature saying that
2 it's served proof of service?

3 MR. EZELL: I don't think so.

4 COMMISSIONER TAYLOR: When you file a Form 58
5 prehearing brief with the Commission and you
6 attach your certificate saying that you served
7 it, I don't know that you actually put it in
8 the mail, but your certificate said you did.
9 And that's what I rely on is the ---

10 MR. EZELL: Well, the other thing I want to point
11 out really quickly.

12 COMMISSIONER TAYLOR: Sure.

13 MR. EZELL: There was a finding that it wasn't
14 properly served. That finding wasn't appealed.

15 COMMISSIONER TAYLOR: Okay.

16 MR. EZELL: So it's the law of the case.

17 COMMISSIONER TAYLOR: Okay.

18 MR. EZELL: And I realize I have very little time,
19 but that finding was in the order as a finding
20 of fact and a conclusion of law, neither of
21 which were appealed.

22 COMMISSIONER TAYLOR: Okay.

23 MR. EZELL: So it's the law of the case.

24 COMMISSIONER TAYLOR: All right.

25 MR. EZELL: That's not before the Court today -- the



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1 Commission today. Does that make sense?

2 COMMISSIONER TAYLOR: It does. It does, uh-huh.

3 MR. EZELL: And the difficulty I have with an
4 argument such as the right hand didn't know
5 what the left hand is doing, an admission by
6 counsel that they didn't handle it very well,
7 the person who's suffering is Troy Randall.
8 Troy Randall lost his home. He lost his car.
9 At the time of the hearing, he was living in a
10 camper in the backyard of his friend's parents.
11 The only evidence in the record regarding his
12 psychological state was from Dr. Mullin saying
13 he's severely depressed due to the accident and
14 due to the financial issues. The other thing
15 I would point out was, which I alluded to at
16 the very beginning, the only evidence that he
17 had -- was capable of modified duty came from
18 a nurse practitioner before an MRI was
19 performed. After an MRI was performed, a board
20 certified neurosurgeon chosen by the defendants
21 said this guy should have been working since
22 the day of the accident.

23 COMMISSIONER TAYLOR: Okay.

24 MR. EZELL: That's the only evidence in the record.
25 So even if you take all of the stuff that they



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1 say about modified duty at face value, you have
 2 the opinion of a nurse practitioner with no
 3 diagnostic information available versus the
 4 opinion of a neurosurgeon chosen by the
 5 defendants with an MRI and an evaluation of the
 6 claimant and the evaluations of two prior
 7 neurosurgeons, one of whom who wanted to do
 8 extensive surgery. After all of that
 9 information, a board certified neurosurgeon
 10 said this guy shouldn't have been working since
 11 he got hit. And that's -- that, to me, is
 12 where the rubber meets the road.

13 COMMISSIONER TAYLOR: All right.

14 MR. EZELL: Thank you so much.

15 COMMISSIONER TAYLOR: Thank you, sir. All right.

16 Thank y'all, both. Have a great afternoon.

17 MR. GALLAGHER: Oh, do I not get three more minutes?

18 COMMISSIONER TAYLOR: Yes, you do. I'm sorry.

19 REPLY BY MR. GALLAGHER:

20 MR. GALLAGHER: Okay. Commissioner, let me address
 21 the point he made earlier. There -- I think we
 22 assumed that perhaps this Form 15 may not have
 23 been served. But, again, he had an attorney.
 24 Filing the Form 15 Subsection 3, y'all don't
 25 even do that anymore. Y'all -- the procedure



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1 was changed. Mr. Ezell acts as if that was his
2 only remedy. It clearly wasn't. He could have
3 filed a Form 50 at any point in time to seek
4 TTD. And, in fact, he did. His former
5 attorney filed a Form 50 on February 8, 2016.
6 A hearing was set for March 18th, and the
7 parties agreed to a consent order. So all this
8 stuff about the defendant's actions allegedly
9 causing him to go a year or over a year without
10 TTD, he had his chance to go to a hearing on
11 March 18th to address the termination of TTD.
12 They entered into a consent order and held that
13 issue in abeyance. That wasn't my client's
14 fault.

15 So, again, we're talking about technical
16 violations, if any. Substantively, he had
17 every -- he had due process, and he didn't
18 exercise it. So you have to ask yourself what
19 else could be the -- if the Commissioner's
20 award of TTD based on the termination issue is
21 erroneous, then what else could the basis of
22 his award be based on? There's no medical
23 evidence that this guy was disabled, at least
24 no contemporaneous medical record. The
25 only ---



1 COMMISSIONER JAMES: I thought there was something
2 that -- and I can't remember the physician's
3 name that actually back-mated it and said that
4 he shouldn't have been working from the
5 beginning.

6 MR. GALLAGHER: And that's what I was getting to,
7 Commissioner.

8 COMMISSIONER JAMES: Okay.

9 MR. GALLAGHER: There's no contemporaneous medical
10 record about it. The only medical record said
11 he could do light duty. Mr. Ezell pointed out
12 that he was seen by three neurosurgeons, two
13 neurosurgeons essentially endorsed those
14 restrictions. So contrary to Mr. Ezell's
15 assertion that this was a nurse practitioner,
16 he subsequently saw two neurosurgeons who
17 didn't address work restrictions, which I would
18 submit is a de facto acquiescence. If they
19 didn't specifically or affirmatively address
20 work restrictions and the only work restriction
21 in place are those initial work restriction of
22 no lifting greater than 15 pounds, the only
23 evidence that he was disabled or written out of
24 work is a retroactive disability slip from
25 Dr. Bucci that was solicited -- like Mr. Ezell,



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1 all good attorneys will send the checkbox
2 questionnaire to the doctor. Dr. Bucci signed
3 off on a checkbox questionnaire saying he was
4 unable to work a year after the fact. No
5 contemporaneous record had him written out of
6 work.

7 COMMISSIONER JAMES: Well, let me ask you this
8 though: Let's say we agree with you 100
9 percent on the Pollack issue. But even that
10 being so, once somebody writes him out totally,
11 does that then remove us from Pollack? Because
12 it was the light duty that he took ---

13 MR. GALLAGHER: Right.

14 COMMISSIONER JAMES: That took him out of the work
15 force. Well ---

16 MR. GALLAGHER: We didn't stipulate.

17 COMMISSIONER JAMES: -- depending on who's arguing.
18 But then he can't work at all, period ---

19 MR. GALLAGHER: Right. Commissioner, I agree with
20 you.

21 COMMISSIONER JAMES: --- once Dr. Bucci says from
22 that point forward. So maybe y'all at least
23 can agree on that.

24 MR. GALLAGHER: Well, and I was gonna get to -- I
25 didn't stipulate that in the hearing. But had



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1 that been the Commissioner's order, I certainly
2 would have been appealing that.

3 COMMISSIONER JAMES: So when would that be?

4 MR. GALLAGHER: I think as of the day he saw
5 Dr. Bucci going forward.

6 COMMISSIONER JAMES: Okay. So we are basically
7 between -- the two of y'all now are really
8 talking about a closed period of time?

9 MR. GALLAGHER: We're talking about a year of ---

10 COMMISSIONER JAMES: Okay.

11 MR. GALLAGHER: Almost exactly to the date, a year
12 of TTD ---

13 COMMISSIONER JAMES: Right.

14 MR. GALLAGHER: --- from -- that we're disputing.
15 Yes, ma'am.

16 COMMISSIONER JAMES: And I'll find it in the record,
17 but before we stop, does either one of you have
18 that date handy?

19 MR. GALLAGHER: Of Dr. Bucci?

20 COMMISSIONER JAMES: I'll find it in your brief or
21 the record.

22 MR. EZELL: Exact date, ma'am?

23 COMMISSIONER JAMES: Of Dr. Bucci's ...

24 MR. GALLAGHER: I got it. It's probably referenced
25 in my brief here.



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1 COMMISSIONER JAMES: I can find it. Don't worry,
2 gentlemen. You've already packed up, and I
3 don't want you to unpack. Thank y'all.

4 (There being no further questions, the deposition
5 concluded at 10:06 a.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of thirty-seven (37) 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 August 11, 2017.



Cortney N. Glover
Court Reporter

Notary Public for South Carolina
My Commission Expires: December 1, 2025



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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1516896

HERBERT RANDALL,	)	
	)	HEARING
CLAIMANT,	)	BEFORE COMMISSIONER
	)	R. MICHAEL CAMPBELL, II
v.	)	
	)	<u>TRANSCRIPT</u>
PALMETTO STATE	)	
TRANSPORTATION COMPANY,	)	
INCORPORATED,	)	
	)	
EMPLOYER,	)	
AND	)	
	)	
CHEROKEE INSURANCE	)	
COMPANY,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
2:44 P.M., WEDNESDAY, DECEMBER 7, 2016, RONALD
TOWNSEND GOVERNMENT BUILDING, 2404 NORTH MAIN STREET,
ANDERSON, SOUTH CAROLINA 29621.

CORA ELLIS BRUTON
COURT REPORTER
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EXHIBITS

(No Exhibits Proffered)

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

1 THE COURT: Today's hearing date is December 7th,
2 2016. This is South Carolina workers' Compensation
3 Case File Number 1516896. This is the case of the
4 Claimant Herbert Randall represented by Attorney
5 Jeffrey D. Ezell. The Employer is Palmetto State
6 Transportation Company, Incorporated. The Carrier is
7 Cherokee Insurance Company; both Defendants
8 represented by Attorney George Gallagher.

9 The date of accident is October 31st, 2015.
10 There is an average weekly wage of \$1,495.78 with a
11 corresponding compensation rate of \$766.05.

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

15 MR. Ezell: No, Your Honor.

16 MR. GALLAGHER: No, sir.

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

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

25 MR. EZELL: Thank you, Your Honor. Your Honor,

1 it's our position Mr. Randall sustained an admitted
2 injury back on October 31st, 2015 when the
3 tractor/trailer he was driving was struck rather
4 violently from behind. He was at a stop when he
5 accident -- the accident happened. He sustained
6 injuries by our claim to his back, neck, left leg,
7 left arm and psyche. APA page -- or APA number 6,
8 page 59 I think this will be one of the initial
9 physician chosen by the Defendant as indicated the
10 condition -- aggravated his previous chronic
11 condition. He had some preexisting scoliosis and it
12 looks like this accident has made that worse. It's
13 our position that he was provided with temporary total
14 disability benefits from the day of the accident to
15 December 5th of 2016 at which time they were
16 improperly stopped. Mr. Randall did admittedly fail a
17 positive post-accident drug screen. It was positive
18 for marijuana. As the Commission is likely aware the
19 THC is a component of marijuana is the intoxicant that
20 can stay in your system from anywhere from four to six
21 weeks. There's no evidence whatsoever that he was
22 intoxicated at the time of the accident or that any
23 alleged intoxication was the proximate cause of the
24 accident. In fact by the Claimant's -- or by the
25 Defendants' Form 50 they have admitted an accident and

1 at least admitted injuries to his wrist and cervical
2 spine. It's our position that he did not work 15 days
3 subsequent to the accident which would warrant his TTD
4 being stopped under 42-9-260(B). He never signed a
5 Form 17. Our position is that while his benefits were
6 stopped on December 5th of 2015 the Form 15 was never
7 filed until June 3rd of 2016. At that time it was
8 claimed that the benefits were stopped for two
9 apparent reasons, one of which it says based on a good
10 faith investigation the Claimant denied -- reasons for
11 denial, failed a post-accident drug test. Again, they
12 have admitted the claim, so I don't know how that
13 could have any relevance. The other one is Claimant
14 is to be released to work at limited duty and Employer
15 has provided limited light duty work. It's our
16 position that work was never actually provided prior
17 to the termination of benefits. We would also point
18 out that the Form 15 and cover letter as I stated were
19 not filed until June 3rd, 2016, which was 216 days
20 after the accident. It's our position that the Form
21 15 and cover letter failed two -- two essential
22 components of Regulation 67-504(A), that being that
23 the Form 15 be filed immediately when the benefits are
24 stopped, and further that two copies of the form 15 be
25 served immediately on the Claimant with proof of

1 service. There is no such proof of service and as
2 you've indicated the Commission file has become a part
3 of the record. I believe both cover letter and the
4 Form 15 are in the Commission's file, but just for
5 reference they are APA pages 77 and 78. It's our
6 position that because the Form 15 was improperly
7 filed, the benefits were improperly terminated and
8 that he's entitled to benefits from December 5th of
9 2015 through the present continuing as well as the 25
10 percent penalty which is applicable when benefits are
11 improperly stopped. As stated, while the Defendants'
12 may have technically complied with Regulations -- with
13 section 42-9-260 it's uncontroverted that they failed
14 to comply with Regulation 504 -- or 67-504.
15 Furthermore, we are stating that at a -- at a bare
16 minimum Dr. Bucci, the neurosurgeon chosen by the
17 Defendant, has indicated that the Claimant is unable
18 to work at present in any capacity. Dr. Bucci is a
19 Board Certified Neurosurgeon. He also reviewed the
20 Claimant's MRI which was not in existence when the
21 occupational medicine doctor ostensibly cleared him
22 for light duty work. Again, Dr. Bucci is a Board
23 Certified Neurosurgeon. He has indicated most
24 probably to a reasonable degree of medical certainty
25 that not only is Mr. Randall not capable of working

1 now, but has not been capable of working in any
2 capacity since the accident occurred. There is no
3 neurosurgical testimony or opinion to -- to controvert
4 that in any way, shape or form, so we would contend
5 that that stands. Finally, we are seeking pain
6 management as recommended by Dr. Bucci that is the
7 authorized -- or the chosen physician by the
8 Defendants. We're also seeking psychiatric and/or
9 psychological counseling and therapy as recommended by
10 Dr. Patrick Mullen who's a Board Certified
11 Psychiatrist who he's been seeing as was stated in
12 some of our prehearing discussions. The Defendants'
13 improper termination of temporary total benefits has
14 had a devastating financial impact on Mr. Randall.
15 Notwithstanding the the difficulty that going from
16 \$1,400 a week average weekly wage to \$766 comp rate
17 would provide, going from \$1,400 a week to zero is --
18 has been devastating. It has put a tremendous strain
19 on his marriage, it has caused him depression and
20 anxiety to significant extent that Dr. Mullen's report
21 evidences. And so at that point we are asking that --
22 that we be granted temporary total disability benefits
23 from December 5th of 2015 through the present and
24 continuing, a 25 percent penalty on the benefits from
25 December 5th of 2016 -- or '15 through December 7th of

1 2016 and ongoing temporary total disability benefits
2 until he reaches maximum medical improvement and also
3 pain management as recommended by Dr. Bucci.

4 THE COURT: Okay. All right. Thank you. Mr.
5 Gallagher?

6 MR. GALLAGHER: Commissioner, easy things first.
7 Regarding pain management, my clients have agreed that
8 we will designate a pain management provider to treat
9 him in accordance with Dr. Bucci's recommendations.
10 Obviously he just saw Dr. Bucci within the last month
11 or so as I recall and we will certainly try to
12 designate somebody to -- to treat him as Dr. Bucci
13 recommends. So that's the easy part. The other
14 issues are clearly contested I -- I'll take those in
15 order. First of all regarding the -- the temporary
16 total issue back to December 5th when they were
17 terminated. It's our position the benefits were
18 properly terminated. Sub -- the substantive grounds
19 for termination were that "but for" Mr. Randall's
20 termination for cause the employer would have had
21 light duty available within his restrictions as
22 recommended by the authorized treating physician at
23 that time which was an occupational accident doctor.
24 I'm not sure if he was the actual company provider,
25 but in any event he -- he -- he was cleared to return

1 to work with some restrictions that -- that Palmetto
2 would have been able to accommodate "but for" the fact
3 he was terminated for cause. So to that extent this
4 case is very analogous to the Pollock case which --
5 which held that termination for cause while someone's
6 on restricted duty does not per se entitle them with
7 the temporary total disability benefits if the reason
8 for the inability to earn wages is due to the
9 termination as opposed to the disability from the
10 injury. So we would submit that the reason he wasn't
11 able to -- to earn wages was because he was terminated
12 for cause, not because the Employer didn't have duty
13 he could do. Regarding the Form 15 issue, Your Honor,
14 clearly the Form 15 was not filed until -- immediately
15 as the Regulation provides. However, technical -- the
16 remedy for a technical violation is not reinstatement
17 of benefits to which you were never entitled to begin
18 with. I could think of dozens of examples and off the
19 record we discussed hypotheticals but -- but -- but
20 obviously your remedy is -- is not to go back and get
21 benefits to which you were -- were -- were never
22 entitled to begin with just because there was some
23 technical noncompliance with the Regulation. Is my
24 client guilty of -- of -- of a finable offense
25 administratively? Perhaps so. But I would submit

1 that would be the extent of it. The fact of the
2 matter is that -- that the grounds -- the subsequent
3 grounds for termination are governed by the Statute.
4 And the grounds that we terminated his benefits on at
5 that time clearly fall within the statutory
6 requirement allowing them the termination. So that's
7 our position regarding that. Going back to Dr.
8 Bucci's record, Dr. Bucci essentially saw him and
9 determined that he was not a surgical candidate. He
10 had seen a surgeon before, Dr. Hodges opined the same
11 thing that he was not a surgical candidate. He saw
12 another doctor who suggests that perhaps he was so he
13 Bucci was kind of a tie breaker. Bucci said he
14 clearly wasn't a surgical candidate and basically
15 released him. In his initial record, it's the
16 narrative record that he generated following
17 evaluation, Dr. Bucci did not address work status.
18 Mr. Ezell sent him a -- a -- a questionnaire asking
19 him to give an opinion on -- on work status. Dr.
20 Bucci checked the box saying that he was disabled all
21 the way back retroactive to October 31st, 2015. Our
22 position with regard to that is -- is Dr. Bucci can't
23 -- you can't have it both ways. You can't -- can't
24 wash your hands of this guy and say you're not going
25 to treat him and then after the fact say, oh, by the

1 way he was -- I think he's been disabled retroactive
2 all the way back a year prior. So that's not proper.
3 I would submit that his work status needs to be
4 deferred to whatever pain management doctor sees him.
5 So I would ask that issue be held in abeyance and let
6 a pain management doctor, whoever he is going to be
7 his treating doctor, address his work status.
8 Regarding the psyche -- the psychological treatment,
9 you know, Mr. Ezell submitted a supplemental APA
10 submission yesterday which included the report from
11 Dr. Mullen from October where Dr. Mullen gives an
12 opinion that he has psychological symptoms stemming
13 from this accident; however, if you read Dr. Mullen's
14 report, Dr. Mullen never recommends any treatment. He
15 doesn't say he needs counseling, he doesn't -- he
16 doesn't say he needs medications, he doesn't say
17 anything about what he needs. I don't know if
18 Commissioner has read the recent case law that came
19 out last week. It's Hartzell v. Palmetto Collision
20 case.

