

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2018-000076
Opinion No. 2017-UP-379 (S.C. App. Filed October 18, 2017)

Johnny Tucker,..... Employee, Respondent,

v.

S.C. Department of Transportation, ...Employer,

and

State Accident Fund,..... Carrier, Petitioners.

APPENDIX

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ATTORNEYS FOR RESPONDENT

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No.: 2015-002575

Johnny Tucker, Employee, ... Appellant,

v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier, ... Respondents.

RECORD ON APPEAL

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1106689

Johnny Tucker,
Employee/Claimant,
Appellant

vs.

SC Department of Transportation,
Employer,

and

State Accident Fund,
Carrier,
Defendants,
Respondents.

Appellate Panel Review in Columbia, South Carolina set for July 17, 2012 per
notices timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed 9-10, 2012.

Appearances:

Claimant/Appellant represented by Preston F. McDaniel, Esquire, of
Columbia, South Carolina.

Defendants/Respondents represented by Sarah S. Alphin, Esquire, of
Willson Jones Carter & Baxley of Columbia, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden on March 2, 2012 in Columbia, South Carolina. As a result of said hearing, Commissioner Barden issued an Order dated March 26, 2012 from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following **Findings of Fact**:

1. The Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Johnny Tucker as Employee-Claimant and South Carolina Department of Transportation as Employer and State Accident Fund as Carrier, Defendants.

2. The Claimant was an employee of the Defendant Employer on and prior to May 2, 2011, on which date he did sustain an injury to the left shoulder arising out of and in the course of his employment. This was an accepted claim to the left shoulder, and the Claimant has received appropriate medical benefits and is presently receiving temporary total compensation.

3. The Claimant alleged he also injured his upper back, that his left shoulder injury affects his arm and hand, that he has not reached MMI, and that the Defendants should provide the Claimant with another opinion from a shoulder specialist.

4. The Claimant is 54 years of age. We base this finding on medical evidence documenting the Claimant's date of birth as 06/24/57.

5. The Claimant is right hand dominant. (Defendants' APA #3, pg. 38).

6. Although the Claimant conceded at the hearing that he had prior left shoulder problems on the date of the accident, he was not forthright with the authorized providers about his pre-existing left shoulder condition. The Claimant was taking Lorcet on the date of the accident,

and the Claimant "denied any previous shoulder injuries or pain" to Dr. Wiley at Hartsville Orthopedic. (Defendants' APA #1, pg. 1; Defendants' APA #2, pg. 10).

7. The medical evidence on the date of accident documents the fact that the Claimant's left shoulder pain radiated to the left trapezius and left side of the neck, but only to the top of the left arm. The Claimant denied any numbness and tingling. Because of this and other temporal records, We find that the source of pain was the left shoulder/scapula area, and there is no separate injury to the upper back. (Defendants' APA #1, pg. 1). The Claimant sustained an injury to his left shoulder only.

8. The Claimant was diagnosed with a left scapula fracture. (Defendants' APA #2, pg. 11).

9. The Claimant is an 11-year employee of the Defendant Employer, a factor which weighs heavily in his favor. However, this factor is not enough to overcome his lack of credibility.

10. The Claimant's prior rotator cuff condition was not aggravated by the accident in issue. Not one medical record states the Claimant's prior rotator cuff tear was aggravated by the injury in-issue, and in fact, the opposite is stated by two experts. Both Dr. Hassler and Dr. Wagner opined the Claimant had pre-existing rotator cuff pathology that is not related to his workers' compensation injury. (Defendants' APA #2, pg. 33-34; Defendants' APA #5, pg. 57). The

Claimant did not present the Undersigned with any medical evidence to the contrary regarding causation. (Medical evidence as a whole).

11. The Claimant did not undergo any surgery for the accident in issue. (Medical evidence as a whole).

12. Two months after the accident, the Claimant complained of pain at level 2 out of 10. He also noted his left shoulder was "getting better." (Defendants' APA #3, pg. 44-45).

13. Three months after the accident, the Claimant's pain level ranged from 1-2 out of 10, and he noted he felt "a lot better." (Defendants' APA #3, pg. 46).

14. On August 10, 2011, the Claimant reported "*just a little pain*" ("1" out of 10) and noted he felt "a lot better." (Defendants' APA #3, pg. 47-48).

15. We give greater weight to the sequential medical records referenced above which show a steady gradual recovery than I give to Claimant's self-serving testimony that he cannot work because of his shoulder.

16. Although the physical therapy records document the Claimant's steady improvement, the Claimant told the Undersigned that physical therapy did not help.

17. The Claimant reached maximum medical improvement for his left shoulder workers' compensation injury on November 7, 2011. (Defendants' APA #3, pg. 34).

18. The fact that the Defendants, in good faith, agreed to provide a second opinion does not estop the Defendants from asserting the Claimant reached maximum medical improvement as of the date opined by the authorized treatment physician.

19. The authorized treating physician assigned a 0% impairment to the Claimant's left shoulder. (Defendants' APA #3, pg. 34). The Claimant requested the Defendants provide a second opinion. The second opinion assigned a 1% impairment rating to the left shoulder based upon the Claimant's complaints of pain. (Defendants' APA #5, pg. 56-57).

20. We find that the Defendants provided a good faith second opinion, and therefore, the Claimant's request for a third opinion is denied. This finding is based on the fact that the Defendants sent the Claimant to a physician in another practice for the second opinion and that the second opinion report is the most detailed report (in terms of background material, mechanics of accident, and exam findings) of any report in evidence. This does not appear to the Undersigned to

be a case of result-oriented, summary report designed as a mere tool to confirm MMI status. (Defendants' APA #5).

21. We give greater weight to the opinions of the authorized physicians Dr. Hassler and Dr. Wagner as they are orthopedic experts rather than the opinion of the Claimant's family physician. (Claimant's APA #1, pg. 1).

22. The Claimant was released with no work restrictions. (Defendants' APA #2, pg. 34-36).

23. For reasons unknown to the Undersigned, the Claimant engaged in gross exaggeration at the hearing despite the fact that the Claimant was sworn to tell the truth. The Claimant indicated and testified from a standing position that he is unable to lift his left arm virtually at all (except for maybe several inches) without the aid of his right arm (and even then only to chest level). This duplicity flies in the face of the physical therapy records from only one month after the accident (*i.e.*, months prior to MMI) showing the Claimant has 125 degree flexion and 110 degree abduction. The Claimant also testified he is unable to sometimes even lift his cane (Claimant was released with no restrictions), and he drops things because of his work injury. testimony which is not supported by the treatment records. (Observations of the Undersigned; testimony of the Claimant; medical evidence including but not limited to Defendants' APA #3, pg. 41, 46).

24. The Claimant has had an intervening heart attack (requiring stent placement) and knee injury (for which he ambulates with a cane). These conditions separately or in concert may (or may not) prevent the Claimant from working, but it is not the injury in question which prevents the Claimant from working.

25. The Defendants are entitled to stop payment of temporary benefits.

26. The Claimant reached maximum medical improvement on November 7, 2011 for the injuries resulting from the May 2, 2011 accident and that there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's disability.

27. That Claimant has sustained 5% permanent partial disability to his left shoulder as a result of the accidental injury on May 2, 2011.

28. The Defendants were entitled to stop payment of temporary total compensation effective December 14, 2011 and are entitled to a credit for the overpayment of temporary total compensation since the date of filing of the Form 21. December 14, 2011, against the award for permanent partial disability ordered herein.

29. The average weekly wage of the Claimant at the time of the above-described accident was \$419.31, making a compensation rate of \$279.55 applicable in this matter.

30. That Claimant has failed to prove that he is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

The Hearing Commissioner's Decision and Order also set forth the following
Conclusions of Law:

1. Under § 42-1-130, the Claimant was a covered employee at the time in question; and
under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, the Claimant sustained an injury to his left shoulder by accident arising out of and in the course and scope of his employment on May 2, 2011. The Claimant failed to meet his burden of proof to prove any other causally related injuries other than the left shoulder scapula fracture. The request for benefits for the upper back, left arm, left hand, and left side are denied.

3. Under §42-9-35, the Claimant did not aggravated his pre-existing left shoulder rotator cuff condition. The Claimant presented no evidence of an aggravation, and in fact, the two experts opined the pre-existing rotator cuff condition was not related to the workers' compensation left shoulder scapula injury.

4. Under §§ 42-9-10 and 42-1-120, the Defendants are entitled to stop payment of temporary benefits, and the Claimant is not entitled to any further temporary benefits as of the filing of the Defendants' Form 21, December 14, 2011. The Defendants are entitled to a credit for all temporary benefits paid after December 14, 2011, such credit to be taken against the Award contained in this Order.

5. Under § 42-15-60, the Claimant was entitled to causally related medical, surgical, hospital and other authorized treatment until November 7, 2011, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of his disability. The Defendants provided a good faith second opinion, and the Claimant is not entitled to a third opinion.

6. Under § 42-9-30, the Claimant has sustained 5% permanent partial disability to the left shoulder. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since December 14, 2011.

Within the statutory period, Counsel for the Claimant filed an Application for Review in the case setting forth the following assignments of error:

1. That the Claimant would request a review pursuant to S.C. Code §42-17-50 by the Full Commission of the Findings of Fact, Conclusions of Law and Decision rendered in this matter based upon a review of the evidence, the positions and the legal precedents cited to the Commissioner and the entire Record before the Hearing Commissioner for decision.

2. That the Supreme Court has specifically ruled that the entitlement to and the benefits for a work-related injury are the personal property of the worker; that the worker has a constitutionally protected right to those benefits; and that a statute may not be construed to deny a worker his property interest in those benefits without due process of law. Glass v. MSI Construction Co., 305 S.C. 349, 409 S.E.2d 334 (1991); Orszula v. Orszula, 292 S.C. 264, 356 S.E.2d 114 (1987). Therefore, where the matter is before the Commission on a stop payment application filed by the Defendants under S.C. Code §42-9-260 which does not provide the Defendants with a right to have a determination made of residual entitlement to benefits and where the Claimant specifically objected to the Commissioner going forward on an Award and was not prepared for determination of his entitlement to benefits and where he noted on the Record that he had not made a request for any benefits under the Act, did the Hearing Commissioner err as a matter of law in violation of the Constitution and the protected due process rights of the Claimant depriving him of his property interest as guaranteed under the United States and South Carolina Constitution?

3. Did the Commissioner err as a matter of law in denying the Claimant an award for total and permanent disability benefits where based on his age, education, background and experience, and the physical facts of the injury including involvement of the Claimant's left shoulder, scapula (which is a separately related body part), left arm and hand and where the Claimant testified that he had not been offered or procured a job and where the only evidence of record concerning his disability was that of the Claimant and where there was no evidence in the Record that the Claimant was released to return to work due to the entire condition of his left shoulder, arm and hand?

4. Did the Commissioner err as a matter of law and was her decision the subject of

being arbitrary and capricious where the Commissioner misstated the physical examination by Dr. Wagner? Dr. Wagner found in reference to the right shoulder and right arm that the:

"The right arm and right shoulder have full active and passive range of motion, in flexion, extension, abduction and internal and external rotation as well as cross-chest abduction."

* * * *

But as to the left shoulder, the Claimant could not perform active range of motion and the doctor only recorded passive range of motion.

"Examination of the left shoulder demonstrates that he complains of pain in the scapula area below the scapula spine where his fracture had occurred . . . he has full passive range of motion of the left shoulder to 170 degrees of flexion but this is painful, as to abduction to 160 degrees with shoulder pain at the extremes. . . cross-chest abduction is painful at 30 degrees. He also pain on internal and external rotation and flexion at 90 degrees." (Emphasis added).

Thus where the Commissioner's decision ignored the fact that the range of motion on the left shoulder was passive range of motion, which means that the evaluator moved the

Claimant's arm not the Claimant, either the Commissioner overlooked this in review of the records or the Commissioner intentionally failed to note this which would be an indication that her decision was the subject of being arbitrary and capricious.

5. Did the Commissioner err as a matter of law in violation of the fundamental principles of the Act and denied the Claimant due process of law where the Claimant had requested as early as November 22nd a second opinion concerning the Claimant's injury and

again on December 15th and where the Defendants after filing a Form 21 then agreed to the obtaining of a second opinion which was not scheduled until January 4, 2011 and not performed until January 24th; and where although requested on numerous occasions to withdraw the Form 21 due to the agreement to a second opinion the Defendants did not do so; and wherein the Claimant had to deal with multiple attorneys being assigned, including first Ms. Ellen Goodwin then Stephen Johnson, who was originally retained on December 20th to represent the Defendants on the stop payment who was then removed and Ms. Sarah Alphin was then retained as the defense counsel until January 19, 2011, and where the Record will establish that the report from the second opinion that was obtained from a general orthopaedist, not a shoulder specialist, was not submitted until after the Defendants Pre-Hearing Brief would have been due for the date that the case was originally scheduled? Based on these facts, this case represents a denial of due process and a rush to judgment in violation of the fundamental principles of the Workers' Compensation Act and particularly the principle that the Commissioners should in the interest of justice where there is no prejudice to the employer, allow the Claimant an opportunity to provide evidence on his medical condition, need for care, and his residual disability.

6. Did the Hearing Commissioner err as a matter of law by failing to grant the Claimant an independent medical evaluation under S.C. Code §42-17-30 where timely and multiple requests were made for the evaluation by a disinterested physician chosen by the Commissioner or agreed upon by the parties?

7. Where the physical therapy records as submitted by the Defendants, and specifically at p. 48 of the Defendants' APA Submissions, state that the Claimant had not completed physical therapy and was discharged from services due to hospitalization which hospitalization is set forth in that record as, "patient admitted to hospital due to heart attack" did

the Commissioner err as a matter of law in basing her decision and her Findings of Fact and particularly Findings of Fact Nos. 12, 13, 14, 15 and 16, as to the benefit of that treatment and use of that evidence to criticize the testimony of the Claimant where the evidence is unequivocal that the Claimant did not complete physical therapy and did not return to physical therapy after his heart attack?

8. Did the Commissioner err as a matter of law by not making a specific Finding of Fact as to whether or not the disability had ended? The South Carolina Supreme Court and the South Carolina Court of Appeals have mandated that were a request to stop payment of benefits is made that the Commission must not only make a finding on maximum medical improvement but must make a finding as to whether or not the disability has ended. In this case, the evidence establishes that Dr. Terrence Hassler did not state that the Claimant could return to work due to the condition of his shoulder. The evidence establishes without question and unequivocally that prior to this accident the Claimant was working every day with his shoulder and that as of the date of the release, Dr. Hassler noted and specifically stated that he was to, "F/U in 4 weeks for evaluation of his left shoulder, rotator cuff . . . if he cannot work because of his left shoulder problems . . . I would be happy to see him for these but we cannot do this under Workers' Comp. I have therefore returned him to duty because of his left scapula injury. I have also told

him that if he could not perform his job safely I would certainly not work regarding his left shoulder . . . which apparently he was working fairly well with prior to his injury." There is absolutely no evidence that the Claimant could return to work and that his testimony established that he is not able to return to work. Therefore, the Commissioner erred as a matter of law by failing to make a specific Finding of Fact on disability.

9. That the Hearing Commissioner erred as a matter of law in Finding of Fact No. 6

concerning her statements concerning the credibility of the Claimant with the authorized providers wherein she refers to the records of Dr. Riley with Hartsville Orthopaedics who at the time was a partner with Dr. Hassler who was the authorized treating physician for this injury, who clearly noted that the Claimant had a pre-existing problem in all of his records that were forwarded to everyone involved. Dr. Hassler as clearly set out in his records, the authorized treating physician, was the doctor that was treating him for any pre-existing problems prior to the date of the accident. Therefore, where the Commissioner's decision based in large measure on the Claimant's credibility ignores either unintentional or intentionally this fact indicates that the Decision is the subject of being arbitrary and capriciousness and that the Commissioner was simply looking for a basis for challenging the Claimant's credibility that does not exist.

10. That the Commissioner erred in making Finding of Fact No. 7 wherein the other medical records that she refers to establish that the problems relate to the Claimant's scapula area which is not part of the shoulder and is part of both the back and shoulder and they also make reference to the problems with the left arm and hand.

11. That the Hearing Commissioner erred as a matter of law in making Finding of Fact No. 8 wherein the diagnosis throughout including that of Dr. Hassler was comminuted fracture of the left scapula with fracture fragments and an os acromiale (non union of the acromium and the osius) and initial assessment by Dr. Wiley according to the x-rays being a left shoulder fracture of the scapula with displacement and comminuted displaced fracture of the left scapula body os acromiale with mild degenerative joint disease.

12. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 2 which is in fact a Finding of Fact.

13. That the Hearing Commissioner erred as a matter of law in making Conclusion of

Law No. 3.

14. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 4 in that no Findings of Fact are made to support this conclusion and wherein the Commissioner does not cite any determination that the Claimant's disability had ended and by failing to make any Finding of Fact under S.C. Code §42-9-190.

15. That the Hearing Commissioner erred as a matter of law by failing to make a Conclusion of Law in reference to the Claimant's request for not only a second opinion but also for an evaluation under S.C. Code §42-17-30. The Commissioner is required by law to make a Findings of Fact and Conclusion of Law on, "each and every issue" presented to the Commissioner for decision. Hill v. Jones, 255 S.C. 219, 178 S.E.2d 12 (1970).

16. That the Hearing Commissioner erred as a matter of law for all of the foregoing reasoning in making her Order and Award in this matter.

Copies of the above assignments of error were furnished to all interested parties prior to oral argument scheduled before the Appellate Panel on July 17, 2012.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the brief of the Appellant and Respondents.

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined the Order of the Hearing Commissioner is hereby AFFIRMED IN FULL. The Findings of Fact and Conclusions of Law found in the Hearing Commissioner's Decision and Order, and as specified above, are hereby AFFIRMED IN FULL.

ORDER

The Order of the Single Commissioner from which this appeal has been taken is hereby
AFFIRMED IN FULL.

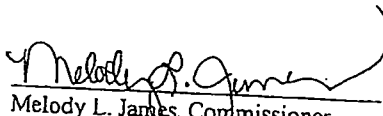
IT IS HEREBY ORDERED that the Application of Defendants to stop payment of temporary total compensation is hereby granted, effective November 7, 2011, the date on which the Claimant reached maximum medical improvement. The Defendants are entitled to credit against the Award for all temporary benefits paid after the date of filing of the Form 21.

IT IS FURTHER ORDERED that as a result of the Claimant's accidental injury occurring on May 2, 2011, he has sustained 5% permanent partial disability to the left shoulder, for which he is entitled to 15 weeks of compensation, at the compensation rate of \$279.55 per week. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation paid after December 14, 2011. This credit shall be taken from the Claimant's Award.

IT IS FURTHER ORDERED that the Claimant reached maximum medical improvement on November 7, 2011, and as such, Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date.

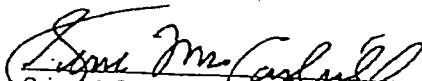
IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Melody L. James, Commissioner
For the Appellate Panel

(ADDITIONAL SIGNATURES APPEAR ON FOLLOWING PAGE)

Concur:


Andrea C. Roche, Commissioner
Gene McCaskill, Commissioner

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1106689

Johnny Tucker,
Employee,
Claimant,
vs.
South Carolina Department of Transportation,
Employer,
and
State Accident Fund,
Carrier,
Defendants.

HEARING:

Held in Hartsville, South Carolina on October 21,
2014.

APPEARANCES:

Claimant represented by Preston F. McDaniel,
Esquire of Columbia, South Carolina.

Defendants represented by Sarah S. Alphin, Esquire
of Willson Jones Carter & Baxley, P.A., Columbia,
South Carolina.

PURPOSE OF HEARING:

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

DECISION AND ORDER:

By Gene McCaskill, Commissioner

FILED:

April 1, 2015.

I. APA SUBMISSIONS

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

Defendant's APA Submissions

- APA #1: Records of Pee Dee Orthopaedic Associates, dated March 3, 2014 to July 26, 2013, consisting of pages 1-13.
- APA #2: Records of Hartsville Physical Therapy, dated September 26 to June 26, 2013, consisting of pages 14-17.
- APA #3: Records of Midlands Orthopaedics, dated August 26, 2013, consisting of pages 16-24.
- APA #4: Records of McLeod Physician Associates, dated May 24, 2013, consisting of pages 25-27.
- APA #5: Records of McLeod Urgent Care - Darlington, dated May 20, 2013, consisting of pages 28-31.
- APA #6: Records of Care South, dated March 14, 2013 to November 14, 2011, consisting of pages 32-33.

Claimant's APA Submissions

- APA #1: Records of Hartsville Medical Group, dated February 29, 2014 to January 10, 2012, consisting of pages 1-2.
- APA #2: Records of USC Orthopaedics and Sports Medicine, dated September 29, 2014 through February 20, 2013, consisting of pages 3-13.
- APA #3: Records of McLeod Physical Therapy, dated January 6, 2014 to August 28, 2013, consisting of pages 14-66.
- APA #4: Records of Correspondence with Carrier Representatives, dated June 26, 2013 to March 18, 2013, consisting of pages 67-72.

II. STIPULATIONS

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

issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission;
2. That the Claimant's accident occurred on May 2, 2011;
3. The Claimant's average weekly wage was \$419.31 with a corresponding compensation rate of \$279.55;
4. Notices were timely and properly served upon all parties of interest;
5. Venue, set in Darlington County, is proper as agreed by all parties;
6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;
7. The issues for determination are whether the Claimant is sustained a change of condition for the worse entitling him to medical benefits.

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

III. STATEMENT OF THE CASE

Claimant filed a Form 50 request for a hearing on July 30, 2014 seeking additional medical treatment and temporary total disability for a change of condition from an injury sustained on May 2, 2011. Claimant's injury was a left scapula fracture. Claimant was awarded 5% to the left shoulder for permanent partial disability and was paid on November 28, 2012. Defendants filed a Form 51 on August 20, 2014 denying Claimant has sustained a change of condition for the worse.

A hearing was held October 21, 2014 before the undersigned in Hartsville, South Carolina. Prior to such Hearing, Defendants filed a Motion to Postpone Hearing and Compel Claimant to Submit to Medical Evaluation. Defendants' Motion was based on Claimant's refusal to attend medical evaluation scheduled by Defendants pursuant to the right codified in S.C. Code Ann. §42-

15-18. Claimant refused to attend the medical evaluation with Dr. Hassler, the authorized treating physician. Based on his refusal to attend, Claimant has never been evaluated by the authorized treating physician of the underlying claim in order for the physician who treated the left scapular fracture to give an opinion as to change of condition. During pre-hearing arguments, the Hearing Commissioner considered Defendants' Motion and denied the same.

Arguments were presented by both parties on the issues of whether the Claimant is entitled to medical treatment from a change of condition. Defendants assert the Form 19, which is a part of the Commission file, shows last payment of compensation was November 28, 2012. Claimant's Form 50 hearing request was filed July 30, 2014, and therefore, Claimant's request for a change of condition is not timely. Alternatively, Defendants argue Claimant's change of condition fails on the merits as the preponderance of the evidence does not support a finding that Claimant's left scapula fracture worsened. Claimant argued that he is in need of additional medical treatment from the change of condition. Claimant argued he filed a Form 50 Claim Only within one year after last payment of compensation, and therefore, his change of condition request is timely.

IV. EVIDENCE OF THE CASE

Claimant testified at the hearing in this matter and his testimony allowed the Commissioner to observe Claimant, to ask questions of Claimant, and to judge his credibility as a witness.

Testimony of Johnny Tucker, Claimant:

Claimant testified he is fifty-seven years old and resides in Hartsville, South Carolina. Claimant testified he sustained a work injury by falling off a work vehicle when he missed a step. He hurt his shoulder in the accident. Claimant admitted his specific injury was a fractured left scapula. He was awarded 5% to the left shoulder for permanent partial disability. Claimant also testified his condition worsened over the last two years, and he has more pain in his left shoulder,

left arm, and left hand. Claimant was confronted with his prior Hearing testimony and admitted his complaints at the Hearing of March 2, 2012 are identical to the same complaints he has now.

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Johnny Tucker as Employee-Claimant and South Carolina Department of Transportation as Employer and State Accident Fund as Carrier, Defendants.
2. Claimant suffered a compensable left scapula fracture injury arising out of and within the course and scope of his employment on May 2, 2011.
3. Claimant was awarded 5% permanent partial disability to the left shoulder from his scapular fracture. A properly executed and filed Form 19 shows date of last payment of compensation to be November 28, 2012.
4. Claimant now alleges a change of condition. Claimant filed a Form 50 Request for Hearing alleging a change of condition on July 30, 2014.
5. Defendants deny that there has been a change of condition.
6. Defendants object to this matter coming before the Commission asserting that the Commission does not have jurisdiction to hear this claim as the Form 50 request for a hearing was filed more than 12 months after last payment of compensation as statutorily required by S.C. Code Ann. §42-17-90.
7. The Form 19, which is a part of the Commission file, shows last payment of

compensation was November 28, 2012.

8. Claimant filed a Form 50 Claim Only alleging a change of condition on May 2, 2013. Claimant did not file a Form 50 Request for Hearing until July 30, 2014.

9. Claimant argues, citing the case of Allen vs. Benson, 112 S.E. 2d 722, that when an application is made within twelve months, the Commission is not restricted to holding the hearing in twelve months, and therefore argues that Claimant is not restricted to requesting a hearing during that time frame.

10. It is the Claimant's position, given their filing of claim only for a change of condition for the worse on May 2, 2013, the statute is effectively tolled.

11. S.C. Code Ann. §42-17-90 reads in part, "... on the application of a party in interest on the ground of a change of condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded..." This code section does not use the words, "request a hearing."

12. Within this framework, I must examine what does "application" mean in the context of the Act.

13. In Allen, the Court said in part, "...the application for review must be made within one year after the last payment of compensation."

14. In Allen, the application that was made was a request for a hearing.

15. Black's Law Dictionary (9th edition) defines "application" as a "request or petition."

16. When I consider the language of §42-17-90, the language in Allen, and the definition provided by Black's, I must conclude that "application" must be interpreted to mean a "request" seeking action on the part of the Commission.

17. What Claimant did on May 2, 2013 by filing a Form 50 claim only was to give notice to the Commission. Claimant did not request a hearing until July 30, 2014 after the twelve month window provided for in the Act has run. Notice does not equate to application.

18. Application is a request for action. There is no such request in the Form 50 filing on May 2, 2013. The request for action comes with the filing of a Form 50 hearing request, which was completed on July 30, 2014. This is 18 months after last payment of compensation and therefore does not comply with S.C. Code Ann. §42-17-90.

19. There is no language in S.C. Code Ann. §42-17-90 which provides for the statute to be tolled. Allen does not speak to tolling the statute.

20. S.C. Code Ann. §42-17-90(A) begins with, "On its own motion or on the application of a party in interest on the ground of a change of condition..." A plain reading of this language further supports the conclusion that an application of a party has the same result as a motion of the Commission. Both are an action to resolve a question under the Act. The vehicle for that resolution is a hearing.

21. S.C. Code Ann. §42-17-90(B) and (C), while dealing with repetitive trauma and occupational disease, mirror the mechanism found in (A) for the timing related to review. Those sections do, however, contain different language not found in (A). *Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.* This language does not appear in (A) which is the applicable section to this case. That being said, sections (B) and (C) must be read in context, and the first sentence of (B) and (C) like the first sentence of (A) require a motion or application.

22. S.C. Code Ann. §42-17-90(A) is clear in its intent. While the Commission does not

have to hold a hearing in the case within twelve months from the date of the last payment of compensation, Claimant must have sought a hearing during that statutorily established timeframe; otherwise, the time period in which the party can file for a change of condition is concluded.

23. In Wallace v. Campbell Limestone Co., 198 S.C. 196, 17 S.E.2d 309 (S.C. 1941), the court wrote, "The conclusiveness of this provision is inescapable."

24. Based on my review, I must conclude that for the application or request for hearing to have been timely, a request for hearing would have to have been filed on or before November 28, 2013.

25. As Claimant's application for a change of condition was not timely, the claim is dismissed with prejudice.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under S.C. Code Ann. §42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under S.C. Code Ann. §42-17-90 and other applicable law, an application for review of change of condition requires a hearing request to be made. A claim only filing is not sufficient as "application" means Claimant must request the Commission to take some action as opposed to simply giving the Commission notice of a claim.

3. Under S.C. Code Ann. §42-17-90 and other applicable law, Claimant failed to file for a change of condition for the worse within the statutorily required time period. Therefore,

Claimant's request for benefits for a change of condition is hereby denied and dismissed with prejudice.

VII. ORDER/AWARD

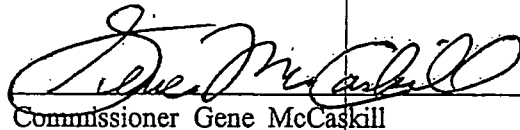
IT IS HEREBY ORDERED the Claimant did not timely file for a change of condition with the Commission.

IT IS FURTHER ORDERED the claim is dismissed with prejudice.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



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).
April 1, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

**AMENDED DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

WCC FILE NO. 1106689

Johnny Tucker,	)
Employee,	)
Claimant,	)
vs.	)
South Carolina Department of Transportation,	)
Employer,	)
and	)
State Accident Fund,	)
Carrier,	)
Defendants.	)

HEARING:

Held in Hartsville, South Carolina on October 21, 2014.

APPEARANCES:

Claimant represented by Preston F. McDaniel, Esquire of Columbia, South Carolina.

Defendants represented by Sarah S. Alphin, Esquire of Willson Jones Carter & Baxley, P.A., Columbia, South Carolina.

PURPOSE OF HEARING:

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

DECISION AND ORDER:

By Gene McCaskill, Commissioner

FILED:

April 14, 2015.

I. APA SUBMISSIONS

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

Defendant's APA Submissions

- APA #1: Records of Pee Dee Orthopaedic Associates, dated March 3, 2014 to July 26, 2013, consisting of pages 1-13.
- APA #2: Records of Hartsville Physical Therapy, dated September 26 to June 26, 2013, consisting of pages 14-17.
- APA #3: Records of Midlands Orthopaedics, dated August 26, 2013, consisting of pages 16-24.
- APA #4: Records of McLeod Physician Associates, dated May 24, 2013, consisting of pages 25-27.
- APA #5: Records of McLeod Urgent Care - Darlington, dated May 20, 2013, consisting of pages 28-31.
- APA #6: Records of Care South, dated March 14, 2013 to November 14, 2011, consisting of pages 32-33.

Claimant's APA Submissions

- APA #1: Records of Hartsville Medical Group, dated February 29, 2014 to January 10, 2012, consisting of pages 1-2.
- APA #2: Records of USC Orthopaedics and Sports Medicine, dated September 29, 2014 through February 20, 2013, consisting of pages 3-13.
- APA #3: Records of McLeod Physical Therapy, dated January 6, 2014 to August 28, 2013, consisting of pages 14-66.
- APA #4: Records of Correspondence with Carrier Representatives, dated June 26, 2013 to March 18, 2013, consisting of pages 67-72.

II. STIPULATIONS

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

issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission;
2. That the Claimant's accident occurred on May 2, 2011;
3. The Claimant's average weekly wage was \$419.31 with a corresponding compensation rate of \$279.55;
4. Notices were timely and properly served upon all parties of interest;
5. Venue, set in Darlington County, is proper as agreed by all parties;
6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;
7. The issues for determination are whether the Claimant is sustained a change of condition for the worse entitling him to medical benefits.

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

III. STATEMENT OF THE CASE

Claimant filed a Form 50 request for a hearing on July 30, 2014 seeking additional medical treatment and temporary total disability for a change of condition from an injury sustained on May 2, 2011. Claimant's injury was a left scapula fracture. Claimant was awarded 5% to the left shoulder for permanent partial disability and was paid on November 28, 2012. Defendants filed a Form 51 on August 20, 2014 denying Claimant has sustained a change of condition for the worse.

A hearing was held October 21, 2014 before the undersigned in Hartsville, South Carolina. Prior to such Hearing, Defendants filed a Motion to Postpone Hearing and Compel Claimant to Submit to Medical Evaluation. Defendants' Motion was based on Claimant's refusal to attend medical evaluation scheduled by Defendants pursuant to the right codified in S.C. Code Ann. §42-

15-18. Claimant refused to attend the medical evaluation with Dr. Hassler, the authorized treating physician. Based on his refusal to attend, Claimant has never been evaluated by the authorized treating physician of the underlying claim in order for the physician who treated the left scapular fracture to give an opinion as to change of condition. During pre-hearing arguments, the Hearing Commissioner considered Defendants' Motion and denied the same.

Arguments were presented by both parties on the issues of whether the Claimant is entitled to medical treatment from a change of condition. Defendants assert the Form 19, which is a part of the Commission file, shows last payment of compensation was November 28, 2012. Claimant's Form 50 hearing request was filed July 30, 2014, and therefore, Claimant's request for a change of condition is not timely. Alternatively, Defendants argue Claimant's change of condition fails on the merits as the preponderance of the evidence does not support a finding that Claimant's left scapula fracture worsened. Claimant argued that he is in need of additional medical treatment from the change of condition. Claimant argued he filed a Form 50 Claim Only within one year after last payment of compensation, and therefore, his change of condition request is timely.

IV. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Johnny Tucker as Employee-Claimant and South Carolina Department of Transportation as Employer and State Accident Fund as Carrier, Defendants.
2. Claimant suffered a compensable left scapula fracture injury arising out of and within the course and scope of his employment on May 2, 2011.
3. Claimant was awarded 5% permanent partial disability to the left shoulder from his

scapular fracture. A properly executed and filed Form 19 shows date of last payment of compensation to be November 28, 2012.

4. Claimant now alleges a change of condition. Claimant filed a Form 50 Request for Hearing alleging a change of condition on July 30, 2014.

5. Defendants deny that there has been a change of condition.

6. Defendants object to this matter coming before the Commission asserting that the Commission does not have jurisdiction to hear this claim as the Form 50 request for a hearing was filed more than 12 months after last payment of compensation as statutorily required by S.C. Code Ann. §42-17-90.

7. The Form 19, which is a part of the Commission file, shows last payment of compensation was November 28, 2012.

8. Claimant filed a Form 50 Claim Only alleging a change of condition on May 2, 2013. Claimant did not file a Form 50 Request for Hearing until July 30, 2014.

9. Claimant argues, citing the case of Allen vs. Benson, 112 S.E. 2d 722, that when an application is made within twelve months, the Commission is not restricted to holding the hearing in twelve months, and therefore argues that Claimant is not restricted to requesting a hearing during that time frame.

10. It is the Claimant's position, given their filing of claim only for a change of condition for the worse on May 2, 2013, the statute is effectively tolled.