21 THE COURT: I'm familiar with it, yeah.

22 MR. GALLAGHER: Yeah. But Commissioner,
23 basically it refers back to the medical Statute
24 42-15-60 and that requirement that in order for the
25 Commission to award or order further medical care

1 beyond ten weeks from date of accident there has to be
2 an opinion within a reasonable degree of medical
3 certainty of what the treatment recommendation is.
4 And Dr. Mullen's report doesn't address what he's
5 recommended. So under that authority I would submit
6 there is no basis to award any psychological treatment
7 at this point, notwithstanding whatever Dr. Mullen
8 says in his report about his depression. So again,
9 Commissioner, we -- we're -- we'll -- we will
10 stipulate to the pain management provision. We think
11 the issue of retroactive TTD is improper both on its
12 not being supported by Dr. Bucci's retroactive
13 disability slip as well as the issues raised about the
14 improper termination and we believe that ongoing
15 running temporary total going forward needs to be
16 deferred to the pain management doctor.

17 MR. EZELL: Your Honor, may I respond just
18 briefly?

19 THE COURT: Absolutely.

20 MR. EZEL: A couple of things, Your Honor. I'll
21 go backwards. As -- as saying you can't have it both
22 ways with Dr. Bucci, I think is -- is horrifically
23 disingenuous. He was the doctor they chose. I didn't
24 pick him. There was nothing that prevented them from
25 sending him a statement. The statement which is -- is

1 APA page 81 has three options. The one that he
2 checked, which is that he has not been able to work
3 since the accident and cannot work now, he could have
4 checked that he's just not currently capable of
5 working which he did not check, or that he is capable
6 of working. So right now the only evidence on the
7 record as to whether or not -- the neurosurgical
8 expert -- expert evidence on the record as to whether
9 or not Mr. Randall is capable of working from December
10 5th of 2015 to the present is Dr. Bucci, the doctor
11 they chose? I -- that was not a ringer I picked. It
12 was -- it was the doctor they chose as the -- and
13 George is exactly right, he was subject to be the
14 tiebreaker. So the tiebreaker said this is what he
15 needs. To now say that well, we don't want -- we
16 don't want to go by the doctor we chose until the next
17 doctor we chose makes a decision I think is -- is
18 faulty. As a practical matter right now the only
19 expert opinion on the record is that he's not capable
20 of working and hasn't been capable of working. The
21 other thing that's really, really important, George
22 puts a lot of emphasis on substantive reason for
23 denial. And I understand where he's coming from, but
24 I want -- also want to note that -- the Commission
25 note that an unrepresented Claimant was -- the -- the

1 only evidence as to the reason for their substantive
2 basis for denial is on their 15. The substantive
3 basis for denial is the denial of the claim because of
4 positive defective drug test or that the Claimant is
5 released to work at limited duty and the Employer has
6 provided the limited duty work. If that's their
7 substantive basis for denial he never knew it. He
8 didn't know it until I got involved and got the
9 Commission file, because they didn't serve it on him.
10 So he had no notice as to the substantive basis for
11 denial. He had no reason to understand that the
12 reason they stopped your temporary total benefits is
13 this. Well yes, I guess if you stretch George's logic
14 he could have filed a Form 50 at any point in time.
15 The only time he knew as to why they stopped his
16 benefits was when this 15 was filed and it was 216
17 days after the accident. So I don't think you can
18 hide behind the substantive basis for denial when you
19 don't put the Claimant on notice of your substantive
20 basis for denial. That's the whole point of the Form
21 15 and section 2 and section 3. Section 2 gives the
22 Claimant the basis for denial, section 3 gives the
23 Claimant the right to contest it. And the mechanism
24 -- mechanism to contest it. If he'd been served at it
25 -- served with it at the time the benefits were

1 stopped, which I don't think they can articulate any
2 reason why that wasn't done. They -- they had the
3 wherewithal to go into the computer and turn his
4 checks off. Why they didn't have the wherewithal to
5 -- in that same course of events do what the
6 Regulation requires and file a Form 15 and serve it on
7 the Claimant with two documents as they're supposed to
8 do. They clearly didn't do it, he had no notice of
9 the substantive basis for denial and therefore
10 couldn't contest it. The other thing I'd like to
11 note, you know George stresses the remedies for a
12 technical violation is not reinstatement of benefits.
13 On what authority? Show me where failing to do the
14 Form 15 properly only entitles you to an
15 administrative fine? The bottom line is section
16 67-504 is the specific mechanism for the way temporary
17 benefits are to be stopped with a Form 15, immediately
18 filed and immediately served. Just -- I -- I don't
19 think they cannot do that and if all they really get
20 is a \$100 fine for not -- not properly filing the
21 form. That's what you get for not filing a Form 19 on
22 time to close the claim which has no prejudice to the
23 Claimant. Failing to file a form, which by its very
24 nature, is telling the Claimant we're stopping your
25 benefits and this is why. Failing to file that on

1 time is a substantive violation of his rights, because
2 he had no notice of the reasons for denial, he had no
3 notice that he could then file -- sign a section 3 and
4 mail it back in and get an emergency hearing in 45
5 days. So I -- I think that it's -- it's really,
6 really thin for them to not do what the Regulations
7 mandate they do and then turn around and claim that
8 all we get is \$100 fine. No. He's been without
9 benefits for a year and two days at \$766 a week.
10 That's not small potatoes. That has changed his life
11 drastically. You're right, Dr. Mullen did not
12 specifically recommend treatment. I'll be happy to
13 depose Dr. Mullen and get that taken care of, but as a
14 practical matter he is very much depressed. Dr.
15 Mullen's report emphatically states his depression is
16 due to his accident and the loss of lifestyle and the
17 pain. So, you know, I -- I just don't see how you can
18 fail to do what the Regulations mandate you to do in
19 order to protect the Claimant's rights and hide behind
20 it. So I think that there is no authority that I can
21 think of that a technical violation which I don't
22 contend this is, I think this is a substantive
23 violation. But even if it was just a technical
24 violation I know of no authority which means this is
25 only a \$100 fine. Thank you.

1 THE COURT: Okay. Mr. Gallagher?

2 MR. GALLAGHER: Commissioner, you know, I think
3 Mr. Ezell has a choice to make. If we're going to
4 convene this hearing and we've already opened the
5 record so I don't think -- he's alleged psych, this --
6 this is it. And if he doesn't have the evidence to --
7 to -- to back up what he's requesting then I'm not
8 going to consent to leave this record open in order
9 for him to go get what he needs from Dr. Mullen. The
10 record's open, the cat's out of the bag, he doesn't
11 have an opinion stating that -- that he needs any
12 treatment in accordance with the Statute and case law,
13 so I think that issue is -- is dead in the water,
14 first. Second, you know, Mr. Ezell wants me to cite
15 an authority, I could obviously ask the same question
16 with regard to him. Where's the authority that the
17 remedy is if you go back and get benefits that you
18 were never entitled to begin with? The Statute says
19 -- and again, I think you -- you've got to look at the
20 Statute because that's going to trump any Regulation.
21 The Statute, 42-9-260 subsection G says, failure to
22 comply with this section shall result in a 25 percent
23 penalty. So the failure to comply with the section
24 and the imposition of a penalty is referring to the
25 substantive requirements of the Statute, not the

1 technical requirements of the Regulation. So again,
2 you don't -- the remedy for a technical violation of
3 not filing a form properly is not to go back and be
4 awarded benefits that you were not entitled to.
5 That's a windfall. That is -- that is not -- that's
6 -- that's just totally inept from any concept of law
7 that I'm familiar with. The -- the notice thing, Your
8 Honor, I mean if he disagreed with the termination, it
9 doesn't matter what we said the reasons were, if he
10 disagreed with the termination of benefits then he was
11 free at any point in time to file a Form 50 and at
12 some point in time he had a lawyer previously, he
13 could have done that. Evidently he chose not to for
14 whatever reason. Perhaps that's why he has a new
15 attorney now. But he had remedy. He wasn't
16 prejudiced. He could have filed a Form 50 at any
17 point in time if he disagreed with the termination of
18 his benefits. And we're here now, obviously, so he
19 disagrees with it so that's what we're here to decide.
20 So I don't think we need to beat that horse anymore.

21 MR. EZELL: Do you have the Statute book, Your
22 Honor, with you?

23 THE COURT: I do.

24 MR. EZELL: Look at page 443 if you would. I'm
25 sorry. I apologize.

1 THE COURT: Okay.

2 MR. EZELL: Under the Notes of Decision --

3 THE COURT: Yes.

4 MR. EZELL: -- the last paragraph that begins on
5 that page, even if Employer could have stopped
6 workers' compensation payments for temporary total
7 disability benefits after Claimant was cleared by
8 orthopedic surgeon to return to work without
9 restrictions, Employer failed to follow procedures for
10 stopping benefits. Employer did not file a Form 15 at
11 least eight -- file a (inaudible) Form 15 for at least
12 18 days. We have 216 now. Eighteen days after
13 compensation was terminated and Employers failed to
14 attach supporting documentation of the form, which
15 means they didn't do it right, which means it wasn't
16 done. It's that simple.

17 THE COURT: Okay.

18 MR. GALLAGHER: Commissioner, again I mean I
19 think it's evident that there's a -- there's a
20 substantive issue about whether or not he was entitled
21 to the benefits to begin with. And the remedy is not
22 to go back and award benefits that he was never
23 entitled to. So that's the issue you have to decide.

24 MR. EZELL: But, Your Honor, that --

25 MR. GALLAGHER: If you decide -- wait a minute.

1 Wait a minute. Let me finish. If you decide he was
2 entitled to those benefits then yeah, sure, you can go
3 back and -- and -- and award -- award a penalty and
4 reinstate if you think he was entitled to begin with.
5 But, you know --

6 MR. EZELL: But, Your Honor, that case clears
7 that argument.

8 MR. GALLAGHER: I don't know much more to say.

9 MR. EZELL: It says, and just for the record
10 that's the Martin v. Rapid Plumbing case, 631 S.E.2d
11 547, S.C. Court of Appeals 2006. Even if Employer
12 could have stopped workers' compensation temporary
13 total benefits then after claimant was cleared by an
14 orthopedic surgeon to return to work, even if they
15 could -- even if they could because he failed a
16 post-accident drug screen. They didn't do it.

17 MR. GALLAGHER: We don't know if that case is
18 still good. I can Brief that issue if you want me to.

19 THE COURT: Okay. You know what? I don't --

20 MR. GALLAGHER: There's all kinds of bad cases
21 (inaudible).

22 THE COURT: No, I can --

23 MR. EZELL: It's a 2016 book so --

24 THE COURT: You guys both have articulated your
25 positions very clearly and I appreciate that and so we

1 will certainly weigh it and I don't want to continue
2 to belabor the point, so let's kind of move on.

3 And Mr. Randall, before we get started I have a
4 couple of instructions for you. If you would please
5 speak up and speak clearly for us. It's important
6 that we all hear your responses to the questions, but
7 most importantly that that nice lady to my right get
8 them for the record. If you're asked a yes or no
9 question please give us a verbal yes or no answer.
10 You can shake your head yes or no like I do all the
11 time just make sure you accompany that with a verbal
12 yes or no answer. Try and stay away from things like
13 uh-huh and huh-uh; that's just too easily
14 misunderstood for the record. So if you could help us
15 out with that we'd appreciate it. Okay?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. Please raise your right
18 hand. Do you swear and affirm that the testimony you
19 are about to give is the truth, the whole truth and
20 nothing but the truth?

21 THE WITNESS: I do.

22 THE COURT: Okay. You can put your hand down and
23 please state and spell your name for the record sir.

24 THE WITNESS: Herbert Troy Randall, H-E-R-B-E-R-T
25 T-R-O-Y R-A-N-D-A-L-L.

1 THE COURT: Thank you Mr. Randall. Mr. Ezell,
2 your witness.

3 MR. EZELL: Thank you, Your Honor.

4 Herbert Troy Randall,
5 Having first been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. EZELL:

8 Q You go by Troy, correct?

9 A Yes.

10 Q All right. Troy, you were employed with
11 Palmetto State Transportation in October of 2015?

12 A Yes.

13 Q And you were involved in an accident October
14 31st of 2015?

15 A Yes.

16 Q Tell me a little bit about that accident
17 real briefly. It's technically admitted, but just so
18 the Commissioner will know what happened.

19 A East Texas on I-10, traffic was stopped
20 about 1:00, 1:30 a.m. I'm not sure what the time was.
21 There was a big accident in the highway. I pulled up,
22 stopped, had my four-way flashers flashing and
23 actually sat the tractor brakes and the trailer brakes
24 on the -- on the truck. I just happened to look --
25 pouring down rain. Happened to look behind me. There

1 was a vehicle had stopped behind me and the next thing
2 I know I had just out of the corner of my eye caught
3 something moving, looked in the mirror and I saw what
4 -- what appeared to be headlights kind of at a angle
5 approaching my vehicle at an extremely high rate. And
6 then there was an impact and it pinned me against the
7 dash of the truck.

8 Q Okay. And you have been treated by various
9 doctors since that point in time? Been seen by
10 various doctors.

11 A Been seen by, --

12 Q Okay.

13 A -- yes.

14 Q Okay. The most recent doctor you saw was
15 Dr. Bucci?

16 A Correct.

17 Q And his records are in the -- in the APA
18 submissions for the Commissioner. But basically it's
19 your understanding that he's recommended pain
20 management?

21 A Yes.

22 Q Okay. And that evaluation was, I believe,
23 in August? No, I'm sorry, it was in November.
24 November 1st?

25 A Yes.

1 Q Okay. Have you been provided pain
2 management as of this time?

3 A No.

4 Q Okay. Have you been instructed to go to any
5 specific physicians for pain management?

6 A No.

7 Q Okay. Let's go back a ways. You were
8 initially treated, I believe, at a hospital in Texas?

9 A Yes.

10 Q Okay. And then you have attended every
11 doctor's appointment that the Defendants have made for
12 you, correct?

13 A Yes.

14 Q Okay. Now it's obvious -- and we're not
15 trying to dispute -- you did fail a positive
16 post-accident drug screen, correct?

17 A Yes.

18 Q And that was for marijuana?

19 A Yes.

20 Q You were not intox -- were you intoxicated
21 at the time the accident occurred?

22 A No.

23 Q Okay. Had you even been intoxicated would
24 have happened anyway to the best of your
25 understanding?

1 A No.

2 Q Okay. Now with regard to your benefits, I
3 think it's evident by the Commission file that you
4 received benefits from October 31st through December
5 5th of 2015; is that correct?

6 A Yes.

7 Q And that's when they were stopped.

8 A Yes.

9 Q Okay.

10 A To what date?

11 Q To December 5th --

12 A Yes.

13 Q -- of 2015.

14 A Yes.

15 Q Okay. After you failed that positive
16 post-accident drug screen did you receive any letters
17 from Palmetto State Transportation asking you to
18 attend any type of substance abuse counseling or rehab
19 program or anything like that?