11. S.C. Code Ann. §42-17-90 reads in part, "... on the application of a party in interest on the ground of a change of condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded..." This code section does not use the words, "request a hearing."

12. Within this framework, I must examine what does "application" mean in the context of the Act.

13. In Allen, the Court said in part, "...the application for review must be made within one year after the last payment of compensation."

14. In Allen, the application that was made was a request for a hearing.

15. Black's Law Dictionary (9th edition) defines "application" as a "request or petition."

16. When I consider the language of §42-17-90, the language in Allen, and the definition provided by Black's, I must conclude that "application" must be interpreted to mean a "request" seeking action on the part of the Commission.

17. What Claimant did on May 2, 2013 by filing a Form 50 claim only was to give notice to the Commission. Claimant did not request a hearing until July 30, 2014 after the twelve month window provided for in the Act has run. Notice does not equate to application.

18. Application is a request for action. There is no such request in the Form 50 filing on May 2, 2013. The request for action comes with the filing of a Form 50 hearing request, which was completed on July 30, 2014. This is 18 months after last payment of compensation and therefore does not comply with S.C. Code Ann. §42-17-90.

19. There is no language in S.C. Code Ann. §42-17-90 which provides for the statute to be tolled. Allen does not speak to tolling the statute.

20. S.C. Code Ann. §42-17-90(A) begins with, "On its own motion or on the application of a party in interest on the ground of a change of condition..." A plain reading of this language further supports the conclusion that an application of a party has the same

result as a motion of the Commission. Both are an action to resolve a question under the Act. The vehicle for that resolution is a hearing.

21. S.C. Code Ann. §42-17-90(B) and (C), while dealing with repetitive trauma and occupational disease, mirror the mechanism found in (A) for the timing related to review. Those sections do, however, contain different language not found in (A). *Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.* This language does not appear in (A) which is the applicable section to this case. That being said, sections (B) and (C) must be read in context, and the first sentence of (B) and (C) like the first sentence of (A) require a motion or application.

22. S.C. Code Ann. §42-17-90(A) is clear in its intent. While the Commission does not have to hold a hearing in the case within twelve months from the date of the last payment of compensation, Claimant must have sought a hearing during that statutorily established timeframe; otherwise, the time period in which the party can file for a change of condition is concluded.

23. In Wallace v. Campbell Limestone Co., 198 S.C. 196, 17 S.E.2d 309 (S.C. 1941), the court wrote, "The conclusiveness of this provision is inescapable."

24. Based on my review, I must conclude that for the application or request for hearing to have been timely, a request for hearing would have to have been filed on or before November 28, 2013.

25. As Claimant's application for a change of condition was not time, the claim is dismissed with prejudice.

V. CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under S.C. Code Ann. §42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under S.C. Code Ann. §42-17-90 and other applicable law, an application for review of change of condition requires a hearing request to be made. A claim only filing is not sufficient as "application" means Claimant must request the Commission to take some action as opposed to simply giving the Commission notice of a claim.

3. Under S.C. Code Ann. §42-17-90 and other applicable law, Claimant failed to file for a change of condition for the worse within the statutorily required time period. Therefore, Claimant's request for benefits for a change of condition is hereby denied and dismissed with prejudice.

VI. ORDER/AWARD

IT IS HEREBY ORDERED the Claimant did not timely file for a change of condition with the Commission.

IT IS FURTHER ORDERED the claim is dismissed with prejudice.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


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).
April 14, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1106689**

Johnny Tucker,
Employee/Claimant,
Appellant

vs.

SC Department of Transportation,
Employer,

and

State Accident Fund,
Carrier,
Defendants,
Respondents.

Appellate Panel Review in Columbia, South Carolina set for July 21, 2015 per
notices timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed September 11th, 2015.

Appearances:

Claimant/Appellant represented by Preston F. McDaniel, Esquire, of
Columbia, South Carolina.

Defendants/Respondents represented by Sarah S. Alphin, Esquire, of
Willson Jones Carter & Baxley of Columbia, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Gene McCaskill on October 21, 2014 in Hartsville, South Carolina. As a result of said hearing, Commissioner McCaskill issued an Order dated April 14, 2014 from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following **Findings of Fact**:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Johnny Tucker as Employee-Claimant and South Carolina Department of Transportation as Employer and State Accident Fund as Carrier, Defendants.
2. Claimant suffered a compensable left scapula fracture injury arising out of and within the course and scope of his employment on May 2, 2011.
3. Claimant was awarded 5% permanent partial disability to the left shoulder from his scapular fracture. A properly executed and filed Form 19 shows date of last payment of compensation to be November 28, 2012.
4. Claimant now alleges a change of condition. Claimant filed a Form 50 Request for Hearing alleging a change of condition on July 30, 2014.
5. Defendants deny that there has been a change of condition.
6. Defendants object to this matter coming before the Commission asserting that the Commission does not have jurisdiction to hear this claim as the Form 50 request for a hearing was filed more than 12 months after last payment of compensation as statutorily required by S.C. Code Ann. §42-17-90.
7. The Form 19, which is a part of the Commission file, shows last payment of

compensation was November 28, 2012.

8. Claimant filed a Form 50 Claim Only alleging a change of condition on May 2, 2013. Claimant did not file a Form 50 Request for Hearing until July 30, 2014.

9. Claimant argues, citing the case of Allen vs. Benson, 112 S.E. 2d 722, that when an application is made within twelve months, the Commission is not restricted to holding the hearing in twelve months, and therefore argues that Claimant is not restricted to requesting a hearing during that time frame.

10. It is the Claimant's position, given their filing of claim only for a change of condition for the worse on May 2, 2013, the statute is effectively tolled.

11. S.C. Code Ann. §42-17-90 reads in part, "...on the application of a party in interest on the ground of a change of condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded..." This code section does not use the words, "request a hearing."

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22. S.C. Code Ann. §42-17-90(A) is clear in its intent. While the Commission does not

have to hold a hearing in the case within twelve months from the date of the last payment of compensation, Claimant must have sought a hearing during that statutorily established timeframe; otherwise, the time period in which the party can file for a change of condition is concluded.

23. In Wallace v. Campbell Limestone Co., 198 S.C. 196, 17 S.E.2d 309 (S.C. 1941), the court wrote, "The conclusiveness of this provision is inescapable."

24. Based on my review, I must conclude that for the application or request for hearing to have been timely, a request for hearing would have to have been filed on or before November 28, 2013.

25. As Claimant's application for a change of condition was not timely, the claim is dismissed with prejudice.

The Hearing Commissioner's Decision and Order also set forth the following
Conclusions of Law:

1. Under S.C. Code Ann. §42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under S.C. Code Ann. §42-17-90 and other applicable law, an application for review of change of condition requires a hearing request to be made. A claim only filing is not sufficient as "application" means Claimant must request the Commission to take some action as opposed to simply giving the Commission notice of a claim.

3. Under S.C. Code Ann. §42-17-90 and other applicable law, Claimant failed to file for a change of condition for the worse within the statutorily required time period. Therefore, Claimant's request for benefits for a change of condition is hereby denied and dismissed with

prejudice.

Within the statutory period, Counsel for the Claimant filed an Application for Review in the case setting forth the following assignments of error:

1. That the Claimant would request a review pursuant to S.C. Code §42-17-50 by the Full Commission of the Findings of Fact, Conclusions of Law and Decision rendered in this matter based upon a review of the evidence, the position and the legal precedents cited to the Commission and the entire Record before the Hearing Commissioner for decision.
2. That the Hearing Commissioner erred as a matter of law by denying the claim for a Change of Condition because the Claimant did not timely file for a Change of Condition with the Commission not on the basis that the Claimant did not file or claim for a Change of Condition with the Commission within one (1) year pursuant to Statute and Regulation but that the Claimant did not request a Hearing on the claim of a Change of Condition within one (1) years this was error because the allegation that the Change of Condition was not timely filed is an affirmative defense which must be plead pursuant to statute and Commission Regulation and it was not plead in the responsive Form 51 in this case.
3. That the Hearing Commissioner erred as a matter of law by denying the Claimant a Hearing on his claim for a Change of Condition on the basis that although the Claimant had timely filed a Claim alleging a Change of Condition had occurred well within the twelve (12) months of the last payment of compensation, the Claimant did not file for a Hearing on that claim until after the twelve (12) months following the last payment of compensation.

4. That the Hearing Commissioner erred as a matter of law by denying the claim for a Change of Condition where South Carolina Workers' Compensation Reg. 67-206 after the claim for a Change of Condition was filed requires that employer's representative "shall immediately contact the Claimant", and where Reg. 67-601 provides that the, "Commission will not set a Hearing until a conflict arises," and where the undisputed evidence is that the Claimant on four (4) separate occasions contacted counsel for the Defendants and/or the adjuster for the Defendants beginning on March 18, 2013 and continued through at least July 26, 2013 and where there is no evidence that the Defendants ever notified counsel or Claimant of a conflict, the Defendants are estopped and/or have waived the affirmative defense of not timely filing for a Change of Condition under S.C. Code §42-17-90.
5. That the Hearing Commissioner erred as a matter of law by denying the claim for a Change of Condition where S.C. Code §42-17-90, our Change of Condition statute is very clear that the Claimant must file an application alleging a Change of Condition which the Commission refers to in its own regulations as, "a claim" involving a Change of Condition (Reg. 67-602B) within one (1) year of the last date of the payment of compensation, the Commissioner's Decision requiring that the Claimant must not only file an application by filing a claim but must file for a Hearing to meet the requirements of the Act, denies the Claimant due process of law under federal and state law. The Commission, not the parties, has bifurcated the, "application process" under its regulations.
6. That the Hearing Commissioner erred as a matter of law by failing to make a

Decision and make Findings of Fact and Conclusions of Law on the application for benefits based on an undiagnosed condition. Where the Form 50 Request for Hearing alleged both a Change of Condition for the worse and also an undiagnosed condition.

7. The Hearing Commissioner erred as a matter of law by failing to apply the fundamental construction principle applied to the Act, that the Act and its provision shall be liberally construed in favor of benefits to the injured worker.

Copies of the above assignments of error were furnished to all interested parties prior to oral argument scheduled before the Appellate Panel on July 21, 2015.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the brief of the Appellant and Respondents.

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined the Order of the Hearing Commissioner is hereby **AFFIRMED IN FULL**. The Findings of Fact and Conclusions of Law found in the Hearing Commissioner's Decision and Order, and as specified above, are hereby **AFFIRMED IN FULL**.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Johnny Tucker as Employee-Claimant and South Carolina Department of Transportation as

Employer and State Accident Fund as Carrier, Defendants.

2. Claimant suffered a compensable left scapula fracture injury arising out of and within the course and scope of his employment on May 2, 2011.
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9. Claimant argues, citing the case of Allen vs. Benson, 112 S.E. 2d 722, that when an application is made within twelve months, the Commission is not restricted to holding the hearing in twelve months, and therefore argues that Claimant is not restricted to requesting a hearing during that time frame.
10. It is the Claimant's position, given their filing of claim only for a change of condition for the worse on May 2, 2013, the statute is effectively tolled.

11. S.C. Code Ann. §42-17-90 reads in part, "... on the application of a party in interest on the ground of a change of condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded..." This code section does not use the words, "request a hearing."
12. Within this framework, we must examine what does "application" mean in the context of the Act.
13. In Allen, the Court said in part, "...the application for review must be made within one year after the last payment of compensation."
14. In Allen, the application that was made was a request for a hearing.
15. Black's Law Dictionary (9th edition) defines "application" as a "request or petition."
16. When we consider the language of §42-17-90, the language in Allen, and the definition provided by Black's, we must conclude that "application" must be interpreted to mean a "request" seeking action on the part of the Commission.
17. What Claimant did on May 2, 2013 by filing a Form 50 claim only was to give notice to the Commission. Claimant did not request a hearing until July 30, 2014 after the twelve month window provided for in the Act has run. Notice does not equate to application.
18. Application is a request for action. There is no such request in the Form 50 filing on May 2, 2013. The request for action comes with the filing of a Form 50 hearing request, which was completed on July 30, 2014. This is 18 months after last payment of compensation and therefore does not comply with S.C. Code Ann. §42-17-90.
19. There is no language in S.C. Code Ann. §42-17-90 which provides for the statute to

be tolled. Allen does not speak to tolling the statute.

20. S.C. Code Ann. §42-17-90(A) begins with, "On its own motion or on the application of a party in interest on the ground of a change of condition..." A plain reading of this language further supports the conclusion that an application of a party has the same result as a motion of the Commission. Both are an action to resolve a question under the Act. The vehicle for that resolution is a hearing.

21. S.C. Code Ann. §42-17-90(B) and (C), while dealing with repetitive trauma and occupational disease, mirror the mechanism found in (A) for the timing related to review. Those sections do, however, contain different language not found in (A). *Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.* This language does not appear in (A) which is the applicable section to this case. That being said, sections (B) and (C) must be read in context, and the first sentence of (B) and (C) like the first sentence of (A) require a motion or application.

22. S.C. Code Ann. §42-17-90(A) is clear in its intent. While the Commission does not have to hold a hearing in the case within twelve months from the date of the last payment of compensation, Claimant must have sought a hearing during that statutorily established timeframe; otherwise, the time period in which the party can file for a change of condition is concluded.

23. In Wallace v. Campbell Limestone Co., 198 S.C. 196, 17 S.E.2d 309 (S.C. 1941), the court wrote, "The conclusiveness of this provision is inescapable."

24. Based on our review, we must conclude that for the application or request for hearing to have been timely, a request for hearing would have to have been filed on or before November 28, 2013.

25. As Claimant's application for a change of condition was not timely, the claim is dismissed with prejudice.

CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under S.C. Code Ann §42-1-130, Claimant was a covered employee at the time in question; and under §42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under S.C. Code Ann. §42-17-90 and other applicable law, an application for review of change of condition requires a hearing request to be made. A claim only filing is not sufficient as "application" means Claimant must request the Commission to take some action as opposed to simply giving the Commission notice of a claim.
3. Under S.C. Code Ann. §42-17-90 and other applicable law, Claimant failed to file for a change of condition for the worse within the statutorily required time period. Therefore, Claimant's request for benefits for a change of condition is hereby denied and dismissed with prejudice.

ORDER

The Order of the Single Commissioner from which this appeal has been taken is hereby
AFFIRMED IN FULL

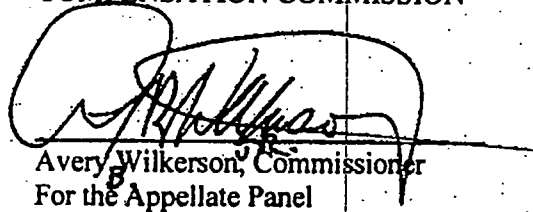
IT IS HEREBY ORDERED the Claimant did not timely file for a change of condition with the Commission.

IT IS FURTHER ORDERED the claim is dismissed with prejudice.

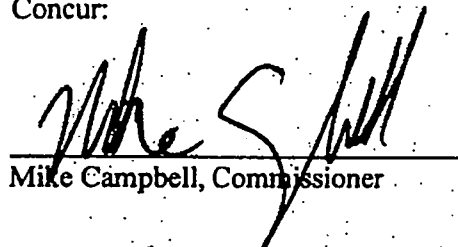
No hearing costs are assessed in this instance.

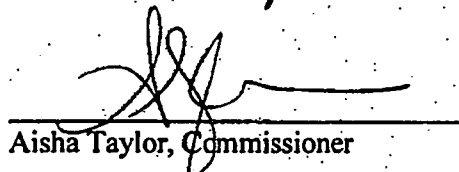
IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


Avery Wilkerson, Commissioner
For the Appellate Panel

Concur:


Mike Campbell, Commissioner


Aisha Taylor, Commissioner

CERTIFICATE OF SERVICE

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

By Kim Falls on September 11, 2015

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Johnny Tucker v SC Depart. Of Transportation

SCWCC: 1106689

Commissioner: McCaskill

Panel : Wilkerson, Campbell, Taylor

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

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission hereby;

_____ Dismissed as Interlocutory.

_____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

_____ Granted.

_____ Denied.

 / Dismissed

_____ Set for Hearing.

BEFORE THE;

_____ Hearing Comm.

_____ Jurisdictional Comm.

_____ Full Commission.

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

_____ Remand to Panel as indicated below.

_____ Barden

_____ James

_____ Taylor

_____ Beck

_____ Campbell

_____ Wilkerson

_____ McCaskill

_____ Remand for Order consistent with the Order of the Court.

_____ Remand to the Hearing Commissioner.

_____ Remand to the Jurisdictional Commissioner.

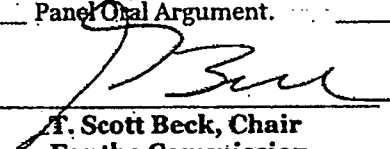
_____ Other: _____

_____ Remand:

_____ Panel Oral Argument.

_____ En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

11/16 2015

CONCURRING:

Commissioner Susan S. Barden

Commissioner Melody James

Commissioner Aisha Taylor

Commissioner Avery Wilkerson

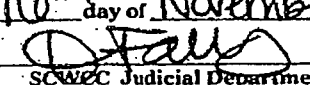
Commissioner Michael Campbell

Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

This 11th day of November, 2015.

By: 

SCWCC Judicial Department

NOT PARTICIPATING:

DISSENTING:

P.47

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

File # 1106689
Carrier File # 2011-001286
Carrier Code # 500 - SF
Employer FEIN 570000U12

Johnny Tucker

DEPT OF TRANSPORTATION
955 Park Street, Columbia, SC 29202

Preparer's name: Robin Oxner-King (803) 896-5911 State Accident Fund, Insurance Carrier

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	45.4286	* Details on Page 2 *		11,421.61
2. Number of weeks T.P.				
3. Number of weeks P.P.		2wks per WCC Order		559.10
4. Disfigurement				
5. Agreement and Final Release				
Total Compensation Paid				11980.71
6. Total Medical Benefits* Paid				8,357.37
7. Funeral Benefits				.00

() Case Denied

Date of Injury: 05/02/2011

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

By: Johnny Tucker
Claimant

By: _____
Employer's Representative

Date: 11-28-12

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

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	\$	.00
B. Attorney's Fee Paid by Employer	\$	
C. Attorney's Fee Paid by Claimant	\$	
(Non contingent fees, only)		

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

WCC FORM # 19 REV. DATE 3/96 **19**

STATUS REPORT AND COMPENSATION RECEIPT

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

W File # 1106689
Carrier File # 2011-001286
Carrier Code # 500-SF
Employer FEIN 570000U12

Johnny Tucker

DEPT OF TRANSPORTATION
955 Park Street, Columbia, SC 29202

Preparer's name: Robin Oxner-King (803) 896-5911 State Accident Fund, Insurance Carrier

TT-AN	4.5714	03-MAY-11	03-JUN-11	
TT	40.8571	04-JUN-11	15-MAR-12	11,421.61

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 115
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: 1106689
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Johnnie Tucker SSN: _____ Employer's Name: Dept of Transportation
Address: _____ Address: 955 Park Street
City: _____ State: SC Zip: _____ City: Columbia State: SC Zip: 29202
Home Phone: (803) Work Phone: () Insurance Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

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

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

Date of Injury or Illness: 5/2/11

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to left shoulder(fracture)/arm/back (Part(s) of Body Injured) on 5/2/11 (Month/Day/Year) in Florence County, State of SC.
1b. Body part(s) affected are: left shoulder(fracture)/arm/back

Briefly describe how the accident occurred. Claimant was stepping off of work vehicle when he missed a step on 5ft. step ladder which caused him to fall landing on and injuring his back, left side and left shoulder (fracture). (CHANGE OF CONDITION AND UNDIAGNOSED CONDITION CLAIM - See No. 11.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 5/2/11 (Month/Day/Year) in the following manner:

Verbally reported to the Safety Manager

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

☐ (a) medical examination and treatment for:

☒ (b) additional medical examination and treatment for: See Attachment.

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: To be determined.

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

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☒ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: 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 provided by law.

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

11a. Further grounds or unusual aspects of claim: See Attachment.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Dr. Terence Hassler, Hartsville Orthopaedics, Hartsville, SC; Carolina Pines Regional Medical Center, Hartsville, SC; Dr. Emmanuel O. Quaye, The Medical Group, Hartsville, SC; Dr. Christopher Mazoue, USC Specialty Clinics, Columbia, SC

11c. To the best of your knowledge, did you have any prior permanent disability?

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

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

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

14. Estimated time needed for hearing: _____

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

Preston F. McDaniel
Preparer's Signature

Claimant's Attorney
Title

mcdaniellaw@hotmail.com
Email

5/2/11
Date

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

WCC Form # 50
Revised 9/07

50
P.51

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

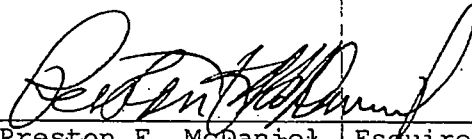
ATTACHMENT TO FORM 50

Johnny Tucker v. SC Department of Transportation
WCC File No. 1106689

- 6b. According to the Claimant's treating physician, Dr. Emmanuel O. Quaye, he has undergone a change of condition for the worse and he has been referred to Dr. Mazoue. According to the evaluation of Dr. Mazoue, both of which reports are attached hereto and incorporated herein by reference, Dr. Mazoue is of the opinion that the Claimant is in need of additional medical care and also he has diagnosed the Claimant with a previously undiagnosed condition stemming from the accident. See 11a.
- 11a. An Award was made in this matter based on the Decision originally entered by the Hearing Commissioner on March 26, 2012, and after appeal, compensation benefits were paid on or about November 28, 2012. Per the attached evaluation of Dr. Emmanuel O. Quaye, an authorized treating physician following the accident, the Claimant has undergone a change of condition for the worse since his last evaluation in 2012 and the Claimant was referred to a shoulder specialist, Dr. Christopher Mazoue. In addition to the previous diagnoses, the Claimant has been diagnosed by Dr. Mazoue with having most likely sustained a, "brachial plexus injury" and possibly a cervical spine pathology and he has recommended electrodiagnostic studies.

The Claimant at this point is requesting medical care to include the evaluation and treatment being provided by Dr. Mazoue and that Dr. Mazoue be designated as the authorized treating physician.

Respectfully submitted,



Preston F. McDaniel, Esquire
Attorney for the Claimant

May 2, 2013



THE MEDICAL GROUP
AFFILIATED WITH CAROLINA PINES REGIONAL MEDICAL CENTER

Internal Medicine

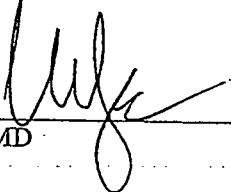
Emmanuel O. Quaye, M. D.

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

Re: Johnny Tucker
Date of Birth:
Date of Accident: 5/2/2011

Dear Mr. McDaniel:

In reply to your inquiry, I have reviewed my original report recommending a referral of Mr. Tucker to Dr. Mazoue which I issued on 1/10/2012. I have reviewed my treatment records of Mr. Tucker since that time and my recent referral of him to Dr. Christopher Mazoue and I have reviewed Dr. Mazoue's report. Based on that review, it is my opinion to a reasonable degree of medical certainty that Mr. Tucker's condition has worsened since January 2012 when I recommended that he be referred to Dr. Mazoue for evaluation and treatment of his shoulder.


Emmanuel O. Quaye, MD

4/15/13
Date

701 Medical Park Drive, Suite 304 Hartsville, SC 29550-4779
Phone: 843-383-0713 Fax: 843-332-9125
P.53

Upper-Extremity Evaluation*

Patient: TUCKER JR, JOHNNIE MRN: 85159 FIN: 28820
 Age: 55 Male DOB:
 Associated Diagnoses: Shoulder pain; Arm Weakness
 Author: Mazoue MD, Christopher

Chief Complaint

CHIEF COMPLAINT

2/20/2013 9:24 AM EST new patient- left shoulder

History of Present Illness

Patient presents today with left shoulder pain. He states that in May 2011 he fell and fractured a bone in his posterior shoulder. He cannot remember where the fracture was. Due to the location of the fracture, they let it heal without immobilization. The pain is not constant. When he does have pain it radiates down his arm. He has numbness and tingling, and weakness in his hand. He has problems turning caps off of jars, and cannot hold things and he drops them. He states his shoulder "locks up" on him. He was referred here by Dr. Quayle. Dr. Hassel was the MD that was treating his fracture at the time of injury. He complains of intermittent numbness in his left hand. He states that he has not been able to use his left shoulder or arm functionally since this injury in May 2011. He has had a heart attack in the interim. He has not had a stroke as far as he knows.

Health Status

Allergies:

Allergic Reactions (Selected)

No known allergies

Medications: (Selected)

Documented MedicationsDocumented

Crestor: 0 Refill(s), Type: Maintenance
 Effient: 0 Refill(s), Type: Maintenance
 Lipitor: 0 Refill(s), Type: Maintenance
 Lorcet HD: 0 Refill(s), Type: Maintenance
 aspirin: 0 Refill(s), Type: Maintenance
 lisinopril: 0 Refill(s), Type: Maintenance
 nitroglycerin 0.3 mg/hr transdermal film, extended release: 0 Refill(s), Type: Maintenance

Problem list:

All Problems

Morbid Obesity / ICD-9-CM 278.01 / Probable
 Left Shoulder Pain / ICD-9-CM 719.41 / Confirmed

Histories

Past Medical History:

No active or resolved past medical history items have been selected or recorded.

Family History:

No family history items have been selected or recorded.

Procedure history:

No active procedure history items have been selected or recorded.

Social History:

No active social history items have been recorded.

Physical Examination

VS/Measurements

Vital Signs

2/20/2013 9:24 AM EST

Peripheral Pulse Rate	94 bpm
Systolic Blood Pressure	162 mmHg HI
Diastolic Blood Pressure	92 mmHg HI
Mean Arterial Pressure	115 mmHg

Printed by: Holmes, Tonya
 Printed on: 2/28/2013 12:51 PM EST

Page 1 of 2
 (Continued)

Measurements from flowsheet : Measurements
2/20/2013 9:24 AM EST

Height	71 in
Weight	298 lb
BSA	2.60 m2
Body Mass Index	41.56 kg/m2

On exam, he is using a cane due to a right knee injury. He just had surgery for this apparently. He has good range of motion of his cervical spine. He has no active abduction at all of the left shoulder. He has major weakness with external rotation and internal rotation of the left shoulder. He has severe weakness with elbow flexion. He has 4 minus over 5 strength with elbow extension. He has good grip strength of the left hand and good strength with flank finger abduction and adduction. He has decreased sensation in the C5, C6, C7, C8 distributions of the left upper extremity. His hand is warm with no evidence of obvious vascular compromise. He has no obvious unilateral swelling of the left upper extremity. I can forward flex his left shoulder 140 degrees. He has some mild discomfort to palpation over his left scapula. Skin is intact upper extremities.

Radiographs of the left shoulder show what appears to be an old healed scapula body fracture. There is inferior subluxation of the humeral head in relation to the glenoid.

Impression and Plan

Diagnosis

Shoulder pain (ICD9 719.41).

Arm Weakness (ICD9 729.89).

Summary: Impression: Left upper extremity weakness in the C5, C6, C7 distributions with decreased sensation in the C5, C6, C7 and C8 distributions with left shoulder subluxation with previous left scapular fracture status post fall

Plan: I think that there was likely brachial plexus injury with this fall. Could be a cervical spine pathology. We will obtain electrodiagnostic studies. He may need an MRI of the cervical spine. He may need an MRI of the shoulder. He'll follow up in 3 weeks for reevaluation.

Orders

Orders.

Charges (Evaluation and Management):

99203 office outpatient new 30 minutes (Charge) (Completed): Quantity: 1

Signature Line

Signed and Authored by Christopher Mazoue on 02/20/2013 10:10 AM EST
Pathynia Knight

Charted Date: February 20, 2013 9:28 AM EST
Subject / Title: Upper Extremity Evaluation*
Performed By: Mazoue MD, Christopher on February 20, 2013 9:31 AM EST
Electronically Signed By: Mazoue MD, Christopher on February 20, 2013 10:10 AM EST
Visit Information: 28620, USC Orthopedics, Outpatient, 2/20/2013 - 2/22/2013

Printed by: Holmes, Tonya
Printed on: 2/28/2013 12:51 PM EST

Page 2 of 2
(End of Report)

CERTIFICATE OF SERVICE BY MAIL

WCC File No: 1106689

I hereby certify that I have on this day served the following in the matter of Johnny Tucker v. Dept of Transportation with a copy of the Form 50 Filing a Claim by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Greg Line, Claims Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

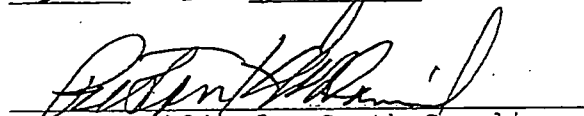
State Accident Fund
Post Office Box 102100
Columbia, South Carolina 29221-5000
ATTN: Robin Oxner-King

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal

SWORN TO BEFORE ME this
2nd day of May, 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: 10/28/18

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

July 30, 2014

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Johnnie Tucker v. SC Department of Transportation
WCC File No.: 1106689

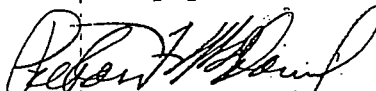
Dear Ms. Bracy:

Enclosed also is my Form 50 requesting a hearing with regards to the above-referenced matter along with my proof of service upon the carrier and/or opposing counsel in this matter. I have also enclosed this firm's check in the amount of \$25.00 representing the appropriate filing fee.

I am requesting that this matter be set for hearing as soon as the Commission calendar will permit.

I hope this is sufficient for filing with the Commission. Should you require anything further, kindly advise.

Sincerely yours,


Preston F. McDaniel

PFM/kth
Enclosure

cc: Gerald Malloy, Esquire
State Accident Fund
Mr. Johnnie Tucker

P.57

South Carolina Workers' Compensation Commission
1353 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



SC File #: **1106689**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Johnnie Tucker SSN: _____ Employer's Name: SC Dept. of Transportation
Address: _____ Address: 955 Park Street
City: _____ State: SC Zip: _____ City: Columbia State: SC Zip: 29202
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: _____
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

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

Date of Injury or Illness: 5/2/11

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

1. The claimant sustained an injury to Left shoulder (fracture)/arm/back (Part(s) of Body Injured) on 5/2/11 (Month/Day/Year) in Florence county, state of SC.
2. Body part(s) affected are: Left shoulder (fracture)/arm/back
Briefly describe how the accident occurred: Claimant was stepping off of work vehicle when he missed a step on 5ft. step ladder which caused him to fall landing on and injuring his back, left side and left shoulder (fracture). (CHANGE OF CONDITION AND UNDIAGNOSED CONDITION CLAIM - See No. 11)
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 5/2/11 (Month/Day/Year) in the following manner: Verbally reported to Safety Manager.
- ☒ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: See Attachment.
- ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: To be determined.
- ☐ 9. Due to 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 provided 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: See Attachment.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Terence Hassler, Hartsville Orthopaedics, Hartsville, SC; Carolina Pines Regional Medical Center, Hartsville, SC; Dr. Emmanuel O. Quaye, The Medical Group, Hartsville, SC; Dr. Christopher Mazoue, USC Specialty Clinics, Columbia, SC
- 11b. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: None
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

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

14. Estimated time needed for hearing: _____

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

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the _____ day of _____ 20____, by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preston F. McDaniel
Preparer's Signature

Attorney for Claimant
Title

preston@dfmcglaw.com
Email

7/30/14
Date

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

WCC Form # 50
Revised 7/13

5P.58

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

SCWCC
AUG 12 2014
JUDICIAL

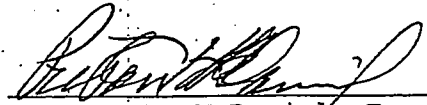
ATTACHMENT TO FORM 50

Johnnie Tucker v. SC Department of Transportation
WCC File No. 1106689

- 6b. According to the report of the Claimant's treating physician and an authorized treating physician for the injury, Dr. Emmanuel O. Quaye, Mr. Tucker has undergone a change of condition for the worse and he was referred to Dr. Mazoue. According to the evaluation of Dr. Mazoue, Dr. Mazoue was of the opinion that the Claimant is in need of additional medical care and also he has diagnosed the Claimant with a previously undiagnosed condition stemming from the accident. Both of these reports were filed with the Commission and with the SC Dept. of Transportation. SC Department of Transportation has since denied further treatment. See 11.
11. An Award was made in this matter based on the Decision originally entered by the Hearing Commissioner on March 26, 2012, and after appeal, compensation benefits were paid on or about November 28, 2012. Per the evaluation of Dr. Emmanuel O. Quaye, an authorized treating physician following the accident in 2011, the Claimant had undergone a change of condition for the worse since his last evaluation in 2012 and the Claimant was referred to a shoulder specialist, Dr. Christopher Mazoue. After evaluation by Dr. Mazoue, in addition to the previous diagnoses, the Claimant was diagnosed by Dr. Mazoue with having most likely sustained a, "brachial plexus injury" and possibly a cervical spine pathology and recommended electrodiagnostic studies. Following the evaluation, he instituted treatment.

The Claimant this point is requesting medical care to include the evaluation and treatment being provided by Dr. Mazoue and that Dr. Mazoue be designated as the authorized treating physician and temporary total as determined to apply pursuant to Dr. Mazoue's opinion until MMI.

Respectfully submitted,


Preston F. McDaniel, Esquire
Attorney for the Claimant

July 30, 2014

P.59

CERTIFICATE OF SERVICE BY MAIL

WCC File No. 1106689

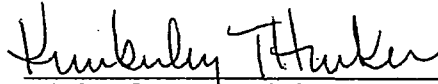
I hereby certify that I have on this day served the following in the matter of Johnnie Tucker v. Dept of Transportation with a copy of the Form 50 - Request for Hearing by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

State Accident Fund
Post Office Box 102100
Columbia, South Carolina 29221-5000

ATTN: Robin Oxner-King

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal

SWORN TO BEFORE ME this
30th day of July, 2014.



Notary Public for South Carolina (L.S.)

My Commission Expires: 10/28/18

SOUTH CAROLINA
STATE ACCIDENT FUND

HARRY B. GREGORY, JR., Director

August 20th, 2014

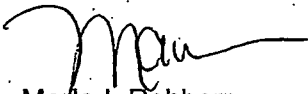
Amy Bracy, Judicial Director
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Johnnie Tucker v. DOT
WCC File No.: 1106689
SAF File No.: 2011-1286

Dear Sirs/Madam:

Enclosed please find the Form 51 which has been completed by this office in the above-entitled claim. If I may be of further assistance, please feel free to call me.

Sincerely,



Maria I. Rehborn
Legal Assistant

Enclosure
cc: Preston McDaniel, Esquire

Post Office Box 102100 Columbia, South Carolina 29221-5000 (803) 896-5800 FAX (803) 612-2785

www.saf.sc.gov

P.61

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



WCC File #: 1106689
Case File #: 2011-1286
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Johnny Tucker SSN: _____ Employer's Name: Dept of Transportation
Address: _____ Address: 955 Park Street
City: _____ State: SC Zip: _____ City: Columbia State: SC Zip: 29406
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: State Accident Fund
Date of Injury: 05/02/2011
Preparer's Name: Ellen Goodwin, Esq./mlr Law Firm: State Accident Fund Preparer's Phone #: (803) 896-5891

Date of Injury or Illness: 05/02/2011

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

- It Is 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 deny the claimant has sustained a change of condition for the worse.
- It Is Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See #1
- It Is Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See #1
- It Is 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
- It Is Denied notice of injury was given the employer. The reasons for denial are:
See #1
- It Is Denied the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See #1
- It Is Denied the employee is entitled to temporary total disability for the period(s) of : Claimant continues to receive weekly benefits at this time.
See #1
- It Is Denied the employee is permanently disabled. The reasons for denial are:
Disability, if any, to be determined by W.C.C.
- It Is Denied the employee has serious disfigurement.
- It Is contended that an average weekly wage of \$ 419.31 applies, according to attached Form 20 as provided by law.
- Further contentions, grounds of defense, or unusual aspects are:

- Estimated time needed for hearing: 30 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Preston McDaniel, Esquire

Judicial Director, SCWCC

Address: 1315 Elmwood Avenue, Columbia, SC 29201

P.O. Box 1715, Columbia, SC 29202-1715

on the 20th day of August, 2014 by ☒ first class mail ☐ personal service ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Ellen Goodwin
Preparer's Signature

Asst. Chief Counsel
Title

EGoodwin@saf.sc.gov
Email

8/20/14
Date

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

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing

P.62

South Carolina Workers' Compensation Commission

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



WCC File #: 1106689
Carrier File #: 2011001286
August 22, 2014

NOTICE OF HEARING

JOHNNY TUCKER v. DEPT OF TRANSPORTATION

Subject: To determine issues as set forth on Forms 50 and 51.
Date: October 21, 2014 at 01:30 PM
Location: Florence-Darlington Tec 225 Swift Creek Road Hartsville-Campus-Room 109
Hartsville, SC 29550

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

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

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

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

By: Kellie C Lindler, SC Workers' Compensation, August 22, 2014

Party

Employee: JOHNNY TUCKER

Employee: JOHNNY TUCKER

Employer: DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Attorney

Preston F. McDaniel
preston@pfmcdlaw.com
803-771-7211

Gerald Malloy
gmalloy@bellsouth.net
843-339-3000

Ellen Goodwin
egoodwin@saf.sc.gov
803-896-5891

Sarah S. Alphin
ssalphin@wjlaw.net
803-227-2885

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
For over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 6, 2014

Commissioner Gene McCaskill
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Johnnie Tucker v. SC Dept. of Transportation
WCC File No.: 1106689

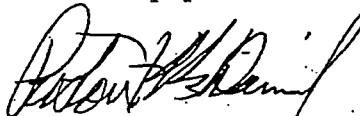
Dear Commissioner McCaskill:

Please find enclosed a copy of the Claimant's Pre-Hearing Brief in the above referenced matter. By copy of this letter, with enclosures, we are forwarding a copy of our Pre-Hearing Brief and APA submissions to opposing counsel on this date.

I hope this is sufficient for filing this matter with the Commission. However, if additional information is needed, please feel free to contact me at your convenience.

I look forward to seeing you at the hearing and to a resolution in the best interest of all parties concerned.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Gerald Malloy, Esquire
Sarah S. Alphin, Attorney

P.64

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1106689

Claimant's Name: Johnnie Tucker
Address: _____
City: _____ State: SC Zip: _____
Home Phone: () - _____ Work Phone: () - _____
Preparer's Name: Preston F. McDaniel

Employer's Name: SC Dept. of Transportation
Address: 955 Park Street
City: Columbia State: SC Zip: 29202
Carrier: State Accident Fund
Preparer's Phone #: (803) 771-7211

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 279.55 2. AWW: \$419.31 Date of Injury: 5/2/11
3. Type of injury and body part(s): Left shoulder /arm/back.6
4. Facts in controversy: SEE ATTACHMENT.
5. Legal issues involved: SEE ATTACHMENT.
6. Unusual aspects: _____
7. Witnesses (designate if expert):* Mr. Tucker, Mrs. Tucker, Kim Hinkle, Ashley Cashdollar, Andrea Ham.
8. Exhibits: CLAIMANT REQUESTS THAT WCC FILE # 1106689 BE MADE A PART OF THE RECORD. Various correspondence and records from The Claimant's attorney's file will be submitted under the Business Records Act if objections is made as to those being submitted as a part of the APA Submissions.
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: Dr. Emmanuel O. Quaye, The Medical Group, Hartsville, SC;
Dr. Christopher Mazoue, USC Specialty Clinics, Columbia, SC; McLeod Regional Medical Center, Sports Physical Therapy, Florence, 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: _____

☐ **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 SEE ATTACHED CERTIFICATE OF SERVICE on the _____ day of 20 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: _____

Date of hearing: October 21, 2014

Email: preston@pfmcdlaw.com

Time needed for hearing: 1.0 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

ATTACHMENT TO FORM 58
Johnnie Tucker v. Department of Transportation
WCC FILE NO: 1106689

4. a. The Claimant had filed for additional treatment based on a change of condition for the worse and an undiagnosed condition based on the medical opinion evidence as expressed by Dr. Quaye and Dr. Mazoue. The evidence will establish that when Dr. Quaye found that Mr. Tucker had undergone a change of condition for the worse, the Claimant specifically requested additional medical care and evaluation from the State Accident Fund which was not authorized. Mr. Tucker then obtained additional care by Dr. Quaye and Dr. Mazoue.
- b. Based on the opinions of Dr. Quaye and Dr. Mazoue temporary total disability benefits from January 9, 2012 to the present and continuing until final evaluation after being released from treatment as having reached maximum medical improvement by all treating physicians.
- c. All medical care provided by Dr. Quaye, Dr. Mazoue and the physical therapy group to whom Mr. Tucker was referred.
- d. In addition the Claimant would welcome an independent medical evaluation as ordered by the Commission by shoulder specialist.

5. IN CORRELATION WITH RESPONSES UNDER NUMBER 4:

a. SC Code §42-17-90 - change of condition. Undiagnosed condition Bray Boy v. Clark Heating Co., Inc. 306 SC 56, SE 2d 767 (1991).

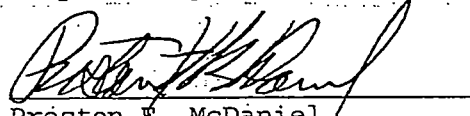
b. Claimant's entitlement to temporary total disability benefits as provided in §42-9-10 and §42-1-120.

Total Disability as defined under Colvin v. E. I. Dupont DeNemours Co., 327 SC 465, 88 SE 2d 581 (1955); Coleman v. Quality Concrete Products, Inc., 245 SC 645, 142 SE 2d 43 (1965).

c. SC Code §42-15-60 provides for Claimant's entitlement to additional medical care due until change of condition.

d. SC Code §42-17-30.

Respectfully Submitted,



Preston F. McDaniel
Gerald Malloy
Attorneys for Claimant

10/6, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 1106689

Johnnie Tucker,)
Employee-Claimant,)
v.)
SC Dept. of)
Transportation,)
as Employer, and)
State Accident Fund,)
as Carrier,)
Defendants.)

NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT, HENTON T. CLEMMONS

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
SARAH S. ALPHIN, ATTORNEY AT LAW, ATTORNEY FOR THE
EMPLOYER/CARRIER

YOU ARE HEREBY NOTIFIED THAT THE Claimant, Johnnie Tucker,
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/physician or other evidence on behalf of the Claimant,
to wit:

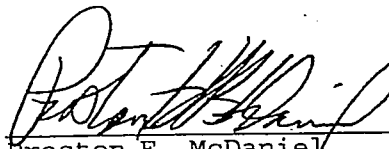
Tab Nos.	NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE Nos.
1	Dr. Emmanuel Quaye Hartsville Medical Group	01-10-2012 thru 02-29-2014	1-2
2	Dr. Christopher Mazoue USC Orthopedics and Sports Medicine	02-20-2013 thru 09-29-2014	3-13
3	McLeod Physical Therapy	08-28-2013 thru 01-06-2014	14-66
4	Correspondence with Carrier Representatives	03-18-2013 thru 06-26-2013	67-72

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 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 Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: The Claimant; Mrs. Tucker; Kimberly Hinkle; Ashley Cashdollar; Andrea Ham; any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,



Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
803-771-7211

October 6, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 1106689

Johnnie Tucker,)
Employee-Claimant,)
v.)

Date of Hearing: 10/21/2014

SC Dept. of)
Transportation,)
as Employer, and)
State Accident Fund,)
as Carrier,)
Defendants.)

APA SUBMISSIONS

Pursuant to South Carolina Code §1-23-330 and Commission
Rule 67-612, Preston F. McDaniel, the Attorney for the
Claimant, submits the following report(s) in support of and on
behalf of the Claimant in this matter:

Tab Nos.	NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE Nos.
1	Dr. Emmanuel Quaye Hartsville Medical Group	01-10-2012 thru 02-29-2014	1-2
2	Dr. Christopher Mazoue USC Orthopedics and Sports Medicine	02-20-2013 thru 09-29-2014	3-13
3	McLeod Physical Therapy	08-28-2013 thru 01-06-2014	14-66
4	Correspondence with Carrier Representatives	03-18-2013 thru 06-26-2013	67-72

Johnnie Tucker
DOB:
Chart #: 123273

Dear Dr. Quaye:

I would appreciate it if you would provide answers to the questions of Mr. Johnnie Tucker's disability and/or return to work status as of the time you expressed the opinion on January 9, 2012 that his condition had worsened. Also, we would appreciate your opinion based on your evaluation and treatment of Mr. Tucker since that time in reference to the condition of his left shoulder as to his disability and return to work status:

1. As of my evaluation on January 9, 2012:

- A. ☒ Mr. Tucker should have been out of work as of the date of the evaluation.
- B. ☐ Mr. Tucker should have been restricted to no work with the left arm and shoulder.
- C. ☐ Mr. Tucker was capable of returning to work with the following limitations and restriction on the use of his left arm/shoulder:
- D. ☒ Mr. Tucker was able to return to work without restriction.

EOQ (initials)

2. Since that time and currently, my opinion on his work status and/or limitations

- A. ☒ has not changed.
- B. ☐ has changed and his current work status is:

EOQ (initials)

The above referenced answers and opinions constitute my opinions and answers to the questions posed to a reasonable degree of medical certainty concerning Mr. Johnnie Tucker's work status as of the date of my evaluation of him on January 9, 2012.

Dr. Emmanuel O. Quaye

Date: 9/24/14

P.70

- 1 -



THE MEDICAL GROUP

AFFILIATED WITH CAROLINA PINES REGIONAL MEDICAL CENTER

Internal Medicine

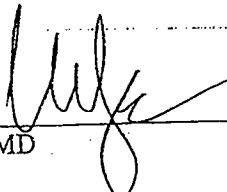
Emmanuel O. Quaye, M. D.

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

Re: Johnny Tucker
Date of Birth:
Date of Accident: 5/2/2011

Dear Mr. McDaniel:

In reply to your inquiry, I have reviewed my original report recommending a referral of Mr. Tucker to Dr. Mazoue which I issued on 1/10/2012. I have reviewed my treatment records of Mr. Tucker since that time and my recent referral of him to Dr. Christopher Mazoue and I have reviewed Dr. Mazoue's report. Based on that review, it is my opinion to a reasonable degree of medical certainty that Mr. Tucker's condition has worsened since January 2012 when I recommended that he be referred to Dr. Mazoue for evaluation and treatment of his shoulder.


Emmanuel O. Quaye, MD

4/15/13
Date

Document Has Been Updated

Freetext Note *

Patient: TUCKER JR, JOHNNIE MRN: 85159 FIN: 81642
Age: Sex: Male DOB:
Associated Diagnoses: None
Author: Mazoue MD, Christopher

Derar Mr. McDaniel:

The following is in response to a letter dated September 25, 2014 from Mr. Preston McDaniel regarding Mr. Tucker. In response to the question regarding the MRI of the left shoulder I feel that at this point there is not much that we would gain from an MRI of the left shoulder. An MRI of the L shoulder from 2011 showed a chronic severe rotator cuff tear with atrophy of the supraspinatus tendon. I do feel at this point that the patient is at maximal medical improvement. I would like to have another appointment with Mr. Tucker to complete an impairment evaluation given the fact that I had not seen him since February. I have filled out the brief questionnaire as requested by Mr. McDaniel.

Sincerely,



Christopher Mazoue, M.D.
Associate Professor
University of South Carolina School of Medicine
Department of Orthopaedics and Sports Medicine

Signature Line

Signed and Authored by Christopher Mazoue on 09/29/2014 01:57 PM EDT
Signed by Christopher Mazoue MD on 09/29/2014 02:04 PM EDT

Charted Date: September 29, 2014 1:51 PM EDT
Subject / Title: Freetext Note *
Performed By: Mazoue MD, Christopher on September 29, 2014 1:57 PM EDT
Electronically Signed By: Mazoue MD, Christopher on September 29, 2014 1:57 PM EDT
Visit Information: 81642, USC Orthopedics, Outpatient, 2/28/2014 - 3/2/2014

Printed by: Mazoue MD, Christopher
Printed on: 9/29/2014 2:05 PM EDT

P.72
-3-

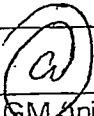
Page 1 of 1
(End of Report)

Johnnie Tucker
DOB:
Chart #: 123273

Dear Dr. Mazoue:

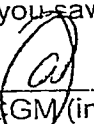
I would appreciate it if you would provide answers to the questions concerning Mr. Johnnie Tucker's disability and/or return to work status as of the time you first saw him on February 20, 2013 based on your evaluation and treatment of Mr. Tucker at that time in reference to his medical problems and condition of his left shoulder:

1. A. _____ Mr. Tucker should have been out of work as of the date of the evaluation.
- B. ☒ Mr. Tucker should have been restricted to no work with the left arm and shoulder.
- C. _____ Mr. Tucker was capable of returning to work with the following limitations and restriction on the use of his left arm/shoulder:


CGM (initials)

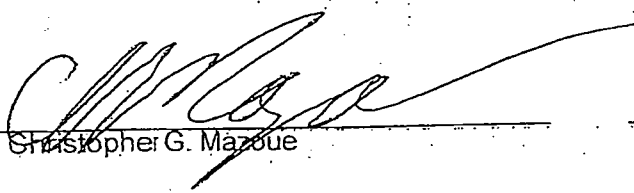
D. _____ Mr. Tucker was able to return to work without restriction.

2. Has that opinion changed through your treatment of him and as of the last time you saw him?


CGM (initials)

No

The above referenced answers and opinions constitute my opinions and answers to the questions posed to a reasonable degree of medical certainty concerning Mr. Johnnie Tucker's work status as of the date of my evaluation of him on February 20, 2013.


Dr. Christopher G. Mazoue

9/29/14
Date:



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS®

November 12, 2013

Johnny Tucker

DOB:

MRN: 85159

Dear Mr. McDaniel:

In response to your inquiry, after review of my evaluation of Mr. Tucker and review of the report of Dr. Emmanuel Quaye who referred Mr. Tucker to me, it is my opinion to a reasonable degree of medical certainty that based on the history given to me by the patient that his problems for which I evaluated him stem from his work related accident. It is further my opinion that he needs the additional medical care as I have outlined in my initial evaluation report to address those problems.

I hope this provides you with the information you need.

A handwritten signature in black ink, appearing to read "C. Mazoue", written over a horizontal dotted line.

Christopher G. Mazoue, M.D., Associate Professor
USC School of Medicine
Department of Orthopaedic Surgery &
Sports Medicine

DEPARTMENT OF ORTHOPAEDIC SURGERY
Two Medical Park, Suite 74, Columbia, SC 29203
803-434-6812, - 5 - 803-434-7306

Orthopedic Note

TUCKER JR, JOHNNIE - 85159

Performed By: Mazoue MD, Christopher on February 28, 2014 11:11 AM EST
Electronically Signed By: Mazoue MD, Christopher on March 02, 2014 11:05 AM EST
Visit Information: 81642, USC Orthopedics, Outpatient, 2/28/2014 - 3/2/2014

Printed by: Bailey-Robinson, Ann
Printed on: 9/17/2014 2:57 PM EDT

Page 4 of 4
(End of Report)

Upper Extremity MAZ

Patient: TUCKER JR, JOHNNIE MRN: 86159 FIN: 50985
Age: Sex: Male DOB:
Associated Diagnoses: Shoulder pain; Brachial Plexus Injury
Author: Mazoue MD, Christopher

Chief Complaint

8/9/2013 2:57 PM EDT
8/9/2013 2:40 PM EDT

L UE EMG FU
F/U LT SHOULDER

History of Present Illness

Mr. Tucker is here for Left UE EMG FU. We last saw him in February and he has been waiting from approval from the attorney on his case for the EMG. He states that the pain is not changed since we last saw him. He has weakness in the L UE and is unable to raise his arm past 90 degrees abduction. He is here for EMG FU.

Review of Systems

Constitutional: Negative.
Cardiovascular: Negative.
Hematology/Lymphatics: Negative.
Musculoskeletal: Negative except as documented in history of present illness.
Integumentary: Negative.
Neurologic: Negative.
Psychiatric: Negative.
All other systems reviewed and negative

Health Status

Allergies:

Allergic Reactions (All)
No known allergies

Medications: (Selected)

Documented MedicationsDocumented

Orestor: 0 Refill(s), Type: Maintenance
Effient: 0 Refill(s), Type: Maintenance
Lipitor: 0 Refill(s), Type: Maintenance
Lorcet HD: 0 Refill(s), Type: Maintenance
aspirin: 0 Refill(s), Type: Maintenance
lisinopril: 0 Refill(s), Type: Maintenance
nitroglycerin 0.3 mg/hr transdermal film, extended release: 0 Refill(s), Type: Maintenance

Problem list:

All Problems

Diabetes Mellitus / ICD-9-CM 250 / Confirmed
Heart Disease / ICD-9-CM 429.9 / Confirmed
HTN (Hypertension) / ICD-9-CM 401.9 / Confirmed
Left Shoulder Pain / ICD-9-CM 719.41 / Confirmed
Morbid Obesity / ICD-9-CM 278.01 / Probable

Histories

Past Medical History:

Active

HTN (Hypertension) (401.9)
Diabetes Mellitus (250)
Heart Disease (429.9)

Family History:

Printed by: Holmes, Tonya
Printed on: 8/18/2013 5:26 PM EDT

Page 1 of 3
(Continued)

Sports Medicine Note

TUCKER JR, JOHNNIE - 85159

Diabetes

Father

HTN (Hypertension)

Father

Mother

TIA (transient ischemic attack)

Mother

Procedure history:

No active procedure history items have been selected or recorded.

Social History:

Alcohol Assessment: Denies Alcohol Use

Tobacco Assessment: Denies Tobacco Use

Substance Abuse Assessment: Denies Substance Abuse

Home and Environment Assessment

Marital status: Married.

Comment: Alice Tucker

Physical Examination

There are no changes on physical exam with regards to the left upper extremity.

Electrodiagnostic studies show evidence of a left upper trunk brachial plexopathy with underlying sensory motor peripheral neuropathy, likely from diabetes and mild bilateral carpal tunnel syndrome.

Health Maintenance

Recommendations

Pending (in the next year)

Due

Alcohol Misuse Screen (Male) due 08/09/13 and every 1 year(s)

Colorectal Cancer Screen (Colonoscopy) (Male) due 08/09/13 and every 10 year(s)

Colorectal Cancer Screen (Occult Blood) (Male) due 08/09/13 and every 1 year(s)

Colorectal Cancer Screen (Sigmoidoscopy) (Male) due 08/09/13 and every 5 year(s)

DM - Communication with Managing Provider due 08/09/13 and every 1 year(s)

DM - Eye Exam due 08/09/13 and every 1 year(s)

DM - Foot Exam due 08/09/13 and every 1 year(s)

DM - HgbA1c due 08/09/13 and every 1 year(s)

DM - Microalbumin due 08/09/13 and every 1 year(s)

Depression Screen (Male) due 08/09/13 and every 1 year(s)

HIV Screen (if sexually active) (Male) due 08/09/13 and every 1 year(s)

Influenza Vaccine due 08/09/13 and every 1 year(s)

Lipid Disorders Screen (Male) due 08/09/13 and every 5 year(s)

STD Counseling (if sexually active) (Male) due 08/09/13 and every 1 year(s)

Syphilis Screen (if sexually active) (Male) due 08/09/13 and every 1 year(s)

Tetanus Vaccine due 08/09/13 and every 10 year(s)

Tobacco Use Screen (Male) due 08/09/13 and every 1 year(s)

Due in Future

High Blood Pressure Screen (Male) not due until 02/20/14 and every 1 year(s)

Satisfied (in the past 1 year)

Satisfied

Aspirin Therapy for Prevention of CVD (Male) on 02/20/13.

High Blood Pressure Screen (Male) on 02/20/13. Satisfied by Durand, Emily

Impression and Plan

Diagnosis

Shoulder pain (ICD9 71941).

Printed by: Holmes, Tonya
Printed on: 8/18/2013 5:26 PM EDT

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(Continued)

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Brachial Plexus Injury (ICD9953.4).

Summary: it is likely that at the time of this fall, Mr. Tucker in addition to his scapular injury sustained an injury to his left upper trunk of his brachial plexus, which has resulted in severe weakness of his left shoulder and left elbow with some sensory deficits.

Unfortunately, I do not feel that there is anything that we can do surgically at this point to help. He may benefit from physical therapy to regain some strength and functional. The left upper extremity and maintain what function he does have distally. We will give him a prescription for physical therapy. He will follow up with us as needed. we spent approximately 15 min. and her consultation time..

Orders

Orders.

Charges (Evaluation and Management):

99213 office outpatient visit 15 minutes (Charge) (Order): Quantity: 1

Professional Services

Note: This note was created using speech recognition software.

Signature Line

Signed and Authored by Christopher Mazoue on 08/09/2013 03:49 PM EDT

Charted Date: August 09, 2013 3:06 PM EDT

Subject / Title: Upper Extremity MAZ

Performed By: Mazoue MD, Christopher on August 09, 2013 3:13 PM EDT

Electronically Signed By: Mazoue MD, Christopher on August 09, 2013 3:49 PM EDT

Visit Information: 50985, USC Orthopedics, Outpatient, 8/9/2013 - 8/11/2013



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
ORTHOPAEDICS & SPORTS MEDICINE

PHYSICAL THERAPY PRESCRIPTION

Patient's Name: Johnnie Tucker DOS:

Diagnosis/Surgery: L brachial plexus neuropathy, L upper extremity weakness

Treatment Frequency:

3 times per week, or one instructional visit only

Treatment Duration:

6 weeks

Precautions/Limitations:

☒ Evaluate and Treat ☒ ROM and Strength Progress per Protocol

 Trunk Stabilization Gait Training Spine Rehabilitation

 Ultrasound/Phono/onto ☒ Home Exercise Program

 Electrical Stimulation Work Conditioning Functional Capacity Eval.

 Massage/Mobilization Impairment Rating Biodex Test

Other

Physical Therapy Note

TUCKER JR, JOHNNIE - 85159

Physician's Signature _____ Date _____

Please send or fax periodic and discharge reports to the above physician at the address and/or fax number listed below.

DEPARTMENT OF ORTHOPAEDIC SURGERY
Two Medical Park, Suite 404, Columbia, SC 29203
803-434-6812, FAX 803-434-7306

www.uscortho.com / www.uscsportsmedicine.com

Signature Line

Signed and Authored by Andrea Taylor on 08/09/2013 03:53 PM EDT

Charted Date: August 09, 2013 3:44 PM EDT
Subject / Title: PT Script
Performed By: Taylor, Andrea on August 09, 2013 3:53 PM EDT
Electronically Signed By: Taylor, Andrea on August 09, 2013 3:53 PM EDT
Visit Information: 50985, USC Orthopedics, Outpatient, 8/9/2013 - 8/11/2013

Printed by: Holmes, Tonya
Printed on: 8/18/2013 5:26 PM EDT

Page 2 of 2
(End of Report)

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Upper Extremity Evaluation*

Patient: TUCKER JR, JOHNNIE MRN: 85159 FIN: 28820
Age: Sex: Male DOB:
Associated Diagnoses: Shoulder pain; Arm Weakness
Author: Mazoue MD, Christopher

Chief Complaint

CHIEF COMPLAINT

2/20/2013 9:24 AM EST new patient- left shoulder

History of Present Illness

Patient presents today with left shoulder pain. He states that in May 2011 he fell and fractured a bone in his posterior shoulder. He cannot remember where the fracture was. Due to the location of the fracture, they let it heal without immobilization. The pain is not constant. When he does have pain it radiates down his arm. He has numbness and tingling, and weakness in his hand. He has problems turning caps off of jars, and cannot hold things and he drops them. He states his shoulder "locks up" on him. He was referred here by Dr. Quayle. Dr. Hassel was the MD that was treating his fracture at the time of injury. He complains of intermittent numbness in his left hand. He states that he has not been able to use his left shoulder or arm functionally since this injury in May 2011. He has had a heart attack in the interim. He has not had a stroke as far as he knows.

Health Status

Allergies:

Allergic Reactions (Selected)

No known allergies

Medications: (Selected)

Documented MedicationsDocumented

Crestor: 0 Refill(s), Type: Maintenance
Effient: 0 Refill(s), Type: Maintenance
Lipitor: 0 Refill(s), Type: Maintenance
Lorcet HD: 0 Refill(s), Type: Maintenance
aspirin: 0 Refill(s), Type: Maintenance
lisinopril: 0 Refill(s), Type: Maintenance
nitroglycerin 0.3 mg/hr transdermal film, extended release: 0 Refill(s), Type: Maintenance

Problem list:

All Problems

Morbid Obesity / ICD-9-CM 278.01 / Probable
Left Shoulder Pain / ICD-9-CM 719.41 / Confirmed

Histories

Past Medical History:

No active or resolved past medical history items have been selected or recorded.

Family History:

No family history items have been selected or recorded.

Procedure history:

No active procedure history items have been selected or recorded.

Social History:

No active social history items have been recorded.

Physical Examination

VS/Measurements

Vital Signs

2/20/2013 9:24 AM EST

Peripheral Pulse Rate
Systolic Blood Pressure
Diastolic Blood Pressure
Mean Arterial Pressure

94 bpm
162 mmHg HI
92 mmHg HI
115 mmHg

Printed by: Holmes, Tonya
Printed on: 2/28/2013 12:51 PM EST

Page 1 of 2
(Continued)

Orthopedic Note

TUCKER JR, JOHNNIE - 85159

Measurements from flowsheet : Measurements
2/20/2013 9:24 AM EST

Height	71 in
Weight	298 lb
BSA	2.60 m2
Body Mass Index	41.56 kg/m2

On exam, he is using a cane due to a right knee injury. He just had surgery for this apparently. He has good range of motion of his cervical spine. He has no active abduction at all of the left shoulder. He has major weakness with external rotation and internal rotation of the left shoulder. He has severe weakness with elbow flexion. He has 4 minus over 5 strength with elbow extension. He has good grip strength of the left hand and good strength with flank finger abduction and adduction. He has decreased sensation in the C5, C6, C7, C8 distributions of the left upper extremity. His hand is warm with no evidence of obvious vascular compromise. He has no obvious unilateral swelling of the left upper extremity. I can forward flex his left shoulder 140 degrees. He has some mild discomfort to palpation over his left scapula. Skin is intact upper extremities.

Radiographs of the left shoulder show what appears to be an old healed scapula body fracture. There is inferior subluxation of the humeral head in relation to the glenoid.

Impression and Plan

Diagnosis

Shoulder pain (ICD9 719.41).

Arm Weakness (ICD9 729.89).

Summary: Impression: Left upper extremity weakness in the C5, C6, C7 distributions with decreased sensation in the C5, C6, C7 and C8 distributions with left shoulder subluxation with previous left scapular fracture status post fall

Plan: I think that there was likely brachial plexus injury with this fall. Could be a cervical spine pathology. We will obtain electrodiagnostic studies. He may need an MRI of the cervical spine. He may need an MRI of the shoulder. He'll follow up in 3 weeks for reevaluation.

Orders

Orders

Charges (Evaluation and Management):

89203 office outpatient new 30 minutes (Charge) (Completed): Quantity: 1

Signature Line

Signed and Authored by Christopher Mazoue on 02/20/2013 10:10 AM EST
Pathyna Knight

Charted Date: February 20, 2013 9:28 AM EST
Subject / Title: Upper Extremity Evaluation
Performed By: Mazoue MD, Christopher on February 20, 2013 9:31 AM EST
Electronically Signed By: Mazoue MD, Christopher on February 20, 2013 10:10 AM EST
Visit Information: 28620, USC Orthopedics, Outpatient, 2/20/2013 - 2/22/2013

Printed by: Holmes, Tonya
Printed on: 2/28/2013 12:51 PM EST

Page 2 of 2
(End of Report)

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- 13 -

McLeod Health*The Choice for Medical Excellence***McLeod Health**
Charting Report**NAME:** TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:**Account ID:** 000125346239
Date of Birth:
Med. Record # : 01031549

PLAN: Discontinue Occupational Therapy at this time. Pt seems to have reached maximum gains from OT at this time with slow but steady improvements achieved since initiation of therapy. Pt agrees that he will continue home program and use LUE for everyday activities.

Treatment Frequency, Duration, and Interventions: Continued occupational therapy recommendations: 2 times per week x 4 weeks
Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

Visit Number: Today's visit is number 33

Treatment Rendered:

REEvaluation 20 minutes.

Modalities 20 minutes.

Exercise 10 minutes.

Provider Certification/Prescription: This is to certify that the above named patient, who is under my care, requires skilled Occupational Therapy services as described in the above treatment plan. I further certify that the services outlined in this plan are skilled and medically necessary. I have reviewed this plan for rehabilitation services, and I recommend and prescribe that these services continue from 01-06-14 to 02-06-14 to meet the goals stated above. **Treatment Diagnosis:** L UE weakness and pain

Physician signature: _____ **Date:** _____ **Time:** _____

Referring Physician: Christopher Mazoue, MD

Signed by: BETH EINZIGER - OTR/L

Feb. 7. 2014 11:44AM

eod Rehab

No. 9859 P. 14



McLeod Health Charting Report

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:

Account ID: 000125346239
Date of Birth:
Med. Record #: 01031549

Level 3 32 lb avg 65 lb avg
Unchanged over past month

Pinch strength: L		R
Lateral	10 lb now 11	21 lb avg same
3 jaw	11 now 7	17 same
Tip-tip	4 now 4	16 same

No change in grip or pinch strength compared to last reeval.

Pain Interventions: modalities

Treatment: Pt received Russian E stim on L shoulder using custom setting 10/10 1/1.

Electrodes placed on anterior deltoid and upper trap to facilitate shoulder elevation x10 minutes. Continued with Russian stim for elbow flexion on same parameters with electrodes placed on biceps x10 minutes.

Pt completed towelglides in 3 directions x20 reps each with 4 1/2 lb wt applied to L wrist. No complaints of fatigue or pain with weight.

Pain Reassessment: 1/10

Education: Pt should continue home program as previously instructed. Will upgrade as tolerated.

ASSESSMENT

Provider #420051 HCIN: 251273555 Medical Diagnosis: BRACHIAL PLEXUS LESIONS

Necessity: Patient requires therapy plan in order to function in community. Patient requires outpatient therapy in order to reduce Activities of Daily Living or Instrumental Activities of Daily Living assistance to a pre-morbid level.

Rehabilitation Potential: Excellent

Motivation/Commitment to Therapy: Good.

The patient has been instructed to contact the clinic if any questions or problems should arise. Patient participated in plan of care development today and establishing of the following goals:

Previous GOALS: Not met over past month. SI improvement in abduction and elbow flexion. No changes over past month in strength or grip/pinch.

Pt is

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. Partially met MET
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. Partially MET
3. Increase L elbow strength to 3+/5 to increase functional use. NOT MET
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. NOT MET
5. Pt will remain in and compliant with HEP as upgrades are provided. Ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.
2. Maximize AROM for optimum functional use in self care tasks.

Feb. 7. 2014 11:44AM

eod Rehab

No. 9059 P. 13

McLeod Health*The Choice for Altered Evidence***McLeod Health****Charting Report**

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:

Account ID: 000125346239
Date of Birth:
Med. Record # : 01031549

Rehabilitation Precautions/Restrictions/Barriers to Treatment:**SUBJECTIVE****Social History:** Marital Status: Married

Children: 1

Employment Status: disabled

Recreational Activities/Hobbies: fishing and play golf

Premorbid Functional Level: Patient/caregiver reports the following functional limitations: independent**Patient Goals:** I want to continue to improve so that I can use my arm to do more things.**Self-Care Management:** Patient reported limitations with the following ADL tasks: Assist from wife as needed for self care and daily living skills including: applying deoderent and buttoning top button.**Pain:** 1/10 Pt complains of pain in L wrist and fingers possibly due to cold weather per pt report.**OBJECTIVE****Observation:** Pt continues to ambulate with a asraight cane and be very pleasant and motivated to improve his LUE.**Sensation:** No increased report of numbness compared to initial eval**Range of Motion:**

Right Upper Extremity AROM is grossly WNL for functional activities.

Left Upper Extremity: (extension/flexion in degrees) Measured against gravity in standing position.**Shoulder:**

extension: 45 was 35

flexion: 70 was 55

abduction 75 was 70

ER:0 80 supported

IR:0 70 supported

Elbow/forearm:

ext:0

flex 120 was 110

Supination: 65 was 60

pron:80 same

wrist:

ext: 65 was 50

flex: 40 was 30

UD:25 same

RD:25 same

Shoulder motion overall improved. Elbow most noted improvement as measured above

Pt demonstrates full digital flex and extension with exception of digit 2.

Grip strength: L R

02/06/2014 3:34 pm

QPM_CHARTINGRTF_BYPAT_op2

Source: MediLinks © 2014 MediServe Information

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Feb. 7. 2014 11:44AM

McLeod Rehab

No. 9859 P. 12



McLeod Health Charting Report

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:

Account ID: 000125346239
Date of Birth:
Med. Record #: 01031549

Date/Time: 1/2/14 10:30 am

Start Time: 10:00 End Time: 10:30
Session Duration: 30

OP HC Note - Missed Visit Hand Center

Completed OrdersDescriptionNum. Performed

OTHCNS

OTHC - PT. NO SHOW

1.00

Occupational Therapy Hand Center Outpatient Missed Visit Note

The patient did not attend the therapy appointment on 01/02/14 at 1000.