20 A No.

21 Q Okay. Did -- who was your supervisor at
22 Palmetto State?

23 A One of many people -- it's not like that.

24 Q Okay. Who -- who did you answer to -- who
25 did you call boss?

1 A Everybody. Dispatchers, the -- Bobby
2 Dumont, Anthony Dumont, dispatchers, the safety guy
3 Jimmy Hartso.

4 Q Is Jimmy Hartso the safety guy?

5 A Yes.

6 Q Did he ever have a conversation with you
7 about attending drug treatment --

8 A No.

9 Q -- or rehab?

10 A No. I haven't talked to him since this
11 happened.

12 Q Did your dispatcher ever have any
13 conversation with you about attending --

14 A No.

15 Q -- substance abuse counseling, drug rehab
16 counseling?

17 A No.

18 Q Okay. You mentioned two Dumont brothers?

19 A Yes.

20 Q Did either of them ever have any
21 conversations with you about going to drug rehab or
22 substance abuse counseling or anything like that?

23 A No.

24 Q Okay. Did anybody else at Palmetto State
25 Transportation ever have any conversation with you

1 about attending drug treatment, substance abuse
2 counseling, rehab, anything like that?

3 A No.

4 Q Okay. Did you ever work light duty at
5 Palmetto State after the accident?

6 A No.

7 Q Did you ever have any conversations with
8 anybody about working light duty?

9 A Yes.

10 Q Okay. And who was that conversation with?

11 A Anthony Dumont.

12 Q And what was his -- what was the substance
13 of that conversation?

14 A He had mentioned something about maybe
15 having to do light duty.

16 Q Okay.

17 A And it would be based on what the doctor's
18 report said.

19 Q Okay.

20 A And that was --

21 Q And did he ever have any subsequent
22 conversations with you about it?

23 A No.

24 Q Okay.

25 A That -- that conversation was more almost in

1 a passing type thing.

2 Q Okay.

3 A As he - he was sitting at his desk, but it
4 wasn't an in-depth conversation whatsoever.

5 Q Did they ever show you to the guard house
6 and say this is where you're going to be working light
7 duty or anything like that?

8 A No. No.

9 Q Okay. May I approach, Your Honor?

10 THE COURT: Sure.

11 Q Troy, I'm going to show you what is marked
12 -- these are the Defendants' APA submissions pages 77
13 and 78. I believe I showed those to you today. Had
14 you ever seen those, ever received copies of those at
15 any point in time before today?

16 A No.

17 Q Okay. To your knowledge -- page 78 is
18 what's called a Form 15 from the Workers' Compensation
19 Commission. Did you ever get a copy of a Form 15 in
20 the mail?

21 A No.

22 Q Did anybody at Palmetto State ever hand you
23 a copy of a Form 15?

24 A No.

25 Q Okay. The ostensible grounds -- well two -

1 there were two grounds stated for why your benefits
2 were stopped. One of them was you failed a positive
3 post-accident drug test and the claim was denied. Did
4 they ever tell you your claim was denied because of a
5 post-accident drug test?

6 A No.

7 Q Okay. And then the other one is that they
8 -- that you had been released to work at limited duty
9 and the Employer provide you limited duty. You
10 indicated that you had one passing comment with one of
11 the Dumont brothers about light duty. Did he ever
12 describe to you what that light duty would be?

13 A No.

14 Q And -- and -- and I think I indicated or
15 asked you, he did not show you to the guard house and
16 say, this is where you're going to be sitting checking
17 in trucks and checking out trucks?

18 A No.

19 Q Okay. Did he ever give you any type of job
20 description as to what you would be doing?

21 A No.

22 Q Okay. Do you feel you're capable of driving
23 a truck right now?

24 A No.

25 Q Okay. Is there any other work you've done

1 in your -- in your work life that you feel that you
2 could do in your current state?

3 A No.

4 Q Okay. Tell the Commissioner what kind of
5 problems you're having right now.

6 A Right now I have upper back pain and it's
7 burning in the -- up here to the left side of my
8 spine.

9 Q You're showing a little bit above your
10 collar bone?

11 A No, just -- well about -- about right here.

12 Q Okay. Right -- right around your shoulder
13 blade?

14 A Yeah. But just to the left of my spine and
15 it flares out like it's on fire and I'd say in an area
16 about the size of a basketball.

17 Q Okay.

18 A And then from that --

19 Q Is that pain constant?

20 A -- excuse me?

21 Q Is that pain constant?

22 A That's never ending. That's 20 -- and it
23 burns like maybe you stuck a red hot poker in my -- in
24 my back and it never went out. And then I get these
25 spiking pains that'll go leave that, they'll travel up.

1 the right side of my neck and end up right here just
2 above my ear on the right side of my head and I end up
3 with what I would have to describe as a migraine
4 headache. I've never had a migraine headache to my
5 knowledge, but from what everyone tells me what
6 migraine feels like I'm going to assume that's what
7 it's like. And I can take Ibuprofen to actually
8 control those headaches although the Ibuprofen doesn't
9 really do anything for my back.

10 Q Okay.

11 A Then in my lower back basically just 24
12 hours a day it feels like somebody has hit me in the
13 lower back as hard as he could with a baseball bat.
14 So that travels side to side across the middle of my
15 back. From that I get these spiking pains that go
16 down my right leg and I use to have it my left leg
17 when this first happened, it would do both legs but
18 I've haven't had the problem in my left leg in months.
19 But my right leg, it's probably on average once a day.
20 But it's spiking pain that runs down the outside of my
21 leg, my right leg, down into my knee. And the only
22 way I can describe that is, and I've never had sciatic
23 nerve damage, but my mother had it, and what she would
24 tell me it felt like I'm assuming that must what that
25 feels like. But the pain is constant, never ending.

1 It -- it spikes into my head and into my leg, but it's
2 never ending. And I would say probably a ten out of
3 ten, but when if you would say, well if it's spiking
4 it's not ten out of ten; okay, it's nine and a half
5 out of ten. Okay?

6 Q What kind of things have you noticed make it
7 worse?

8 A Walking.

9 Q Okay. So you're walking with a cane now?

10 A Laying down, sitting down. I try to lay
11 down about -- maybe 18 years a day I'm laying down
12 because the pressure begins to be too much when I'm
13 sitting.

14 Q You're using a cane now. Do you use that
15 pretty much all the time?

16 A If I'm going to walk any distances I take it
17 with me because that -- if -- if my leg -- if I get
18 that spike in my leg I actually lose the -- the use of
19 that leg and I'll fall down. I've fallen several
20 times. So I carry that cane if I'm going to go any
21 distance at all. Maybe -- basically I mean if I want
22 to go to the store I'd have to take a cane with me.
23 If I'm going to walk to the garbage can 30 feet I
24 think I -- I usually just walk to the garbage can.

25 Q You've indicated that standing makes it

1 worse. Anything else? Does sitting for any length of
2 time make it worse?

3 A Oh, yeah. I'm always shifting -- trying to
4 -- you know, I think it's got to the point where I'm
5 trying to shift to get away from the pain thinking one
6 of these days I'm going to hit that right spot, but
7 that doesn't happen.

8 Q You say you take Ibuprofen and it doesn't
9 help your back. Are you taking anything else?

10 A No.

11 Q Dr. Bucci has recommended pain management.
12 Are you willing to go through whatever the pain
13 management doctors recommend?

14 A We've got to do something. I'm willing to
15 do anything.

16 Q Okay. Where are you living now?

17 A I live in a camper behind my friend's mom
18 and dad's house.

19 Q Okay. Was that where you were living when
20 this happened?

21 A No.

22 Q Okay. Has not being -- not having any
23 income for the past year had an impact on you?

24 A Well, I mean kind of evident -- have no
25 income and try to live.

1 Q Okay. I sent you to Dr. Mullen. Did you
2 answer all of his questions truthfully?

3 A Mr. Mullen?

4 Q Dr. Mullen?

5 A Yes.

6 Q Okay. Do you feel like you're depressed?

7 A Well, I mean I -- I'm not a clinical
8 psychologist and what -- what I find is depressing I'm
9 sure other people -- I -- I don't know. I'm not a
10 doctor. I answered the questions, he said, oh, well,
11 you know, I think you're suffering depression? I -- I
12 guess I'm depressed a lot of the times just I'm
13 sitting there, I'm doing nothing. Nobody is helping.
14 Nobody's treating me. Just you know what, here you
15 are, here's your life, sit in this camper, nobody
16 gives a damn.

17 Q Well let -- let me ask it to you this way,
18 has your outlook on life changed since this accident
19 happened?

20 A Yeah. Quite a bit.

21 Q For the worse or for the better?

22 A Well, I mean my outlook on life is now
23 basically -- I sit around I say when's somebody
24 going to help me so I can go back to work?

25 Q And nobody -- even though Dr. Bucci saw you

1 November 1st, nobody's contacted you about -- about
2 pain management --

3 A No.

4 Q -- at this point? Okay.

5 MR. EZELL: Bear with me just one moment,
6 Commissioner.

7 THE COURT: Yeah. Take your time.

8 MR. EZELL: And if I asked this already I'm sorry
9 and I apologize, Commissioner.

10 Q Are you basically willing to do whatever the
11 doctors recommend to try and get you better?

12 A Yeah, whatever? Yes.

13 MR. EZELL: Your Honor, that's all the questions
14 I have.

15 THE COURT: Okay.

16 MR. EZELL: Reserve the right to redirect.

17 THE COURT: All right. Thank you. Mr.
18 Gallagher?

19 CROSS EXAMINATION

20 BY MR. GALLAGHER:

21 Q Mr. Randall, how you doing today, sir?

22 A All right.

23 Q Mr. Randall, it's my understanding you've
24 had some preexisting back problems with scoliosis in
25 your neck and your lower back; is that fair to say?

1 A I was born with scoliosis.

2 Q Were you treating with a chiropractor for
3 that -- for those issues prior to this accident?

4 A I -- I've been to a chiropractor probably a
5 handful of times since I was maybe 14.

6 Q This was before this accident you'd seen a
7 chiropractor?

8 A Yeah.

9 Q And you saw a chiropractor immediately after
10 this accident?

11 A Yes, I did.

12 Q And was this the same chiropractor that you
13 had seen before?

14 A No.

15 Q So after this accident you went to a
16 different chiropractor that you had never previously
17 seen before?

18 A Right. I've never been to another
19 chiropractor in South Carolina. I didn't grow up
20 here.

21 Q When's the last time you went to see a
22 chiropractor prior to this accident?

23 A Probably 1980.

24 Q How did you -- the chiropractor that you did
25 see after this accident, how did you -- how did you

1 happen to see this particular person?

2 A Well, because I was a young kid. I was
3 playing sports in -- in high school and everything and
4 get your back tweaked and I had scoliosis. I'd go in
5 to the chiropractor and he'd do adjustments on me.

6 Q No, I'm sorry sir. I -- I - you may have
7 misunderstood me. I -- I -- I'm talking about after
8 this accident the chiropractor you did go see, how did
9 you come to see that particular chiropractor?

10 A Oh, my daughter-in-law actually worked
11 there.

12 Q Okay. Let me understand a little bit about
13 this accident. My understanding is you were at a stop
14 at an intersection, a stoplight?

15 A No, I was stopped in the middle of the
16 highway.

17 Q Okay. Stopped in the middle of the highway
18 and there was another vehicle stopped behind you that
19 was then struck by another vehicle that rammed into
20 you, correct?

21 A Yeah.

22 Q So it was a three car accident?

23 A Yes.

24 Q Okay. And you had a trailer?

25 A Yes.

1 Q Your trailer was full?

2 A Yes.

3 Q What were you hauling?

4 A I -- I'm going to be honest with you I have
5 no -- I can't remember. I -- I -- it was hazardous.

6 Q Well what was your -- what was your --

7 A It had hazardous material.

8 Q What was your tonnage in the trailer?

9 A I think I had scaled out somewhere around
10 79,000, but you're talking about a year ago and I
11 haven't seen the scale ticket, so, I'm going -- I was
12 heavy.

13 Q 79 -- 79,000 pounds, you were stopped dead
14 still and you -- what kind of vehicle struck you?

15 A A pickup truck.

16 Q What kind of vehicle struck the pickup?

17 A No, the pickup truck that struck me wasn't
18 the one set behind me.

19 Q Okay. What was set behind you?

20 A A pickup truck.

21 Q Okay.

22 A And another pickup truck went through that
23 pickup truck and basically how them people lived I got
24 no idea, because the cab and bed of that truck was
25 destroyed. Then he hit the back of my trailer,

1 breaking the frame of the trailer.

2 Q Okay.

3 A He actually broke the frame of the trailer
4 and shoved my truck up the road a little ways. I
5 don't know how many feet. I can't -- it wasn't in the
6 same position it was before the accident and the
7 brakes were all locked down. That's how hard he hit
8 me.

9 Q When your benefits were terminated back in
10 December of 2015 is it your testimony you had no
11 reason why they were terminated?

12 A Let me tell you the story how that all came
13 about. I mean --

14 Q I'd like you to answer the question.

15 A Say -- say it again?

16 Q Is it your testimony, or is it your
17 position, that you didn't have any idea why they had
18 terminated your benefits?

19 A Not the day that I didn't get the check
20 because it was a week -- about a week and a half from
21 the day I was supposed to get the check on it was a --
22 that was usually on a Friday. And then, well I mean
23 it didn't come Friday, maybe it would be Saturday. So
24 it was the following week I went to the other attorney
25 that I had hired -- went to their office and said, hey

1 for some reason I didn't get that check. They said,
2 oh, well let's check on that.

3 Q Now, you don't need to get into what your
4 attorneys told you because that's privileged.

5 A I'm telling you how I found out.

6 Q Well, let me be clear. I don't -- you may
7 not be able to say that or --

8 A Oh, okay.

9 Q -- but if you want to waive it that's your
10 privilege.

11 A No. No.

12 Q If you want to waive what your attorney told
13 you that's fine, but I'm just telling you you don't
14 need to do that for purposes of what I'm asking you.

15 A Okay. Maybe I don't understand exactly what
16 you're asking then.

17 Q My question is sir, you had an attorney at
18 the time your benefits were terminated, correct?

19 A Yes.

20 Q You didn't know why they were terminated?

21 A I did at a later date.

22 Q Okay. At what point in time did you realize
23 -- understand the reason why they were terminated?

24 A I don't remember exactly, but I would say
25 probably a week after.

1 Q So the first time you found out about why
2 your benefits were terminated was not after June of
3 2015 when this letter went out that you never got?

4 A No.

5 Q Okay. So tell me -- so a week after the
6 benefits were terminated you knew why they were
7 terminated or at least what the insurance's
8 explanation as to why they were terminated?

9 A Well, I knew what I was being told.

10 Q Okay.

11 A I never talked to the insurance company.

12 Q You were on notice of why your benefits were
13 terminated?

14 MR. EZELL: Objection. That calls for a legal
15 conclusion.

16 A I'm sorry?

17 THE COURT: Okay. I'll let you -- if you want to
18 respond to that.

19 MR. GALLAGHER: I'll -- I'll rephrase the
20 question.

21 THE COURT: Okay. Thank you.

22 BY MR. GALLAGHER:

23 Q A week after your benefits were terminated
24 in December of 2015 you received an explanation as to
25 what the reasoning was behind that, correct?

1 A A limited explanation I guess, yes.

2 Q And did you agree or disagree with that?

3 A They are asking me to go back in -- the way
4 I understand this question. You're asking me to go in
5 and explain to you the conversation I had with another
6 attorney?

7 Q Okay. Well don't do that. But do you --
8 can you just tell me what your conclusion was? Did
9 you agree or disagree with the reason that the
10 insurance company gave you for termination of your
11 benefits?

12 MR. EZELL: Your Honor, I object on the grounds
13 of relevance.

14 MR. GALLAGHER: It's very relevant. He talked
15 about him being depressed since he hadn't been noticed
16 about his termination until a letter that he didn't
17 get went out six months later --

18 THE COURT: I'll allow it. Go ahead. I'll allow
19 it.

20 A Okay. I was told -- what I was told was
21 that I had failed a -- a post-accident drug screen
22 although I wasn't aware that I had at that time. No
23 one had called me from the drug screening place and
24 told me that.

25 Q Okay. Without getting into what your

1 attorney told you, because I don't want to -- I don't
2 want to breach attorney/client privilege. Without
3 getting into what your attorney told you, was it your
4 understanding that your attorney was going to do
5 something on your behalf at that point in time?

6 MR. EZELL: Your Honor, I object. He -- he can't
7 speak to what his attorney was supposedly going to do.
8 And -- and if -- if he did have a conversation with
9 his attorney about it it's privileged.

10 MR. GALLAGHER: It's his privilege.

11 MR. EZELL: And I'm instructing him as his
12 attorney not to waive it.

13 MR. GALLAGHER:

14 Q You had an attorney at the time didn't you,
15 sir -- at the time your benefits were terminated?

16 A Yes.

17 Q So you weren't just fending for yourself out
18 there? You had somebody representing you; is that
19 correct?

20 A Yeah.

21 Q Okay.

22 A Yes,

23 Q What action did your attorney take after
24 that?

25 A I have no idea.

1 MR. EZELL: Object.

2 A I have no idea.

3 MR. GALLAGHER: That's not privileged. That's

4 not privileged.

5 A I have no idea.

6 BY MR. GALLAGHER:

7 Q Okay. When did you retain Mr. Ezell?

8 A Ezell?

9 Q Yes.

10 A I don't remember the exact date.

11 Q Is it your testimony, sir, or your position
12 that Palmetto Transport never approached you about
13 completing some type of program in order to regain
14 your eligibility to continue over-the-road truck
15 driving after --

16 A No they didn't.

17 Q -- after you failed your drug screen? Did
18 anybody at Palmetto State Transport ever tell you that
19 you even had a positive drug screen?

20 A No, they didn't.

21 Q Were you aware of Federal Regulations and
22 Requirements regarding eligibility to drive an
23 over-the-road truck following a drug screen -
24 positive drug screen.

25 A Yes.

1 Q You're familiar with those Regulations?

2 A Yeah.

3 Q Is it your understanding that once you have
4 a positive drug screen you have to go through some type
5 of program in order to regain your eligibility to
6 drive over-the-road again?

7 A Yes.

8 Q After you received notice that you had a
9 positive drug screen in connection with this accident
10 did you not think that you would need to do something
11 in order to regain your -- your eligibility to drive?

12 A That directive comes from the -- from the
13 transportation company you work for, whether they
14 require that or not.

15 Q Were you -- when you were officially
16 terminated by Palmetto Trans -- Transport --

17 A I couldn't tell you when that was.

18 Q Okay. Did you have a conversation with
19 somebody?

20 A No.

21 Q Did you receive a letter?

22 A No.

23 Q How did you find out you were terminated?

24 A Because they stopped making my payments and
25 I -- then my attorney at the time told me, evidently

1 you've been terminated because you failed a drug -- a
2 drug screen.

3 Q You didn't receive any kind of letters --

4 A No.

5 Q -- or phone calls from --

6 A No.

7 Q -- Palmetto Transport?

8 A No.

9 MR. GALLAGHER: Okay. Okay. That's all the
10 questions I have.

11 THE COURT: Okay. Mr. Ezell?

12 REDIRECT EXAMINATION

13 BY MR. EZELL:

14 Q Troy, so your understanding of why the
15 benefits were stopped was because you failed a drug
16 test?

17 A Correct.

18 Q Okay. Showing you again Defendants' APA
19 page 78. One of the reasons they claim they stopped
20 your benefits was because you failed a drug test and
21 that's the one dated June 3rd.

22 A Correct.

23 Q Okay. There was another one saying that
24 they provided limited duty work and that you had
25 refused to do it?

1 A No.

2 Q That never happened?

3 A That's not true.

4 Q Okay. The first doctor you saw was Dr.
5 Hodge that the Defendants sent you to; is that
6 correct?

7 A Yes. Well, the first one I saw was that
8 occupational medical doctor.

9 Q And then he sent you to -- or you were then
10 forwarded to Dr. Hodge at --

11 A Correct.

12 Q -- Cross Creek Neurosurgery?

13 A Something like -- wherever -- I don't know
14 what the address was, but it was Dr. Hodges, yes.

15 Q Mr. Gallagher asked you a little bit about
16 some preexisting problems. You did have some
17 scoliosis I believe?

18 A I did.

19 Q Okay. And is it your understanding that
20 this accident aggravated that?

21 A I -- I'm not -- I can't speak to that
22 because I'm not a doctor.

23 MR. EZELL: Your Honor, I'll draw your attention
24 to APA page 59.

25 THE COURT: Okay. Thank you.

1 MR. EZELL: That's all. No further questions,
2 Troy.

3 MR. GALLAGHER: Your Honor, I don't have any re
4 -- re-cross. I just would point out that the Form 15
5 doesn't say he refused. It doesn't have to be refusal
6 to terminate benefits on a Form 15. It just has to be
7 offered.

8 MR. EZELL: Let me -- may I address that?

9 THE COURT: Okay. Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. EZELL:

12 Q Troy, were you offered a light duty job?

13 A No

14 Q Okay. All right.

15 THE COURT: Thank you. Okay. And sir, you can
16 take a seat right next to your attorney.

17 MR. EZELL: One second, Your Honor, I may -- I
18 may be done.

19 THE COURT: Okay.

20 MR. EZELL: That's all. That's the Claimant's
21 case, Your Honor.

22 THE COURT: Okay. Mr. Gallagher?

23 MR. GALLAGHER: I call Mr. Scott Justice.

24 THE COURT: Okay. And I know you heard them, but
25 I'll run through them quick. Please speak up, speak

1 clearly. If you're asked a yes or no question please
2 give us a verbal yes or no answer. Stay away from
3 things like uh-huh and huh-uh. If you can help us out
4 with that we'd appreciate it.

5 THE WITNESS: Okay.

6 THE COURT: Okay. Please raise your right hand.
7 Do you swear and affirm the testimony you are about to
8 give is the truth the whole truth and nothing but the
9 truth?

10 THE WITNESS: I do.

11 THE COURT: Okay. And please state and spell
12 your name for the record sir.

13 THE WITNESS: Jeffery Scott Justice,
14 J-E-F-F-E-R-Y S-C-O-T-T J-U-S-T-I-C-E.

15 THE COURT: Thank you, Mr. Justice. Mr.
16 Gallagher, your witness.

17 MR. GALLAGHER: Thank you.

18 Jeffery Scott Justice,
19 Having first been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GALLAGHER:

22 Q Scott, could you tell us what your current
23 position is with Palmetto State Transport and how long
24 you've been in that position?

25 A Director of Human Resources and Quality

1 Control, about six, seven years.

2 Q And does your job involve handling the
3 workers' compensation matters generally?

4 A Yes.

5 Q Tell us how generally you're involved?

6 A Well, basically the way that -- the way that
7 it works with us is we take the initial claim and we
8 do the first report of accident and then it's sent off
9 to Cherokee Insurance Company which follows through on
10 the claims and filings and that -- that aspect.

11 Q Do you, as the initial handler of a workers'
12 compensation matter, refer injured Claimant's to -- to
13 --

14 A Yes. To a physician, yes.

15 Q Let me finish.

16 A I'm sorry.

17 Q I know -- I know you want to jump in, but
18 it's going to be easier if you wait until I finish
19 asking the question before you answer.

20 A Okay.

21 Q Okay? All right. So who's your company
22 provider? Who's your company doctor?

23 A Greenville Occupational Health.

24 Q And in this case y'all obviously were aware
25 that Mr. Randall was involved in an accident?

1 A That's correct.

2 Q No disputing that he was in -- that he was
3 involved in an accident, correct?

4 A No.

5 Q So when he got back to South Carolina from,
6 I believe it was Texas, y'all referred him to your
7 company doctor, correct?

8 A That's right.

9 Q And what was your understanding of -- well
10 let me back up. Once you refer somebody to a -- to
11 your company provider do y'all communicate directly
12 with that provider regarding work restrictions or do
13 you rely upon the Claimant to bring you back the work
14 notes?

15 A Well, we want the client or the Employee to
16 bring us back the work notes, or if we don't get the
17 work notes back from them they are sent directly to
18 us.

19 Q In this particular case did you get a work
20 note back from Occupational Medicine?

21 A Yes.

22 Q And what did the -- what did the
23 Occupational Medicine --

24 MR. EZELL: I -- I object to this. It's not
25 submitted in the APA. I don't think he can say what

1 the document says.

2 MR. GALLAGHER: Well, he can --

3 MR. EZELL: No he can't. It's not -- it's not an
4 exhibit, it's hearsay.

5 THE COURT: Will you let me address your
6 objection before you interrupt?

7 MR. EZELL: I was not interrupting. I was
8 expounding upon my objection. Go right ahead.

9 THE COURT: Okay. Go ahead and respond.

10 BY MR. GALLAGHER:

11 Q Let me ask - rephrase the question. What
12 was your understanding of his work restrictions?

13 MR. EZELL: Again, the same objection. It's
14 hearsay.

15 MR. GALLAGHER: No it's not.

16 THE COURT: I'm going to allow him to -- he can
17 testify as to what his understanding was.

18 BY MR. GALLAGHER:

19 Q What was your understanding of his work
20 restrictions initially from Occupational Medicine?

21 A No driving. And he could do limited duty,
22 some sitting, some standing, limited maybe twisting
23 and pulling, and no more than 15 pounds.

24 Q At that point in time were aware that he had
25 failed a post-accident drug screen?

1 A To my recollection all this information was
2 coming in at the same time.

3 Q Okay. Would you -- is it a standard policy
4 to do a urine drug screen after an accident?

5 A Yes.

6 Q Okay. Once you got notice of the work
7 restrictions generally what is your policy and then
8 tell us what happened in this case?

9 A Gen -- generally our policy is once we get
10 the work restriction we try to go ahead and put them
11 in a duty position. Normally what we do is, we have a
12 guard house on the property and allows them to sit.
13 They -- they -- we -- we do add a little bit more to
14 it depending on the work restriction, but normally
15 they're sitting -- their checking in trailers and
16 trucks as they come in. Basically they can sit in a
17 swivel chair, turn around, look at a truck, write down
18 the truck and trailer number. If they're able to they
19 can do what we call a walk around. They'll walk
20 around the truck, look, see if there's any damages
21 coming in on the truck or anything like that.

22 Q In this particular instance was that type of
23 position offered to Mr. Randall once you got the --
24 the -- the restrictions --

25 A To -- to my recollections that was the plan

1 but at the same time we were getting the drug screen
2 back -- with the -- with the positive results.

3 Q All right. And what is your understanding
4 of Federal Regulations that govern drivers who come
5 back with a positive drug screen?

6 A My understanding of the Regulation is it's a
7 Federal Mandate that they have to -- before them to
8 requalify for their CDL they have to finish a SAP
9 program -- the Certified SAP program.

10 Q And what is an SAP?

11 A Substance Abuse Program.

12 Q Okay. And is that something that the
13 Employer sponsors on behalf of a driver seeking to
14 regain their eligibility to drive over-the-road?

15 A That we -- we give them the information.
16 It's the driver's responsibility to -- to follow
17 through.

18 Q All right. In this particular instance was
19 the information about the -- the Substance Abuse
20 Program relayed to Mr. Randall?

21 A The -- the program package was sent to him
22 via certified mail.

23 Q Did you -- did you get any certified
24 receipt?

25 A To my recollection there is one in his file.

1 MR. EZELL: I object. It's not been submitted.
2 If it's not an APA submitted -- they had every
3 opportunity to submit this if they wanted to and he's
4 now testifying as to a document that's not in
5 evidence.

6 MR. GALLAGHER: He can testify as to his
7 understanding it was received. If he wanted to
8 subpoena, he could have. He didn't subpoena his
9 Employer file.

10 THE COURT: Okay. Well let's move on.

11 MR. EZELL: If you want to prove the existence of
12 a document the best way to do that is submit it as an
13 exhibit in the case. Again, it's clear they've not
14 done. It's hearsay that if he's talking about it.

15 THE COURT: So let's move on.

16 BY MR. GALLAGHER:

17 Q Beyond just the -- the mailing of the
18 information did you call Mr. Randall regarding --

19 A I did not issue --

20 Q -- the issue of the program?

21 A I -- I did not personally. To my
22 recollection Jimmy Hartso, the safety director, made
23 several attempts via phone call.

24 Q What about Mr. Dumont that Mr. Randall
25 referred to earlier? Is he some sort of safety

1 director?

2 A No. He's Vice President of Operations.

3 Q Okay. Would he have been involved in -- in
4 this?

5 A Not the -- the day to day aspect of it. I
6 don't know what the conversation was. I mean he
7 understands our programs and what we normally do in a
8 workers' comp case.

9 Q At what point was Mr. Randall terminated?

10 A He was terminated at the point of when he
11 wasn't returning the phone calls when we were trying
12 to relay the SAP program and the results. We -- we
13 also wait for the medical review officer to -- to
14 initiate and let the Employee know about the substance
15 abuse.

16 Q And as the HR Manager or Director, whatever
17 exactly your title is, are you the one responsible for
18 processing terminations?

19 A I am.

20 Q And do you document the reasons for -- for
21 the termination?

22 A Yes.

23 Q And why was Mr. Randall terminated?

24 A For the failure of the drug screen.

25 Q Was it the failure of the drug screen or the

1 failure to comply with --

2 MR. EZELL: Object to the form. It's been asked
3 and answered.

4 MR. GALLAGHER: I can ask a follow up.

5 THE COURT: Please rephrase.

6 BY MR. GALLAGHER:

7 Q Is it your understanding -- was he -- was he
8 -- was he terminated for failure to, excuse me -- for
9 the -- for the -- the drug screen failure or was he
10 terminated because he didn't follow up with the
11 program?

12 MR. EZELL: Same objection, Your Honor. He's
13 already answered he was terminated because of his
14 positive drug screen.

15 THE COURT: And I'll allow him to answer it
16 again.

17 BY MR. GALLAGHER:

18 A It -- because of the not following up with
19 the SAP.

20 Q All right. That was the reason why you, as
21 the HR Director, processed his termination?

22 A That's correct.

23 Q All right. And was notice of his
24 termination, how was that communicated to him?

25 A The -- I would have -- I could not say for

1 sure. If -- normally we -- we have a -- we bring him
2 in for an interview, but there were some problems
3 trying to get a hold of Mr. Randall.

4 Q Did you ever recall having a conversation
5 where you verbally told him that he was terminated?

6 A I do not.

7 Q Okay. Do you know or do you have any
8 personal knowledge of -- of any conversation to that
9 effect?

10 A I do not.

11 Q He obviously didn't come back to work at any
12 point did he?

13 A That's correct.

14 Q All right. So from the time he had this
15 accident until the time he was terminated he never
16 worked.

17 A That's correct.

18 Q "But for" --

19 A Other than to get back from Texas.

20 Q Okay.

21 A If he -- he completed the trip from Texas.

22 Q But for the fact that he was terminated,
23 would Palmetto have been able to accommodate light
24 duty restrictions in the guard house?

25 A We would have.

1 Q And how long or on what basis would you have
2 been amenable to -- to provide that light duty?

3 A It -- it's ongoing. I -- I -- we've had
4 Employees that's been out two years -- doing modified
5 duty.

6 Q All right. Do you have any knowledge
7 regarding the filing of workers' comp forms with the
8 Commission?

9 A Not -- no, sir. I know what most of the
10 forms are but I don't handle the filing.

11 Q Is it your responsibility to do that?

12 A No.

13 Q You do complete the Form 20, right, the wage
14 statement?

15 A The what?

16 Q Do you complete the wage statement, Form 20
17 wage statement?

18 A No, I do not.

19 Q You do not. Do you provide that information

20 --

21 A I provide information for that.

22 Q You provide it to Cherokee?

23 A I did.

24 Q Okay. You don't provide it to another
25 Employee to complete?

1 A No. I actually do it myself.

2 Q Do you have any knowledge as to why the form
3 memorializing the termination of his workers'
4 compensation benefits was not filed?

5 A I do not. It -- the first I've heard about
6 it was today.

7 Q Okay. All right.

8 MR. GALLAGHER: That's all the questions I have.

9 THE COURT: Thank you. Mr. Ezell?

10 MR. EZELL: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. EZELL:

13 Q Mr. Justice, he does not have to complete
14 the SAP program to sit in the guard house does he?
15 There's no Federal Regulation saying that --

16 A No.

17 Q -- you've got to have a CDL to sit in the
18 guardhouse?

19 A No, he does not.

20 Q Okay. Now you were asked a couple of
21 questions in succession -- when you were first asked
22 why he was terminated you said it was because of a
23 positive drug screen, right?

24 A That's correct.

25 Q Then he -- and then you were asked again and

1 you said it was failure for the SAP.

2 A There was no follow-up on the SAP.

3 Q Okay.

4 A And --

5 Q So he was either fired for the positive drug
6 screen or he was fired because there was no follow-up
7 on the SAP is your position?

8 A Yes.

9 Q But you don't have the SAP package or a copy
10 of the SAP package here with you today?

11 A I do not.

12 Q You don't have a copy of the return receipt
13 you claim you received when you sent it to him
14 certified mail?

15 A Not here today.

16 Q Okay. And did you not have any reason to
17 believe that might be important?

18 A What are you asking me, sir?

19 Q Do you not think that some evidence of the
20 grounds for his termination in a case we were seeking
21 back benefits for over a year might be important for
22 the Commissioner to see?

23 A I mean --

24 MR. GALLAGHER: Commissioner, that's -- that's
25 argumentative.

1 THE COURT: I'll allow him to answer.

2 BY MR. EZELL:

3 Q Let me repeat it. Did you not think that in
4 a case where back benefits of over a year were
5 predicated upon an improper termination that the
6 evidence of -- of his basis for termination might be
7 important here today?

8 A I think it was important, but I did not
9 think I needed to bring documentation.

10 Q All right. When asked about the light duty
11 program your words were, and I wrote them down, the
12 guard house was the plan. Your plan was to put him in
13 the guard house.

14 A That's correct.

15 Q Okay. And he could have been in the guard
16 house without the SAP as you've indicated?

17 A That's correct.

18 Q Okay. So the bottom line is that you don't
19 have any evidence that he was offered a guard house
20 job? You don't have any letter, any memo, any email?