Reason: Patient did not show for appointment.

Future Appointment: The patient has additional appointments.

Signed by: LOY WHITE - COTAL

Date/Time: 1/6/14 10:21 am

Start Time: 10:15 End Time: 11:05
Session Duration: 50

OP HC ReEvaluation - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity/Hand RE Evaluation - UE Hand

Provider #420051

HCIN: 251273555

Medical Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LEFT UPPER EXTREMI

Demographics:

Age: 56

Gender: Male

Primary Language: English

Hand Dominance: Right

Referring Physician: Christopher Mazoue, MD

Concurrent Services: None.

Previous treatment for this condition: No previous treatment.

Past Medical History: DM, HTN, knee surgery on R knee

History of Present Illness:

Date of Injury: May 2012

Method of injury/illness: Fell down and landed on shoulder sustaining a scapular fracture and brachial
plexus injury

Medications and Allergies: none

02/06/2014 3:34 pm

QPM_CHARTINGRTF_BYPAT_op2

Source: MediLinks © 2014 MediServe Information

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Feb. 7. 2014 11:44AM

McLeod Rehab

RECEIVED 02/07/2014 12:03

No. 9859 P. 11



McLeod Health Charting Report

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:

Account ID: 000125346239
Date of Birth:
Med. Record # : 01031549

Moist heat with E-Stim 15 mins
Exss 15 mins
FA 15 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 12/27/13 10:39 am

Start Time: 0:00 End Time: 0:00
Session Duration: 0

OP HC Note - Missed Visit Hand Center

Completed Orders
OTHCNS

Description
OTHC - PT. NO SHOW

Num. Performed
1.00

Occupational Therapy Hand Center Outpatient Missed Visit Note

The patient did not attend the therapy appointment on 12/27/13 at 1000.

Reason: Patient did not show for appointment.

Future Appointment: The patient has additional appointments.

Signed by: BETH EINZIGER - OTR/L

Date/Time: 12/30/13 10:22 am

Start Time: 10:00 End Time: 10:20
Session Duration: 20

OP HC Note - Missed Visit Hand Center

Completed Orders
OTHCNS

Description
OTHC - PT. NO SHOW

Num. Performed
1.00

Occupational Therapy Hand Center Outpatient Missed Visit Note

The patient did not attend the therapy appointment on 12/30/13 at 1000.

Reason: Patient did not show for appointment.

Future Appointment: The patient has additional appointments.

Signed by: LOY WHITE - COTA/L



McLeod Health Charting Report

NAME: TUCKER, JOHNNIE**Account ID:** 000125346239**ROOM:** HC**Date of Birth:****ADMIT DATE:** 01/06/2014 10:25:0**Med. Record # :** 01031549**CHART:****OBJECTIVE****Interventions:** Patient received the following interventions:**MODALITIES:**

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Exercises:

1. Pt completed graded clothes pins 1-8# with 3 Jaw pinch to increase pinch strength. Rest breaks required and assistance from LUE to hold clothes pins box needed.

Functional Activities:

1. Pt was able to place and removal 30 ez grip pegs of various sizes on blue resistive peg board. Pt utilized alternating finger opposition. Mod rest breaks required.

Education/HEP: Continue with functional use of L UE at home**Pain Reassessment:** fatigue in wrist 2/10**ASSESSMENT****Treatment Diagnosis:** LEFT BRACHIAL PLEXUS NEUROPATHY LUE**Response to Visit:** Rest breaks required to complete FA and exss.**Progress Toward Goals:****Previous GOALS:**

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and dallyliving skills. Partially MET
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. Partially MET
3. Increase L elbow strength to 3+/5 to increase functional use. NOT MET
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. NOT MET
5. Pt will remain f and compliant with HEP as upgrades are provided. Ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.
2. Maximize AROM for optimum functional use in self care tasks.

PLAN**Treatment Frequency, Duration, and Interventions:**

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 31**Treatment Rendered:**

McLeod Health
Charting Report

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:

Account ID: 000125346239
Date of Birth:
Med. Record #: 01031549

New Goals: 4 weeks

1. Will continue to work toward previous goals.
2. Maximize AROM for optimum functional use in self care tasks.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 30

Treatment Rendered:

Moist heat with E-Slim 15 mins

Exss 45 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 12/23/13 11:00 am

Start Time: 10:15 End Time: 11:00
Session Duration: 45

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE Pt was 15 mins late to today's session.

Patient Report: I am a little sore in my shoulder.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 2 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.



McLeod Health Charting Report

NAME: TUCKER, JOHNNIE**ROOM:** HC**ADMIT DATE:** 01/06/2014 10:25:0**CHART:****Account ID:** 000125346239**Date of Birth:****Med. Record # :** 01031549

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD**Rehabilitation Precautions/Restrictions:** Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am going good.**Clinical/Medical Status Changes:** Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.**Pain :** Patient reports pain.**Location:** L shoulder**Quality:****Aching:**

Patient's reported level of pain is 1 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/4, during on cycle pt was instructed to perform shoulder shrugs.

Exercises:

1. Pt was able to completed grip/pull/kneading exss with green resistive thera putty x 30 mins to increase grip and endurance.
2. Pt completed BTE exss with tools 181 ladder for push and pull, 162 grip, and 151 pinch for 120 secs with mod resistance applied.

Education/HEP: Continue with functional use of L UE at home**Pain Reassessment:** 4/10 fatigue in hand post session 2/10 pain in thumb

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE**Response to Visit:** Pt did require rest breaks during BTE exss, good endurance noted during thera putty exss.**Progress Toward Goals:****Previous GOALS:**

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. Partially MET
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. Partially MET
3. Increase L elbow strength to 3+/5 to increase functional use. NOT MET
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. NOT MET
5. Pt will remain 1 and compliant with HEP as upgrades are provided. Ongoing

McLeod Health
Charting Report

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:

Account ID: 000125346239
Date of Birth:
Med. Record #: 01031549

Education/HEP: Continue with functional use of L UE at home

Pain Reassessment: 4/10 fatigue in hand post session.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt demonstrated mod difficulties during hand grip activity, with removal of wooden pegs.

Good grasp noted during cylinder carry. Mod fatigue reported in L hand post session.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and dally living skills. Partially MET
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. Partially MET
3. Increase L elbow strength to 3+/5 to increase functional use. NOT MET
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. NOT MET
5. Pt will remain l and compliant with HEP as upgrades are provided. Ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.
2. Maximize AROM for optimum functional use in self care tasks.

PLAN:

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM. UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 29

Treatment Rendered:

Moist heat with E-Stim 15 mins

FA 35 mins

Exss 10 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 12/18/13 10:50 am

Start Time: 9:50 End Time: 10:50
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Feb. 7. 2014 11:43AM

McLeod Rehab

RECEIVED 02/07/2014 12:03

No. 9859 P. 6



McLeod Health Charting Report

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE: 01/06/2014 10:25:0
CHART:

Account ID: 000125346239
Date of Birth:
Med. Record #: 01031549

Treatment Rendered:
Moist heat with E-Stim 15 mins
FA 40 mins

Signed by: LOY WHITE - COTAL

Date/Time: 12/16/13 11:15 am

Start Time: 10:15 End Time: 11:15
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE Pt was 15 mins late.

Patient Report: I have been able to pick up more with my hand at home. I picked up some firewood and walked until it just fell out of my hand.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 1 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Functional Activities:

1. Pt was able to use hand grip on level 1 with Coban wrapped around it, to place and remove 30 large wooden pegs on large peg board to increase grip strength. Pt required frequent rest breaks and had frequent drops during removal. Pt used RUE to support LUE at forearm during activity.

2. Pt utilized a hook grasp to carry 2.5-10# cylinders approx 50 feet x 5 to simulate home activities. Good grasp noted.

Exercises:

1. Pt completed 10 total mins on UBE at 60 RPM going CW and CCW for 5 mins each to increase endurance and AROM.

02/06/2014 3:34 pm

QPM_CHARTINGRTF_BYPAT_op2

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Page 3 of 12

McLeod Health
Charting Report

NAME: TUCKER, JOHNNIE

ROOM: HC

ADMIT DATE: 01/06/2014 10:25:0

CHART:

Account ID: 000125346239

Date of Birth: /

Med. Record #: 01031549

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Functional Activities:

1. Pt was able to complete graded clothes pins 1-8# on 3 horizontal rungs and 1 vertical rung. Pt did demonstrate more difficulty with vertical rung second to decrease shoulder AROM.
2. Pt completed grip and pull exs with green resistive therapy putty x 50 with rest breaks taken as needed to increase grip strength and endurance.

Education/HEP: Continue with functional use of L UE at home

Pain Reassessment: fatigue in hand post session.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good endurance noted during FA.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. Partially MET
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. Partially MET
3. Increase L elbow strength to 3+/5 to increase functional use. NOT MET
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. NOT MET
5. Pt will remain I and compliant with HEP as upgrades are provided. Ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.
2. Maximize AROM for optimum functional use in self care tasks.

PLAN

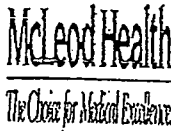
Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks.

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 28



McLeod Health Charting Report

NAME: TUCKER, JOHNNIE

ROOM: HC

ADMIT DATE: 01/06/2014 10:25:0

CHART:

Account ID: 000125346239

Date of Birth:

Med. Record #: 01031549

Date/Time: 12/9/13 10:33 am

Start Time: 10:00 End Time: 10:30

Session Duration: 30

OP HC Note - Missed Visit Hand Center

Completed OrdersDescriptionNum. Performed

OTH CNS

OTH C - PT. NO SHOW

1.00

Occupational Therapy Hand Center Outpatient Missed Visit Note

The patient did not attend the therapy appointment on 12/9/13 at 1000.

Reason: Patient did not show for appointment.

Future Appointment: The patient has additional appointments.

Signed by: LOY WHITE - COTAL

Date/Time: 12/9/13 11:05 am

Start Time: 11:00 End Time: 11:05

Session Duration: 5

OP OT HC Note - Contact Note

Mr. Tucker called clinic approx 1100 to cancel 1000 appointment second to transportation problems.

Signed by: LOY WHITE - COTAL

Date/Time: 12/11/13 11:55 am

Start Time: 11:00 End Time: 11:55

Session Duration: 55

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE Pt was an hr late for today's session, pt agreed to be seen for as long as possible.

Patient Report: I am sorry I missed appointments by car is in the shop, I had to rent a car to come today.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain

Location: L shoulder

Dec. 10. 2013 3:24PM I od Rehab

RECEIVED 12/10/2013 15:35

No. 7640 P. 46/46

000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Outpatient Missed Visit Note

The patient did not attend the therapy appointment on 12/9/13. at 1000.

Reason: Patient did not show for appointment.

Future Appointment: The patient has additional appointments.

Signed by: LOY WHITE - COTAL

Date/Time: 12/9/13 11:05 am

Start Time: 11:00 End Time: 11:05

Session Duration: 5

OP OT HC Note - Contact Note

Mr. Tucker called clinic approx 1100 to cancel 1000 appointment second to transportation problems.

Signed by: LOY WHITE - COTAL

12/10/2013 2:27 pm

QP_Plan_of_Care1

P.95

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Dec. 10. 2013 3:24PM f od Rehab

RECEIVED 12/10/2013 15:35

No. 7640 P. 45/46

000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 26

Treatment Rendered:

Moist heat with E-Stim 15 mins

Exss 20 mins

FA 25 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 12/6/13 10:20 am

Start Time: 10:00 End Time: 10:20
Session Duration: 20

OP HC Note - Missed Visit Hand Center

Completed Orders

Description

Num. Performed

OTHCNS

OTHC - PT. NO SHOW

1.00

Occupational Therapy Hand Center

Outpatient Missed Visit Note

The patient did not attend the therapy appointment on 12/6/13 at 1000.

Reason: Patient did not show for appointment.

Future Appointment: The patient has additional appointments.

Signed by: LOY WHITE - COTA/L

Date/Time: 12/9/13 10:33 am

Start Time: 10:00 End Time: 10:30
Session Duration: 30

OP HC Note - Missed Visit Hand Center

Completed Orders

Description

Num. Performed

OTHCNS

OTHC - PT. NO SHOW

1.00

Occupational Therapy Hand Center

12/10/2013 2:27 pm

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000125346197

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Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

SUBJECTIVE

Patient Report: I am moving it better.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim. was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Exercises:

1. Pt completed shoulder gliding table top exss in all planes x 10 each without any reports of pain.

2. Pt completed 10 total mins on UBE at 90 RPM going CW and CCW for 5 mins each.

Functional Activities:

1. Pt was able to complete graded clothes pins 1-8# on 3 horizontal rungs and 1 vertical rung. Pt did demonstrate more difficulty with vertical rung second to decrease shoulder AROM.

Education/HEP: Continue with functional use of L UE at home

Pain Reassessment: 1/10

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to today's session. Good AROM during FA and exss.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing.
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain 1 and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN

12/10/2013 2:27 pm

OP_Plan_of_Care1

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000125346197

McLeod Health
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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt did require 1 rest break during graded clothes pins 8#. Good endurance during putty activity.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED.

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 25

Treatment Rendered:

Moist heat with E-Stim 15 mins

Exss 45 mins

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 11/25/13 11:00 am

Start Time: 10:00 End Time: 11:00

Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

12/10/2013 2:27 pm

QP_Plan_of_Care1

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Dec. 10. 2013 3:24PM Physical Rehab

RECEIVED 12/10/2013 15:35

No. 7640 P. 4/46

000125346197

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555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Treatment Rendered:
Moist heat with E-Stim 15 mins
Exss 45 mins

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 11/20/13 11:07 am

Start Time: 10:00 End Time: 11:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD
Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am doing ok.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Exercises:

1. BTE for tool 701 for ER/IR and push/pull on con/ecc settings. Full rotation on con/con setting.
2. Pt completed grip and pull exercises with red resistive therapy putty x 50 to increase digit AROM, strength, and endurance.
3. UBE at 60 revs for 10 mins

Education/HEP: Continue with functional use of L UE at home

Pain Reassessment: 4/10 fatigue in hand

ASSESSMENT

12/10/2013 2:27 pm

QP_Plan_of_Care1

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000125346197

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Florence, SC 29502

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Exercises:

1. Pt completed graded clothes pins 1-8# utilizing tip to tip pinch for placement and removal. Pt demonstrated difficulty accuracy placing pins on each rung.
2. Pt completed grip and pull exercises with red resistive thera putty x 50 to increase digit AROM, strength, and endurance.
3. UBE at 60 revs for 10 mins

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: 4/10 fatigue in hand

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt did require 1 rest break during graded clothes pins 8#. Good endurance during putty activity.

Progress Toward Goals:**Previous GOALS:**

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN**Treatment Frequency, Duration, and Interventions:**

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 24

12/10/2013 2:27 pm

OP_Plan_of_Care1

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Dec. 10. 2013 3:23PM I od Rehab

RECEIVED 12/10/2013 15:35

No. 7640 P. 40/46

000125346197

McLeod Health
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555 East Cheves St
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000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 23

Treatment Rendered:

Moist heat with E-Stim 15 mins

Exss 45 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 11/18/13 1:50 pm

Start Time: 10:00 End Time: 11:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am doing ok. I feel like I can hold onto things better.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

12/10/2013 2:27 pm

QP_Plan_of_Care1

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000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: My whole shoulder is stiff and my hand too. It must be this cold weather.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Exercises:

1. Pt completed graded clothes pins 1-8# utilizing tip to tip pinch for placement and removal. Pt demonstrated difficulty accuracy placing pins on each rung.
2. Pt completed grip and pull exercises with red resistive therapy putty x 50 to increase digit AROM, strength, and endurance.
3. Pt completed shoulder table top glides x 10 each in all planes to increase AROM during home functional activities.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given therapy putty to add to HEP.

Pain Reassessment: 4/10 fatigue in hand

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt did require 1 rest break during graded clothes pins 8#. Good endurance during putty activity.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing

Dec. 10. 2013 3:23PM I od Rehab

RECEIVED 12/10/2013 15:35

No. 7640 P. 38/46

000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

Pain Reassessment: 4/10 fatigue in shoulder.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt did require min rest breaks on wall pulleys to complete all planes. Pt fatigued during dowel exss. Noted increase in AAROM during IR/ER with dowel.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 22

Treatment Rendered:

Moist heat with E-Stim 15 mins

FA 45 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 11/13/13 11:00 am

Start Time: 10:00 End Time: 11:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

12/10/2013 2:27 pm

QP_Plan_of_Care1

P.103

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000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Signed by: LOY WHITE - COTA/L

Date/Time: 11/11/13 11:00 am

Start Time: 10:00 End Time: 11:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am doing pretty good today, I rested and watched football all weekend.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 1 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

Functional Activities:

1. Pt completed shoulder wall pulleys in all planes x 10 each with mod A for stability of L elbow and shoulder. Good AAROM noted for flexion.
2. Pt completed seated shoulder dowel exercises x 10 each with light weight wooden dowel in front of mirror for self correction. Pt did require rest breaks to complete all ROM.
3. Pt completed shoulder table top glides x 10 each in all planes to increase AROM during home functional activities.
4. Pt completed 10 mins on UBE at 60 RPM going CW and CCW for 5 mins each to increase BUE endurance.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

12/10/2013 2:27 pm

QP_Plan_of_Care1

P.104
-35-

000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

endurance.

Functional Activities:

1. Pt completed shoulder flex/ext and ad/bduction on mounted wall ladder x 10 each to increase AROM during functional activities. Vcing for correct form.
2. Pt completed 10 mins on UBE at 60 RPM going CW and CCW for 5 mins each to increase BUE endurance. Pt did require rest break second to L hand cramping.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: 2/10 in digits.

ASSESSMENT**Treatment Diagnosis:** LEFT BRACHIAL PLEXUS NEUROPATHY-LUE**Response to Visit:** Slight increase in active shoulder flex during mounted wall ladder. Good endurance noted throughout session.**Progress Toward Goals:****Previous GOALS:**

1. Increase L shoulder AROM by 20 degrees in flex. and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN**Treatment Frequency, Duration, and Interventions:**

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 21**Treatment Rendered:**

Moist heat with E-Stim 15 mins
Exss 20 min mins
FA 25 mins

Dec. 10. 2013 3:23PM A od Rehab

RECEIVED 12/10/2013 15:35

No. 7640 P. 35/46

000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:20

Treatment Rendered:

Moist heat with E-Stim 15 mins
Exss 45 mins

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 11/6/13 11:00 am

Start Time: 10:00 End Time: 11:00

Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I have problems holding things in my hand. It's better, but if I hold something for a long period of time it slips out of my hand.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 1 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

EXERCISE:

1. Pt completed table top shoulder exercises in all planes with forearm supported on table x 10 with min pain reported during CCW movements.

2. Pt completed grip and pull exercises with red resistive thera putty x 25 to increase grip strength and

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000125346197

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Patient's reported level of pain is 2 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to Increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

EXERCISE:

1. Pt completed table top shoulder exercises in all planes with forearm supported on table x 10 with min pain reported during CCW movements.

Functional Activities:

1. 1# weighted dowel exercises while seated in front of mirror. 2 sets x 10 reps of flexion and abduction completed. Moderate fatigue noted at end of exercise.
2. Pt completed 10 mins on UBE at 60 revs.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: 1/10

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY-LUE

Response to Visit: Good endurance noted during FA and Nu-Step. Pt demonstrated increase AROM during table top exs and FA.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

~~Procedures: ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -~~
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain l and compliant with HEP as upgrades are provided. ongoing

New Goals: 4 weeks

1. Will continue to work toward previous goals.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:19

Treatment Rendered:

Moist heat with E-Stim 15 mins

Exss 15 mins

FA 30 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 11/4/13 1:36 pm

Start Time: 11:00 End Time: 12:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am doing pretty good

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth: C
Med. Record #: 01031549

Patient Report: I don't have much pain right now. My the tip of my cane come off so I'm walking without it for now.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 2 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

EXERCISE:

1. Pt completed table top shoulder exercises in all planes with forearm supported on table x 10 with min pain reported during CCW movements.

2. Pt completed 10 mins on Nu-Step with BUE and BLE movements at 75 SPM to increase AROM and endurance.

Functional Activities:

1. Pt was able to place 50 pegs of various sizes into resistive peg board by utilizing shoulder flex, elbow flex/ext, and wrist flex/ext across midline of body during placement. During removal pt removed pegs with alternating finger opposition. Pt required VCing for correction of body mech (using torso to reach across midline).

2. Pt was able to carry basket of pegs (approx 1#) with hook grasp with L hand from table to counter top approx 25 ft without any difficulties.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: 1/10

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good endurance noted during FA and Nu-Step. Pt demonstrated increase AROM during table top exss and FA.

Progress Toward Goals:

Previous GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

Pain Reassessment: 3/10 fatigue in hand

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to all activities today. Pt did require one rest break on UBE second to cramping in L hand.

Progress Toward Goals:

NEW GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:17

Treatment Rendered:

Moist heat with E-Stim 15 mins

Exss 40 mins

Signed by: LOY WHITE - COTAL

Date/Time: 10/30/13 3:40 pm

Start Time: 14:40 End Time: 15:40
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

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Dec. 10. 2013 3:22PM K od Rehab

No. 7640 P. 30/46

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Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Exss 20 mins
FA 20 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 10/23/13 10:55 am

Start Time: 10:00 End Time: 10:55
Session Duration: 55

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I can tell my arm is getting better because I can move it move now.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 1 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

EXERCISE:

1. Pt completed UBE for 10 mins at level 4.2 going CW and CCW for 5 mins each to increase shoulder endurance and AROM.

2. Pt completed placement and removal of graded clothes pins 1-8# by using a palmar grasp. Pt did not demonstrate any difficulties with pinching pins but did show difficulties with placement second to upper arm weakness.

3. Pt completed grip and pull exercises with red resistive thera putty to increase grip strength x 30.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

EXERCISE:

1. Pt completed sealed towel table top shoulder exercises in all planes x 10 each to increase active shoulder ROM.
2. Pt completed UBE for 10 mins at level 4.2 going CW and CCW for 5 mins each to increase shoulder endurance and AROM.

Functional Activities:

1. Pt completed sealed shoulder dowel exercises in front of mirror for self correction for 10 reps x 2 each to increase active shoulder ROM. Pt require mod VCing for correct form.
2. Pt completed 5 reps for shoulder flexion/extension on mounted wall ladder for AAROM. Pt was not able to reach full shoulder flexion.
3. Pt completed 10 bilateral shoulder shugs while sitting in front of a mirror for self correction.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 1 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt completed all ROM and FA activities without any reports or signs of pain.

Progress Toward Goals:**NEW GOALS:**

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain l and compliant with HEP as upgrades are provided. ongoing

PLAN**Treatment Frequency, Duration, and Interventions:**

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 16

Treatment Rendered:

Moist heat with E-Stim 15 mins

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 15

Treatment Rendered:

Moist heat with E-Stim 15 mins

Exss 25 mins

FA 20 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 10/21/13 10:55 am

Start Time: 10:00 End Time: 10:55

Session Duration: 55

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I have been doing exercises with my cane and those ones on top of the table at home.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 1 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 1 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to Increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

EXERCISE:

1. Pt completed seated towel table top shoulder exercises in all planes x 10 each to increase active shoulder ROM.

2. Pt completed UBE for 10 mins at 90 RPM going CW and CCW for 5 mins each to increase shoulder endurance and AROM.

Functional Activities:

1. Pt completed seated shoulder dowel exercises in front of mirror for self correction for 10 reps x 2 each to increase active shoulder ROM. Pt require mod VCing for correct form.

2. Pt completed grip and pull exercises with red resistive thera putty x 15 with min A from R hand to hold putty.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 1 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE.

Response to Visit: Good tolerance to dowel and table top exercises. Pt stated that shoulder felt loose and better post session.

Progress Toward Goals:

NEW GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

PLAN

12/10/2013 2:27 pm

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000125346197

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

Progress Toward Goals:

NEW GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain l and compliant with HEP as upgrades are provided. ongoing

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:14

Treatment Rendered:

Moist heat with E-Stim 15 mins
Exss 25 mins
FA 20 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 10/16/13, 11:00 am

Start Time: 10:00 End Time: 11:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am fine, just a little pain.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

12/10/2013 2:27 pm

QP_Plan_of_Care1

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000125346197

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: My pain is at the back and on top of my shoulder.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 2 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

EXERCISE:

1. Pt completed seated wall pulleys in all planes for 10 reps x 3 to increase AROM. A mirror was placed in front of pt for self correction.

2. Pt completed UBE for 10 mins at 90 RPM going CW and CCW for 5 mins each to increase shoulder endurance and AROM.

Functional Activities:

1. Pt completed graded clothes pins 1-8# by utilizing tip to tip pinch for placement and removal. Pt require min A from R hand to bring clothes pins closer to L hand. Pt required extra time during placement on rung second to decreased AROM.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 1 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good tolerance to graded clothes pins, pt did require min A from R hand and extra time during placement. No difficulties during pinching.

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

manipulation and grip strength. Pt required min A from R hand to hold and pull putty.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls. Pt was given thera putty to add to HEP.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 1 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt reported slight fatigue in hand from thera putty exercises.

Progress Toward Goals:

NEW GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain l and compliant with HEP as upgrades are provided. ongoing

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 13

Treatment Rendered:

Moist heat with E-Stim 15 mins
Exss 20 mins
FA 20 mins

Signed by: LOY WHITE - COTA/L

Date/Time: 10/14/13 11:00 am

Start Time: 10:00 End Time: 11:00

Session Duration: 60

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:12

Treatment Rendered:

Modalities 15 minutes.

EX 45 minutes.

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 10/9/13 10:55 am

Start Time: 10:00 End Time: 10:55

Session Duration: 55

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I have just a little pain in the back of my shoulder.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions: Moist heat applied to L shoulder and elbow.

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt. received moist heat and Russian E-Stim x15 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1, during on cycle pt was instructed to perform shoulder shrugs.

EXERCISE:

1. Pt completed seated wall pulleys in all planes for 10 reps x 3 to increase AROM. A mirror was placed in front of pt for self correction.

Functional Activities:

1. Pt completed grip and pull exercises with L hand x 30 with red resistive therapy putty to increase

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions:**OBJECTIVE**

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x10 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1

EXERCISE:

1. 5 lb bulk putty manipulation with L hand. Pt required assistance from R UE to place putty back into container

2. Wall pulleys for 5 mins

3. 1# isolated bicep curls with moderate A to reduce compensation. 2 sets x 10 reps

4. UBE for 5 mins on level 90 revs

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 3 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt performed all ex in front of mirror which helped decrease compensatory motion. Pt completed all tasks as presented and reported fatigue at end of session.

Progress Toward Goals:**NEW GOALS:**

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing

2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program

3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program

4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing

5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

PLAN**Treatment Frequency, Duration, and Interventions:**

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -

HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

NEW GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength. tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 11

Treatment Rendered:

Modalities 15 minutes.

EX 40 minutes.

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 10/7/13 1:10 pm

Start Time: 9:00 End Time: 10:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I think I am slowly getting better.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I think I am slowly getting better.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions:

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x10 mins on L shoulder to increase active elevation. Stim was set on custom setting 10/10 and 1/1.

EXERCISE:

1. 5 lb bulk putty manipulation with L hand. Pt required assistance from R UE to place putty back into container
2. BTE for tool 122 for 200 sec with fatigue noted
3. 1# isolated bicep curls with moderate A to reduce compensation. 2 sets x 10 reps

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder. Add isolated biceps curls

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 3 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt performed all ex in front of mirror which helped decrease compensatory motion. Pt completed all tasks as presented and reported fatigue at end of session.

Progress Toward Goals:

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ROOM: HC
ADMIT DATE:
CHART:

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Date of Birth:
Med. Record #: 01031549

2. BTE for tools 701 for ER/IR, full rotation, 136 for driving simulation.
3. UBE for 10 mins of 90 revs.

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 3 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Pt performed all ex in front of mirror which helped decreased compensatory motion. Pt completed all tasks as presented and reported fatigue at end of session.

Progress Toward Goals:

NEW GOALS:

1. Increase L shoulder AROM by 20 degrees in flex and abduction to promote increased function in self care and daily living skills. progressing
2. Increase motor power L proximal muscle strength from 2/3 to 2+/3 to help increase functional strength tolerating strengthening program
3. Increase L elbow strength to 3+/5 to increase functional use. tolerating strengthening program
4. Increase grip strength by 5 lbs for improved hand use in self care tasks. progressing
5. Pt will remain I and compliant with HEP as upgrades are provided. ongoing

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 10

Treatment Rendered:

Modalities 15 minutes.

EX 30 minutes.

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 10/2/13 10:05 am

Start Time: 9:00 End Time: 10:00

Session Duration: 60

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ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:8

Treatment Rendered:
Modalities 15minutes.
EX 35 minutes.

Signed by: BETH EINZIGER - OTR/L

Date/Time: 12/30/13 10:09 am

Start Time: 9:00 End Time: 9:45

Session Duration: 45

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I think I am slowly getting better.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions:

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim x10 mins on L shoulder to Increase active elevation. Stim was set on custom setting 10/10 and 1/1

EXERCISE:

1. Dowel exercises x 10 reps for shoulder flexion and for rowing forward and backward. Moderate tactile cuing required to reduce compensation.

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Quality:

Aching.

Patient's reported level of pain is 3 out of 10.

Pain Interventions:**OBJECTIVE****Interventions:** Patient received the following interventions:**MODALITIES:**

1. Pt recieved moist heat and Russian E-Stim x10 mins on L shoulder to Increase active elevation Stim was set on custom setting 10/10 and 1/1
2. Pt recieved Russian E-Stim x 5mins on biceps with arm supported on wedge for improved positioning. Same parameters used as indicated above.

EXERCISE: Mirror was used in front of pt for all ex to improve positioning and decrease compensation

1. Table glides for shoulder ROM to include flexion/extension and circles in both directions x20 reps each
2. Shoulder shrugs x10 and then shoulder rotation in both directons x5 each
3. Wall pulleys in scaption plane x 5 minutes

AROM: L shoulder flexion 55

Education/HEP: Pt was instructed in shoulder shrugs, rotation and towel glide ex to begin at home 3x daily. Also recommended moist heat application 2-3x daily as warm up for shoulder.**Pain Reassessment:** Patient currently has pain.**Reported pain level:** Patient reports a pain level of 3 out of 10.**ASSESSMENT****Treatment Diagnosis:** LEFT BRACHIAL PLEXUS NEUROPATHY LUE**Response to Visit:** Pt performed all ex in front of mirror which helped decreased compensatory motion. Pt completed all tasks as presented and reported fatigue at end of session.**Progress Toward Goals:****Short Term Goals:** Time frame to achieve short term goal(s):

1 week

1. Pt will be educated on formal HEP.

Long Term Goals: Time frame to achieve long term goal(s):

4 weeks

1. Pt will increase AROM at shoulder level by 15 degrees in all planes of motion.
2. Pt will increase AROM for L elbow flexion by 15 degrees against gravity.
3. Pt will increase active L supination by 10 degrees.

PLAN**Treatment Frequency, Duration, and Interventions:**

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -

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ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Reason: Transportation difficulties.
Future Appointment: The patient has additional appointments.

Signed by: BETH EINZIGER - OTR/L

Date/Time: 9/19/13 11:30 am

Start Time: 11:25 End Time: 11:30
Session Duration: 5

OP HC Note - Missed Visit Hand Center

Completed Orders

Description

Num. Performed

OTHCCAN

OTHCC - PT. CANCEL

1:00

Occupational Therapy Hand Center Outpatient Missed Visit Note

The patient did not attend the therapy appointment on 09/19/13 at 1400.

Reason: Transportation difficulties.
Future Appointment: The patient has additional appointments.

Signed by: LOY WHITE - COTA/L

Date/Time: 9/23/13 8:33 am

Start Time: 9:00 End Time: 9:50
Session Duration: 50

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am moving my arm more than I was before

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to modalities today with good motion noted and decrease in pain post session.

Progress Toward Goals:

Short Term Goals: Time frame to achieve short term goal(s):

1 week

1. Pt will be educated on formal HEP.

Long Term Goals: Time frame to achieve long term goal(s):

4 weeks

1. Pt will increase AROM at shoulder level by 15 degrees in all planes of motion.

2. Pt will increase AROM for L elbow flexion by 15 degrees against gravity.

3. Pt will increase active L supination by 10 degrees.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 7

Treatment Rendered:

Modalities 30 minutes.

EX30 minutes.

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 9/18/13 8:16 am

Start Time: 0:00 End Time: 0:00

Session Duration: 0

OP HC Note - Missed Visit Hand Center

Completed OrdersDescriptionNum. Performed

OTHCCAN

OTHC - PT. CANCEL

1.00

Occupational Therapy Hand Center**Outpatient Missed Visit Note**

The patient did not attend the therapy appointment on 9/18/13 at 9 am.

12/10/2013 2:27 pm

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NAME: TUCKER, JOHNNIE
ROOM: HC
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CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Modalities 30 minutes.
EX25 minutes.

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 9/16/13 11:05 am

Start Time: 9:00 End Time: 10:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy**Outpatient Upper Extremity Hand Treatment Note**

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I can tell my arm is getting a little better. I can bend my elbow more than I could.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 4 out of 10.

Pain Interventions:

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim for 15 mins on L shoulder region Increase active muscle contraction at shoulder level

2. Pt received Russian E-Stim x 15 mins on biceps and triceps with alternating mode in place. Pt completed active elbow flexion and extension in a gravity eliminated plane of motion.

FUNCTIONAL ACTIVITIES:

1. Table glides for shoulder ROM to include flexion/extension and full rotation

2. Pt completed UBE at 90 RPM for 10 mins to increase AROM and endurance going CW and CCW for 5 mins each.

3. Wall pulleys with 1# cuff weight for 5 mins

4. Seated dowel exercises 10 reps in flexion

Education/HEP: added dowel shoulder exercises.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 2 out of 10.

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt received moist heat and Russian E-Stim for 15 mins on L shoulder region Increase active muscle contraction at shoulder level
2. Pt received Russian E-Stim x 15 mins on biceps and triceps with alternating mode in place. Pt completed active elbow flexion and extension in a gravity eliminated plane of motion.

FUNCTIONAL ACTIVITIES:

1. Table glides for shoulder ROM to include flexion/extension and full rotation
2. Pt completed UBE at 90 RPM for 10 mins to increase AROM and endurance going CW and CCW for 5 mins each.
3. Wall pulleys with 1# cuff weight for 5 mins

Education/HEP: added dowel shoulder exercises.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 2 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to modalities today with good motion noted and decrease in pain post session.