21 A No.

22 Q Okay. So consequently I assume you don't
23 have any evidence that he refused the guard house job?

24 MR. GALLAGHER: Objection. That's not the
25 standard. He doesn't have to refuse it.

1 MR. EZELL: I -- I -- the standard is irrelevant,
2 Your Honor. I'm asking him a question.

3 BY MR. EZELL:

4 Do you have any evidence that he refused the
5 guardhouse job?

6 A I do not.

7 MR. GALLAGHER: I'm going to object to relevance.

8 THE COURT: Okay. You can answer.

9 BY MR. EZELL:

10 Q Do you have any evidence that he refused --

11 A I don't.

12 Q -- the guardhouse job?

13 A I do not.

14 Q Okay. Okay. Let me see. The general
15 policy you indicated was once you get work
16 restrictions you put somebody in the guardhouse?

17 A That's correct.

18 Q Okay. And he -- he was not fired because he
19 failed to do the guardhouse job, correct?

20 A That's correct.

21 Q Okay. So he was fired because of something
22 independent of the guardhouse job, the SAP package?

23 A That's correct.

24 Q Okay. I assume you guys pay Cherokee a
25 pretty good bit of money each month?

1 A Yes.

2 Q How long has Cherokee been your Carrier?

3 A Ten or 12 years.

4 Q Okay. So you rely upon them?

5 A We do.

6 Q They act on your behalf?

7 A They do.

8 Q Okay.

9 MR. EZELL: I think that's all the questions I
10 have.

11 THE COURT: Okay. Mr. Gallagher?

12 MR. GALLAGHER: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. GALLAGHER:

15 Q Mr. Justice, would an Employee who was not
16 involved in any sort of underlying workers'
17 compensation matter be terminated if they failed to
18 comply with a mandated SAP program?

19 A They would.

20 Q And do y'all do random drug screening?

21 A We do.

22 Q Okay. So have there been occasions in the
23 past where Cherokee -- excuse me, Palmetto Employees
24 have failed a random drug test and have been presented
25 with a Substance Abuse Program?

1 A Yes they have.

2 Q And have you had occasions in the past where
3 people failed to comply with that and you terminated
4 them?

5 A We have.

6 Q And again, these are instances where there
7 wasn't some underlying workers' compensation matter,
8 correct?

9 A That's correct.

10 Q So did you treat Mr. Randall any differently
11 in this situation than you would have anybody else who
12 failed to -- to comply with the Substance Abuse
13 Program?

14 A No we did not.

15 Q All right.

16 MR. GALLAGHER: That's all the questions I have.

17 THE COURT: Okay.

18 RE-CROSS EXAMINATION

19 BY MR. EZZELL:

20 Q Why were his benefits stopped?

21 A His benefits stopped because of the
22 termination.

23 Q Okay. And he was terminated because of
24 failure of the SAP package?

25 A That's correct.

1 Q Okay. But he could have worked in the
2 guardhouse without the SAP package. You said that?

3 A That's correct. If he wasn't terminated.

4 Q All right. Okay. There was nothing in the
5 SAP package that would have precluded him from working
6 in the guardhouse?

7 A No.

8 Q Okay. And there was nothing about a
9 positive post-accident drug that would have precluded
10 him working in the guardhouse?

11 A Well, there -- if -- if -- no.

12 MR. EZELL: That's all the questions I have, Your
13 Honor.

14 THE COURT: Okay. Mr. Gallagher, anything more?

15 REDIRECT EXAMINATION

16 BY MR. GALLAGHER:

17 Q Let me ask a question, have you -- has -- to
18 your knowledge has Palmetto previously fired folks for
19 failure to comply with the SAP who could have worked
20 in the guardhouse regardless?

21 A Yes.

22 Q Okay. Thank you.

23 THE COURT: Anything more?

24 MR. EZELL: No further questions.

25 THE COURT: Okay. There being nothing further

1 then that concludes today's hearing.

2 (The hearing concluded at 4:25 p.m.)

3

4

5

6

7

8

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 67
 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 13TH DAY OF
 FEBRUARY, 2017.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES DECEMBER 31, 2024

Cora Bruton
Court Reporter
131 Browning Court
Lexington, SC 29073
803-957-6303
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Cell - 803-397-0189
SSN - 246-72-6027

February 13, 2017

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INVOICE FOR SERVICES

Re: Herbert Randall v. Palmetto State Transportation
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December 6, 2016
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Thank you very much.

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803-397-0189

1 STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
2 COUNTY OF GREENVILLE) WORKERS' COMPENSATION
3 HERBERT RANDALL,) COMMISSION
4 Employee,) WCC FILE NO: 1516896
5 vs.) **COPY**
6 PALMETTO STATE)
7 TRANSPORTATION,)
8 Employer,)
9 and)
10 CHEROKEE INSURANCE)
11 COMPANY,)
12 Carrier,)
13 Defendants.)

14 - - - - -
15 Deposition of **HERBERT TROY RANDALL**, taken
16 by the Employer-Carrier, pursuant to notice
17 and/or agreement, before Donna B. Friddle,
18 Court Reporter and Notary Public, at Ezell
19 Law Firm, 15 North Irvine Street,
20 Greenville, South Carolina, on the 10th day
21 of October, 2016, commencing at the hour of
22 1:03 o'clock, p.m.

23 - - - - -

24

25

1 APPEARANCES:

2 **JEFFREY D. EZELL, Esquire**

3 Ezell Law Firm

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5 Greenville, South Carolina 29601

6 Attorney for Employee-Claimant.

7 **M. STEPHEN STUBLEY, Esquire**

8 Speed, Seta, Martin, Trivett, &

9 Stubley, LLC

10 1122 Lady Street, Suite 620

11 Post Office Box 11669 (29211)

12 Columbia, South Carolina 29201

13 Attorney for Employer-Carrier.

14 - - - - -

15 STIPULATIONS:

16 1. All objections, except as to the form of
17 the question and responsiveness of the
18 answer, will be reserved until the time of
19 trial.

20 2. The Witness will waive the reading and
21 signing of the deposition.

22 - - - - -

23

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INDEX OF EXHIBITS

	PAGE
THERE WERE NO EXHIBITS INTRODUCED.	

(In the following transcript, a dash [---] is used to indicate an unintentional or purposeful interruption in a sentence, or to indicate halting speech or an unfinished sentence in dialogue.)

1 HERBERT TROY RANDALL,
2 being first duly sworn/affirmed, was
3 examined and deposed as follows:

4 DIRECT EXAMINATION

5 BY MR. STUBLEY:

6 Q. Mr. Randall, my name is Stephen
7 Stubbley, and I'm here today on behalf
8 of Palmetto State Transportation and
9 Cherokee Insurance Company regarding
10 the accident that you had on October
11 31st, 2015. Have you ever been in a
12 deposition before?

13 A. No, sir.

14 Q. Okay. I'm going to ask you a series of
15 questions today. I'm going to find out
16 about how far you went in school, your
17 work background, your medical history,
18 and the issues that you're having as a
19 result of this injury. If I ask you
20 any questions that you don't
21 understand, if you'll let me know I'll
22 be happy to rephrase the question for
23 you. Okay?

24 A. Yes, sir.

25 Q. If I ask you any questions and you

1 respond, I'm going to assume you're
2 giving me a truthful response. And I
3 know that you have legitimate back
4 issues. Nobody's questioning that.
5 And if you need to get up and move
6 around today just for your own comfort,
7 feel free to do so as long as I can --
8 the court reporter can still hear you.
9 Okay? With that, what is your full
10 name?

11 A. Herbert Troy Randall.

12 Q. And your date of birth?

13 A. 8/16/62.

14 Q. And what's your current home address,
15 Mr. Randall?

16 A. Homeless.

17 Q. Okay. Do you have a shelter that
18 you're staying in?

19 A. I have a friend of mine's camper I'm
20 staying in.

21 Q. Okay. And where is that located?

22 A. In Taylors.

23 Q. Does anybody live there with you?

24 A. No. My dog.

25 Q. Okay. And how far did you go in

1 school?

2 A. Oh, how -- how educated am I?

3 Q. Yes.

4 A. Graduated high school, and probably
5 two, two and a half years of college.

6 Q. Okay.

7 A. Plus some other work-related
8 educational thing.

9 Q. All right. Did you get any type of
10 Associate's Degree for the two years in
11 college?

12 A. No, I carried a certification by the
13 State of South Carolina. I had to go
14 to Purdue University and study
15 entomology. Owned a pest control
16 business at one time.

17 Q. Okay. And what other certifications do
18 you have?

19 A. Truck driver.

20 Q. Okay. Prior to becoming a truck driver
21 what did you do as far as employment?
22 What types of jobs?

23 A. I was 16 year old, worked in a pallet
24 factory.

25 Q. Okay.

1 A. Started driving a truck when I was 17.

2 Q. All right. Have you driven trucks ever
3 since?

4 A. Beside four years I did in the United
5 States Air Force.

6 Q. Okay. So you were four years Air
7 Force?

8 A. Uh-huh (Affirmative).

9 COURT REPORTER: Is that a "yes"?

10 THE WITNESS: Yes. Sorry.

11 Q. What was your MOS in the Air Force?

12 A. I was security police officer. I don't
13 know what the actual MOS number was
14 now.

15 Q. Okay.

16 A. 83150, or something. I don't know.

17 Q. And were you honorably discharged?

18 A. No.

19 Q. Okay. What happened?

20 A. What happened where?

21 Q. When you said that you were not
22 honorably discharged, why were you
23 discharged from the Air Force?

24 A. I don't know that it has any bearing on
25 what we're talking about; does it?

1 MR. EZELL: You need to answer
2 that question.

3 THE WITNESS: Huh?

4 MR. EZELL: You need to answer the
5 question.

6 A. What was I discharged for? I can't
7 honestly say I remember what the exact
8 charge was, tell you the truth.

9 Q. Okay. So you don't recall?

10 A. No, that was in 1987. But I was
11 discharged. It was less than honorable
12 discharge.

13 Q. All right.

14 A. But I don't remember what -- what the
15 actual wording is. I couldn't tell
16 you.

17 Q. Did they discharge you for an act?

18 A. For an act?

19 Q. Sure. A crime? Did you commit any
20 crimes in the Air Force?

21 A. Oh. Yeah, I got caught doing some
22 unsavory things. Yeah.

23 Q. Okay. What was the crime?

24 A. Obstruction of justice, I think. I
25 know they lowered it, but it was

1 obstruction of justice at one time.

2 And then when they lowered it, it may
3 have been something else. But honestly
4 I couldn't tell you what it was now.

5 It's been so long ago I don't remember
6 that.

7 Q. Okay. And did you have a CDL before
8 you went into the Air Force?

9 A. Back then it was a Class D license. It
10 wasn't CDL. It was in Illinois. And
11 to drive a truck was actually a Class
12 D.

13 Q. But you had a Class D license before --

14 A. Yes.

15 Q. -- you went into the Air Force? Okay.

16 A. Yeah.

17 Q. When you came out did you go
18 immediately back to truck driving?

19 A. Yeah, I was grandfathered into the CDL
20 program.

21 Q. Okay. All right. How long did you
22 work for Palmetto State Transportation?

23 A. Six years, I believe it was. Maybe
24 five. I'm not even really sure about
25 those dates.

1 Q. Okay. Were you a single driver or a
2 team driver?

3 A. Single.

4 Q. Okay. And did you have a specific
5 route that you usually ran, or --

6 A. No.

7 Q. -- was it multiple? All right. Excuse
8 me. Who is your immediate supervisor
9 at Palmetto State?

10 A. It would be the owner, Bobby Dumit, or
11 the safety officer, Jimmy Hartsoe. But
12 I don't know the -- didn't really have
13 a driver's rep like that. You kind of
14 talked to whoever you had to talk to
15 about whatever it was.

16 Q. Okay. And did they pay you by the
17 mile?

18 A. By the mile, yeah.

19 Q. Do you recall --

20 A. And by the stop also. There was also
21 stop pay and --

22 Q. Okay. Do you recall how much they were
23 paying you by the mile at the time of
24 your injury?

25 A. Forty-four or forty-six cents. There

1 were some raises going on in there.

2 You know this -- or it had just

3 occurred. And I think -- it was 44, I

4 think it was.

5 Q. Okay. And you said on top of that you
6 got stop pay?

7 A. Uh-huh (Affirmative).

8 Q. How exactly does that work?

9 A. Well, it was an LTL company, which
10 lessened truck load. So you have --
11 might have a trailer that had -- I mean
12 you could have a trailer with one stop
13 in it. Just -- or you might have a
14 trailer that had 15 stops in it.

15 Q. Right.

16 A. And you would make the first stop for
17 free. Every stop after that you were
18 paid a per diem for that stop up until
19 -- I think you had to give them the
20 first one and the last one. And
21 anything in between you were paid extra
22 money for.

23 Q. Okay.

24 A. That's pretty standard across that
25 industry.

1 Q. When was your last date of employment
2 with Palmetto State Transportation;, do
3 you recall?

4 A. Do -- are you talking about the day I
5 was fired, or the last day I worked?

6 Q. The last day you worked.

7 A. Been November the 1st of 2015. Day
8 after that wreck.

9 Q. All right. And when were you fired?

10 A. Couldn't tell you what date that was.

11 Q. Okay. All right. Going to the date in
12 question on October 31st, 2015, tell me
13 what happened.

14 A. Okay. I was driving across east Texas
15 over toward Beaumont on I-10 going
16 eastbound. It was o'dark-thirty in the
17 morning. Maybe 1:30. I'm not exactly
18 sure about the exact time, but it was
19 around 1:30ish. There was rain -- it
20 was raining like -- you know it -- it
21 was raining extremely hard, a lot of
22 water on the highway. There was -- had
23 been a wreck on the interstate on the
24 eastbound side when I come up on
25 stopped traffic in the interstate. I

1 stopped in the right lane, had my four-
2 way flashers going, because there's
3 stopped traffic. I stopped probably 20
4 foot behind the vehicle that was in
5 front of me. Had my four-way flashers
6 on, all of the lights working,
7 everything. Look in the mirror,
8 another vehicle -- I don't know what
9 kind of vehicle it was, stopped behind
10 me. I'm sitting in the seat, and it
11 probably -- I don't know if it was five
12 seconds or a minute later. Anyway, I
13 was slammed in the rear-end by
14 something. And a guy hit me in the
15 rear-end.

16 Q. So somebody hit the car that was behind
17 you?

18 A. First. Before they hit me.

19 Q. Okay.

20 A. They didn't hit that vehicle in front
21 of -- yeah, behind me. And then that
22 vehicle hit me. They hit that vehicle
23 -- went through that vehicle, and hit
24 me.

25 Q. So the same car?

- 1 A. Yes.
- 2 Q. Okay.
- 3 A. It destroyed the -- the vehicle behind
4 me ended up being a pickup truck. It
5 totaled that pickup truck. How them
6 two guys weren't killed, I don't have
7 the vaguest idea. But the vehicle that
8 hit my truck -- the one that initiated
9 the accident hit -- hit the trailer
10 hard enough that it broke the frame on
11 the trailer.
- 12 Q. Okay. Did the police find that -- I'm
13 assuming that driver at fault?
- 14 A. Yes.
- 15 Q. Okay.
- 16 A. Charged him with DUI.
- 17 Q. Have you filed a lawsuit against that
18 driver?
- 19 A. Yes.
- 20 Q. Is that ongoing?
- 21 A. Excuse me?
- 22 Q. Is it ongoing? An ongoing --
- 23 A. Yes.
- 24 Q. -- case? All right. Okay. And you
25 were immediately treated out in Texas?

1 A. I don't know what kind of -- what you
2 would call "treatment." I was -- they
3 had to take me out of the truck on a
4 backboard --

5 Q. Okay.

6 A. -- 'cause I was pinned against the dash
7 of the semi-truck. And it moved the
8 pickup -- it moved the semi-truck, as I
9 understand it, and pushed it up the
10 road, and was kind of a little
11 cockeyed, and but not out of the lane.
12 They ended up -- somebody came up to
13 the truck, and I -- my legs were pinned
14 against the dash sitting cockeyed in
15 the -- in the seat. My back was
16 absolutely on fire. And my leg, I
17 couldn't feel my left leg.

18 Q. All right.

19 A. Somebody came up there and asked me if
20 I was okay. And I said, I didn't know.
21 They said that the -- the emergency
22 people were on their way. I don't know
23 how long it was. It could have been
24 five seconds. It could have been 15
25 minutes. I don't know how long it was

1 --

2 Q. Okay.

3 A. -- when fire got there. They ended up
4 extricating me from the vehicle on a
5 backboard, put me in the ambulance,
6 took me however far it was to the
7 hospital. They did X-rays on me. I
8 think that's about all they did for me.

9 Q. Okay. And --

10 A. They gave me pre -- some kind of
11 prescription there.

12 Q. Okay. Did they refer you or tell you
13 to see someone when you got back to
14 South Carolina?

15 A. I don't know. I don't remember.

16 Q. Where was the next place that you
17 treated?

18 A. It would have been at the
19 chiropractor's office here in
20 Greenville.

21 Q. Okay.

22 A. Chandler Chiropractic.

23 Q. All right. Had you treated with them
24 before this accident?

25 A. No.

1 Q. Okay. All right. What did they do for
2 you at Chandler Chiropractic?

3 A. She stuck the -- the chiropractor, Dr.
4 Green, started doing -- they did spinal
5 adjustments. They done X-rays on me.
6 Did physical therapy -- or, well, some
7 kind of back therapy thing with a
8 machine, and then did physical
9 adjustments.

10 Q. Did that provide you any relief?

11 A. It did provide the relief that -- when
12 I got back here I was bent over at the
13 waist almost at, say, a 45 degree
14 angle.

15 Q. Right.

16 A. And it did allow me to stand upright
17 more, but not completely. And I think
18 -- I want to say that she adjusted me
19 four times, I think it was, before the
20 insurance company told me not to go
21 back there.

22 Q. Were you having pain in any central
23 part of your back, or was it your
24 entire spine?

25 A. No, I have two se -- two points in my

1 back.

2 Q. Okay. And where are they located?

3 A. In my upper back. And it feels like
4 it's on the left side of my spine, and
5 that is basically it feels like
6 somebody's, you know, got a knife dug
7 in my back. And then it just burns
8 like fire. Probably about the size of
9 a basketball. And because of that --
10 well. And I get massive headaches that
11 don't -- the only thing I can do is
12 take -- I take about 3,000 milligrams
13 of ibuprofen a day for the headaches
14 that I get. It does help with the
15 headaches, but it doesn't do anything
16 for the back pain. Then in my lower
17 back I have what feels like -- say I
18 was punched in the kidneys. And it
19 just goes like that always.

20 Q. Is it all --

21 A. I --

22 Q. -- the way across the base of your
23 back, or is it centralized in --

24 A. It -- it --

25 Q. -- your side?

1 A. I -- I would say like from the spine
2 maybe three inches out, both sides.

3 Q. Okay.

4 A. And that is just -- like I said, just
5 constantly feels like I've been punched
6 in the kidneys, except when I walk.
7 When I walk any distance -- and I'm
8 talking maybe anything ten or fifteen
9 feet -- that pain in my lower back
10 increases, and it actually -- I find
11 myself kind of trudging where I'm like
12 kind of throwing my legs forward,
13 because it hurts that bad.

14 Q. Would you say that -- is the lower back
15 worse than the upper back?

16 A. I would say the upper back, the
17 spiking, stabbing pain, and the
18 burning. And they're two different
19 things.

20 Q. Right.

21 A. They're -- they're two completely
22 different things. I can't say one's
23 worse than the other, because I am
24 totally cognizant of both of them at
25 the same time.

1 Q. Okay.

2 A. I can't say one's worse than the other.

3 It -- it's different, you know. I

4 don't even know how to explain that.

5 It -- the -- it's two totally -- it

6 feels like it's two totally different

7 injuries. It's almost like if you cut

8 an arm off, and you cut -- cut a leg

9 off, they're two totally different

10 injuries. Besides the headaches I have

11 severe tinnitus that is just -- it

12 never ends. And I mean when I say "It

13 never ends," I mean it never ends. And

14 it sounds like it is just -- maybe you

15 take a razor, stick it in my ear, and

16 just tape it beside my head, that's

17 what I hear 24 hours a day. It never

18 ends. It never goes away. It never

19 gets less. It never gets more. It's

20 constant.

21 Q. Okay.

22 A. Then I have these spiking pains that go

23 down from the center of my lower back.

24 And this might happen three or four

25 times a day. And then it might not

1 happen for three or four days. And
2 then it might happen once a day for the
3 next five days. And it's just -- just
4 this jeering pain runs down the side of
5 my leg, the outer leg, right into my
6 kneecap. And it basically will
7 collapse me.

8 Q. Is that your right leg?

9 A. My right leg. And I've fallen probably
10 four or five times. When that's
11 happened I just lose all feeling in my
12 leg. It feels like somebody's ripping
13 my leg open. And it might last five
14 seconds. It might last five minutes,
15 that feeling. But that can happen if
16 I'm just sitting here. That can happen
17 --

18 Q. Okay.

19 A. -- if I'm walking. If can happen if I
20 lay down. I'm not in control of that
21 whatsoever.

22 Q. Have you been prescribed any medication
23 that's provided you any relief?

24 A. No.

25 Q. Okay. Well, I know that after you went

1 to the chiropractor you saw Dr. -- is
2 it Dr. Gail or Dr. Galle at the
3 Greenville Hospital Sys --

4 A. At -- med doctor. Occupational medical
5 doctor?

6 Q. Yes.

7 A. Yeah, I saw him. I saw his -- well,
8 that was later.

9 Q. Okay.

10 A. Okay. After -- after the chiropractor
11 I went to Occ Med. And that was a
12 nurse practitioner whose name -- get -
13 I'd have to get off your records. I
14 don't remember --

15 Q. Okay.

16 A. -- what that woman's name was.

17 Q. Okay.

18 A. I saw her the first two -- may -- maybe
19 two times I went there, I didn't see a
20 doctor yet. And that basically was she
21 checked my reflexes and checked my
22 blood pressure, and told me what -- you
23 know whatever it is that she said. And
24 then I went there. And they gave me
25 prescriptions there. They put me on --

1 gave me physical therapy over at a
2 physical therapist's office over off of
3 Pelham Road.

4 Q. Was that beneficial at all?

5 A. No, that actually was -- made -- made
6 it worse. And all they did for me was
7 water therapy over there. Get in the
8 swimming pool and wade around. Try to
9 do some exercises in the pool, and it
10 absolutely destroyed my lower back.
11 The pain was incredible in that. I
12 went through 12 sessions of that, I
13 think it was. And I went to a
14 neurosurgeon over there off Doctors
15 Drive.

16 Q. Dr. Hodge?

17 A. Yeah. And I guess you have their
18 reports; right?

19 Q. I know that he said that he didn't
20 think you were a surgical candidate.

21 A. I mean -- I -- I don't know, do you
22 want word for word what the man said to
23 me?

24 Q. If you want to tell me what he said,
25 sure.

1 A. Well, I mean to a point he said the
2 same thing that the first -- that the
3 nurse practitioner said. And then he
4 said it. And then the occupational
5 medical doctor that I went and saw,
6 that Galle, he said it. They walked in
7 the room, all three of them. I mean
8 one at a time. I was in their separate
9 offices. And he introduced himself.
10 And before shaking my hand, or in the
11 middle of shaking my hand, before they
12 examined me, before they took X-rays,
13 before they looked at anything, they
14 said "I'm here to tell you that your
15 injuries didn't come from this
16 accident." Now, they hadn't -- hadn't
17 examined me whatsoever.

18 Q. Okay.

19 A. The neurosurgeon, Hodge, when he said
20 that to me, I said, "How would you know
21 that, you haven't even seen the MRI?
22 You haven't even examined me." He spun
23 around. He looked at the screen that
24 they had the MRI up on. And he said,
25 "Yeah, there ain't nothing I can do for

1 you." And that was the end of that
2 meeting.

3 Q. Okay. Did anybody do any MRIs or
4 anything on you?

5 A. I had an MRI done at Innervision. I
6 don't remember the exact date of it
7 quite honestly.

8 Q. Okay.

9 A. But I did have an MRI done at
10 Innervision over here in Greenville.

11 Q. Okay.

12 A. Then I went to a doctor out at Five
13 Points up by Scuffletown Road here in
14 Greenville. And honestly I -- you'll
15 have to look at the record to see what
16 the -- what his name was. They wanted
17 to do Cortisone injections in my spine.
18 And I guess they had to call the
19 insurance company to get that
20 authorized or something. Anyway it
21 wasn't authorized. So he told me there
22 wasn't anything he could do for me.
23 That Dr. Galle had told me there wasn't
24 anything he could do for me. And then
25 I went to the neurosurgeon up there in

1 Spartanburg. And that doctor's name --
2 what's his name?

3 MR. EZELL: Is it Chittum?

4 THE WITNESS: Chittum?

5 MR. EZELL: That's right. Sorry.

6 MR. STUBLEY: That's all right.

7 A. All right. And, I mean, he looked at
8 the MRI. I'm pretty sure he looked at
9 it. He didn't look at it -- at it in
10 the room where I was in. I did take it
11 with me, and he had it. So I'm
12 assuming he looked at it. And he
13 wanted it, told me he wanted to do a
14 spinal fusion, that that's the only
15 thing he could see that would help me
16 whatsoever. And he actually wanted to
17 schedule it that day that I was in
18 there. And I told him, "Well, that
19 would be beyond my control at this
20 point."

21 Q. Okay.

22 A. I didn't know -- or I don't know if I
23 have the ability to schedule something
24 like that right now from a medical
25 standpoint where I am legally, so. You

1 know I just told him, "Well, I will
2 just have to get back with you on that
3 one."

4 Q. So --

5 A. Other than that, that's it. All the
6 prescriptions they gave me over time,
7 these doctors, seeing them, giving me
8 Tramadol, giving me -- oh, God, there's
9 a whole list of them. And I don't --
10 can't tell you what all of them are.
11 But I'm sure it's on record. Not one
12 of those things ever did anything
13 whatsoever for me.

14 Q. Okay.

15 A. They wouldn't help with the headache,
16 you know. I made a joke about it. "If
17 they would just give me M&M's at least
18 I would have been happy. I would have
19 had chocolate."

20 Q. But Dr. Chittum was the last person
21 that you've seen for your back?

22 A. Yes, sir.

23 Q. Okay. Do you have a family doctor in
24 Greenville?

25 A. No.

1 Q. Where do you go if you're sick?
2 A. I don't get sick. I don't go to
3 doctors.
4 Q. So you --
5 A. I haven't -- I haven't been to --
6 beside a DOT doctor --
7 Q. Right.
8 A. 'Cause I have to go for a DOT physical
9 obviously.
10 Q. Right.
11 A. I haven't been to the doctor in 25
12 years.
13 Q. Okay.
14 A. If I cut my finger, I'll put some tape
15 over it. It will be all right.
16 Q. Okay. In your medical notes it says
17 that you had -- I guess you have bad
18 scoliosis; is that correct?
19 A. I have scoliosis. I was born with it.
20 Q. Okay. Did you treat any -- who did you
21 treat with for that over a period of
22 time?
23 A. Been to chiropractor a few times in my
24 life, but that -- really nothing -- was
25 noth -- until about 1988 there was no

1 -- no cure for scoliosis whatsoever,
2 until a Hollywood doctor invented
3 prosthesis for it, for a Hollywood
4 actress. And that runs about 30, 40
5 grand back then. I'm pretty educated
6 when it comes to scoliosis, 'cause I've
7 had it my whole life. It's never
8 stopped me from doing anything. And
9 when I say "anything," I literally mean
10 anything. My limitations were
11 physically -- because I'm a blue collar
12 worker --

13 Q. Right.

14 A. -- my hands are tore up. There's
15 literally nothing I won't try, I
16 couldn't do. If I -- I mean, maybe I
17 couldn't lift 500 pounds, but I could
18 lift 200 pretty easy.

19 Q. Right.

20 A. And -- and I've never shied away from
21 anything. Never had back pain. Just
22 every once in a while people need to
23 get adjusted. I feel like I need an
24 adjustment. Maybe I'm standing a
25 little crooked. Somebody will say

1 something to you. Go by a chiropractor
2 and you get an adjustment.

3 Q. Did you see a chiropractor here in
4 South Carolina other than Chandler
5 Chiropractic?

6 A. For this? No.

7 Q. No, no, not for this. But like prior
8 to --

9 A. Years ago back in the early '90s.

10 Q. Okay.

11 A. Went to church, and there was a guy in
12 the church that was a chiropractor.
13 And he would do chiropractic. He would
14 do adjustments on you for free. So I
15 went a few times, 'cause they were
16 friends of ours.

17 Q. Okay.

18 A. But not for pain or anything like that.
19 Just go to a chiropractor and get an
20 adjustment.

21 Q. Okay. I don't know if I got it off of
22 your driving report or got it off of
23 what's called an "ISO Report." But it
24 indicated that you had also been in car
25 accidents in 2001 and 2013?

1 A. I don't know. 2001 what? What's the
2 accident?

3 Q. Were you in a car accident in 2001?

4 A. I don't have the faintest idea.

5 Q. You don't know if you were in a car
6 accident?

7 A. In 2001? Not -- no, I don't know even
8 what you're talking -- unless -- unless
9 you are going to sit there and tell me
10 what it is, I can't tell you I was or I
11 wasn't.

12 Q. How about in 2013?

13 A. I don't know. What are we talking
14 about?

15 Q. You tell me. I'm asking you the
16 question. You don't --

17 A. I -- to the best of my knowledge I have
18 no idea.

19 Q. So is that a "no"?

20 A. That's to the best of my knowledge, I
21 have no idea.

22 Q. Is there any reason that you would not
23 recall being in a car accident in 2013?

24 A. Beside the fact it was three years ago.
25 And I don't know what you're talking

1 about. I'm sorry. If I was involved
2 in a wreck and you have some proof of
3 it, tell me what it is.

4 Q. I'm asking you, sir.

5 A. I have no idea if I was or I -- I'm not
6 saying I wasn't, I'm not saying I was.

7 Q. All right. Have you been in any other
8 car accidents or trucking accidents
9 while working for Palmetto State
10 Transportation?

11 A. I had a truck driver hit me in a truck
12 stop that happened -- it wasn't too
13 many months before this accident here
14 happened. I was parked, and he was
15 backing into the spot next to me, and
16 ran into my truck.

17 Q. Okay.

18 A. Let me see. There was one somebody
19 tried to accuse me of being in. Oh, I
20 was in Wabash -- was that the name, Mc
21 -- Warren -- some kind -- some town in
22 Ohio. This may have been in 2013.

23 Q. Okay.

24 A. When making a right-hand turn on a
25 corner they said my trailer hit a

1 vehicle. Hit another -- came in
2 contact with an SUV, or some type of
3 vehicle. And my argument was it
4 didn't. Went to court. They found me
5 guilty of being in that accident. So
6 maybe that was 2013. But I -- I
7 couldn't have told you what the date on
8 that was.

9 Q. Okay. Well, let me ask it to you this
10 way: Have you been injured in any
11 other car --

12 A. No.

13 Q. -- accidents? Have you filed any other
14 Workers' Compensation claims against
15 Palmetto State Transportation?

16 A. No.

17 Q. And other than the claim we're here on
18 today, and the lawsuit that you have
19 going on against the at fault driver,
20 have you been a party to any other
21 lawsuits?

22 A. No.

23 Q. All right. Now, prior to the accident
24 on October 31st, 2015, were you having
25 -- did you have pain anywhere in your

1 back?

2 A. No.

3 Q. Did you have any other ongoing health
4 issues other than the scoliosis?

5 A. Any what?

6 Q. Any other ongoing health issues like
7 diabetes?

8 A. No.

9 Q. Okay. Were you on any other
10 prescription medications at that time?

11 A. No. Until this accident I hadn't taken
12 an aspirin in 25 years.

13 Q. In regards to your termination from
14 Palmetto State Transportation, what was
15 your understanding of why were you
16 being terminated?

17 A. Because of a DOT drug test.

18 Q. Do you know what you tested positive
19 for?

20 A. THC.

21 Q. All right. Do you still have a valid
22 --

23 A. No.

24 Q. Okay. Driver's License is what I was
25 going to ask you.

1 A. The answer is "no."

2 Q. Okay.

3 A. I have what? I don't have a valid CDL
4 Driver's License. I have a valid
5 Driver's License.

6 Q. Have you worked anywhere since being
7 terminated from Palmetto State --

8 A. No.

9 Q. -- Transportation? Have you applied
10 for, or are you receiving any
11 unemployment benefits?

12 A. No.

13 Q. Have you applied for Social Security
14 benefits?

15 A. Yes.

16 Q. Okay. Has there been a ruling on the
17 Social Security?

18 A. I was denied the first -- the first re
19 -- what do call it, application?

20 Q. Okay.

21 A. So I'm doing the -- I'm in the middle
22 of the appeal right now.

23 Q. And do you have an attorney
24 representing you on that?

25 A. No.

1 Q. Has your appeal been submitted?

2 A. Not yet. I have till October the 24th
3 to submit that.

4 Q. Okay.

5 A. It's basically just a bunch of
6 paperwork, about five pages.

7 Q. Mr. Randall, have you been charged with
8 any felonies in the past ten years?

9 A. No.

10 Q. Any arrests in the past ten years?

11 A. No. Are you saying "Two or ten"?

12 Q. Ten.

13 A. Huh-uh (Negative).

14 Q. Are there currently -- tell me
15 currently physically what you are
16 unable to do as a result of your
17 injury, as far as how it applied to
18 your job.

19 A. How it applied to my job?

20 Q. Correct.

21 A. Well, right now I can't sit up
22 straight. I can't hold my head up
23 straight more than a couple of seconds,
24 'cause it hurts in my neck and
25 exacerbates the pain in my neck. I lay

1 down probably two-thirds of the day.