Progress Toward Goals:

Short Term Goals: Time frame to achieve short term goal(s):

1 week

1. Pt will be educated on formal HEP.

Long Term Goals: Time frame to achieve long term goal(s):

4 weeks

1. Pt will increase AROM at shoulder level by 15 degrees in all planes of motion.
2. Pt will increase AROM for L elbow flexion by 15 degrees against gravity.
3. Pt will increase active L supination by 10 degrees.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY - HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION - E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 6

Treatment Rendered:

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ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
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4 weeks

1. Pt will increase AROM at shoulder level by 15 degrees in all planes of motion.
2. Pt will increase AROM for L elbow flexion by 15 degrees against gravity.
3. Pt will increase active L supination by 10 degrees.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:5

Treatment Rendered:

Modalities 35 minutes.

EX25 minutes.

Signed by: CINDY BELK - MSR, OTR/L

Date/Time: 9/11/13 2:15 pm

Start Time: 9:00 **End Time:** 10:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I can tell my arm is getting a little better. I can hold on to items a little longer than I used to.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 4 out of 10.

Pain Interventions:

12/10/2013 2:27 pm

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NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

Occupational Therapy Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am doing alright today.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 4 out of 10.

Pain Interventions: Moist Heat and Russian E-Stim combo x 20 mins

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt recieved moist heat and Russian E-Stim combo for 20 mins on L shoulder region Increase active muscle contraction at shoulder level

2. Pt recieved Russian E-Stim x 15 mins on biceps and triceps with alternating mode in place. Pt completed active elbow flexion and extension in a gravity eliminated plane of motion.

FUNCTIONAL ACTIVITIES:

1. Table glides for shoulder ROM to include flexion/extension and full rotation

2. Pt completed UBE at 90 RPM for 10 mins to increase AROM and endurance going CW and CCW for 5 mins each.

Education/HEP: added dowel shoulder exercises.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 2 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to modalities today with good motion noted and decrease in pain post session.

Progress Toward Goals:

Short Term Goals: Time frame to achieve short term goal(s):

1 week

1. Pt will be educated on formal HEP.

Long Term Goals: Time frame to achieve long term goal(s):

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ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

2. Pt completed UBE at 90 RPM for 10 mins to increase AROM and endurance going CW and CCW for 5 mins each.

Education/HEP: added dowel shoulder exercises.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 2 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to modalities today with good motion noted and decrease in pain post session.

Progress Toward Goals:

Short Term Goals: Time frame to achieve short term goal(s):

1 week

1. Pt will be educated on formal HEP.

Long Term Goals: Time frame to achieve long term goal(s):

4 weeks

1. Pt will increase AROM at shoulder level by 15 degrees in all planes of motion.

2. Pt will increase AROM for L elbow flexion by 15 degrees against gravity.

3. Pt will increase active L supination by 10 degrees.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 4

Treatment Rendered:

Modalities 35 minutes.

Functional/Therapeutic Activities 25 minutes.

Signed by: LOY WHITE - COTA/L

Date/Time: 9/9/13 1:18 pm

Start Time: 9:00 **End Time:** 10:00

Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

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McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number:3

Treatment Rendered:
Modalities 20 minutes.
Functional/Therapeutic Activities 35 minutes.

Signed by: LOY WHITE - COTA/L

Date/Time: 9/5/13 11:00 am

Start Time: 10:00 **End Time:** 11:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am doing alright today.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 4 out of 10.

Pain Interventions: Moist Heat and Russian E-Stim combo x 20 mins

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt recieved moist heat and Russian E-Stim combo for 20 mins on L shoulder region to increase blood circulation/tissue elasticity/AROM and to decrease pain.

2. Pt recieved Russian E-Stim x 15 mins on biceps and triceps with alternating mode in place. Pt completed active elbow flexion and extension in a gravity eliminated plane of motion.

FUNCTIONAL ACTIVITIES:

1. Pt completed seated wall pulley exercises for shoulder flex/ext and IR/ER and elbow flex/ext x 10 each with mirror placed in front of pt for self correction. Slight pain noted during elbow flex/ext.

000125346197

**McLeod Health
Rehab Services**
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

Quality:

Aching.

Patient's reported level of pain is 4 out of 10.

Pain Interventions: Moist Heat and Russian E-Stim combo x 10 mins

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt recieved moist heat and Russian E-Stim combo for 10 mins on L shoulder region to increase blood circulation/tissue elasticity/AROM and to decrease pain.
2. Pt recieved Russian E-Stim x 10 mins on biceps and triceps with alternating mode in place. Pt completed active elbow flexion and extension in a gravity eliminated plane of motion.

FUNCTIONAL ACTIVITIES:

1. Pt completed seated dowel shoulder exercises in all planes in front of mirror for self correction for 10 reps x 2 to increase AROM. Pt required min VCrng to maintain proper form.
2. Pt completed UBE at 90 RPM for 10 mins to increase AROM and endurance going CW and CCW for 5 mins each.

Education/HEP: added dowel shoulder exercises.

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 3 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to E-stim for elbow flexion and extension. Good endurance and tolerance to dowel exercises.

Progress Toward Goals:

Short Term Goals: Time frame to achieve short term goal(s):

1 week

1. Pt will be educated on formal HEP.

Long Term Goals: Time frame to achieve long term goal(s):

4 weeks

1. Pt will increase AROM at shoulder level by 15 degrees in all planes of motion.
2. Pt will increase AROM for L elbow flexion by 15 degrees against gravity.
3. Pt will increase active L supination by 10 degrees.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

000125346197

McLeod Health

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record #: 01031549

Short Term Goals: Time frame to achieve short term goal(s):

1 week

1. Pt will be educated on formal HEP.

Long Term Goals: Time frame to achieve long term goal(s):

4 weeks

1. Pt will increase AROM at shoulder level by 15 degrees in all planes of motion.
2. Pt will increase AROM for L elbow flexion by 15 degrees against gravity.
3. Pt will increase active L supination by 10 degrees.

PLAN

Treatment Frequency, Duration, and Interventions:

Continued occupational therapy recommendations: 2 times per week x 4 weeks

Procedures: - ADL TRAINING - EVALUATION - EXERCISE - FUNCTIONAL/THERAPEUTIC ACTIVITY -
HOME INSTRUCTION - MANUAL THERAPY - MASSAGE - NEUROMUSCULAR RE-EDUCATION -
E-STIM UNATTENDED

The patient has been instructed to contact our clinic if any questions or problems should arise.

Visit Number: 2

Treatment Rendered:

Modalities 30 minutes.

Functional/Therapeutic Activities 30 minutes.

Signed by: LOY WHITE - COTA/L

Date/Time: 9/3/13 4:50 pm

Start Time: 15:55 End Time: 16:50
Session Duration: 55

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am not doing too bad today.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain: Patient reports pain.

Location: L shoulder

12/10/2013 2:27 pm

QP_Plan_of_Care1

P.134

000125346197

McLeod Health
Rehab Services
555 East Cheves St
Florence, SC 29502

NAME: TUCKER, JOHNNIE
ROOM: HC
ADMIT DATE:
CHART:

Account ID: 000125346197
Date of Birth:
Med. Record # : 01031549

Date/Time: 8/28/13 9:00 am

Start Time: 8:00 End Time: 9:00
Session Duration: 60

OP HC Note - Treatment - UE Hand Revised

Occupational Therapy

Outpatient Upper Extremity Hand Treatment Note

Referring Clinician: Christopher Mazoue, MD

Rehabilitation Precautions/Restrictions: Per diagnosis: none reported

SUBJECTIVE

Patient Report: I am hurting some in my shoulder today.

Clinical/Medical Status Changes: Patient has not experienced significant, unusual or unexpected change in clinical status since their last visit.

Pain : Patient reports pain.

Location: L shoulder

Quality:

Aching.

Patient's reported level of pain is 5 out of 10.

Pain Interventions: Moist Heat and Russian E-Stim combo x 20 mins

OBJECTIVE

Interventions: Patient received the following interventions:

MODALITIES:

1. Pt recieved moist heat and Russian E-Stim combo for 20 mins on L shoulder region to increase blood circulation/tissue elasticity/AROM and to decrease pain.
2. Pt recieved Russian E-Stim x 10 mins on biceps and triceps with alternating mode in place. Pt completed active elbow flexion and extension in a gravity eliminated plane of motion.

FUNCTIONAL ACTIVITIES:

1. Pt completed wall pulleys for AA shoulder flexion/extension 10 reps each to increase AROM during functional activities.
2. Pt completed UBE at 90 RPM for 10 mins to increase AROM and endurance going CW and CCW for 5 mins each.

Education/HEP: continue with HEP

Pain Reassessment: Patient currently has pain.

Reported pain level: Patient reports a pain level of 3 out of 10.

ASSESSMENT

Treatment Diagnosis: LEFT BRACHIAL PLEXUS NEUROPATHY LUE

Response to Visit: Good response to E-stim for elbow flexion and extension. Good endurance and tolerance to wall pulleys and UBE.

Progress Toward Goals:

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-709

July 26, 2013

VIA EMAIL ONLY: roxnerking@saf.sc.gov

Ms. Robin Oxner-King
State Accident Fund
Post Office Box 102100
Columbia, South Carolina 29221-5000

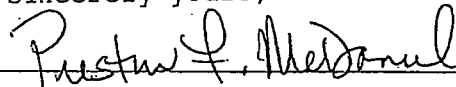
RE: Johnnie Tucker vs. Department of Transportation
WCC File No.: 1106689

Dear Ms. King:

I just spoke with Sarah Alphin and Sarah advised me that their case is closed because this is actually a change of condition claim and she told me to deal with you directly. We have had no response to the Form 50 and that is probably because I sent a copy to her and you. This man needs treatment, please let us know whether you accept the change in condition and will authorize treatment so we can get this man treated.

I look forward to hearing from you.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Gerald Malloy, Esquire

P.136

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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for over 25 years.

Preston F. McDaniel
Justin S. Byars
OF COUNSEL:
Michael Jobison, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

May 2, 2013

Ms. Robin Oxner-King
Claims Adjuster
State Accident Fund
Post Office Box 102100
Columbia, SC 29221-5000

RE: Johnny Tucker vs. Department of Transportation
WCC File No.: 1106689

Dear Robin:

Please find attached a Form 50 Notice of Claim for a change of condition and for an undiagnosed condition that we are filing with the Commission. Since I wrote Sarah, you will note that we have also received a letter from the Claimant's treating physician stating that Mr. Tucker in his opinion has undergone a change of condition for the worse. Please let me know if you would like to rethink your position on this and if not, I will go ahead and file for a hearing to get this medical care ordered. If we cannot work this out, please let me know if Sarah Alphin is going to be representing you and at the time I file for a hearing, I will send her a copy as well. Thanks for your assistance and hopefully we can get this medical care taken care of and then resolve this case.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Gerald Malloy, Esquire

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-00-

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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Preston F. McDaniel
Justin S. Byars
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

April 8, 2013

~~March 18, 2013~~

Second Request

VIA EMAIL - ssalphin@wjlaw.net
AND US MAIL

Sarah S. Alphin, Attorney at Law
Wilson, Jones, Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

RE: Johnny Tucker vs. Department of Transportation
WCC File No.: 1106689

Dear Sarah:

Please find attached a report we have received from Dr. Christopher Mazoue where Mr. Tucker was sent by his family doctor and you will see that he has diagnosed Mr. Tucker with a previously undiagnosed condition and has determined that he needs additional medical care. I intend to file both a change of condition and also for an undiagnosed condition based on this report. I would appreciate your thoughts on this case and would appreciate it if you would get with the State Accident Fund and see how they want to proceed.

I look forward to hearing from you and working to a conclusion which will be in everyone's best interest.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Gerald Malloy, Esquire
Mr. Johnny Tucker

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-09-

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 18, 2013

VIA EMAIL - ssalphin@wjlaw.net
AND US MAIL

Sarah S. Alphin, Attorney at Law
Wilson, Jones, Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

RE: Johnny Tucker vs. Department of Transportation
WCC File No.: 1106689

Dear Sarah:

Please find attached a report we have received from Dr. Christopher Mazoue where Mr. Tucker was sent by his family doctor and you will see that he has diagnosed Mr. Tucker with a previously undiagnosed condition and has determined that he needs additional medical care. I intend to file both a change of condition and also for an undiagnosed condition based on this report. I would appreciate your thoughts on this case and would appreciate it if you would get with the State Accident Fund and see how they want to proceed.

I look forward to hearing from you and working to a conclusion which will be in everyone's best interest.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Gerald Malloy, Esquire
Mr. Johnny Tucker

P.139
-70-

Orthopedic Note

TUCKER JR, JOHNNIE - 85159

Upper-Extremity Evaluation*

Patient: TUCKER JR, JOHNNIE MRN: 85159 FIN: 28820
Age: Sex: Male DOB:
Associated Diagnoses: Shoulder pain; Arm Weakness
Author: Mazoue MD, Christopher

Chief Complaint

CHIEF COMPLAINT

2/20/2013 9:24 AM EST new patient- left shoulder

History of Present Illness

Patient presents today with left shoulder pain. He states that in May 2011 he fell and fractured a bone in his posterior shoulder. He cannot remember where the fracture was. Due to the location of the fracture, they let it heal without immobilization. The pain is not constant. When he does have pain it radiates down his arm. He has numbness and tingling, and weakness in his hand. He has problems turning caps off of jars, and cannot hold things and he drops them. He states his shoulder "locks up" on him. He was referred here by Dr. Quayle. Dr. Hassel was the MD that was treating his fracture at the time of injury. He complains of intermittent numbness in his left hand. He states that he has not been able to use his left shoulder or arm functionally since this injury in May 2011. He has had a heart attack in the interim. He has not had a stroke as far as he knows.

Health Status

Allergies:

Allergic Reactions (Selected)

No known allergies.

Medications: (Selected)

Documented Medications

Documented

Crestor: 0 Refill(s), Type: Maintenance
Effient: 0 Refill(s), Type: Maintenance
Lipitor: 0 Refill(s), Type: Maintenance
Loracet HD: 0 Refill(s), Type: Maintenance
aspirin: 0 Refill(s), Type: Maintenance
lisinopril: 0 Refill(s), Type: Maintenance
nitroglycerin 0.3 mg/hr transdermal film, extended release: 0 Refill(s), Type: Maintenance

Problem list:

All Problems

Morbid Obesity / ICD-9-CM 278.01 / Probable
Left Shoulder Pain / ICD-9-CM 719.41 / Confirmed

Histories

Past Medical History:

No active or resolved past medical history items have been selected or recorded.

Family History:

No family history items have been selected or recorded.

Procedure history:

No active procedure history items have been selected or recorded.

Social History:

No active social history items have been recorded.

Physical Examination

VS/Measurements

Vital Signs

2/20/2013 9:24 AM EST

Peripheral Pulse Rate
Systolic Blood Pressure
Diastolic Blood Pressure
Mean Arterial Pressure.

94 bpm
162 mmHg HI
92 mmHg HI
115 mmHg

Printed by: Holmes, Tonya
Printed on: 2/28/2013 12:51 PM EST

Page 1 of 2
(Continued)

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- 71 -

Orthopedic Note

TUCKER JR, JOHNNIE - 85159

Measurements from flowsheet : Measurements
2/20/2013 9:24 AM EST

Height	71 in
Weight	298 lb
BSA	2.60 m2
Body Mass Index	41.58 kg/m2

On exam, he is using a cane due to a right knee injury. He just had surgery for this apparently. He has good range of motion of his cervical spine. He has no active abduction at all of the left shoulder. He has major weakness with external rotation and internal rotation of the left shoulder. He has severe weakness with elbow flexion. He has 4 minus over 5 strength with elbow extension. He has good grip strength of the left hand and good strength with flank finger abduction and adduction. He has decreased sensation in the C5, C6, C7, C8 distributions of the left upper extremity. His hand is warm with no evidence of obvious vascular compromise. He has no obvious unilateral swelling of the left upper extremity. I can forward flex his left shoulder 140 degrees. He has some mild discomfort to palpation over his left scapula. Skin is intact upper extremities.

Radiographs of the left shoulder show what appears to be an old healed scapula body fracture. There is inferior subluxation of the humeral head in relation to the glenoid.

Impression and Plan

Diagnosis

Shoulder pain (ICD9 719.41).

Arm Weakness (ICD9 729.89).

Summary: Impression: Left upper extremity weakness in the C5, C6, C7 distributions with decreased sensation in the C5, C6, C7 and C8 distributions with left shoulder subluxation with previous left scapular fracture status post fall

Plan: I think that there was likely brachial plexus injury with this fall. Could be a cervical spine pathology. We will obtain electrodiagnostic studies. He may need an MRI of the cervical spine. He may need an MRI of the shoulder. He'll follow up in 3 weeks for reevaluation.

Orders

Orders.

Charges (Evaluation and Management):

99203 office outpatient new 30 minutes (Charge) (Completed); Quantity: 1

Signature Line

Signed and Authored by Christopher Mazoue on 02/20/2013 10:10 AM EST
Pathyna Knight

Charted Date: February 20, 2013 9:28 AM EST
Subject / Title: Upper Extremity Evaluation*
Performed By: Mazoue MD, Christopher on February 20, 2013 9:31 AM EST
Electronically Signed By: Mazoue MD, Christopher on February 20, 2013 10:10 AM EST
Visit Information: 28620, USC Orthopedics, Outpatient, 2/20/2013 - 2/22/2013

Printed by: Holmes, Tonya
Printed on: 2/28/2013 12:51 PM EST

Page 2 of 2
(End of Report)

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, 2-

CERTIFICATE OF SERVICE BY MAIL

WCC File No. 1106689

I hereby certify that I have on this day served the following in the matter of Johnny Tucker v. Dept of Transportation with a copy of the Claimant's Pre-Hearing Brief, Notice of Witnesses and Written Reports(s)/Physician or other Evidence, and APA Submissions, with enclosures by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Commissioner Gené McCaskill
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

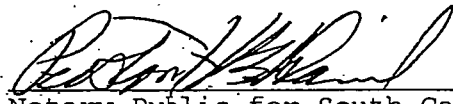
Sarah S. Alphin, Attorney
Willson Jones Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, SC 29209

I also hereby certify that a regular communication by mail exists.


Ashley Cashdollar

SWORN TO BEFORE ME this

6th day of October, 2014.


(L.S.)
Notary Public for South Carolina

My Commission Expires: 10/28/18

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH ATLANTA

Sarah S. Alphin
Direct (803) 227-2885
Fax (803) 782-2527
ssalpin@wjlaw.net

4500 Fort Jackson Boulevard
Columbia, SC 29209
www.wjclaw.net

October 10, 2014

The Honorable Gene McCaskill
South Carolina Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

Re: Johnny Tucker vs. SCDOT (DOI:5/2/11)
WCC File No.: 1106689 DOI: 5/2/2011
Carrier: State Accident Fund - Claim No.: 2011-1286
WJC&B File No.: 0385.00752

Dear Commissioner McCaskill:

Enclosed herein please find the Defendants' Pre-Hearing Brief as well as the Notice of Witnesses and Written Medical Reports which lists the documents I intend to submit at the hearing of the above-referenced matter pursuant to the South Carolina Administrative Procedures Act.

By copy of this letter, I am providing a copy of these forms and reports to Preston F. McDaniel, Claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Sarah S. Alphin
Sarah S. Alphin

SSA/twc
Enclosure(s)

cc (w/enclosures): Preston F. McDaniel, Esquire ✓
Robin Oxner-King (via e-mail)

P.143



Claimant's Name: <u>Johnny Tucker</u>	Employer's Name: <u>South Carolina Department of Transportation</u>
Address: _____	Address: <u>PO Box 191</u>
City: _____ State: <u>SC</u> Zip: _____	City: <u>Columbia</u> State: <u>SC</u> Zip: <u>29202-0191</u>
Home Phone: _____ Work Phone: _____	Carrier: <u>State Accident Fund</u>
Preparer's Name: <u>Sarah S. Alphin</u>	Preparer's Phone #: <u>(803) 227-2885</u>

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$279.55 2. AWW: \$419.31 Date of Injury: 5/2/2011
3. Type of injury and body part(s): Left scapula fracture. Denied change of condition.
4. Facts in controversy: Whether the Claimant sustained a change of condition; whether the Claimant timely filed Hearing request for change of condition; whether the Claimant is entitled to any benefits.
5. Legal issues involved: § 42-17-90; §42-1-120; § 42-15-60; § 42-1-160; § 42-9-10; § 42-9-30; § 42-9-60; Curiel vs. Environmental Management Services; Shealy vs. Algemon Blair, Inc. 250 S.C. 106 Krell v. SC State Highway Dept., 237 S.C. 584 (1961); res judicata and other applicable statutes, regulations, and case law.
6. Unusual aspects: Defendants reserve the right to and may move to either postpone or adjourn the scheduled hearing to exercise due process rights afforded by law to cross examine, respond to, and otherwise oppose evidence presented by the Claimant. Claimant is alleging a change of condition. Defendants have authorized an evaluation without prejudice with Dr. Hassler for October 13, 2014. Dr. Hassler was the Claimant's authorized treating physician for the original injury but has not seen the Claimant since finding the Claimant at MMI on November 7, 2011. Defendants will submit report of Dr. Hassler as soon as available and may request postponement of Hearing, if necessary.
7. Witnesses (designate if expert):* Claimant
8. Exhibits: Claimant's Employment/Personnel File; Payroll Records; Depositions of Claimant; Hearing Order of March 26, 2012; Form 19 dated November 28, 2012; WCC File #1018814; Hearing Order in WCC #1018814 dated April 11, 2012; Full Commission Order in WCC #1018814 dated October 30, 2012
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: Dr. Hassler at Hartsville Orthopaedic and Sports Medicine, 700 Medical Parks Drive, Hartsville, SC 29550
11. Impairment rating(s); body part(s); physician and date of opinion: 0% to the left shoulder on November 7, 2011

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}

12. I am amending my Form 50/51 in the following manner:

Defendants assert Claimant's change of condition was not timely filed within 1 year from the last payment

Mediation

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

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

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

I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Preston E. McDaniel, 1315 Elmwood Avenue, Columbia, SC 29201 and Gene McCaskill, P. O. Box 1715, Columbia, SC 29202-1715 on the 10th day of October, 2014 by ☒ first class mail ☐ personal service ☐ certified mail.

Tessa W. Campbell
Certifier, Tessa W. Campbell

Signature:

Sarah S. Alphin
Sarah S. Alphin, Willson Jones Carter & Baxley, P.A.

Email: ssalpin@wjlaw.net

Date of hearing: 10/21/2014

Time needed for hearing: 30 minutes

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

WCC Form # 58

58

PRE-HEARING BRIEF

Revised 7/13

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

WCC File # 1106689
Carrier File # 2011-1286
Carrier Code #
Employer FEIN

Johnny Tucker Claimant's Name		SSN		South Carolina Department of Transportation Employer's Name	
Address		City	State	Zip	PO Box 191, Columbia, SC 29202-0191
Home Phone		Work Phone		Address	
Sarah S. Alphin Preparer's Name		4500 Fort Jackson Boulevard, Columbia, SC 29209		State Accident Fund Insurance Carrier	
				(803) 227-2885 Phone #	

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

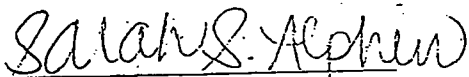
YOU ARE HEREBY NOTIFIED THAT DEFENDANTS, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the defendants, to wit:

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE
5. Dr. Emmanuel O. Quaye	November 30, 2009 – July 24, 2012	73 – 77
6. Hartsville Orthopaedic and Sports Medicine	May 3, 2011 – November 7, 2011	78 – 95
7. Dr. Timothy R. Wagner	January 24, 2012	96 - 99

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 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 and inclusion into the evidence on behalf of the employer-defendant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: Claimant.


Sarah S. Alphin
Willson Jones Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, SC 29209

October 10, 2014

October 21, 2014
(hearing date)

Tucker, Johnny DOB: 24992 Date of Service: 11/30/2009 16:23

SUBJECTIVE:

Chief Complaint: Follow-up.

HISTORY OF PRESENT ILLNESS: 52 year old comes for follow up. He was seen two weeks ago for left shoulder weakness. States he saw the ortho and is scheduled to go back to see him again. roscv reported Negative Cardiovascular System Review denied Headache denied, blurred vision denied, dizziness denied, chest pain denied, cough denied, shortness of breath denied, palpitations denied, weakness denied, claudication denied. Swelling in the legs/feet denied. Orthopnea denied, paroxysmal nocturnal dyspnea denied, cough denied, reduced exercise tolerance denied. ROSMUSC reported. **NEGATIVE MUSCULOSKELETAL SYSTEM REVIEW** denied. Pain denied. Swelling denied. Erythema denied. Stiffness denied. Warmth denied. Weakness denied. Numbness denied.

OBJECTIVE:

VS: BP: 154/098. BMI: 40.8. H: 5' 11.0". P: 093. RR: 18. T: 097.80 Deg.. W: 292 lbs. 00.0 oz..

Gen: Alert, no acute distress.

HEENT: EOMI, PEERLA, MC moist.

Neck: Supple, no mass, no bruits.

Chest: Clear to AP, good excursion.

CV: Regular rate and rhythm.

Abd: +BS, NT to palpation and percussion.

Extremities: No edema, cyanosis, clubbing.

Musculoskeletal: No joint swelling, redness, tenderness. Left shoulder weakness persists.

ASSESSMENT:

Diabetes Mellitus (non-insulin dependent) Type 2 - #250.00.

Shoulder weakness.

Hypertension (high blood pressure) Stage one #401.1.

PLAN:

Refill diabetic test strips.

Discussed option for surgery.

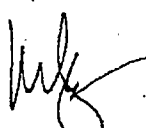
MEDICATION:

Diabetic test strips disp 120 for four times daily, testing, 11 refills

Dx: 25002

FOLLOW UP:

1-3 months

Signed: 

Emmanuel O. Quayle, MD

Printed on 11/30/2009 at 08:11 PM

Tucker, Johnny DOB:

24992 Date of Service: 11/29/2010 11:24

SUBJECTIVE:

Chief Complaint: Routine follow up.

HISTORY OF PRESENT ILLNESS: 63 year old comes follow up. Has no new complaints. He has lost some weight. Has problem with left shoulder. He saw Dr. Hassler, but his knee is a priority for surgery. Roscon reported Negative constitutional review denied. Anorexia denied. Chills denied. Diaphoresis denied. Dizziness denied. Fatigue denied. Fever denied. Lethargy denied. Malaise denied. Night sweats denied. Weakness, generalized denied. Weight Gain denied. Weight Loss denied. ROSMUSC reported. **NEGATIVE MUSCULOSKELETAL SYSTEM REVIEW** denied. Pain denied. Swelling denied. Erythema denied. Stiffness denied. Warmth denied. Weakness reported, left shoulder. Numbness denied.

OBJECTIVE:

VS: BP: 173/088. BMI: 40.5. H: 5' 11.0". P: 099. RR: 18. T: 097.70 Deg.. W: 290 lbs. 00.0 oz.

GEN: Well developed adult, no distress.

HEENT: MM's WNL, TM's normal, PERLA, conjunctiva WNL.

NECK: Full ROM, no adenopathy or masses.

LUNGS: Clear to auscultation and percussion, equal BS.

HEART: RR & R, no murmur, gallop, or rub, PMI nondisplaced.

ABD: Positive bowel sounds, nontender to palpation.

MS: No joint pain/tenderness, erythema, effusion.

NEURO: Alert, CN's WNL, DTR's equal, no sensory-motor-coordination changes.

SKIN: No rashes or lesions.

EXT: Good DP, PT pulses, no effusions.

ASSESSMENT:

Diabetes Mellitus (non-insulin dependent) Type 2 - #250.00.

Hypertension (high blood pressure) Stage 2 #401.0

Dyslipidemia (pure hypercholesterolemia) #272.0.

Obesity (over-weight) #278.00.

PLAN:

Continue current.

Encourage weight loss.

MEDICATION:

Acidophilus+ 5bn i po twice daily, #60, no refills

Prandin 2mg i po TID/AC meals, #270, 1 refill

Cialis 20mg i po TIW, #10, 5 refills

Norvasc 5mg i po daily, #90, 1 refills

Niacin 500mg i po daily, #90, 1 refills

Welchol 1000mg 3 po twice daily, #540, 1 refills

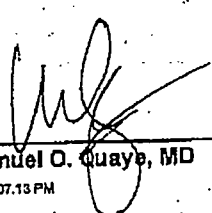
Lisinopril 40mg i po daily, #90, 1 refills

Januvia 100mg i po daily, #90, 1 refills

EC aspirin 325mg i po once daily, #30, 1 refill

FOLLOW UP:

One month

Signed: 

Emmanuel O. Quaye, MD

Printed on 11/29/2010 at 07:13 PM

P.148

Tucker, Johnny DOB:

24892

Date of Service: 04/19/2011 14:10

SUBJECTIVE:

Chief Complaint: Routine follow up.

HISTORY OF PRESENT ILLNESS: 53 year old comes for follow up. States he "feels great." Has no new complaints. roscoc reported. Negative constitutional review denied. Anorexia denied. Chills denied. Diaphoresis denied. Dizziness denied. Fatigue denied. Fever denied. Lethargy denied. Malaise denied. Night sweats denied. Weakness, generalized denied. Weight Gain denied. Weight Loss denied. He received injection for his left shoulder. ROSMUSC reported. **NEGATIVE MUSCULOSKELETAL SYSTEM REVIEW** denied. Pain reported, left shoulder. Swelling denied. Erythema denied. Stiffness denied. Warmth denied. Weakness denied. Numbness denied.

OBJECTIVE:

VS: BP: 147/089; BMI: 40.5. H: 5' 11.0". P: 087. RR: 20. T: 99.40 Deg.. W: 290 lbs. 00.0 oz. 243.

GEN: Well developed adult, no distress.

HEENT: MM's WNL. TM's normal. PERLA, conjunctiva WNL.

NECK: Full ROM, no adenopathy or masses.

LUNGS: Clear to auscultation and percussion, equal BS.

HEART: RR & R, no murmur, gallop, or rub, PMI nondisplaced.

ABD: Positive bowel sounds, nontender to palpation.

MS: No joint pain/tenderness, erythema, effusion.

NEURO: Alert, CN's WNL, DTR's equal, no sensory-motor-coordination changes.

SKIN: No rashes or lesions.

EXT: Good DP, PT pulses, no effusions.

ASSESSMENT:

Diabetes Mellitus (non-insulin dependent) Type 2 - #250.00.

Hypertension (high blood pressure) Stage one #401.1.

Dyslipidemia (pure hypercholesterolemia) #272.0.

Degenerative Joint Disease #715.90.

PLAN:

Continue current.

Has medications.

MEDICATION:

No new.

FOLLOW UP:

Three months

Signed:

Emmanuel O. Quaye, MD

Printed on 04/25/2011 at 10:22 PM

Needs
labs
next
work
OK
Spoke

75

Tucker, Johnny DOB: 24992 Date of Service: 11/15/2011 16:14

SUBJECTIVE:

Chief Complaint: Return to work visit.

HISTORY OF PRESENT ILLNESS: 54 year old comes for follow up. He has been out of work since he had myocardial infarction in August. He comes for follow up assessment for return to work. He reports low back pain, but also dizziness that is positional. roscoe reported Negative constitutional review denied. Anorexia denied. Chills denied. Diaphoresis denied. Dizziness denied. Fatigue denied. Fever denied. Lethargy denied. Malaise denied. Night sweats denied. Weakness, generalized denied. Weight Gain denied. Weight Loss denied. roscoe reported Negative Cardiovascular System Review denied Headache denied, blurred vision denied, dizziness reported, chest pain denied, cough denied, shortness of breath denied, palpitations denied, weakness denied, claudication denied. Swelling in the legs/feet denied. Orthopnea denied, paroxysmal nocturnal dyspnea denied, cough denied, reduced exercise tolerance denied.

OBJECTIVE:

VS: BP: 144/088. BMI: 41.2. H: 5' 11.0". P: 074. RR: 20. T: 098.20 Deg. W: 285 lbs. 00.0 oz. 98%. Or hostatic blood pressures negative.

Gen: Alert, no acute distress.

HEENT: EOMI, PEERLA, MC moist.

Neck: Supple, no mass, no bruits.

Chest: Clear to AP, good excursion.

CV: Regular rate and rhythm.

Abd: +BS, NT to palpation and percussion.

Extremities: No edema, cyanosis, clubbing.

Musculoskeletal: No joint swelling, redness, tenderness.

ASSESSMENT:

Coronary Artery Disease #414.9.

Myocardial infarction (heart attack with injury) #410.90.

Dizziness (vertigo) #780.4.

Diabetes Mellitus (non-insulin dependent) Type 2 - #250.00.

PLAN:

Continue current

Continue cardiac rehab. May not return to work as yet.

MEDICATION:

Has medications.

FOLLOW UP:

One month

Signed: 

Emmanuel O. Quayle, MD

Printed on 11/15/2011 10:02:41 PM

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Tucker, Johnny DOB:

24892 Date of Service: 07/24/2012 12:38

SUBJECTIVE: Chief Complaint: Routine follow up.

HISTORY OF PRESENT ILLNESS: 55 year old comes for follow up. He has bilateral knee and shoulder pains. Left shoulder pain is chronic, and inoperable. ROSMUSC reported. **NEGATIVE MUSCULOSKELETAL SYSTEM REVIEW** denied. Pain reported. Swelling denied. Erythema denied. Stiffness denied. Warmth denied. Weakness denied. Numbness denied. Rosoon reported Negative constitutional review denied. Anorexia denied. Chills denied. Diaphoresis denied. Dizziness denied. Fatigue denied. Fever denied. Lethargy denied. Malaise denied. Night sweats denied. Weakness, generalized denied. Weight Gain denied. Weight Loss denied.

He reports nocturia after he drinks plenty of water.

review reported The past medical, surgical, family and social history has been reviewed. There is no change in the medications, or in any of the reviewed history. All other systems reviewed and negative.

OBJECTIVE:

VS: BP: 154/99, BMI: 41.7, H: 5' 11.0", P: 88, RR: 20, T: 99.30 Deg., W: 298 lbs. 08.0 oz., 88%.

Gen: Alert, no acute distress.

EYES: EOMI, PEERLA.

ENT: Clear mucous membranes and nasal passages.

Chest: Clear to AP, good excursion.

CV: Regular rate and rhythm.

Abd: +BS, NT to palpation and percussion.

Extremities: No edema, cyanosis, clubbing.

Musculoskeletal: Left shoulder weakness.

Skin: No rash or skin lesions. Nails show no fungus.

ASSESSMENT:

Diabetes Mellitus (non-insulin dependent) Type 2 - #260.00.

Hypertension (high blood pressure) Stage one #401.1.

Dyslipidemia (pure hypercholesterolemia) #272.0.

Vitamin D Deficiency #268.9

Coronary Artery Disease #414.9.

PLAN:

Refills as below.

Continue current.

Check labs.

MEDICATION:

Prandin 2mg i po TID/AC meals, #270, 1 refill

Cialis 20mg i po TIW, #10, 5 refills

Norvasc 5mg i po daily, #90, 1 refills

Niacin 500mg i po daily, #90, 1 refills

Welchol 625mg 3 po twice daily, #540, 1 refills

Lisinopril 40mg i po daily, #90, 1 refills

Januvia 100mg i po daily, #90, 1 refills

EC aspirin 325mg i po once daily, #30, 1 refill

Lorcet 10/650mg i po four times daily, #120, 2 refills

FOLLOW UP:

Three months

Signed:

Emmanuel O. Olaye, MD

Printed on 07/23/2012 at 11:24 AM

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May 17, 2011 10:53AM HARTSVILLE OFTHOPEDICS

No. 6029 P. 3/5

2011-1286

RLF

DOT
5/2/11

PATIENT: Tucker, Johnny AGE:

EXAM DATE: 05/03/11

REFERRING PROVIDER: QUAYE, EMMANUEL

DATE OF ONSET: 5/2/11

CHIEF COMPLAINT: Left Shoulder Pain

HISTORY: He stated that he had a fall onto his left non-dominant shoulder yesterday. He stated that he drives a dump truck and slipped off a step and fell onto his left shoulder. He denied any previous left shoulder injuries or pain. He stated that he went to Darlington Urgent Care and had xrays and then went to Carolinas Hospital for a CT scan of his left shoulder. He was given a sling. He presents today for further evaluation and recommendations.

PAST HISTORY:

ILLNESSES: Diabetes
Heart Disease
Hyperlipidemia
Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)
Avandia (Dosage: 4mg)
Caduet
Fishoil
Januvia (Dosage: 100mg)
Lisinopril (Dosage: 40mg)
Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)
Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)
Norvasc (Dosage: 5mg)
Relafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)
Vitamin B-12

ALLERGIES: NKDA

SOCIAL HISTORY: Employment: Fulltime
Marital Status: Married

FAMILY HISTORY: Arthritis
Diabetes
Heart Disease
Hyperlipidemia
Hypertension
Stroke

REVIEW OF SYSTEMS:

Head:	No Headaches, or difficulty with vision, taste, smell or swelling
Neck:	No Difficulty swallowing or masses noted
Heart:	No Chest pain, palpitations, orthopnea, edema or syncope.
Lungs:	No SOB, cough, sputum production, wheezes or hemoptysis.
GI:	No Abdominal pain, dyspepsia, change in bowel habits, blood in stool.
GU:	No Dysuria, hematuria, frequency, urgency, or discharge.

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May 17 2011 10:53AM

From: unknown Page: 2/4
HARTSVILLE ORTHOPEDICS

Date: 5/18/2011 11:03:28 AM

No. 5029 P. 426

Report Date: May 17, 2011 Patient: Tucker, Johnny DOS: 05/03/11

Neuro: No focal neurologic deficit, weakness, paresthesias or incoordination
Musculoskeletal: Left shoulder pain
Psychosocial: No depression, or anxiety, recent stressors or change in lifestyle.
Home: No bleeding problems, or easy bruising.
Lymph: No swollen glands.

EXAMINATION: VITAL SIGNS: Pulse: No Data for Pulse Blood Pressure: No data for Blood Pressure
Weight: No Data for Weight

Constitutional: Well Developed, well nourished, in no acute distress.

Mental Status: Alert, oriented x 3, cooperative, pleasant.

HEENT: Normocephalic, Atraumatic skull, EOMI, Throat clear.

Neck: No thyromegaly or lymphadenopathy, no masses, FROM.

Lungs: Clear to auscultation all lung fields

Cardiovascular: No swelling, pulses full, skin warm, no edema.

Extremities: Left UE - TTP scapula and periscapular muscles. AROM shoulder: FE 50, ER 30, IR body.

NVI throughout. No TTP AC joint or anterior acromion.

Skin: No rashes, good color

Neuro: No focal weakness, loss of sensation or incoordination. DTRs intact and equal bilaterally.

X-RAYS: Left Shoulder (Urgent Care Films) - can see fracture on scapular Y view w/ some displacement
Left Shoulder CT Scan (Carolinas Hospital CD) - comminuted, displaced fracture of left scapular body. Os Acromiale. Mild GH DJD.

ASSESSMENT: 1. Left Scapula Body Fracture.

PRESCRIPTION: Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0 Method: Print)

PLAN: 1. FU 10 days
2. Sling
3. Next visit - shoulder views

D. Wiley

David H. Wiley, M.D.

Electronically Signed

Dictated on: 05/03/11

Time: 9:45 AM.

Page 2

This fax was received by GFI FAXmaker fax server. For more information, visit <http://www.gfi.com>

P.153

PATIENT: Tucker, Johnny AGE:

EXAM DATE: 05/13/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUAL,

SUBJECTIVE

CC: Left Shoulder Pain

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is still wearing his sling.

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis

Diabetes

Heart Disease

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Caduet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcat (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)

Norvasc (Dosage: 5mg)

Rolafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: NKDA

OBJECTIVE

PHYSICAL EXAM Left UE - TTP scapula and periscapular muscles. AROM shoulder: FE 50, ER 30, IR body. NVI throughout. No TTP AC joint or anterior acromion.

X-RAY: Left Scapula - displaced (distal dorsally) mid-body scapula fracture w/ some comminution.

ASSESSMENT

1. Left Scapula Body Fracture

PLAN

PRESCRIPTION: Lorcat (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0 Method: Print)

1. F/u 3 weeks with Dr. Hassler

May 17, 2011 10:54 AM

From: unknown

Page: 4/4

Date: 5/18/2011 11:03:29 AM

HARTSVILLE ORTHOPEDICS

No. 6029

P. 6/6

Report Date: May 17, 2011 Patient: Tucker, Johnny DOS: 05/13/11

2. Next visit - AP and scapular Y views
3. Continue sling
4. Next visit - would likely setup for PT for shoulder ROM

D Wiley

David H. Wiley, M.D.

Electronically signed

Dictated on: 05/13/11

Time: 9:45 AM

Page 2

This fax was received by GFI FAXmaker fax server. For more information, visit: <http://www.gfi.com>

P.155

PATIENT: Tucker, Johnny AGE: EXAM DATE: 05/23/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUAL,

SUBJECTIVE

CC: Left Shoulder Pain

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is still wearing his sling.

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis.

Diabetes

Heart Disease

Hyperlipdemia

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hyperlipidemia

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Cadvet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)

Norvasc (Dosage: 5mg)

Relafen (Dosage: 750 mg SIG: 1 po bld Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: .NKDA

OBJECTIVE

PHYSICAL EXAM Left UE - TTP scapula and periscapular muscles. AROM shoulder: FE 50, ER 30, IR body. NVI throughout. No TTP AC joint or anterior acromion.

X-RAY: Left Scapula - displaced (distal dorsally) mid-body scapula fracture w/ some comminution.

ASSESSMENT

1. Left Scapula Body Fracture

PLAN

82

P.156

May. 26. 2011 3:59PM

From: 678-985-4862 Page: 2/2
HARTSVILLE ORTHOPEDICS

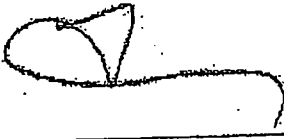
Date: 5/26/2011 3:59:08 PM

No. 6888 P. 3

Report Date: May 26, 2011 Patient: Tucker, Johnny DOS: 05/23/11

PRESCRIPTION: No data for Prescription

1. F/u 6/6/11, would likely setup for PT for shoulder ROM



Work Status
Light duty, no use of
left arm until 6/6/11 (next visit)

Terence W. Hassler, M.D.

Electronically signed

Dictated on: 05/23/11

Time: 2:51 PM

83

P.157

Page 2

PATIENT: Tucker, Johnny AGE: EXAM DATE: 06/06/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUAL,

SUBJECTIVE

CC: Left Shoulder Pain

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is still wearing his sling.

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis

Diabetes

Heart Disease

Hyperlipidemia

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hyperlipidemia

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Cadvet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)

Norvasc (Dosage: 5mg)

Relafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: NKDA

OBJECTIVE

PHYSICAL EXAM Left UE - TTP scapula and periscapular muscles. AROM shoulder: FE 50, ER 30, IR body. NVI throughout. No TTP AC joint or anterior acromion.

X-RAY: Left Scapula - displaced (distal dorsally) mid-body scapula fracture w/ some comminution.

ASSESSMENT

1. Left Scapula Body Fracture

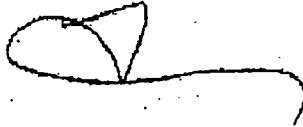
PLAN

84

Report Date: August 02, 2011 Patient: Tucker, Johnny DOS: 06/06/11

PRESCRIPTION: No data for Prescription

1. F/u four weeks, setup for PT for shoulder ROM, unfortunately Workman's Compensation is requiring him to go to 8th street for physical therapy. I have found him to not be very aggressive here and would be concerned about him getting his motion back in a timely fashion.



Terence W. Hassler, M.D.

Electronically signed

Dictated on: 06/06/11

Time: 11:05 AM

85

PATIENT: Tucker, Johnny AGE: EXAM DATE: 06/30/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUEL,

SUBJECTIVE

CC: Left Shoulder Pain

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is not wearing his sling.

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis

Diabetes

Heart Disease

Hyperlipidemia

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hyperlipidemia

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Cadvet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)

Norvasc (Dosage: 5mg)

Relafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: .NKDA

OBJECTIVE

PHYSICAL EXAM Left UE - TTP scapula and periscapular muscles. AROM shoulder: FE 50, ER 30, IR body. NVI throughout. No TTP AC joint or anterior acromion.

X-RAY: She can.

ASSESSMENT

1. Left Scapula Body Fracture possible rotator cuff tear

PLAN

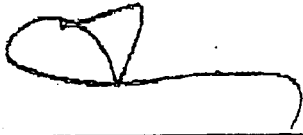
PRESCRIPTION: Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 1 Method: Print)

1. F/u four weeks, continue passive motion with PT for shoulder ROM, possible MRI on next visit

86

Corvel Scan Date: 7/12/2011

Report Date: July 08, 2011 Patient: Tucker, Johnny DOS: 06/30/11



Terence W. Hassler, M.D.

Electronically signed

Dictated on: 06/30/11

Time: 9:06 AM

8.7

PATIENT: Tucker, Johnny AGE: EXAM DATE: 08/04/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUAL,

SUBJECTIVE

CC: Left Shoulder Pain

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is still wearing his sling. I think it three months post injury he should certainly be healed and we would be back to his prior injury which was rotator cuff

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis

Diabetes

Heart Disease

Hyperlipidemia

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hyperlipidemia

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Cadvet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)

Norvasc (Dosage: 5mg)

Relafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: .NKDA

OBJECTIVE

PHYSICAL EXAM Left UE - TTP scapula and periscapular muscles. AROM shoulder: FE 50, ER 30, IR body. NVI throughout. No TTP AC joint or anterior acromion.

X-RAY: None taken

ASSESSMENT

1. Left Scapula Body Fracture with old rotator cuff injury

88

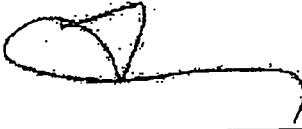
Corvel Scan Date: 8/26/2011

Report Date: August 23, 2011 Patient: Tucker, Johnny DOS: 08/04/11

PLAN

PRESCRIPTION: No data for Prescription

1. F/u one week, new CAT scan to determine the status of the scapular fracture.



Terence W. Hassler, M.D.

Electronically signed

Dictated on: 08/04/11

Time: 4:28 PM

89

PATIENT: Tucker, Johnny AGE: EXAM DATE: 08/29/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUAL,

SUBJECTIVE

CC: Left Shoulder Pain

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is still wearing his sling. I think it three months post injury he should certainly be healed and we would be back to his prior injury which was rotator cuff. He runs out of his workman's compensation at 180 days after his 5/2/11 injury. This is for the scapular fracture which according to CT scan today is healing but not healed. He also has a chronic rotator cuff tear of that left upper extremity and I have discussed with him at some length that he cannot make him normal and because of the atrophy of the periscapular muscles he will likely not have a significantly improved outcome

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis

Diabetes

Heart Disease

Hyperlipidemia

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hyperlipidemia

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Cadvet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)

Norvasc (Dosage: 5mg)

Relafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: .NKDA

OBJECTIVE

PHYSICAL EXAM Left UE - TTP scapula and periscapular muscles. AROM shoulder: FE 140, ER 30, IR body. NVI throughout. No TTP AC joint or anterior acromion.

X-RAY: None taken

90

Report Date: September 13, 2011 Patient: Tucker, Johnny DOS: 08/29/11

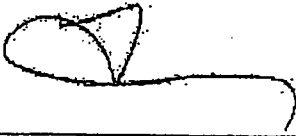
ASSESSMENT

1. Left Scapula Body Fracture with old rotator cuff injury

PLAN

PRESCRIPTION: No data for Prescription

1. F/u mid October for new CT scan to evaluate healing before he must return to work at 180 days after his injury. Continue therapy.



Terence W. Hassler, M.D.

Electronically signed

Dictated on: 08/29/11

Time: 11:28 AM

PATIENT: Tucker, Johnny AGE: id EXAM DATE: 10/13/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUEL,

SUBJECTIVE

CC: Left Shoulder Pain, He is also complaining of bilateral knee pain today.

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is still wearing his sling. I think it three months post injury he should certainly be healed and we would be back to his prior injury which was rotator cuff. He runs out of his workman's compensation at 180 days after his 5/2/11 injury. This is for the scapular fracture which according to CT scan today is healing but not healed. He also has a chronic rotator cuff tear of that left upper extremity and I have discussed with him at some length that he cannot make him normal and because of the atrophy of the periscapular muscles he will likely not have a significantly improved outcome

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis

Diabetes

Heart Disease

Hyperlipdemia

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hyperlipdemia

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Caduet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3)

Norvasc (Dosage: 5mg)

Relafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: NKDA

OBJECTIVE

PHYSICAL EXAM Left UE -tenderness over the anterolateral acromion, no tenderness over the scapula

X-RAY: None taken

42

Report Date: October 18, 2011 Patient: Tucker, Johnny DOS: 10/13/11

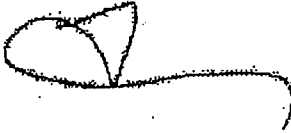
ASSESSMENT

1. Left Scapula Body Fracture with old rotator cuff injury

PLAN

PRESCRIPTION: No data for Prescription

1. F/u after new CT scan to evaluate healing before he must return to work at 180 days after his injury.
Disability evaluation for his scapula injury at that time.



Terence W. Hassler, M.D.

Electronically signed

Dictated on: 10/13/11

Time: 10:53 AM

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2011001286

7/12

Sbc
5/2/11
DOT

PATIENT: Tucker, Johnny AGE:

EXAM DATE: 11/07/11

DOI/DOS: 5/2/11

Referring Provider: QUAYE, EMMANUEL,

SUBJECTIVE

CC: Left Shoulder Pain, he is also complaining of right knee pain today.

HPI: Johnny is here for follow up for his left shoulder. He still has some pain in his left shoulder blade. He is out of his sling. I think it 6 months post injury he should certainly be healed and we would be back to his prior injury which was rotator cuff. He runs out of his workman's compensation at 180 days after his 5/2/11 injury. This is for the scapular fracture which according to CT scan today is essentially healed. He also has a chronic rotator cuff tear of that left upper extremity and I have discussed with him at some length that he cannot make him normal and because of the atrophy of the periscapular muscles he will likely not have a significantly improved outcome with eventual surgery which again is not related to his workman's compensation injury. His rotator cuff problem three existed his fall and fracture of his scapula.

SOCIAL HISTORY: Employment: Fulltime

Marital Status: Married

FAMILY HISTORY: Arthritis

Diabetes

Heart Disease

Hyperlipdemia

Hypertension

Stroke

ILLNESSES: Diabetes

Heart Disease

Hyperlipidemia

Hypertension

OPERATIONS: none

MEDICATIONS: Aspirin (Dosage: 325mg)

Avandia (Dosage: 4mg)

Cadvet

Fishoil

Januvia (Dosage: 100mg)

Lisinopril (Dosage: 40mg)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 50 Refills: 0)

Lorcet (Dosage: 10/325 SIG: 1 PO q6h PRN Pain Dispense: 90 Refills: 3)

Norvasc (Dosage: 5mg)

Relafen (Dosage: 750 mg SIG: 1 po bid Dispense: 60 Refills: 1)

Vitamin B-12

ALLERGIES: .NKDA

OBJECTIVE

PHYSICAL EXAM: Left UE -tenderness supraspinatus and infraspinatus musculature, which is very atrophied

X-RAY: None taken

94

Report Date: November 08, 2011 Patient: Tucker, Johnny DOS: 11/07/11

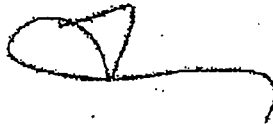
ASSESSMENT

1. Left Scapula Body Fracture with old rotator cuff injury

PLAN

PRESCRIPTION: Mobic (Dosage: 15mg SIG: 1 PO qd Dispense: 30 Refills: 3 Method: Print)

1. F/u in four weeks for evaluation for his left shoulder rotator cuff and right knee. These are not workman's compensation injuries. I have once again explained to the patient and his wife that his disabilities preexisted his workman's compensation injury and as far as on concern regarding his workman's compensation injury is scapula fracture he may return to work. If he cannot work because of his left shoulder problems and right knee problems I would be happy to see him for these but we cannot do this under Workman's Comp. I have therefore return them to duty because of his left scapular injury. I've also told him that if he cannot perform his job safely I would certainly not work regarding his left shoulder and his right knee which apparently he was working fairly well with prior to his injury. I believe he has reached maximum medical improvement for his left scapula fracture with subsequent 0% disability as of 11/7/11.



Terence W. Hassler, M.D.

Electronically signed

Dictated on: 11/07/11

Time: 11:15 AM

Timothy R. Wagner MD
Lake City Orthopaedic Clinic

330 Mercy Street
Lake City, South Carolina 29560
Phone: 843.374.5267
Fax: 843.374.6243

January 24, 2012

State Accident Fund
P.O. Box 102100
Columbia, SC 29221-5000
Attn: Ms. Sherri Carr

Re: Mr. Johnny Tucker 2492WC
Claim#: 2011-001286

Dear Ms. Carr:

Mr. Johnny Tucker of Hartsville, South Carolina was examined in my office at Lake City Orthopaedic Clinic on January 24, 2012, at your request for an evaluation for a second opinion in reference to his Workers' Compensation claim.

The evaluation process was explained to Mr. Tucker and he understands that no patient/treating physician relationship has been established and that a report will be sent directly to your offices for the sole purpose of its use in the adjudication of his claim.

History: Mr. Tucker is a fifty-four year old African American male who was born in Darlington County and delivered at home by a midwife. He graduated from Rosewall High School in Society Hill, South Carolina in 1976. He had then gotten a job working as a cleanup man in a cleanup crew for two years. He worked at the Sara Lee Hosiery Company from 1978 to 2000, until the plant had closed. From 2000 to 2011 he had worked for the South Carolina Highway Department. He did many jobs but he primarily drove a truck. He was driving a dump truck and hauling asphalt on the day he was injured. Mr. Tucker states that on May 2, 2011, his dump truck was at the asphalt plant in Florence, South Carolina waiting to get loaded with hot asphalt. He said the vehicle had been used the day before and there were branches and debris in the bed of the truck. He had climbed up into the truck bed and cleaned out the limbs. As he was coming out of the truck bed and going down the ladder on the front of the bed on the passenger side, he missed a step and had fallen backwards landing on the left scapula area. He said he did not have loss of consciousness. He notified his supervisor of what had happened and was told to get the load of asphalt and go to the roadwork site. He, in fact, did this. His supervisor knew he was injured. He said at the worksite the safety manager came and took him to Carolina Urgent Care in Florence, South Carolina. X-rays were questionable for a sprain of the shoulder. He then had gone to Carolinas Hospital for more x-rays and a diagnosis of left scapular fracture had been made.

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January 24, 2012

Re: Mr. Johnny Tucker 2492WC

Claim#: 2011-001286

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He has not returned to work since his injury on May 2, 2011. He suffered a myocardial infarction at the end of August 2011. He had no surgery regarding the left shoulder. He had been under the care of Dr. Hassler in Hartsville, South Carolina. He had worn a splint on his left arm and was in a sling for two to three months. He said he had gone to physical therapy in Hartsville, South Carolina, for thirteen weeks. He had not completed the physical therapy for his shoulder because of his myocardial infarction. He said that ~~he has been to cardiac rehabilitation in Hartsville for the last thirteen weeks and~~ tomorrow is his last day. He had been taking pain medication for his left shoulder but his orthopaedist said that he needed to continue using pain medicines for his right knee and not his scapula.

Past Medical History: He said that on December 13, 2010, he had a right knee arthroscopic surgery in Hartsville, South Carolina. He has a history of myocardial infarction with heart stent placement.

Chief Complaint: Left scapular pain.

Allergies: He is allergic to Celebrex.

Medications: He is taking a number of medications which include Januvia, Wilco, Lisinopril, Amlodipine, Lipitor, Nitroglycerine patch and Nitroglycerine tablets.

Social History: He doesn't smoke or drink. He had stopped both those habits eight years ago before his myocardial infarction. He has two heart stents.

Surgical History: After his myocardial infarction he had two heart stents placed by cardiac catheterization. Also includes a right knee arthroscopy in 2010.

Radiology Studies: Mr. Tucker had brought with him a series of disks which included CT scans and x-rays. I have reviewed a disk that was dated May 2, 2001. This showed that he had a scapular fracture, minimally displaced and slightly angulated toward the thorax. I had also reviewed CT's of the scapula dated August 11, 2011 and on October 21, 2011, which showed that the fracture of the left scapula had healed with excellent bridging callus noted on both studies. He also brought with him a copy of an MRI scan done at Carolina Pines Hospital and dated January 19, 2012, which was read by Sally W. Reagan, M.D. This was of his left shoulder and I have reviewed this and agree with the findings of the radiologist as follows:

History: Left shoulder pain, old football injury in the 1970's.

January 24, 2012

Re: Mr. Johnny Tucker 2492WC

Claim#: 2011-001286

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Findings: There is tendinopathy and partial tearing of the supraspinatus and infraspinatus tendon. There is fluid in the subacromial/subdeltoid bursa suggesting the possibility of a full thickness tear. It may be of benefit to proceed with MRI arthrogram. The subscapularis tendon is intact as is the teres minor. There is also noted marked atrophy of the supraspinatus and infraspinatus muscles. Both the supraspinatus and infraspinatus demonstrate stage-four Goutallier with fat being greater than muscle. The subscapularis appears to be stage one with a few fatty streaks as is the teres minor. The acromioclavicular joint is intact. There is no evidence of impingement. The long head of the biceps tendon is intact and in position within the bicipital groove. The labrum appears degenerated without a definite tear. There is no joint effusion.

Impression: Severe tendinopathy and tearing of the supraspinatus and infraspinatus tendons with muscle atrophy. MR arthrography could be performed if needed.

Physical Examination: Demonstrates an alert and very pleasant African American male who is oriented to person, place and time. He stands 5'9 3/4" and he weighs 300 pounds. He said that in his younger days, about twenty-five years ago, he could bench press 325 pounds but has not been lifting weights in the ensuing period of time, but working. His head is normocephalic. His trachea is in the midline. He has a full passive range of motion of the cervical spine in flexion/extension, lateral bending and rotation to the right and left. The right arm and right shoulder have full active and passive range of motion in flexion, extension, abduction and internal and external rotation, as well as, cross-chest adduction. Examination of the left shoulder demonstrates that he complains of pain in the scapular area below the scapular spine where his fracture had occurred. There is no crepitus and no point tenderness at the fracture site secondary to solid union. He has full extension of the left shoulder. In flexion he can only get to twenty degrees. He has full passive range of motion of the left shoulder to 170 degrees of flexion but this is painful, as is adduction to 160 degrees with shoulder pain at the extremes. External rotation is 90 degrees and internal rotation is 60 degrees. Cross-chest adduction is painful at 30 degrees. He also has pain on internal and external rotation in flexion at 90 degrees.

Impression: Healed left shoulder scapular fracture.

At this time he does not have full range of motion of the left shoulder secondary to rotator cuff type pain and I would say that his scapular pain is probably secondary to scar tissue formation, but the fracture has healed. Because of complaints of scapular pain from the healed fracture, I would give him a one percent impairment rating to the whole

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January 24, 2012

Re: Mr. Johnny Tucker 2492WC

Claim#: 2011-001286

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person based upon the Fifth Edition of the AMA Guides, referencing Chapter 18 regarding pain. The loss of range of motion is probably secondary to chronic rotator cuff tendinitis with possible full thickness tear, which, in my medical opinion, has not been caused by his injury on May 2, 2011.

The above analysis is based upon the available information at this time, including the history given by the examinee, the medical records and test provided, the results of pain status inventories and the physical findings. It is assumed that the information provided to me is correct. If more information becomes available at a later date, an additional report may be requested. Such information may or may not change the opinions rendered in this evaluation.

The examiner's opinions are based upon reasonable medical certainty and are impartial. Medicine is both an art and a science, and although an individual may appear to be fit for work activity, there is no guarantee that the person will not be re-injured or suffer additional injury. If applicable, employers should follow the processes established in the American with Disabilities Act, Title I. The opinions on work capacity are to facilitate job placement and do not necessarily reflect an in-depth direct threat analysis. Comments on appropriateness of care are professional opinions based upon the specifics of the case and should not be generalized, nor necessarily be considered supportive or critical of the involved providers or disciplines. Any medical recommendations offered are provided as guidance and not as medical orders. The opinions expressed do not constitute a recommendation that specific claims, or administrative action be made or enforced.

Thank you for asking me to see this examinee in consultation. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Timothy R Wagner, M.D.

Timothy R. Wagner, M.D., FAAOS, CIME
ska

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 #: 1106689
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Johnnie Tucker SSN: _____ Employer's Name: SC Dept. of Transportation
Address: 1417 Shaw Drive Address: 955 Park Street
City: _____ State: SC Zip: _____ City: Columbia State: SC Zip: 29202
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: _____
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 5/2/11 - Change of Condition

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 ATTACHMENT.

(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 SEE ATTACHED CERTIFICATE OF SERVICE on the ____ day of ____ 20__ by ☒ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature

Attorney for the Claimant
Title

preston@pfmcdlaw.com
Email

4/23/15
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.

ATTACHMENT TO FORM 30

~~Johnny Tucker v. SC Department of Transportation~~

W.C.C. File No. 1106689

1. That the Claimant would request a review pursuant to S.C. Code §42-17-50 by the Full Commission of the Findings of Fact, Conclusions of Law and Decision rendered in this matter based upon a review of the evidence, the positions and the legal precedents cited to the Commissioner and the entire Record before the Hearing Commissioner for decision.
2. That the Hearing Commissioner erred as a matter of law by denying the claim for a Change of Condition because the Claimant did not timely file for a Change of Condition with the Commission not on the basis that the Claimant did not file or claim for a Change of Condition with the Commission within one (1) year pursuant to Statute and Regulation but that the Claimant did not request a Hearing on the claim of a Change of Condition within one (1) year this was error because the allegation that the Change of Condition was not timely filed is an affirmative defense which must be plead pursuant to statute and Commission Regulation and it was not plead in the responsive Form 51 in this case.
3. That the Hearing Commission erred as a matter of law by denying the Claimant a Hearing on his claim for a Change of Condition on the basis that although the Claimant had timely filed a Claim alleging a Change of Condition had occurred well within the twelve (12) months of the last payment of compensation, the Claimant did not file for a Hearing on that claim until after the twelve (12) months following the last payment of compensation.
4. That the Hearing Commissioner erred as a matter of law by denying the claim for a Change of Condition where South Carolina Workers' Compensation Reg. 67-206 after the claim for a Change of Condition was filed requires that employer's representative, "shall immediately contact the Claimant", and where Reg. 67-601 provides that the, "Commission will not set a Hearing until a conflict arises," and where the undisputed evidence is that the Claimant on four (4) separate occasions contacted counsel for the Defendants and/or the adjuster for the Defendants beginning on March 18, 2013 and continuing through at least July 26, 2013 and where there is no evidence that the Defendants ever notified counsel or Claimant of a conflict, the Defendants are estopped and/or they have waived the affirmative defense of not timely filing for a Change of Condition under S.C. Code §42-17-90.

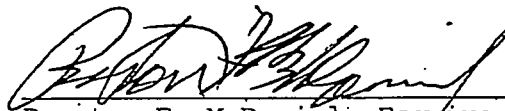
5. ~~That the Hearing Commissioner erred as a matter of law by denying the claim for a Change of Condition where S.C. Code §42~~
17-90, our Change of Condition statute is very clear that the Claimant must file an application alleging a Change of Condition which the Commission refers to in its own regulations as, "a claim" involving a Change of Condition (Reg. 67-602B) within one (1) year of the last date of the payment of compensation, the Commissioner's Decision requiring that the Claimant must not only file an application by filing a claim but must file for a Hearing to meet the requirements of the Act, denies the Claimant due process of law under federal and state law. The Commission, not the parties, has bifurcated the, "application process" under its regulations.

6. ~~That the Hearing Commissioner erred as a matter of law by failing to make a Decision and make Findings of Fact and Conclusions of Law on the application for benefits based on an undiagnosed condition. Where the Form 50 Request for Hearing alleged both a Change of Condition for the worse and also an undiagnosed condition.~~

7. ~~The Hearing Commissioner erred as a matter of law by failing to apply the fundamental construction principle applied to the Act, that the Act and its provisions shall be liberally construed in favor of benefits to the injured worker.~~

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript in this matter.

Respectfully submitted,



Preston F. McDaniel, Esquire
Attorney for the Claimant

April 23, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 1106689

JOHNNIE TUCKER,)
Employee-Claimant,)
v.)
SC Dept. of Transportation,)
Employer,)
and)
STATE ACCIDENT FUND,)
Carrier,)
Defendants.)

CLAIMANT/APPELLANT'S
BRIEF TO THE FULL COMMISSION

STATEMENT OF THE CASE

Following an Award by the Commission, benefits were paid on November 28, 2012. On May 2, 2013, the Claimant filed a Form 50 filing a claim for both a, "change of condition and undiagnosed condition claim". Attached to the claim was the opinion of an authorized treating physician, Dr. Emmanuel O. Quaye, who found that Mr. Tucker had undergone a change of condition for the worse and had referred him to an orthopaedist, Dr. Christopher Mazoue. In his initial evaluation, in addition to the previous diagnoses and conditions, Dr. Mazoue stated that Mr. Tucker most likely had sustained a brachial plexus injury and possibly a cervical spine pathology and recommended electro-diagnostic

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studies. The claim specifically requested authorization for the recommended medical care. (Form 50 Change of Condition, 5/2/13).

As is set out in the Record, both before and after filing for a change of condition, the Claimant through his Counsel contacted prior Defense Counsel (hereinafter Ms. Alphin) first on March 18, 2013 and then a second request was made on April 8, 2013 requesting specifically:

"I would appreciate your thoughts on this case and would appreciate it if you would get with the State Accident Fund and see how they want to proceed." (Claimant's APA, pp. 69-72).

At the direction of Ms. Alphin, Counsel for the Claimant then on May 2, 2013, in addition to serving the adjuster with the claim, wrote to the assigned claims adjuster, Ms. Robin Oxner-King, requesting this medical care. Again on July 26, 2013 in writing, Claimant's Counsel contacted the assigned adjuster, at the direction of Ms. Alphin, and again requested the medical care as found to be necessary pursuant to the medical reports already provided to the Defendants since March of 2013. (Claimant's APA, pp. 67-68).

After repeated requests for authorization for medical care or as to how the Defendants wanted to proceed, without any evidence in the Record of any reply as required by Regulation whatsoever either denying, accepting or offering any further medical care, on July 30, 2014 the Claimant filed for a hearing on the change of condition previously filed on May 2, 2013

requesting the medical care, evaluations and treatment, that was being provided at that time by Dr. Christopher Mazoue and previously by authorized treating physician, Dr. Quaye, and that temporary total as determined by the Commission to be due, be paid until maximum medical improvement. The Request for Hearing claimed both a, "change of condition and undiagnosed condition". (Form 50, 7/30/14).

A responsive Form 51 was filed on August 20, 2014 and set out as to the reasons for denial: "Defendants deny the Claimant has sustained a change of condition for the worse." On the WCC Form 51 #11, "further contentions, grounds of defense, or unusual aspects:" was left blank. In other words no other defenses were listed. (Defendants' Form 51, 8/20/14).

Subsequent to the Request for Hearing and the responsive Form 51, this matter came to be heard on October 21, 2014. On October 10, 2014, the Defendants filed their Form 58 Pre-Hearing Brief and for the first time alleged a defense of, "whether the claimant timely filed a hearing request for change of condition".

At the hearing, the Defendants asserted the position that the Claimant must both file a claim and file for a hearing within twelve (12) months after the payment of compensation and the Claimant stated his position that only a claim needs to be filed within twelve (12) months and cited as authority, Allen v.

Benson, 236 S.C. 22, 112 S.E.2d 722 (1960). The Defendants had also made a Motion to leave the Record open for a belated evaluation which the Commissioner took under advisement.

Subsequent to the hearing on February 18, 2015, the Commissioner issued his notes for a proposed Order and on or before March 27, 2015 a proposed Order was drafted and forwarded to Counsel for the Claimant. On March 27, 2015, Claimant's Counsel filed a Request for Reconsideration noting specifically that the Defendants had not raised the affirmative defense that the request for a change of condition had not been timely filed; requesting the application of existing case law as the Commission is required to do; requesting a liberal construction of the Act; and requesting a reversal and remand for a de novo hearing based on this due process failure to give notice of the issues to be heard at the hearing.

The Hearing Commissioner issued the Order on April 1, 2015. On April 1st immediately upon receipt of the signed Order, Claimant's Counsel objected to the Statement of the Case, the inclusion of legal authority not referred to during argument by either party and the inclusion of a Statement of Evidence of the Case since the Hearing Commissioner's decision was based on the affirmative defense. An Amended Order was filed on April 14, 2015. The revised Order struck the Evidence of the Case section; however the legal precedent not referred to by either Counsel at

argument before the Commissioner was still included in the Order. From that decision, this appeal follows.