2 Q. Okay.

3 A. I'm unable to sleep. Last night I
4 actually got about three hours sleep,
5 but not at one time. I sleep about an
6 hour. It takes me maybe 30 minutes to
7 an hour laying down. And out of pure
8 exhaustion --

9 Q. Right.

10 A. -- it will take me 30 minutes to an
11 hour to get to a point where I can
12 actually go to sleep, or find a
13 position that is the least painful,
14 that doesn't exacerbate the pain from
15 laying down. And I've pretty much got
16 it down to an area how I have to lay.
17 And then I have to kind of struggle
18 with my body to -- to get in that exact
19 right position, so I can go to sleep.
20 But any movement -- if I move while I'm
21 sleeping, it will spike the pain. It
22 will change the pain in my back to
23 where it -- I mean like a shock of
24 waking you up. So I don't sleep very
25 much. But I lay down a lot just to get

1 the pressure off of my lower back.
2 Just sitting here the pain -- you know
3 this pain never goes away. But it does
4 get -- sitting here it -- it's starting
5 to get pretty uncomfortable. I mean
6 it's uncomfortable because it's
7 constant pain. But it kind of grows,
8 the pain, and where I need to lay down.
9 I suffer -- you know I'm suffering from
10 extreme exhaustion. It just -- it -- I
11 don't get to sleep. I don't get to
12 rest. I get no -- absolutely no relief
13 from the pain. And the noise inside my
14 head from this tinnitus is just -- it
15 -- it -- it's nearly unbearable.

16 Q. And so other than laying down there's
17 nothing else that you can do, or that
18 you do that sometimes provides you any
19 relief?

20 A. Oh, no, I don't get any relief. I mean
21 if I have to take the trash out --
22 because I stay in this camper at my
23 friend's, if I have to take the trash
24 out to the garbage can -- it's about 30
25 feet to the garbage can. And by the

1 time I get there I'm trudging. And
2 it's everything I can do to get back.
3 And there's been times where I'll have
4 to sit -- sit down at the picnic table
5 by the back of their house, and sit
6 there and wait about ten minutes before
7 I feel like my legs will get me back.

8 Q. Okay.

9 A. You know I have to do dishes. You know
10 it -- it's -- I -- I try to do dishes.
11 If I use a plate I try to wash that
12 plate, 'cause I can't let dishes pile
13 up, 'cause I can't stand up there and
14 do dishes all day long. I sit down.
15 And if I shave, I sit down. Because
16 standing -- the longer I stand the
17 worse my back gets. The worse my lower
18 back gets. I -- I get no relief from
19 it whatsoever. Trying to keep my mind
20 centered on one thing -- trying to pay
21 close attention, I can't do that
22 because the -- the pain takes -- I
23 start thinking about the pain. And so
24 trying to focus on -- if it's a TV
25 show, I'll -- I'll just -- if I'm

1 sitting there watching TV, it's hard to
2 focus on that. It -- you can watch a
3 little bit of it, and you can't focus
4 on that anymore. Maybe I need to stand
5 up and just move my legs just a little
6 bit. Or maybe I need to go lay down.
7 But this is constant. This is -- it --
8 it's not a life I wish on anybody.
9 It's no life at all.

10 Q. So really about 30 feet at a time is
11 about your maximum ability to walk?

12 A. Sometimes it is, yeah.

13 Q. Okay.

14 A. Sometimes it's less than that.

15 Q. Okay.

16 A. But by the time I walk 30 feet, any
17 time, I'm trudging. I -- I feel --
18 maybe I don't -- maybe I don't look
19 like I'm trudging, like I'm dragging my
20 feet, but that's what I feel -- that's
21 what it feels like. It feels like I'm
22 trying to throw my hips to throw my
23 legs. That's what I'm feeling in my
24 legs. Maybe that's not what I'm
25 actually doing, but that's what it

1 feels like I'm doing. And it -- and
2 the pain just spreads through my hips.
3 And it's not good. It just -- but it
4 doesn't matter if I'm sitting here
5 today, or if I have to go to the -- if
6 I have to go to the grocery store, and
7 ride to the grocery store, and then
8 walk inside with a -- and -- and get a
9 cart, and then I need to sit down.
10 There's a little Subway there at the
11 Walmart. I can sit there for ten,
12 fifteen minutes and rest, and then get
13 a few things, 'cause I don't go big
14 grocery shopping. I live in a little
15 camper. I have limited room. So I get
16 a few things, and I get out of there.
17 And by the time I'm done if I -- if it
18 takes me 20, 30 minutes to go to
19 Walmart, and I live two mile -- two
20 minutes from there. If it takes me 20,
21 30 minutes to get there and get back
22 completely, I need to lay down probably
23 three or four hours. I'm going to be
24 laying down just to recover from that.
25 Q. Right.

1 A. There's that much pain and that much
2 discomfort. And --

3 Q. Okay.

4 A. -- my life's gone to hell. I mean, I'm
5 not going to be -- I -- you know I
6 worked my entire -- my entire life. I
7 know nothing but about hard work. I'm
8 a blue collar worker. I'm not used to
9 this not working. This is about to
10 drive me insane. And there's nothing
11 good to come from this whatsoever.

12 Q. The doctor who recommended surgery, did
13 he feel like that by performing surgery
14 you may be able to return to work?

15 A. Never got into that. He said the only
16 thing he thought -- from my
17 understanding --

18 Q. Right.

19 A. -- the only thing that he could do for
20 my upper back pain -- and I don't know
21 if that included the lower back, or
22 whatever, was to do this spinal
23 surgery. But that was -- that was the
24 only thing I understood him as saying
25 was going to help with this. That --

1 now, what -- what relief that would
2 give me, I got no idea. I'm not a
3 doctor.

4 Q. Did he make any specific
5 recommendations in regards to your
6 lower back, or just the upper back?

7 A. To my knowledge just my upper back. I
8 don't know. I don't recollect I've
9 even seen that medical report, so I
10 can't tell you exactly what he said.

11 Q. Okay. Okay. And you said it was a
12 fusion?

13 A. From my understanding what he said,
14 "Well, you need the spinal fusion."
15 And I think he may have told me what
16 part of my spine. You know the --
17 whatever the numbers are and letters
18 are that --

19 Q. Right.

20 A. And I'm sure that's all in the medical
21 report.

22 Q. All right. Have you understood all of
23 my questions today?

24 A. Yes.

25 Q. Have all of your answers been truthful

1 to the best of your knowledge?

2 A. Yes.

3 MR. STUBLEY: That's all I have
4 for you.

5 **CROSS-EXAMINATION**

6 **BY MR. EZELL:**

7 Q. Troy, are you willing to do whatever
8 the treating physician says to try and
9 get better?

10 A. I've got to do -- yeah, I've got to do
11 -- something has to be done. I can't
12 live my life like this, so I'm willing
13 to -- at this point if they said "Put
14 pennies in your ears, it will make your
15 tinnitus go away," I'll try it.

16 Q. Okay. And the positive post-accident
17 drug screen you had, you were not under
18 the influence of any drugs or alcohol
19 at the time the accident occurred?

20 A. No.

21 Q. Okay.

22 MR. EZELL: That's all of the
23 questions I have.

24 **(DEPOSITION CONCLUDED)**

25

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF GREENVILLE)

4 I, DONNA B. FRIDDLE, a Notary Public, duly
5 commissioned and qualified in and for the
6 State of South Carolina, do hereby certify
7 that the deposition of Herbert Troy Randall,
8 called by the Employer-Carrier, was taken
9 before me on October 10, 2016, commencing at
10 1:03 p.m., and concluding at 1:41 p.m.; that
11 said Witness was duly sworn; that his
12 deposition testimony was transcribed by me;
13 and that this transcript is a true record of
14 said testimony. I further certify that I am
15 not of kin or counsel to the parties in this
16 case, am not in the regular employ of
17 counsel for any of said parties, nor am I
18 interested in the results of this case.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and affixed my official seal this
21 11th day of October, 2016.

22

23 Notary Public for South Carolina

24 My Commission Expires: 11/24/25

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739 www.wcc.sc.gov



WCC File #: **1516896**
Carrier File #: **WC41487**
Carrier Code #: **1101**
Employer FEIN #:

Claimant's Name: Herbert Randall SSN: 342-60-1321
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City: Taylors State: SC Zip: 29687
Home Phone: (864) 517-8169 Work Phone: () -
Date of Injury: 10/31/15

Employer's Name: Palmetto State Transportation
Address: 1050 Park West Blvd.
City: Greenville State: SC Zip: 29611
Insurance Carrier: Cherokee Insurance Co.

Preparer's Name: George D. Gallagher, Esquire Law Firm: Speed-Seta Law Firm Preparer's Phone #: (803) 748-2919

Date of Injury or Illness: 10/31/15

Estimated time for hearing: 30 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 Form 50. The reasons for denial are:
Defendants admit compensable injuries to cervical and lumbar spine with psychological overlay per Full WCC Order dated 6/9/17 but deny all other alleged injuries, conditions, and/or disabling effects and/or to the extent alleged
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:
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See #1 Above
5. It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:
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:
a) See #1 above regarding scope of compensable injuries; and b) Defendants will continue to authorize and be financially responsible for all causally related and medically necessary treatment under the direction of authorized providers until Claimant reaches MMI and beyond per the Act
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of:
Claimant on running TTD from 12/6/17 and award of accrued benefits prior to that date under Appeal to Court of Appeals
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
a) See #1 above; and b) Determination of the extent of permanent disability is premature pending release at MMI
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 1,495.78 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants deny that Claimant is entitled to weekly payment of accrued TTD awarded and currently under Appeal to Courts- Case v. Hermitage Cotton Mills, 115 S.E.2d 57, 236 S.C. 515 (1960) (holding that statute governing payment of benefits pending appeal only requires payment of weekly compensation accruing AFTER the date of the Commission's Award).

☐ 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: George D. Gallagher Attorney Title: GGallagher@Speed-Seta.com Email: August 2, 2017 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 at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. 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 07/13

51

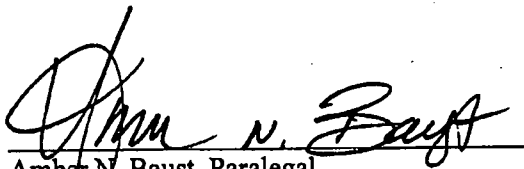
Employer's Answer to Request for Hearing

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing WCC Form 51, Employer's Answer to Request for Hearing, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 8 day of August, 2017.

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Jeffery D. Ezell, Esquire
Ezell Law Firm, LLC
15 N. Irvine Street
Greenville, SC 29601


Amber N. Baust, Paralegal
Speed, Seta, Martin, Trivett & Stubley, LLC
Post Office Box 11669
Columbia, South Carolina 29211
(803) 748-2844

Attorneys for Defendants

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

WALLACE SPEED (GA & TN)
LESLI R. SETA (GA & FL)
SETH C. MARTIN (GA & FL)
ERIC L. TRIVETT (GA)
M. STEPHEN STUBLEY (SC)
STEPHANIE A. ROCKWELL (GA & TN)
JAMES E.L. FICKLING (SC & NC)

REPLY TO
P.O. BOX 11669
COLUMBIA, SOUTH CAROLINA 29211
PHONE (803) 748-2919
FAX (803) 748-2735
www.Speed-Seta.com

ALEXANDER ADKINS (GA & TN)
HUNTER CHANDLER (GA & TN)
MELISSA CRUZ (GA)
JEREMY T. ENGLAND (AL & MS)
C. BENTON HILBURN (GA)
JASON A. LANAHAN (GA)
ERICA LOUDIN (SC)
ANDREA S. OWEN (GA)
BRITTANY SCHWANITZ (GA)
BRITTANY BELL TURNER (GA & FL)
LILY D. WILKERSON (GA & FL)

GEORGE D. GALLAGHER (SC), of counsel
ROBERT E. HORNER (SC & NC), of counsel

August 2, 2017

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

RE: *Herbert Randall v. Palmetto State Transportation*

WCC No.: 1516896
Claim No.: WC41487
DOA: 10/31/15
Our File No.: 1800-0107

Dear Ms. Bracy:

Enclosed for filing, please find the original and one copy of the Employer/Carrier Form 51 in the above-referenced matter. I would appreciate it if you would return a copy to me in the self-addressed stamped envelope that I have provided.

By copy of this letter to the claimant's attorney, Jeffery D. Ezzell, I am serving him with a copy of the Form 51.

Sincerely,



George D. Gallagher

GDG/anb
Enclosures

cc: Jeffery D. Ezzell, Esquire (w/encl)
Michael DeCarolis (w/encl)

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 #: 1516896
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Herbert Randall SSN: 342-60-1321 Employer's Name: Palmetto State Transportation
Address: PO Box 1871 Address: 1050 West Park Blvd.
City: Taylors State: SC Zip: 29687 City: Greenville State: SC Zip: 29611
Home Phone: 864-517-8169 Work Phone: 864-682-3800 Insurance Carrier: _____

Preparer's Name: Jeffrey D. Ezell Law Firm: Ezell Law Firm, LLC Preparer's Phone #: 864-421-0015

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

Date of Injury or Illness: 10/31/2015

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

1. The claimant sustained an injury to LLE, LUE, Spine, left hand, psyche (Part(s) of Body Injured) on 10/31/15 (Month/Day/Year) in Orange county, state of TX.
2. Body part(s) affected are: LLE, LUE, Spine, Left Hand

Briefly describe how the accident occurred. Claimant was rear-ended while driving for employer in Texas. Claimant was awarded back TTD benefits for a closed period of time, although Defendants have appealed same. Claimant would contend that SC Code Section 42-17-60 requires the Defendants to pay the award as Ordered by the Single Commissioner and the Full Commission, AND to provide the medical care and treatment, including psychiatric care, as awarded by the Single Commissioner and unanimously affirmed by the Full Commission. The Claimant went without TTD benefits for over a year and Defendants have been ordered by the Single Commissioner, and the unanimous panel of the Full Commission, to pay back TTD benefits. Claimant is permanently and totally disabled by virtue of injuries to his left upper and lower extremities, his back, his neck, and his psyche. Claimant has been unable to work in any capacity since the date of the accident.

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 10/31/15 (Month/Day/Year) in the following manner:
Verbally to Jimmy Hartso, safety supervisor and Jason, the dispatcher.

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

☒ (a) medical examination and treatment for: LLE, LUE, Spine, Left Hand, Psyche

☒ (b) additional medical examination and treatment for: LLE, LUE, Spine, Left Hand, Psyche

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

From December 5, 2015 through present and continuing (Claimant is presently on a running award but is owed significant back TTD benefits). Claimant would contend that he is entitled to the back TTD Benefits ordered by the Single Commissioner, and unanimously affirmed by the Full Commission. Claimant contends that SC Code Section 42-17-60 provides that the Defendants' current appeal does NOT act as a supersedeas and that the back TTD benefits should be immediately paid. Claimant further contends that the question is ultimately moot as the Claimant is permanently and totally disabled and therefore entitled to the unpaid balance of 500 weeks.

☒ 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:
To be determined

10a. At the time of the injury, the Claimant was paid weekly wages of \$Form 20 Requested, and demands accounting of days worked and wages earned as provide by law.

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

11. Further grounds or unusual aspects of claim:
Claimant reserves the right to amend.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Claimant's Exhibit 1.

11b. To the best of your knowledge, did you have any prior permanent disability? 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: 2.5 Hours

☒ 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 M. Stephen Stuble, McKay, Cauthen, Settana & Stuble, P.A.

Address PO Box 7217, Columbia, SC 29202-7217 on the 31 day of May 2016, by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature

Attorney at Law

Title

jeff@jeffezellawfirm.com

Email

Date

7/5/12

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
WCC FILE NO.: 1518596

Herbert Randall,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
Palmetto State Transportation,	)	CERTIFICATE OF
	)	SERVICE
Employer,	)	
	)	
And	)	
	)	
Cherokee Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants	)	

The undersigned certifies that she is an employee of Jeffrey D. Ezell, Attorney at Law, and that she 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 §15-9-930 and §15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Judicial Director
SCWCC
PO Box 1715
Columbia, SC 29202-1715

George Gallagher
Speed, Seta, Martin, Trivett & Stublely, LLC
PO Box 11669
Columbia, SC 29211

DOCUMENT: Form 50 – Hearing Request

DATE MAILED: July 5, 2017

Janet Spruell

Janet Spruell
Paralegal to Jeffrey D. Ezell

Ezell Law Firm, LLC

15 N. Irvine Street, Greenville, SC 29601
PH: 864-421-0015 Fax: 864-421-0256
www.ezelllawfirmgreenville.com

Jeffrey D. Ezell
Attorney at Law
jeff@jeffezelllawfirm.com
864-419-4337 (Cell)

Janet Spruell
Paralegal
janet.spruell@jeffezelllawfirm.com

July 5, 2017

Amy Bracy
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

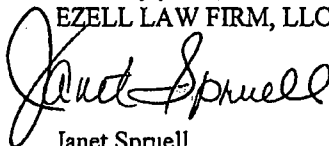
RE: Herbert Randall vs. Palmetto state Transportation
WCC File No.: 1516896 DOI: 10/31/2015
Carrier: Cherokee Insurance Company – Claim No.: WC41487

Dear Amy:

Please find enclosed our Form 50 – Requesting a Hearing in the above referenced matter along with our check for \$25.00 for the filing fee for same. By copy of this correspondence to the attorney for the defendant employer/carrier, I am providing him with notice of our actions in this regard. I appreciate you placing this matter in line for a Hearing at the earliest possible date.