ARGUMENTS

- I. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY DENYING THE CLAIM FOR A CHANGE OF CONDITION BASED ON THE AFFIRMATIVE DEFENSE THAT THE CLAIMANT DID NOT TIMELY FILE FOR A HEARING FOR A CHANGE OF CONDITION WITHIN 12 MONTHS OF THE PAYMENT OF COMPENSATION WHERE SUCH ALLEGATION IS AN AFFIRMATIVE DEFENSE THAT MUST BE PLEAD.

As noted in the Statement of the Case, in the responsive Form 51 filed to the Claimant's request for a hearing, the Defendants did not raise any affirmative defense and specifically the defense that the Claimant was time barred under SC Code §42-17-90.

Commission Reg. 67-603(B) specifically provides that the Form 51 must be filed within 30 days and that,

"the employer's attorney shall fully state his position and defenses, if any, replying to each specification in the Form 50"

Under subsection(C) where a Defendant fails to do this and fails to place the Claimant on notice of certain affirmative defenses, those defenses not plead are forfeited,

"B(1) shall forfeit each special and affirmative defense allowed by the Act including the Defenses available in §42-9-60, §42-15-20, §42-15-40 and §42-17-90 of the Act."

The Supreme Court specifically ruled in Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 846 (1967) that such defenses not plead are waived; citing to 100 C.J.S. Workers'

Compensation Section 500 that,

"An objection that the claim for compensation was not made or filed in the requisite time must be raised by the pleadings before the hearing."

Chapman further recognized the authority of the Commission to adopt Rules and Regulations implementing the provisions of the Act. In the case of Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (SC App. 1984), our Court of Appeals reaffirmed the holding in Chapman that affirmative defenses must be plead in the responsive Form 51 (the Defendants' pleading) or they are waived.

Since the Defendants did not raise in its pleading the affirmative defense in this case that the change of condition was not timely filed under §42-17-90, it was waived. The Decision of the Hearing Commissioner must be reversed and this matter remanded for a de novo hearing.

II. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY DENYING THE CLAIMANT'S APPLICATION FOR A CHANGE OF CONDITION ON THE BASIS IT WAS NOT TIMELY FILED WHERE THE DEFENDANTS ARE ESTOPPED FROM ALLEGING THIS DEFENSE UNDER THE FACTS OF THIS CASE.

In this case, on March 18, 2013, six (6) weeks before the Claimant filed a claim for a change of condition on May 2, 2013, Counsel for the Claimant forwarded a copy of the medical report establishing a change of condition to Counsel for the Defendants and requested that Defense Counsel get in touch with the State Accident Fund and see how they wanted to proceed with a repeat,

follow-up second request being sent on April 8, 2013. Then simultaneously with the filing of the claim on May 2nd, the adjuster for the State Accident Fund was specifically contacted concerning the medical reports (at that point involving two medical reports; one stating specifically that the Claimant had undergone a change of condition), and as to how they wanted to proceed concerning this request for medical care. Then as reflected in the Record on July 26, 2013 the Claimant again contacted the adjuster assigned to the file stating that Ms. Alphin had advised that she had closed her file and that she had not yet been retained on the change of condition and again had instructed Counsel to contact the adjuster. Claimant's Counsel expressed the feeling that possibly he had not been contacted concerning the request for additional medical care by the adjuster because he had, "sent a copy to her (Ms. Alphin) and you" and requested that, "please let us know whether you accept the change of condition and will authorize treatment so we can get this man treated." Between the filing of the claim on 5/2/13 and the hearing request on 7/30/14, there is simply no evidence in the Record of the Claimant being advised as to whether the claim was being accepted or whether it was being denied.

What the Record clearly establishes is that Ms. Alphin who represented the Defendants on the initial claim and who advised

the Claimant multiple times to contact the adjuster concerning obtaining medical care, and who knowing the Form 51 had not raised the defense then raised the issue of an untimely hearing request for the first time at the hearing. (Again there is no evidence in the Record reflecting any denial or position in any way denying the claim or any evidence at all that the Claimant was advised that they were rejecting the change of condition.)

The State Accident Fund was served with the May 2, 2013 claim and Commission Reg. 67-206 in reference to any, "claim" that is filed provides under subsection (E) that upon notice to the employer's representative of the filing of a claim that:

"The employer's representative shall immediately contact the Claimant."

There was no required contact by the adjuster.

Assuming for the point of argument that the 12 month limitation under §42-17-90 requires not only the filing of a claim but a request for hearing, the Supreme Court and Court of Appeals have both held that the Defendants may be deemed to have waived and/or may be estopped from asserting such a defense based on their actions. Chapman v. Foremost Dairies, Inc., supra; Lovell v. C.A. Timbes, Inc., 263 S.C. 384, 210 S.E.2d 610 (1974); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (S.C. App. 1984). For estoppel to apply the essential elements are that:

1. The party asserting estoppel lacks knowledge and/or

the means of knowledge of the truth as to the facts in question;

2. Relies upon the conduct of the party estopped; and

3. Any action taken by the party alleging estoppel is based upon that action and that his action is of such character as to change his position prejudicially. It is the essence of equitable estoppel that the party entitled to invoke the principle, "shall have been misled to his injury".

In this case, there is no question that the claim for a change of condition was timely filed. The evidence establishes that thereafter the Defendants did not contact the Claimant as required by Regulation concerning the claim for a change of condition. Also, the evidence establishes that the Claimant repeatedly contacted both Ms. Alphin (who ultimately became the Defense Counsel that tried this case) and the adjuster to try to obtain medical care. The evidence is uncontested that at no time up until ten (10) days before the date of the hearing did the Defendants ever notify the Claimant that they would take any position other than that the Claimant had not established that he had undergone a change of condition for the worse. The Defendants then for the first time, and again not even in their Form 51, but ten (10) days before the hearing alleged a legal argument that they were interpreting the law to require both the filing of a claim and a request for hearing.

Therefore, where the Defendants did not raise this legal

issue at the time of filing the claim; or at any time including in their Form 51 pleadings, ~~did not ever~~ contact the Claimant per Regulation after notice and did not take this position within the one (1) year of the payment of compensation, the Defendants should be estopped from asserting and be deemed to have waived this defense, especially in light of the guiding principle of the Workers' Compensation Act in that all provisions of the Act and the Regulations must be read and applied on the basis of a liberal interpretation in favor of benefits to the injured worker.

III. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY DENYING THE CLAIMANT'S APPLICATION FOR A CHANGE OF CONDITION ON THE BASIS THAT A REQUEST FOR HEARING ON THE CHANGE OF CONDITION WAS NOT TIMELY FILED WHERE THE RECORD ESTABLISHES THAT THE CLAIMANT TIMELY FILED A CLAIM FOR A CHANGE OF CONDITION WITHIN ONE (1) YEAR OF THE DATE OF THE LAST PAYMENT OF COMPENSATION AS REQUIRED BY THE ACT.

The Defendants do not question that the, "claim" for a change of condition was timely filed but that under their interpretation of the law, not only must a claim be filed but a hearing must be requested. Neither the Statute nor the Commission Rules, nor the interpretation of the Statute by the Supreme Court and Court of Appeals require this. The filing of a claim is all that is necessary and the Commissioner's decision to the contrary is contrary to the law.

The Commission's authority is derived "strictly" from the Statute which is in derogation of the common law. Price v.

Peachtree Electrical Services, Inc., 396 S.C. 403, 721 S.E.2d 461 (SC App. 2011), aff. ~~modified~~ 405 S.C. 455, 748 S.E.2d 229. The Commission must liberally construe the Act in favor of benefits and coverage in order to serve the beneficial purposes of the Act. James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730, reh. den. (2010). In addition to the requirement that the Commission must liberally interpret the Act in favor of benefits to the injured worker and the previous Supreme Court decisions interpreting the law in reference to the various time limitations for filing any type of a claim with the Commission, the Commission has adopted Regulations to implement the provisions of the Act. Regulation 67-206 deals with the filing of any type of, "claim" with the Commission and specifically does not require that a request for hearing be filed at the same time that a claim is filed and the Rule basically allows for a bifurcated process. That Regulation also requires as argued previously that the employer's representative upon the filing of any type of a claim, "shall immediately contact the claimant" in regard to the claim. Further, in addition to the provisions of the Act and the APA concerning the requirement that there must be issue(s) in controversy or in other words, a, "contested case" for a hearing to set, the Commission has adopted Regulations concerning when matters will be set for hearing and Regulation 67-601(B) specifically provides that a hearing will

not be set until a conflict arises. Reg. 67-602 deals with the setting of hearings and under subsection (C) specifically refers to the setting of a hearing on, "a claim involving a change of condition . . ." Therefore, not only are the filings of claims and requests for hearing dealt with under separate sections of the Regulation, but based on a clear reading of the Commission's own Regulations, there is no requirement that the request for a hearing must be filed on a change of condition but only that a "claim" must be filed. Under the Regulations, a request for hearing is not a necessary part of the filing of any claim.

When one adds to this the previous Supreme Court decisions requiring a liberal interpretation and the Supreme Court's specific holding in Allen v. Benson Outdoor Advertising Co., supra, wherein the Court specifically held that the hearing does not have to be held within the one year, only that the application for review must be filed within one (1) year, under any interpretation of the Statute, the Commission's Regulations and the previous rulings of the Supreme Court and Court of Appeals the filing of a request for hearing is in addition to filing the claim. Quoting from Allen:

"Appellants (the insurance carrier in that case) say that the forgoing statutory limitations 'is directed to the Industrial Commission rather than to the parties to the action', and that is not sufficient for the application for review to be made within one year after the last payment

of compensation but the application must be heard by the Commission within that period."

* * *

"We do not agree with Appellant's view. It represents a literal and strict construction of §72-359 when under the well settled Rule a liberal construction is required. To sustain Appellant's contention would lead to a rather unreasonable result clearly not within the intent of a Legislature".

Quoting further from the Allen decision:

"In Wilkes v. State Compensation Commissioner, supra, the Court said [120 W.Va. 424, 198 S.E. 871]:

"The filing of a claim for further compensation within the Statutory period and partial but not complete development thereof within such period, with loss of jurisdiction by the Commission during the progress of the case, would be an absurd result which the Legislature certainly did not have in mind and we feel warranted in holding that the Statute in question should be given a construction which permits the Commissioner to hear and pass upon any application in writing for a further adjustment of a claim, if filed within a statutory period applicable to the nature of the claim filed." (Emphasis added).

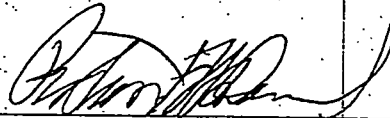
The Defendants interpretation would also result in unnecessary litigation, discourage resolution of issues and add a requirement to the Act not within its clear meaning. Therefore under the Statutory authority, the Commission's Regulations, and the interpretation of that Statute by the Supreme Court and Court of Appeals, the Commissioner erred by interpreting the Statute and Regulations to require that the Claimant has to, in

addition to filing a claim timely, request a hearing on that claim within the 12 month period. The decision must be reversed and this case remanded for a de novo hearing.

CONCLUSION

For all the foregoing reasons, the decision of the Hearing Commissioner must be reversed and this matter remanded for a de novo hearing on the change of condition, application made, and timely filed.

Respectfully submitted,



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803-771-7211

and

Gerald Malloy, Esquire
Malloy Law Firm
108 Cargill Way
Hartsville, South Carolina 29551
843-339-3000

Attorneys for the Claimant

June 15, 2015

CERTIFICATE OF SERVICE

Johnnie Tucker v. SC Dept. of Transportation

WCC File No. 1106689

I HEREBY CERTIFY that on this date:

I mailed a copy of the Claimant/Appellant's Brief to the Full Commission to:

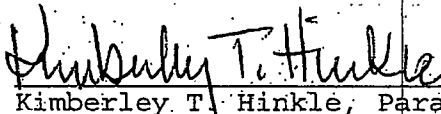
VIA eCASE

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

And I mailed a copy of the Claimant/Appellant's Brief to the Full Commission to:

VIA FIRST CLASS MAIL

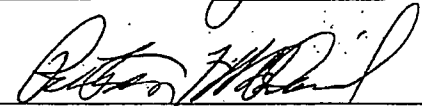
Sarah S. Alphin, Attorney
Willson Jones Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, SC 29209



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

15th day of June, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: 10/29/18

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1106689

Johnny Tucker,)
Employee,)
Claimant/Appellant,)
vs.)
South Carolina Department of Transportation,)
Employer,)
and)
State Accident Fund,)
Carrier,)
Defendants/Respondents.)

BRIEF OF
DEFENDANTS/RESPONDENTS

STATEMENT OF THE CASE

Claimant filed a Form 50 Request for Hearing on July 30, 2014 seeking additional medical treatment and temporary total disability for a change of condition from an injury sustained on May 2, 2011. Claimant's injury was a left scapula fracture. Claimant was awarded 5% to the left shoulder for permanent partial disability and was paid on November 28, 2012. Defendants filed a Form 51 on August 20, 2014 denying Claimant has sustained a change of condition for the worse.

A hearing was held October 21, 2014 before the Single Commissioner in Hartsville, South Carolina. Prior to such Hearing, Defendants filed a Motion to Postpone Hearing and Compel Claimant to Submit to Medical Evaluation. Defendant's Motion was based on Claimant's refusal to attend medical evaluation scheduled by Defendants pursuant to the right codified in S.C. Code Ann. §42-15-18. Claimant refused to attend the medical evaluation with Dr. Hassler, the authorized treating physician. Based on his refusal to attend, Claimant has never been evaluated by the authorized treating physician of the underlying claim in order for the physician who treated the left scapular fracture to give an opinion as to the change of condition. During pre-hearing arguments, the Hearing Commissioner considered Defendants' Motion and denied the same.

Arguments were presented by both parties on the issues of whether Claimant is entitled to medical treatment from a change of condition. Defendants asserted the Form 19, which is a part of the Commission file, shows last payment of compensation was November 28, 2012. Claimant's Form 50 hearing request was filed July 30, 2014, and therefore, Claimant's request for a change of condition was not timely. Alternatively, Defendants argued Claimant's change of condition fails on the merits as the preponderance of the evidence does not support a finding that Claimant's left scapula fracture worsened. Claimant argued that he is in need of additional medical treatment from the change of condition. Claimant argued he filed a Form 50 Claim Only within one year after last payment of compensation, and therefore, his change of condition request is timely.

The Hearing Commissioner found that Claimant failed to file for a change of condition for the worse within the statutorily required time period because the filing of a Form 50 Claim Only was not a sufficient "application" within the meaning of §42-17-90. The Hearing Commissioner found that "application" within the meaning of the statute required the Claimant to request the Commission take some action as opposed to simply giving the Commission notice of a claim. Claimant appeals to the Full Commission from this ruling.

STATEMENT OF FACTS/EVIDENCE

Claimant testified at the hearing in this matter and his testimony allowed the Commissioner to observe Claimant, to ask questions of Claimant, and to judge his credibility as a witness.

Testimony of Johnny Tucker, Claimant:

Claimant testified he is fifty-seven years old and resides in Hartsville, South Carolina. Claimant testified he sustained a work injury by falling off a work vehicle when he missed a step. He hurt his shoulder in the accident. Claimant admitted his specific injury was a fractured left scapula. He was awarded 5% to the left shoulder for permanent partial disability. Claimant also testified his condition worsened over the last two years, and he has more pain in his left shoulder, left arm, and left hand. Claimant was confronted with his prior Hearing testimony and admitted his complaints at the Hearing of March 2, 2012 are identical to the same complaints he has now.

ISSUES PRESENTED

- I. The Hearing Commissioner correctly determined Claimant failed to timely file his claim for a change of condition where he did not Request a Hearing for a change of condition within one year of the date of the last payment of compensation.
- II. Defendants' defense that change of condition was not timely was properly plead.
- III. Claimant's argument that Defendants did not properly plead defense of untimely change of condition is not preserved for appeal.
- IV. Estoppel does not apply to bar the Defendant's assertion that Claimant failed to comply with the one year statutory filing requirement contained in South Carolina Code Ann. §42-17-90.

ARGUMENTS/DISCUSSION

- I. The Hearing Commissioner correctly determined Claimant failed to timely file his claim for a change of condition where he did not Request a Hearing for a change of condition within one year of the date of the last payment of compensation.

South Carolina Code Ann. § 42-17-92(A) authorizes the Commission to review an award on the grounds of a change in condition "on its own motion or on the application of a party in interest." (emphasis added). In *Allen v. Benson Outdoor Advertising Co.*, 236 S.C. 22, (1960), the South Carolina Supreme Court interpreted the language of S.C. Code Ann. §42-17-90 to mean that an "application for review" of a change of condition claim must be made within one year after the last payment of compensation. The Hearing Commissioner correctly determined that a Form 50 claim only is not an application for review because the Claimant requests no action by the Commission. *Decision and Order of the South Carolina Worker's Compensation Commission*, Commissioner Gene McCaskill, p. 6.

Claimant relies on *Allen* to establish that the Commission should use a liberal construction of the statute to allow for the Commission's review of the claim. Though the Court in *Allen* did apply a liberal construction to the change of condition statute, it did so to prevent timely and properly submitted claims from being time barred under the change of condition statute where the Commission itself did not hear the claim within a one year period. 236 S.C. 22, 112 S.E.2d 722.

(1960). *Allen* prevents injured workers from being penalized for timing and scheduling factors out of their control once their request for hearing has been properly submitted to the Commission. This rationale does not apply to the facts at hand as Claimant is not being penalized by scheduled factors out of Claimant's control. Claimant simply did not request a hearing within the statutorily required period.

Claimant argues Regulation 67-206 "basically" allows for a bifurcated processes. Appellant's Brief to the Full Commission, p. 11. S.C. Regulations 67-206 and 67-207 only detail the required information and filing instructions for completing forms including a hearing request and those not including such request. The regulations do not purport to establish the sufficiency of any form to comply with the requirements of any statute, recommend the merits or usage of any form, or create a bifurcated system under any statute. Allowing a Form 50 Claim Only to toll the one year statutory requirement would create an incentive for all claimants to file such a claim even if they had not yet experienced the worsening of condition because they could then, at any point in the future, file a request for hearing and be awarded benefits. This would effectively nullify the one year statutory filing requirement.

In the case at hand, Claimant received his last payment of compensation on November 28, 2012, filed a claim only for change of condition on May 2, 2013, and filed for a hearing for change of condition on July 30, 2014. Hence, the Form 50 Request for Hearing exceeded the one year period dictated by statute. Because the filing of a Form 50 Claim Only does not satisfy the requirements of S.C. Code Ann. § 42-17-90, the Hearing Commissioner correctly determined the Commission did not have jurisdiction to hear the change of condition claim. Therefore, Defendants respectfully request the Full Commission to affirm the Decision and Order in Full.

II. Defendants' defense that change of condition was not timely was properly plead.

South Carolina Code Ann. §42-17-90 dictates the time within which a change of condition claim must be asserted, stating "the review must not be made after twelve months from the date of the last payment of compensation pursuant to a P. 195d by this title." The South Carolina Supreme

Court interpreted this language to mean an application for review must be made within one-year after the last payment of compensation. *Allen v. Benson Outdoor Advertising Co.*, 236 S.C. 22, 112 S.E.2d 722 (1960). Based on the holding of *Allen*, S.C. Code Ann. §42-17-90 establishes a one year statutory requirement for filing a change of condition claim, and allowing claims to be filed after this established statutory period violates the statute.

Claimant argues that the Defendants are barred from asserting the Claimant's request for a hearing for a change of condition was untimely because the Defendants did not raise this defense in their Form 51 response. As discussed above, this argument must fail because the one year filing period is not an affirmative defense to be pled but instead an express requirement of the statute itself. Claimant cites Reg. 67-603 as support for his claim and combines subsection B and C to create the proposition that where the Defendant fails to reply to each specification in the Form 50, the Defendant forfeits the corresponding defenses. This is an inaccurate reading of the regulation because subsection C specifically addresses the unique situation in which a Defendant completely fails to file a Form 51. The regulation states that where no Form 51 is filed within the statutorily required period, the Defendants shall forfeit each special and affirmative defense. Subsection C is inapplicable to the case at hand because the Defendants timely filed a Form 51, giving Claimant notice of the denial.

Defendants asserted the defense of Claimant's failure to timely file for a change of condition on their Form 58 pre-hearing brief. Thus Claimant had notice of Defendant's assertion of the defense prior to the date of the hearing.

III. Claimant's argument that Defendants did not properly plead defense of untimely change of condition is not preserved for appeal.

Only issues made a part of the record or otherwise preserved for appeal can be argued on appeal. Defendants raised in both their pre-hearing brief and in arguments at the hearing that Claimant's request for a change of condition was not timely. Claimant never raised that Defendants' argument was barred for failure to raise such defense in Defendants' Form 51, and therefore, Claimant's argument is not preserved for appeal.^{P. 196} *mmons v. Strong*, the South Carolina Court of

Appeals stated that an argument raised by Claimant for the first time in his reply brief and not ruled upon by the Appellate Panel was not preserved for review. 401 S.C.166, 739 S.E.2d 631 (S.C. App. 2013)(footnote 2). Claimant failed to object to the Defendant's argument on the grounds of improper notice at the hearing and raises this issue for the first time in his Appellate Brief to the Full Commission. The issue of improper notice of the defense through non-inclusion in the Form 51 was not raised before the Hearing Commissioner and was not ruled upon. By failing to object on the grounds he had received improper notice of the defense to the Hearing Commissioner and proceeding to argue the issue on its merits, the Claimant waived an argument of improper notice.

IV. Estoppel does not apply to bar the Defendant's assertion that Claimant failed to comply with the one year statutory filing requirement contained in South Carolina Code Ann. §42-17-90.

The South Carolina Court of Appeals described the elements of estoppel as being divided between the estopped party and the party claiming the estoppel. *Kelley v. Kelley*, 629 S.E.2d 388, 368 S.C. 602 (2006) (citations omitted). For Claimant's estoppel argument to succeed, Claimant must prove "1) conduct which amounts to a false representation, or conduct calculated to convey the impression that the facts are otherwise, 2) the intention that such conduct shall be acted upon by the other party, and 3) knowledge of the true facts." *Id.*

Claimant argues Defendants should be estopped from asserting Claimant was untimely in requesting a hearing because "there is simply no evidence in the Record of the Claimant being advised as to whether the claim was being accepted or whether it was being denied." (Appellant's Brief to the Full Commission, 7 (emphasis removed)). Thus, by his own assertion, Claimant establishes estoppel does not apply in this matter because Defendants made no representation to Claimant on which he could justifiably rely in delaying his hearing application. Because Defendants gave Claimant no indication his claim was going to be accepted, Claimant cannot satisfy the elements for his claim of estoppel because Defendants did not engage in conduct amounting to a misrepresentation or conduct calculated to convey the impression that the facts are otherwise. Additionally, Claimant cannot be said to have justifiably relied on the alleged silence of the

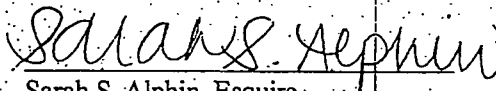
Defendants for 15 months as a representation that Defendants intended to accept the change of condition claim such that the Claimant would reasonably believe he need not request a hearing.

CONCLUSION

For the reasons set forth above, the decision of the Hearing Commissioner must be upheld and the Claimant's request for benefits for change of condition denied and dismissed. Defendants respectfully request that the Hearing Commissioner's Decision and Order be Affirmed in Full.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Sarah S. Alphin, Esquire
4500 Fort Jackson Boulevard
Columbia, SC 29209
Attorneys for Defendants

Date: June 29, 2015

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1106689

Johnny Tucker,

Employee,
Claimant,

vs.

South Carolina Department of Transportation,

Employer,

and

State Accident Fund,

Carrier,
Defendants.

CERTIFICATE OF SERVICE

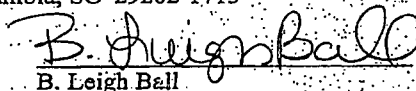
I, B. Leigh Ball, do hereby certify that I am the Legal Assistant for Sarah S. Alphin, Esquire, attorney for the defendants with WILLSON JONES CARTER & BAXLEY, P.A. in Columbia, South Carolina, and that on the 29th day of June, 2015, I mailed the foregoing BRIEF OF DEFENDANTS/RESPONDENTS to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

Gerald Malloy, Esquire
Malloy Law Firm
P.O. Box 1200
Hartsville, SC 29551

Via eCase Submission

Ms. Amy Bracy
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715


B. Leigh Ball

Legal Assistant to Sarah S. Alphin, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.

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McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 8, 2015

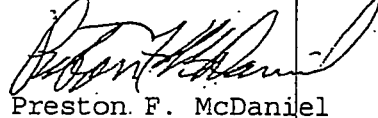
Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Johnny Tucker v. SC Department of Transportation
WCC File No.: 1106689

Dear Ms. Bracy:

Please find attached my Request for Rehearing which I am filing pursuant to SC Code §1-23-380. The required filing fee is enclosed and by copy of this letter, I am notifying and serving Counsel for the Defendants with a copy of the Request for Rehearing.

Respectfully submitted,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Gerald Malloy, Esquire
Sarah S. Alphin, Attorney at Law

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 1106689

Johnnie Tucker,)
Employee-Claimant,)
v.)
SC Dept. of)
Transportation,)
as Employer, and)
State Accident Fund,)
as Carrier,)
Defendants.)

CLAIMANT'S
REQUEST FOR REHEARING

SCWCC
OCT 13 2015
JUDICIAL

Pursuant to the provisions of SC Code §1-23-380 and the Supreme Court decision in Rhame v. Charleston County School Dist., 412 S.C. 273, 772 S.E.2d 159 (2015), Counsel for the Claimant hereby moves for rehearing in the above-referenced matter. The basis for the request is as follows:

1. That pursuant to SC Code §42-17-50, the Claimant raised seven (7) specific exceptions and grounds for review before the Full Commission, six (6) of which concerned specific errors of law as to the decision of the Hearing Commissioner.

2. That the only Finding of Fact and Conclusion of Law actually made by the Commission which was contained in a "Request for Proposed Order" addressed to Defense Counsel to

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draft a proposed Order was a finding of a "Full Affirmation of the Hearing Commissioner's Findings of Fact and Conclusions of Law and Decision".

3. That SC Code §42-17-40 requires, "the Commission" in its Award to make specific Findings of Fact and rulings of law as to the questions at issue.

4. That SC Code §1-23-350 requires that the Decision in a contested case must be in writing and the final Decision, "shall include Findings of Fact and Conclusions of Law, separately stated."

5. That SC Code §1-23-40 in reference to the final decision of the Commission provides that, "the proposal for decision shall contain a statement of the reasons therefore and of each issue or fact or law necessary to the proposed decision, prepared by the person . . . who has read the Record."

6. That the SC Supreme Court has repeatedly held and specifically held in the case of Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962) the Commission is required to make Findings of Fact and Conclusions of Law specifically as to each contested issue and the responsibility to make those Findings of Fact and Conclusion of Law is, "solely on Commission". The Commission is also required to make a determination as to each issue raised and it is an error of law

not to do so. Hill v. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970).

7. That the Commission's own Regulations under Reg. 67-709 contemplate that the Commission will make Findings of Fact and Conclusions of Law on each issue raised before the Commission for review.

8. That a review of the Commission Order will establish that the Commission did not address any of the specific legal issues and errors of law before it for review in its Full Commission Decision.

9. That one of the issues raised under Grounds for Review #2 is that the Hearing Commissioner erred as a matter of law by denying the claim, the affirmative defense, not on the basis that the Claimant did not timely file a claim for a change of condition, but on the basis that he did not file for a hearing within one year of the last payment of compensation. The Claimant alleged an error of law in that this is an affirmative defense under the Statute, the Regulations and the Supreme Court decisions which must be pled and it was not pled. This issue is nowhere addressed in the Full Commission's Decision on the issues presented to it.

10. That in Grounds for Review #3, the Claimant was denied his claim for a change of condition on the basis that he did not request a hearing within one (1) year even though it is admitted

FP.2033.

that the Claimant filed a claim pursuant to the Commission Regulations and Statute within one year. The Commission is an Administrative Body that is charged with administering the Workers' Compensation Act and has absolutely no authority to interpret the law except where the law has been interpreted by our Courts which the Commission may follow. The Commission must apply the plain and ordinary meaning of the Statutes, and is duty bound to interpret the law in reference to the best interest of the injured worker and under that principle must resolve any ambiguities in favor of the injured worker. In addition while the Commission is given deference to the interpretation of the law and as to its Regulations, where the Commission's interpretation is contrary to the law, this is an error of law. This Commission has already interpreted the word, "application" to mean a "claim". Regulation 67-206(B); 67-602(C); and the Hearing Commissioner's reinterpretation or contrary interpretation is an error of law. An Agency's interpretation of its own Regulation that is contrary to that Regulation's plain language is an error of law. Brown v. South Dept. of Health and Environmental Control, 348 S.C. 507, 560 S.E.2d 410 (2002). In this case, there is no Statute, Regulation or Supreme Court decision interpreting the word "application" to mean anything other than filing of a claim. Without either Statutory, Regulatory or Supreme Court decision supporting the

EP.2044

decision of the Commission, the Commission went outside of its authority in denying the change of condition on this basis, specifically where the Commission's own Regulation speaks to a change of condition simply being filed as a claim as defined in the Regulations.

11. That under Grounds for Review #4, the Claimant alleged specific mandatory, Statutory and Regulatory violations committed by the Defendants in reference to a change of condition claim and raised the legal argument that the Defendants were estopped and/or had waived the affirmative defense of not timely filing for a hearing for a change of condition. That issue and that legal issue and argument is nowhere addressed anywhere in the Decision of the Full Commission.

12. That under Grounds for Review #5, the Claimant raised a specific legal issue that under the Commission's own Regulations in reference to an application for a change of condition that the Commission's own Regulations require and refer to that application as being the filing of a, "claim" and that the Commission through its Regulations had bifurcated the application or claims process, not the parties. This legal issue and the interpretation of the Commission's own Regulations and the application of a liberal construction of the Act is nowhere addressed in the Commission's Order.

13. That under Grounds for Review #6, the Claimant raised the legal issue that not only was a claim for a change of condition filed, but a claim was filed for an undiagnosed condition. Our Supreme Court has specifically held that a separate standard applies and that the Change of Condition Statute absolutely has no application to an, "undiagnosed condition" claim. The Supreme Court decisions and the fact that an undiagnosed condition claim was being made is nowhere addressed in the Commission Order. This is a specific legal issue based on specific legal precedent that was not addressed anywhere in the Full Commission's Order.

14. That under Grounds for Review #7, the Claimant raised the fundamental construction principle of the Act for which the Commission is legally bound to apply which is that the Act shall be liberally construed in favor of benefits to the injured worker. The Claimant cited to the Commission the Supreme Court decisions that specifically applied this legal principle to the wording of the Act. Nowhere in the Full Commission's Order is the legal issue of a liberal interpretation of the wording of the Act in favor of benefits to the injured worker wherein the, "workers' compensation law must be resolved in favor of the claimants, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed towards the end of providing coverage, rather than non-coverage." Cokely

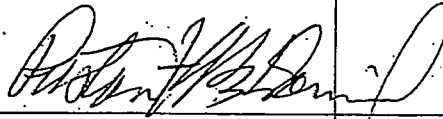
v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941).

Contrary to the statement made during oral argument by a Commissioner, this liberal interpretation is required to be applied by the Commission to all aspects of the Act including any interpretation of the wording in reference to benefits and any other provisions of the Act. This concept and the application of this fundamental construction principle which is required to be applied by the Commission is nowhere referenced in the Full Commission Order. Further, the Supreme Court has cautioned the Commission that the Act is required to be, "liberally" and not, "literally" or construed narrowly to deny benefits. Hamm v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940). The Commission cites in its Full Commission Order no specific reference to how this is a liberal interpretation of the Act to interpret the word application to not refer to the Commission's own Regulations which defines and refers to that as the filing of a "claim" for a change of condition.

15. That under Grounds for Review #7, the Claimant specifically raised the legal issue that the Commission did not apply the fundamental construction principle as set forth herein above to the Act in this matter and that again is a specific legal issue based on specific Supreme Court decisions that must be addressed as to how the Commission's Order in this matter is in accordance with those Supreme Court decisions and principle.

Based on all of the above, the Claimant would respectfully request that the Commission grant Rehearing in this matter and then after oral argument, specifically address all of these legal issues which is its Statutory and Regulatory and Judicially required responsibility.

Respectfully submitted,



Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for Claimant

October 8, 2015

FP.2088

CERTIFICATE OF SERVICE

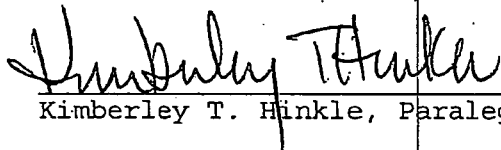
WCC File No. 1106689

I hereby certify that I have on this day served the following in the matter of Johnnie Tucker v. SC Department of Transportation with a copy of the CLAIMANT'S REQUEST FOR REHEARING by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Sarah S. Alphin, Attorney
Willson Jones Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, SC 29209

I also hereby certify that a regular communication by mail exists.


Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
8TH day of October, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/28/18

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE

CHARLESTON

COLUMBIA

CHARLOTTE

RALEIGH

ATLANTA

Sarah S. Alphin
Direct (803) 227-2885
Fax (803) 782-2527
ssalpin@wjlaw.net

4500 Fort Jackson Boulevard
Columbia, SC 29209
www.wjclaw.net

October 16, 2015

Amy Bracy, Judicial Director
South Carolina Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

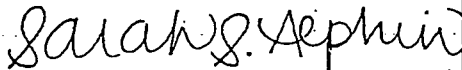
Re: Johnny Tucker vs. SCDOT (DOI:5/2/11)
WCC File No.: 1106689 DOI: 5/2/2011
Carrier: State Accident Fund - Claim No.: 2011-1286
WJC&B File No.: 0385.00752

Dear Ms. Bracy:

Enclosed please find Defendants' Response to Claimant's Request for Rehearing in the above-referenced matter. By copy of this correspondence, a copy of the Response is being served upon Preston F. McDaniel, Esquire, Claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



Sarah S. Alphin

SSA/twc
Enclosure(s)

cc (w/enclosure): Preston F. McDaniel, Esquire ✓
Robin Oxner-King (via e-mail)

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1106689

Johnny Tucker,

Employee,
Claimant,

vs.

South Carolina Department of Transportation,

Employer,

and

State Accident Fund,

Carrier,
Defendants.