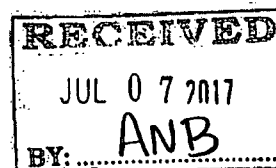
If you should have any questions, please do not hesitate to call. Otherwise, as always, I hope this letter finds you doing well and I look forward to hearing from you soon.

Sincerely yours,
EZELL LAW FIRM, LLC



Janet Spruell
Paralegal to Jeffrey D. Ezell

JDE/js
Enclosures
CC: Randall Herbert
George Gallagher



Response due:
8/5

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



WCC File #: **1516896**
Carrier File #: **WC41487**
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Herbert Randall SSN: 342 - 60 - 1321 Employer's Name: Palmetto State Transportation
Address: 6 Embry Street Address: 1050 West Park Blvd.
City: Taylors State: SC Zip: 29687 City: Greenville State: SC Zip: 29611
Home Phone: (864) 517 - 8169 Work Phone: () - - Insurance Carrier: Cherokee Insurance Co.
Preparer's Name: George D. Gallagher Law Firm: Speed-Seta Law Firm Preparer's Phone #: (803) 748 - 2919

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☐ Employer (check one) Date of Injury or Illness: 10/31/2015

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

See attached Addendum

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Jeffrey Ezell, Esquire
address 15 N. Irvine Street, Greenville, SC 29601 on the 6th day of February 2017, by X first class
postage certified mail personal service.

George D. Gallagher
Preparer's Signature

Attorney
Title

ggallagher@speed-seta.com
Email

February 6, 2017
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.

O O

ADDENDUM TO
RANDALL HERBERT v. PALMETTO STATE TRANSPORTATION
WCC NO: 1516896

- 1) Did the Hearing Commissioner err as a matter of law and fact in awarding Claimant retroactive TTD benefits commencing on or about December 6, 2015 through on or about January 24, 2016, when the reliable and credible evidence in the record establishes that but for Claimant's termination for cause the Employer would have provided him with light duty consistent with his work restrictions during that period?

 - 2) Did the Hearing Commissioner err by failing to find that Claimant's alleged inability to earn wages between 12/6/15 and 1/24/16 was due to his termination for cause, not "disability" due to injury?

 - 3) Did the Hearing Commissioner err in awarding Claimant retroactive TTD benefits for the period between 12/6/15 and 1/26/15 when there is no credible medical evidence in the Record establishing that he was "disabled" per S.C. Code § 42-1-120 during that period?

 - 4) Did the Hearing Commissioner err in finding that the Employer's alleged failures and deficiencies in notifying Claimant of further action necessary to maintain his employment and/or the reasons for his ultimate termination justify an award of retroactive TTD, when the merits of his underlying termination are unquestionably valid, and but for said termination, Claimant could have continued to earn wages?

 - 5) Did the Hearing Commissioner err in ordering further psychological evaluation/treatment when there is no evidence in the Record stating within a reasonable degree of medical certainty that such treatment is medically necessary, in violation of S.C Code § 42-15-60 *See also Hartzell v. Palmetto Collision, LLC et al* Shearhouse Advance Sheets Opinion No. 5457 (Ct. Apps. November 23, 2016)?
-

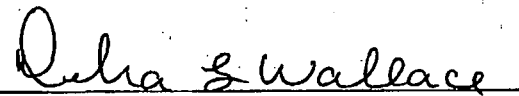
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing WCC Form 30, Request for Commission Review, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 7 day of February, 2017.

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

The Honorable Mike Campbell, Commissioner
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Jeffrey Ezell, Esquire
15 N. Irvine Street
Greenville, SC 29601


Debra L. Wallace, Paralegal
Speed, Seta, Martin, Trivett & Stubley
Post Office Box 11669
Columbia, South Carolina 29211
(803) 748-2919

Attorneys for Defendants

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



WCC File #: 1516896
Carrier File #: WC41487
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Herbert Troy Randall SSN: 342-60-1321 Employer's Name: Palmetto State Transportation
Address: PO Box 1871 Address: 1050 West Park Blvd.
City: Taylors State: SC Zip: 29687 City: Greenville State: SC Zip: 29611
Home Phone: () - Work Phone: (864) 682-3800 Insurance Carrier: Cherokee Insurance Company
Preparer's Name: Jeffrey D. Ezell Law Firm: Ezell Law Firm LLC Preparer's Phone #: (864) 421-0015

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 10/31/2015
(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).

- 1) Did the Hearing Commissioner err as a matter of law in failing to find that the Defendants failed to comply with Reg. 67-504(A) in that they never served a copy of a Form 15 on the Claimant as required by the Regulation?
- 2) Did the Hearing Commissioner err as a matter of fact in failing to find that the Defendants failed to comply with Reg. 67-504(A) in that they never served a copy of a Form 15 on the Claimant as required by the Regulation?
- 3) Did the Hearing Commissioner err as a matter of law in failing to find that the Defendants improperly and/or illegally stopped the Claimant's TTD benefits?
- 4) Did the Hearing Commissioner err as a matter of fact in failing to find that the Defendants improperly and/or illegally stopped the Claimant's TTD benefits?
- 5) Did the Hearing Commissioner err as a matter of law in finding that the Claimant's request for an award of TTD based upon the Defendants not following proper procedure lacks merit?
- 6) Did the Hearing Commissioner err as a matter of fact in finding that the Claimant's request for an award of TTD based upon the Defendants not following proper procedure lacks merit?
- 7) Did the Hearing Commissioner err as a matter of law in finding that the Form 15(II) purportedly filed on 12/17/15 was timely for termination of TTD benefits?
- 8) Did the Hearing Commissioner err as a matter of fact in finding that the Form 15(II) purportedly filed on 12/17/15 was timely for termination of TTD benefits?
- 9) Did the Hearing Commissioner err as a matter of law in failing to impose a 25% penalty on the Defendants for failure to comply with Reg. 67-504?
- 10) Did the Hearing Commissioner err as a matter of fact in failing to impose a 25% penalty on the Defendants for failure to comply with Reg. 67-504?
- 11) Did the Hearing Commissioner err as a matter of law in finding that the Defendants were in compliance with S.C. Code Section 42-9-260?
- 12) Did the Hearing Commissioner err as a matter of fact in finding that the Defendants were in compliance with S.C. Code Section 42-9-260?

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.

- 13) Did the Hearing Commissioner err as a matter of law in failing to assess a penalty against the Defendants for improper termination of TTD benefits?
- 14) Did the Hearing Commissioner err as a matter of fact in failing to assess a penalty against the Defendants for improper termination of TTD benefits?
-
- 15) Did the Hearing Commissioner err as a matter of law in his construction and/or application of SC Code Sections 42-19-30 and 42-3-105?
- 16) Did the Hearing Commissioner err as a matter of fact in his construction and/or application of SC Code Sections 42-19-30 and 42-3-105?
- 17) Did the Hearing Commissioner err as a matter of law in his construction and/or application of Reg. 67-504?
- 18) Did the Hearing Commissioner err as a matter of fact in his construction and/or application of Reg. 67-504?
- 19) Given that the Hearing Commissioner specifically found that "There is no evidence that the Claimant was ever served with a copy of either of the Form(s) 15 as required by Reg. 67-504(A)", did the Hearing Commissioner err as a matter of law in failing to find that the Claimant was entitled to TTD benefits from December 6, 2015, through the present and continuing, as well as a 25% penalty, as the Defendants were not in compliance with Reg. 67-504?
- 20) Given the fact that the Hearing Commissioner specifically found that "There is no evidence that the Claimant was ever served with a copy of either of the Form(s) 15 as required by Reg. 67-504(A)", did the Hearing Commissioner err as a matter of fact in failing to find that the Claimant was entitled to TTD benefits from December 6, 2015, through the present and continuing, as well as a 25% penalty, as the Defendants were not in compliance with Reg. 67-504?
-

(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 George Gallagher, Speed, Seta, Martin, Trivett, & Stuble, LLC, PO Box 11669, Columbia, SC 29211 on the 31st day of January 2017, by ☐ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature

Attorney for Claimant
Title

jeff@jeffzelllawfirm.com
Email

1/31/17
Date

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

Ezell Law Firm, LLC

15 N. Irvine Street, Greenville, SC 29601
PH: 864-421-0015 Fax: 864-421-0256
www.ezelllawfirmgreenville.com

Jeffrey D. Ezell
Attorney at Law
jeff@jeffezelllawfirm.com
864-419-4337 (Cell)

Janet Spruell
Paralegal
janet.spruell@jeffezelllawfirm.com

January 31, 2017

Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

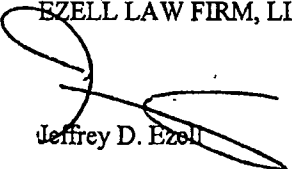
RE: Herbert Randall vs. Palmetto state Transportation
WCC File No.: 1516596 DOI: 10/31/2015
Carrier: Cherokee Insurance Company – Claim No.: WC41487

Dear Amy:

Please find enclosed the original and three (3) copies of our Form 30 – Request for Commission Review and our check in the amount of \$150.00 for the filing fee for same. By copy of this correspondence to the attorney for the Employer/Carrier, Mr. George Gallagher, I am providing him with a notice of our actions in this regard.

If you should have any questions, please do not hesitate to call. Otherwise, as always, I hope this letter finds you doing well and I look forward to hearing from you soon.

Sincerely yours,
EZELL LAW FIRM, LLC


Jeffrey D. Ezell

JDE/js
Enclosures

CC: Randall Herbert
George Gallagher ✓

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: **1516896**
Carrier File #: **WC41487**
Carrier Code #: **1101**
Employer FEIN #: **57-0940376**

Claimant's Name: Randall, Herbert SSN: 342 - 60 - 1321 Employer's Name: Palmetto State Transportation
Address: 6 Embury Street Address: 1050 Parkwest Blvd
City: Taylors State: SC Zip: 29687 City: Greenville State: SC Zip: 29611
Home Phone: (864) 517-8169 Work Phone: () Insurance Carrier: Cherokee Insurance Company
Preparer's Name: Michael DeCarolis Law Firm: n/a Preparer's Phone #: (800) 201-0450

Date of injury: 10/31/2015 (m/d/yyyy)
m/d/yyyy

Date of Notice to Employer of Injury: 10/31/2015

Payment of Temporary Compensation Check one: ☐ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☐ A. Temporary Total at the compensation rate of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment was _____ (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of \$_____ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a **Form 15S** with the **Form 18**, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury	\$
- Current weekly wage	\$
= Difference in wages before injury and now	\$ 0.00
x .6667	\$ 0.00
Temporary Partial Compensation Rate	\$ 0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

HIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

I. Termination of Temporary Compensation Temporary compensation payments were stopped on 12/6/2015 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a **Form 17**.
- ☒ Based on a good faith investigation, the claim is denied. Reason for denial: Failed Post-Accident Drug Test
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

certify that this form has been served on the claimant per R.67-211.

[Signature]
Signature of Claims Administrator

12/10/2015
Date (m/d/yyyy)

II. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

- The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

BY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: **Form 15(II)** ☐ Has ☐ Has not been received.

Signature of Claimant or Legal Representative

Date (m/d/yyyy)

Employer's representative must complete and file **Form 15** with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve a **Form 15** on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve **Form 20** within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the **Form 15** on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the **Form 15** and filing it with Judicial Department.

WCC Form # 15
Rev. 10/04

15

TEMPORARY COMPENSATION REPORT

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Report run: 12/19/17 09:16

Report Criteria: Case Status

Upload File

Appeal a Fine

Ask a Question

Case #	Caption	Date of Injury	Carrier	Attorney for Defendant	Attorney for Claimant	Status
1516896	HERBERT RANDALL -VS- PALMETTO STATE TRANSPORTATION CO INC	10/31/15	Cherokee Insurance Company 34200 Mound Road Sterling Heights MI 48310 pkeene@cherokeeinsurance.com (800) 201-0450	FOR: Cherokee Insurance Company M. Stephen Stubley Speed, Seta, Martin, Trivett & Stubley, LLC PO Box 11669 Columbia SC 29211 sstubley@speed-seta.com (803) 748-2919 FOR: Cherokee Insurance Company George D. Gallagher Speed, Seta, Martin, Trivett & Stubley, LLC PO Box 11669 Columbia SC 29211 ggallagher@speed-seta.com (803) 748-2919	Jeffrey D. Ezell Ezell Law Firm, LLC 15 N. Irvine Street Greenville SC 29601 jeff@jeffezelllawfirm.com (864) 421-0015 Thomas M. Gagne Was released 05/23/16.	Hearing scheduled 01/16/18, 01:00 PM at County Square, 301 University Ridge, Conference Room E, East Wing, Greenville, SC Forms 50/51-Admitted before Commissioner Taylor. 11/30/17 Notice Printed 11/30/17 Scheduled for Hearing 10/31/17 Hearing Schedule Pending 10/31/17 Mediation Impasse 10/30/17 Form 18 Received 10/18/17 Order Served 10/02/17 Order Assigned to be Written 09/25/17 Motion Filed 08/30/17 Mediation Scheduled 08/22/17 Mediation Mandated 08/22/17 Form 51 Timely 08/10/17 Form 51/53/55 Received 07/10/17 Notice of intent to appeal to Court of Appeals 07/10/17 Admin Dismissal; Appeal Settled 07/07/17 Form 50 Hearing requested 06/09/17 Order Served 04/28/17 Form 18

Received
04/27/17 Order
Assigned to be
Written
03/30/17
Respondent Brief
Uploaded through
eCase by
GEORGE D.
GALLAGHER
(CAR)
03/29/17
Appellate Reply
Brief Uploaded
through eCase by
JEFFREY D.
EZELL (CLT)
03/21/17
Appellants Brief
received
03/21/17
Appellant Brief
Uploaded through
eCase by
GEORGE D.
GALLAGHER
(CAR)
03/17/17
Appellants Brief
received
03/16/17
Appellant Brief
Uploaded through
eCase by
JEFFREY D.
EZELL (CLT)
03/09/17 Notice
Printed
03/09/17
Scheduled for
appeal hearing
02/21/17 Notice
Printed
02/21/17
Scheduled for
appeal hearing
02/17/17 Notice
Printed
02/15/17
Scheduled for
appeal hearing
02/09/17 Ready to
set for Appeal
Hearing
02/09/17 Oral
Argument
requested
02/09/17 Appeal
filed
02/08/17 APA
Uploaded through
eCase by
JEFFREY D.
EZELL (CLT)
02/03/17 Oral
Argument

requested
02/03/17 Appeal
filed
01/26/17 Order
Served
01/18/17 Order
Assigned to be
Written
12/13/16 APA
Uploaded through
eCase by M.
STEPHEN
STUBLEY (CAR)
12/08/16 Hearing
Held
12/06/16 Pre-
Hearing Brief -
Amended
Uploaded through
eCase by
JEFFREY D.
EZELL (CLT)
11/15/16 Notice
Printed
11/15/16
Scheduled for
Hearing
11/15/16 Hearing
Postponed
11/07/16 Form 18
Received
10/25/16 Notice
Printed
10/25/16
Scheduled for
Hearing
10/25/16 Hearing
Postponed
10/20/16 Pre-
Hearing Brief
Uploaded through
eCase by M.
STEPHEN
STUBLEY (CAR)
09/21/16 Notice
Printed
09/21/16
Scheduled for
Hearing
09/21/16 Hearing
Postponed
09/14/16 Pre-
Hearing Brief
Uploaded through
eCase by
JEFFREY D.
EZELL (CLT)
07/14/16 Notice
Printed
07/14/16
Scheduled for
Hearing
07/14/16 Hearing
Postponed
07/13/16 Notice
Printed

						07/13/16 Scheduled for Hearing 07/12/16 Hearing Schedule Pending 07/12/16 Form 51 Timely 07/05/16 Form 51/53/55 Received 06/02/16 Form 50 Hearing requested 05/23/16 Order Served 05/23/16 Order Assigned to be Written 05/16/16 Attorney Fee Petition Received 05/12/16 Claim Reviewed by Examiner 04/26/16 Form 18 Received 03/18/16 Order Assigned to be Written 03/18/16 Order Served 03/17/16 Consent Order filed 03/16/16 Hearing Schedule Pending 03/16/16 Form 51 Not Received to Date 02/22/16 Form 50 Hearing requested 12/17/15 Temp. Comp. Award Terminated 12/17/15 Temp. Comp. Award Started 12/15/15 Form 20 Received 11/18/15 EDI First Report received

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
DEC 27 2017
SC Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2017-001-001483

WCC File No. 1516896

Herbert Randall, Employee/Claimant

Respondent/Appellant

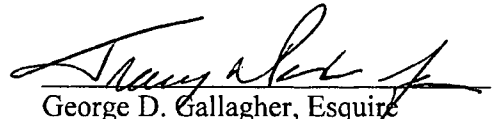
v.

Palmetto State Transportation, Employer
Cherokee Insurance Company, Carrier.

Appellant/Respondent

CERTIFICATE OF COUNSEL

December 27, 2017


George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett & Stubley
PO Box 11669
Columbia, SC 29211
(803) 748-2919
SC Bar # 12149
Attorney for Appellant/Respondent