DEFENDANTS' RESPONSE TO
CLAIMANT'S REQUEST FOR
REHEARING

TO: South Carolina Workers' Compensation Commission; and
Preston F. McDaniel, Esquire, Attorney for Claimant

In response to Claimant's Request for Rehearing, the Defendants would argue as follows:

The Defendants respectfully request that the Claimant's request for rehearing, pursuant to SC Code §1-23-380 and *Rhame v. Charleston County School Dist.*, 412 S.C. 273, 772 S.E.2d 159 (2015), be denied. The Defendants base their request for denial on the following:

1. The Claimant failed to timely file his Petition for Rehearing.

South Carolina Appellate Court Rule 221(A) states: "Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court." In *Rhame v. Charleston County School District*, the South Carolina Supreme Court gave the Appellate Panel of the Workers' Compensation Commission the authority to entertain motions for rehearing. *Rhame*, 412 S.C. 273, 772 S.E.2d 159 (2015). Because this authority was given by an Appellate Court, the Appellate Court Rules for the time of filing should control in the absence of a statute or regulation directed specifically to the Workers Compensation Commission.

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In this case, the Appellate Panel Decision and Order was filed on September 11, 2015. The Claimant then filed his Petition for Rehearing on October 8, 2015, 27 days after the Decision and Order of the Appellate Panel. Because the Claimant failed to file for rehearing within the 15 day statutory timeframe allowed by SCACR 221(A), his Petition for Rehearing should be denied.

2. The Claimant's request does not meet the high standard of merit required for en banc review.

Although the Full Commission may address merit based arguments, South Carolina Appellate Court rule 219(A) states a "rehearing en banc is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

This Petition arises out of the Claimant's failure to timely file for change of condition. In the *Allen* case, the South Carolina Supreme Court interpreted the language of S.C. Code Ann. §42-17-90 to mean that an "application for review" of a change of condition claim must be made within one year after the last payment of compensation. *Allen v. Benson Outdoor Advertising Co.*, 236 S.C. 22, 112 S.E.2d 722, 726 (1960). The Hearing Commissioner found that the Claimant failed to file for a change of condition for the worse within the statutorily required time period because the filing of a Form 50 Claim Only was not a sufficient "application" within the meaning of §42-17-90. The Claimant appealed the holding of the Single Commissioner to the Full Commission in a hearing held July 21, 2015.

The Claimant now argues for rehearing on the basis that "review of the Commission Order will establish that the Commission did not address any of the specific legal issues and errors of law before it for review in its Full Commission Decision." Claimant's Request for Rehearing, p. 8.

On August 4, 2015, the Full Commission issued a Request for a Proposed Order giving full affirmation to the findings of the Single Commissioner. Defendants timely submitted the Proposed Order, which was then adopted, signed, and issued by the Commission. A second review by the Full Commission of the sufficiency of its own procedures and its Findings that the Claimant failed to timely exercise his rights does not serve to maintain the uniformity of decisions or answer a question of exceptional importance. Instead such rehearing on an issue of the Claimant's neglect of his statutory rights misuses the time of the Commission.

Based on the proceeding reasoning, Defendants respectfully request that the Commission deny the Claimant's Petition for Rehearing.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

Sarah S. Alphin

Sarah S. Alphin, Esquire.
4500 Fort Jackson Boulevard
Columbia, SC 29209
Attorneys for Defendants

Date: October 16, 2015

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1106689

Johnny Tucker,)
Employee,)
Claimant,)
vs.)
South Carolina Department of Transportation,)
Employer,)
and)
State Accident Fund,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I, Tessa W. Campbell, do hereby certify that I am the Legal Assistant for Sarah S. Alphin, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Columbia, South Carolina, and that on the 16th day of October, 2015, I mailed the foregoing MOTION TO DENY CLAIMANT'S REQUEST FOR REHEARING to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

SCWCC
P. O. Box 1715
Columbia, SC 29202

Preston F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201



Tessa W. Campbell
Legal Assistant to Sarah S. Alphin, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.

P.214

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 23, 2015

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Johnnie Tucker v. SC Department of Transportation
WCC File No.: 1106689

Dear Ms. Bracy:

I am sure that Ms. Alphin was not aware of it, otherwise she would not have misstated the law to the Commission in reference to the time for filing a Request for Rehearing. The Supreme Court has specifically ruled that:

"In the absence of an Agency Ruling specifying a time limit for filing Petitions for the Rehearing of Administrative Agencies' Decisions, parties have thirty (30) days after a final Agency's Decision to petition the Agency for rehearing or appeal the decision to the Circuit Court." McCummings v. SC Dept. of Corrections, 319 S.C. 440, 462 S.E.2d 271 (1995). See also: Owen Steel Co., Inc. v. SC Tax Commission, 281 S.C. 80, 313 S.E.2d 636 (SC App. 1984).

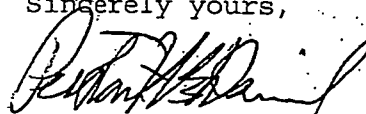
By way of Reply, the only thing I would like to re-emphasize is that the Commission is required to apply the statutory provisions of the Act and a liberal interpretation in favor of the injured worker, and must apply the Statute in that vein unless our Appellate Courts have spoken to the contrary. The only Decision that has addressed this issue is by the Supreme Court as previously stated to the Commission. The Supreme Court has affirmatively ruled that the hearing does not have to be held within one (1) year and that the only thing that is required is that the Claimant must file a claim for a change of condition. The Defendants have cited no contrary interpretation by the Supreme Court or Court of Appeals, and there is none.

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Amy Bracy, Judicial Director
October 23, 2015
Page 2

By copy of this letter, I am notifying and serving Ms. Alphin with a copy of my Reply. An Affidavit of Service is also enclosed.

Sincerely yours,



Preston F. McDaniel

PFM/kth

Enclosure

cc: Sarah S. Alphin, Attorney at Law
Gerald Malloy, Esquire

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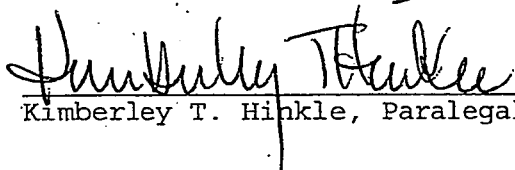
CERTIFICATE OF SERVICE

WCC File No. 1106689

I hereby certify that I have on this day served the following in the matter of Johnny Tucker v. SC Department of Transportation with a copy of the Claimant's REPLY TO DEFENDANTS' RESPONSE TO CLAIMANT'S REQUEST FOR REHEARING by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Sarah S. Alphin, Attorney
Willson Jones Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, SC 29209



Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

23 day of October, 2015. -

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/4/24

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Trial Court Case No. 11:06689

RECEIVED

DEC 16 2015

SC Court of Appeals

Johnny Tucker, Employee, ... Appellant,

v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier, ... Respondents.

NOTICE OF APPEAL

Appellant, Johnny Tucker, appeals the Decision and Order of the SC Workers' Compensation Commission Appellate Panel filed September 11, 2015, and the SC Workers' Compensation Commission Judicial Conference Decision and Order November 16, 2015. Appellant received notice of entry of the Appellate Panel Decision and Order (the final Agency Decision) according to an "Certificate of Service" by email on November 16, 2015.

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

1. That the Appellant would request a review pursuant to S.C. Code §42-17-60 by the Court of the Findings of Fact,

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Conclusions of Law and Decision rendered in this matter based upon a review of the evidence, the positions and the legal precedents cited to the Commission and the entire Record before the Commission for decision.

2. That the Commission erred as a matter of law by denying the Appellant a Hearing on his claim for a Change of Condition on the basis that although the Appellant had timely filed a, "claim" alleging a Change of Condition had occurred well within the twelve (12) months of the last payment of compensation, the Appellant did not file for a Hearing on that claim until after the twelve (12) months following the last payment of compensation.

3. That the Commission erred as a matter of law by denying the claim for a Change of Condition because the Appellant did not timely file for a Change of Condition with the Commission not on the basis that the Appellant did not file a "claim" for a Change of Condition with the Commission within one (1) year pursuant to Statute and Regulation, but on the basis that the Appellant did not "request a Hearing" on the claim of a Change of Condition within one (1) year. This was error because the allegation that the Change of Condition was not timely filed is an affirmative defense which must be plead pursuant to statute and Commission Regulation and it was not plead in the responsive Form 51 in this case.

4. That the Commission erred as a matter of law by denying the claim for a Change of Condition where South Carolina Workers'

Compensation Reg. 67-206 after the claim for a Change of Condition was filed requires that employer's representative, "shall immediately contact the Claimant", and where Reg. 67-601 provides that the, "Commission will not set a Hearing until a conflict arises," and where the undisputed evidence is that the Appellant on four (4) separate occasions contacted counsel for the Respondents and/or the adjuster for the Respondents beginning on March 18, 2013 and continuing through at least July 26, 2013 and where there is no evidence that the Respondents ever notified counsel or Appellant of a conflict, the Respondents are estopped and/or they have waived the affirmative defense of not timely filing for a Change of Condition under S.C. Code §42-17-90.

5. That the Commission erred as a matter of law by denying the claim for a Change of Condition where S.C. Code §42-17-90, our Change of Condition statute is very clear that the claimant must file an application alleging a Change of Condition which the Commission refers to in its own regulations as, "a claim" involving a Change of Condition (Reg. 67-602B) within one (1) year of the last date of the payment of compensation, the Commission's Decision requiring that the claimant must not only file an application by filing a claim but must file for a Hearing to meet the requirements of the Act, denies the Appellant due process of law under federal and state law. The Commission, not the parties, has bifurcated the, "application process" under its regulations.

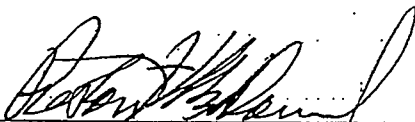
6. That the Commission erred as a matter of law by failing to make a Decision and make Findings of Fact and Conclusions of Law on the application for benefits based on an undiagnosed condition, where the Form 50 Request for Hearing alleged both a Change of Condition for the worse and also an undiagnosed condition.

7. The Commission erred as a matter of law by failing to apply the fundamental construction principle applied to the Act, that the Act and its provisions shall be liberally construed in favor of benefits to the injured worker.

8. The Commission erred as a matter of law by not rendering a decision on the Motion for Rehearing and by simply not denying but, "dismissing" the Motion on a Form Order without any indication of consideration of the Motion.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript in this matter.

Respectfully submitted,



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Appellant

December 14, 2015

Other Counsel of Record:

Sarah S. Alphin, Attorney
Willson Jones Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209
(803) 227-2885
Attorney for Respondents

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1106689

Johnny Tucker,)
)
Claimant,)
)
vs.)
) TRANSCRIPT OF PROCEEDINGS
Department of)
Transportation, Employer,) ~~October 21, 2014~~
)
and)
)
State Accident Fund,)
Carrier,)
)
Defendants.)

This hearing was held before
Commissioner Gene McCaskill, reported by
Kimberly T. Power, Court Reporter and Notary
Public in and for the State of South Carolina;
said proceedings were held at the South
Carolina Workers' Compensation Commission,
Florence-Darlington Technical School, 225 Swift
Creek Road, Hartsville, South Carolina, on
Tuesday, October 21, 2014, commencing at the
hour of 2:30 p.m.

KIMBERLY T. POWER, P.223 (803) 622-9057

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APPEARANCES

ATTORNEYS FOR THE CLAIMANT

MCDANIEL LAW FIRM
BY: PRESTON MCDANIEL, ESQUIRE
~~1315 Elmwood Avenue~~
Columbia, South Carolina 29201

ATTORNEYS FOR THE DEFENDANTS

WILLSON, JONES, CARTER & BAXLEY, P.A.
BY: SARAH S. ALPHIN, ESQUIRE
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

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Certificate of Reporter 53

1 THE COURT: Today's date is
2 October 21, 2014. This is Workers'
3 Compensation Commission File Number 1106689.
4 This is the case of Johnny Tucker vs. The
5 Department of Transportation. The carrier is
6 the State Accident Fund. The claimant is
7 represented today by Preston McDaniel and the
8 employer/carrier are represented by Sarah S.

9 Alphin.

10 The claimant has an average weekly
11 wage of \$419.31, with a corresponding
12 compensation rate of \$279.55. The date of the
13 accident May 2, 2011.

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

16 MR. MCDANIEL: None from the
17 claimant, Commissioner.

18 MS. ALPHIN: Commissioner, I believe
19 that my objection to the Form 50 being not
20 properly filed -- I'm sorry, timely filed is
21 technically a jurisdiction issue. So I would
22 like to raise that I believe --

23 THE COURT: Put it on the record.

24 MS. ALPHIN: -- that the Commission
25 does not have jurisdiction to hear this claim

1 as the Form 50 request for a hearing was filed
2 more than 12 months after last payment of
3 compensation. The Commission file should
4 reflect the Form 19 showing last payment of
5 compensation was November 28, 2012. The Form
6 50 hearing request was filed July 30, 2014. We
7 believe that any Form 50 claim that would have
8 been filed previously is not adequate to

9 satisfy the requirements of 42-17-90, and we
10 would assert the Commission does not have
11 jurisdiction of this change of condition.

12 THE COURT: Mr. McDaniel, you want
13 to speak to that?

14 MR. MCDANIEL: Commissioner, as I
15 put on the record previously, the case of Allen
16 vs. Benson, 112 Southeastern 2nd 722, which is
17 directly on point. It says where the
18 application made within 12 months, the
19 hearing -- the Commission may then after hold
20 the hearing at whatever date. It's not
21 restricted to holding a hearing in 12 months
22 nor is a request for it. 42-17-90 speaks in
23 terms of making an application for a change of
24 condition. It does not say a request for a
25 hearing. And I would submit to the Commission

1 that we originally filed our change of
2 condition for the worse on May 2, 2013 and we
3 believe it's timely filed.

4 THE COURT: Ms. Alphin?

5 MS. ALPHIN: Commissioner, we would
6 just assert that while we understand the
7 Commission may hear the issues more than 12
8 months after that, the request for a hearing

9 and compensation to be paid must be filed
10 within one year.

11 THE COURT: Anything else,
12 Mr. McDaniel?

13 MR. MCDANIEL: Just that the case
14 and the statute refer to application. It
15 doesn't say hearing request.

16 THE COURT: All right. And I will
17 rule on that in my Order. All right. Any
18 other objection?

19 MS. ALPHIN: Not from the
20 defendants.

21 MR. MCDANIEL: None, Commissioner.

22 THE COURT: All right. The
23 Commission file becomes a part of the record
24 with the exception of self-serving declarations
25 and unstipulated medical reports.

1 We are here today, Mr. McDaniel,
2 on -- as a result of the Form 50 that you filed
3 on behalf of your client. If you would,
4 please, sir, please your client's position on
5 the record.

6 MR. MCDANIEL: Commissioner, as we
7 set forth in the Form 50, we believe that my
8 client has undergone a change of condition for

9 the worse in reference to his left shoulder
10 injury that he sustained back in May of 2011.
11 In addition, he has been diagnosed with a
12 previously undiagnosed condition in reference
13 to a brachial plexus injury that has been
14 diagnosed by Dr. Christopher Mazoue.

15 We would request benefits for having
16 established that a change of condition for the
17 worse has occurred in the condition of his left
18 shoulder stemming from the original injury and
19 in reference to the previously undiagnosed
20 condition. We would ask for medical care as
21 provided by Dr. Christopher Mazoue. We would
22 also ask for, based on the opinions of
23 Dr. Quaye, one of the original authorized
24 treating doctors, and Dr. Mazoue, we would ask
25 for benefits -- temporary total disability

1 benefits from -- according to Dr. Quaye from
2 January 9, 2012 and continuing until he is seen
3 by Dr. Christopher Mazoue again for final
4 evaluation.

5 Dr. Mazoue has treated him for the
6 last year and a half. We're asking for that
7 treatment which you will -- which includes
8 extensive physical therapy as you will note

9 from the records that we submitted in addition
10 to other care. And we would ask that -- that,
11 you know, he be allowed to be sent back to --
12 that Dr. Christopher Mazoue be designated and
13 that he be allowed to see Dr. Mazoue and
14 evaluated for that final visit and we would ask
15 for an award at that point in time.

16 THE COURT: All right. Thank you,
17 sir. Ms. Alphin.

18 MS. ALPHIN: Thank you,
19 Commissioner. As an initial matter I would
20 like to put on the record the motion to
21 postpone that I made in order for the
22 defendants to have Mr. Tucker seen by the
23 original authorized physician, Dr. Hassler. I
24 would also like to put on the record that we
25 are requesting to leave the record open since

1 the postponement was denied in order for
2 Mr. Tucker to be seen by the authorized
3 physician, Dr. Hassler, for an opinion on
4 whether there has been a change of condition.

5 Beyond that, Commissioner, I've
6 already raised my issue with jurisdiction and
7 that we believe the Form 50 requesting a
8 hearing for a change of condition was not

9 timely. It is our position that the only thing
10 at issue today for a change of condition is the
11 extent of the worsening of the injury and
12 that's pursuant to the Owenby case.

13 Mr. Tucker's original injury was a
14 left scapular fracture. He fell and hit his
15 shoulder and was diagnosed with a left scapular
16 fracture. You will see from the medical
17 records as well as the prior hearing Order and
18 hearing transcript that Mr. Tucker had a
19 pre-existing rotator cuff condition to the left
20 shoulder at least as early as 2009.

21 Dr. Hassler as the authorized
22 treating physician clearly talks about the
23 rotator cuff issue and the scapular fracture
24 and says multiple times that these are not
25 related. The scapular was the workers' comp

1 injury and the rotator cuff was pre-existing.

2 It is our position that based on
3 discovery done, we believe Mr. Tucker's
4 complaints were the same today as they were at
5 the time of the hearing. And, therefore, by
6 his own testimony, his condition was not
7 worsened as his symptoms are the same.

8 Pursuant to the Correll case, if an

9 injured worker knew of injuries or knew that
10 there was some sort of condition or complaints
11 and he did not seek compensation for them, he
12 cannot then seek them as a change of condition.
13 The records will show that Mr. Tucker sought
14 compensation for not only the left shoulder,
15 but the left arm and the left hand at the
16 original hearing and complained of numbness and
17 grip problems with the left hand and that those
18 were all complaints he had at the time of the
19 original hearing and those were denied.
20 Therefore, he cannot seek compensation for
21 those or that condition as a change of
22 condition. And I think what that goes to is
23 evidence that shows that this is not a change
24 of condition, that these things were already
25 there pre-existing and are not related to the

KIMBERLY T. POWER^{P.232} (803) 622-9057

1 workers' compensation accident.

2 We would assert that the claimant's
3 request for TTD benefits is based on work notes
4 that are -- were from September 29, 2014 and
5 are writing the claimant out of work for time
6 that has already elapsed, and we would assert
7 that those are essentially backdated work
8 notes, so to speak, and that they are not valid

9 for awarding TTD benefits. Furthermore, the
10 claimant has retired, and so we would assert
11 that he is not, you know, seeking to work at
12 this time anyway.

13 We further object to the payment of
14 unauthorized medical treatment. Dr. Quaye is
15 the claimant's family doctor and has been the
16 claimant's family doctor for years and is not
17 an authorized doctor. Dr. Hassler was the
18 authorized doctor in this claim.

19 And I believe that sums up the
20 defendants' position in this claim.

21 THE COURT: All right.

22 Mr. McDaniel.

23 MR. MCDANIEL: I guess I was a
24 little confused. I thought we had gone over
25 that once, but I have nothing further.

1 THE COURT: Well, we are for the
2 record. We weren't on the record earlier.

3 MR. MCDANIEL: Commissioner, you
4 know, I previously stated, you know, these are
5 not backdated medical records. I thought I
6 went through that on the record, but just --

7 THE COURT: That was before we went
8 on the record.

9 MR. MCDANIEL: In reference to --
10 first off, I point out previously on the
11 record, I think, the Brayboy case. You know,
12 the very purpose of --

13 THE COURT: Brayboy was just before
14 we went on the record. So if you want to put
15 that on the record, please do.

16 MR. MCDANIEL: Well, I referenced
17 the Brayboy case which is the case decided by
18 the South Carolina Supreme Court in reference
19 to the fact that where a person had been seen
20 by, I think, three orthopedic surgeons who had
21 failed to diagnose this condition in the
22 claimant's knee. And after the case was
23 decided, he went to another orthopedic surgeon
24 and he did additional testing and found there
25 was an undiagnosed condition in the knee. The

1 Supreme Court Commission and the Supreme Court
2 awarded that on the basis that he was not
3 limited by the statute of limitations and it
4 was a truly undiagnosed condition. We have
5 that same thing here. So I point to the
6 Commission to the Brayboy decision. I'll be
7 glad to hand up a copy if the Commission wants
8 that. But, however, it's simply that you have

9 a right to file for a previously undiagnosed
10 condition.

11 I also submitted prior to maybe
12 going on the record that you will find
13 absolutely no reference in the medical records
14 to any testing for, as a matter of fact, a
15 brachial plexus injury and you will find no
16 reference to a brachial plexus injury. That is
17 a new, previously undiagnosed condition found
18 by Dr. Christopher Mazoue.

19 In reference to the backdating in
20 case that was off the record, simply there is
21 no backdating in this case. Dr. Quaye was
22 asked what his opinion was as to the claimant's
23 work status as of January 12, 2012 when he saw
24 him based on his evaluation of the claimant at
25 that time, and Dr. Mazoue stated the opinion --

1 Dr. Quaye stated the opinion that Mr. Tucker
2 should be out of work in his opinion and was
3 not capable of working. Dr. Mazoue stated, who
4 saw Mr. Tucker specifically for the shoulder,
5 stated the opinion which is in the medical
6 records that in his opinion Mr. Tucker as of
7 his first visit with him should have been out
8 of work or limited to no work with the left

9 shoulder. They have both stated the opinion
10 that that opinion has not changed as of this
11 time. So there is no backdating.

12 In reference to Mr. Tucker's
13 testimony about any previous existing problems
14 that he was having prior to the first hearing,
15 we're here on a change of condition. A change
16 of condition is exactly that. His condition --
17 and he will testify his condition has gotten
18 worse and you will listen to the testimony of
19 how it's gotten worse. And I believe that you
20 will listen to Mr. Tucker and you will find him
21 to be a forthright gentleman, and I hope that
22 you will decide that he has undergone a change
23 of condition. So I really don't understand
24 that reference. I mean, somebody is having a
25 back injury and having back problems, they come

1 over and receive an award, and then the
2 question is whether or not their condition is
3 worsened. Same thing here in the shoulder. So
4 I believe the evidence will establish
5 Mr. Tucker's will testify that his condition
6 has gotten worse, and I believe you will find
7 that after you hear him.

8 THE COURT: All right. Thank you.

9 MR. MCDANIEL: Nothing further.

10 THE COURT: Ms. Alphin, anything
11 else?

12 MS. ALPHIN: Yes, Commissioner. I
13 would like to point out that the injury for
14 which he treated that was a workers' comp claim
15 was a left scapular fracture, and there's been
16 no evidence submitted that the left scapular
17 fracture has gotten worse. In fact, the only
18 evidence related to the left scapular is that
19 it completely healed back in the end of 2011.

20 The complaints that he currently has
21 are the same that he had at the time of the
22 last hearing and before that time. And I think
23 what that goes to is evidence that there has
24 not been a change and that he had these
25 complaints and they pre-existed even the work

1 accident and that the claimant sought benefits
2 originally at the original hearing for symptoms
3 to the left arm and left hand for which he is
4 now seeking a change of condition. Our
5 position is these are benefits that he -- if he
6 thought they were compensable, he raised them
7 at the original hearing and he does not get to
8 come back on a change of condition for them and

9 we do not believe that the evidence supports an
10 undiagnosed condition, so to speak, of a
11 brachial plexus injury.

12 THE COURT: Mr. McDaniel, anything
13 else?

14 MR. MCDANIEL: I was just -- I
15 believe that when you read Dr. Mazoue's report,
16 he does in fact state and references the
17 original scapular fracture and he references a
18 change in condition of the scapular. In his
19 opinion the symptomatology is referencing to
20 two injuries: One, the original scapular
21 fracture and also the brachial plexus. So I
22 believe that -- and, of course, I would leave
23 that to Your Honor, but I believe you will find
24 that when you read his records.

25 THE COURT: Anything else,

1 Ms. Alphin?

2 MS. ALPHIN: No, Commissioner.

3 THE COURT: All right. You ready to
4 hear from your witness?

5 MR. MCDANIEL: Yes, Commissioner.

6 THE COURT: Mr. Tucker, I'm going to
7 swear you in in just a minute. I've got two
8 requests for you, sir. The first is speak up.

9 This is a little room and sometimes folks,
10 because it is a little room, don't quite talk
11 loudly enough for us. It is imperative that
12 both of the attorneys hear you, this young lady
13 who is making the record needs to hear you, and
14 I need to hear you. So please speak loudly
15 enough so that we all can. Okay?

16 THE WITNESS: Okay.

17 THE COURT: And then my second
18 request is if you are asked a yes or no
19 question, please give us a verbal yes or no
20 answer. I sometimes shake and nod my head to
21 stuff. But if you do that in this setting, she
22 actually has to put that in the record and that
23 will slow her down. So to keep it all clean
24 and clear and moving along, if you're asked a
25 yes or no question, please respond with a

1 verbal yes or no. All right?

2 THE WITNESS: Yes, sir.

3 (JOHNNY TUCKER, being duly sworn to
4 tell the whole truth, testified as follows:)

5 THE COURT: Please state and spell
6 your full name for the record.

7 THE WITNESS: Johnny Tucker.

8 THE COURT: Thank you, Mr. Tucker.

9 Mr. McDaniel, your witness.

10 DIRECT EXAMINATION

11 BY MR. MCDANIEL:

12 Q. Mr. Tucker, how old are you, sir?

13 A. Fifty-nine.

14 Q. All right. Now, who lives with you?
15 I believe you're married?

16 A. Yes, sir.

17 Q. And who all lives with you that's
18 dependent upon you for support?

19 A. My wife and son.

20 Q. Your wife and son. And I believe
21 your son is a special needs young man?

22 A. Yes, sir.

23 Q. How old is your son, by the way?

24 A. Thirty.

25 Q. Thirty. All right. Mr. Tucker, how

1 many years did you work for the Department of
2 Transportation?

3 A. Eleven.

4 Q. Eleven years. And when you were --
5 tell me -- tell the Commissioner -- first off,
6 I want the Commissioner to understand the
7 description of the accident. What happened to
8 you on May I believe it was 3rd of 2011? Tell

9 him what happened to you.

10 A. Yes. I was getting ready to haul
11 asphalt and you have to climb up on the truck
12 to clean the truck so you could haul the
13 asphalt. And coming down, my right knee gave
14 way and I fell on my left shoulder.

15 Q. What was the ground like where you
16 fell?

17 A. It was asphalt.

18 Q. And you fell on your left shoulder?

19 A. Yes, sir.

20 Q. What happened after the accident as
21 far as getting medical care?

22 A. After that I didn't have nobody else
23 to drive my truck back to the shop. So I had
24 to end up driving it back one handed and it was
25 hard to try to drive loaded with asphalt. So

1 when I got back to the job site, I reported it
2 to my supervisor.

3 Q. And then what happened after that as
4 far as getting medical care?

5 A. The supervisor then reported it to
6 the safety coordinator. In turn he came out
7 and took me back to the job site and determined
8 that I did -- where I was and what happened.

9 And then he -- instead of taking me direct to
10 the doctor's office or to the hospital, he took
11 me back to the office to fill out the paperwork
12 and then went to the doctor.

13 Q. All right. And where did they take
14 you? Where did you first go for medical care?

15 A. At first I went to -- I can't think
16 of the health care place in Florence.

17 Q. It's over in Florence?

18 A. Yes. And then after that I went to
19 Carolina Systems which is also in Florence.

20 Q. And then from there where did they
21 tell you to go?

22 A. After I seen the doctor at the
23 hospital, he told me to follow up with my
24 family doctor.

25 Q. And who is that?

1 A. Dr. Quaye.

2 Q. And then you went to Dr. Quaye?

3 A. Uh-huh.

4 Q. And what did Dr. Quaye do for you?

5 A. Dr. Quaye looked at my shoulder and
6 then he made me an appointment to see
7 Dr. Hassler.

8 Q. And I believe you saw Dr. Hassler

9 the next day, but who did you actually see at
10 Dr. Hassler's office?

11 A. They sent me to see Dr. Hassler. He
12 wasn't in, so I saw Dr. Wylie.

13 Q. And you saw Dr. Wylie a couple times
14 and then Dr. Hassler saw you after that?

15 A. Yes.

16 Q. And you had a broken part of your
17 left shoulder; is that right?

18 A. Yes, sir.

19 Q. All right. Now, Mr. Tucker, you had
20 previously been seen -- Dr. Quaye had
21 previously sent you to Dr. Hassler because you
22 were having some problems --

23 MS. ALPHIN: Object to leading.

24 MR. MCDANIEL: Commissioner, it's in
25 the medical records. Ms. Alphin referred to

1 the fact that he had previously been treated.
2 So I would ask -- first off, I don't know that
3 it is leading since it's in reference to --

4 BY MR. MCDANIEL:

5 Q. Had you been treated by Dr. Hassler
6 for your left shoulder prior to that?

7 A. Yes, sir.

8 Q. Okay. How did you get to

9 Dr. Hassler? Who sent you there?

10 A. Dr. Quaye.

11 Q. All right. Thank you. Now, tell
12 me, you were treating with Dr. Hassler,
13 according to his medical records, and he
14 released you. The last time he saw you was in
15 November of 2011. They also sent you to a
16 Dr. Wagner in January of 2012?

17 A. Yes, sir.

18 Q. All right. Now, let's talk about
19 your job with the South Carolina Department of
20 Transportation. Okay?

21 A. Okay.

22 Q. What was your job at the time of
23 this injury?

24 A. At the time of this injury, my job
25 was fixing potholes in the road and I have to

1 run what they call an AMV machine.

2 Q. And I believe y'all call that the
3 pothole crew; is that right?

4 A. Yes, sir.

5 Q. And how many people are on that
6 crew?

7 A. Two.

8 Q. And who was head of that crew?

9 A. I was.

10 Q. All right. And so tell me what you
11 do to do the pothole -- what do you do on the
12 pothole crew?

13 A. Well, when you fixing potholes, you
14 got two people, the driver and the operator. I
15 pull -- we pulled up to the hole, I gets out
16 the truck, start the machine up, and they got
17 an arm on the back of it that you have to use
18 to do your work with the asphalt. And then you
19 got -- if you hold it too high, it blows rock
20 and stuff all over the place. If you hold it
21 too low, it blows it out. So basically you
22 have to hold it at a certain height, but then
23 you got to have a sweeping motion as far as
24 sweeping it back and forth to keep it from
25 blowing all over the place.

1 Q. Okay.

2 A. And then once I finish that, I take
3 a shovel.

4 Q. Now, let's stop you. Let me stop
5 you right there. One thing I don't think you
6 said. This is actually a machine that's pulled
7 behind a dump truck. Am I right?

8 A. Yes, sir.

9 Q. And in the dump truck is rocks?

10 A. Yes, sir.

11 Q. And then in the machine is the
12 asphalt that you use to cover the potholes with
13 and the rock?

14 A. Yes, sir.

15 Q. Okay. And when you're operating
16 this machine, what's the name of the machine?

17 A. It's called an AMV machine.

18 Q. AMV machine. And you said that you
19 have to -- you can't hold it too high and you
20 can't hold it too low?

21 A. Uh-huh.

22 Q. Are the hydraulics to help you hold
23 the machine off the ground?

24 A. It all depends whether they're
25 working or not. If they're not working, then I

1 have to manually hold it.

2 Q. What's on this machine that you hold
3 it by? Is it like a bar or something?

4 A. It's a bar and then I have to hold
5 it with the other arm to help keep it balanced.
6 You're sweeping it with one arm, so you have to
7 hold it with the other.

8 Q. Okay. So at the time of this

9 injury, you would use both your arms to hold
10 and sweep this machine back and forth?

11 A. Yes.

12 Q. Okay. In addition to that job, you
13 said after you get the pothole filled, you
14 would then do what?

15 A. I would then -- the way I work, I
16 stay on that road, I continue to fix potholes
17 until I -- until the day is done. Then I will
18 have to break it down and check it and load it
19 up and come in.

20 Q. But when you fill those potholes,
21 what other types of equipment do you use to
22 shovel the rock or whatever?

23 A. A shovel -- I use a shovel because
24 once you build up the rock, you got to get it
25 and put what excess rock is there in the hole

1 and then you take a broom and sweep it off --
2 the excess rock off the side of the road.

3 Q. So we're talking about a regular
4 sweep broom that has a long handle on it?

5 A. Yes.

6 Q. And we're talking about a shovel
7 that's got a handle on it?

8 A. Uh-huh.

9 Q. And in reference to that handle and
10 in reference to that broom on both the handle
11 and the shovel, were you able to use both arms
12 to do that?

13 A. Yes, before the accident.

14 Q. Okay. All right. And in addition
15 to what you did there, did you also drive that
16 truck?

17 A. Yes, sir.

18 Q. All right. And were you able to use
19 both your arms to drive that truck?

20 A. Before the accident, yeah.

21 Q. Okay. Now, Doctor -- like we said,
22 Dr. Hassler released you in November of 2011
23 and you saw Dr. Wagner over in Lake City?

24 A. Uh-huh.

25 Q. And Dr. Wagner evaluated you.

1 MR. MCDANIEL: By the way, since
 2 Ms. Alphin decided to put that in,
 3 Commissioner, I really would appreciate it if
 4 you would flip to Dr. Wagner's evaluation of
 5 Mr. Tucker. I believe that's found at -- let
 6 me see if I can find it. It's on page --
 7 actually, what I would like you to look at is
 8 Page 98 and I want to show this to Ms. Alphin,

9 but I want to show it to you. I've got mine
 10 highlighted, so it will make it a little bit
 11 easier for you to find.

12 THE COURT: Show it to her first.

13 MR. MCDANIEL: I'm sure the
 14 Commissioner is well aware of the difference
 15 between active and passive range of motion.
 16 And Dr. Wagner evaluated Mr. Tucker and if you
 17 will look at page -- if you will look at
 18 line -- if you will look at Line 7 right after
 19 the indented part starts, you will find that
 20 the right arm and right shoulder have full
 21 active and passive range of motion. Then I ask
 22 the Commissioner to look at the remainder of
 23 that report and then you will find he has full
 24 passive range of motion of the left shoulder.
 25 You will find in reference to his evaluation of

1 the left shoulder no active motion. I just
2 note that to the Commissioner because --

3 MS. ALPHIN: I'm objecting as there
4 doesn't seem to be a question as part of this.

5 MR. MCDANIEL: Well, it is.

6 BY MR. MCDANIEL:

7 Q. So they sent you to Dr. Wagner and
8 he evaluated you, correct?

9 A. Yes.

10 Q. Now, let's talk about you also went
11 to Dr. Quaye in January of 2012, I believe?

12 A. Yes.

13 Q. Now, Mr. Tucker, you were having --
14 you had been treated by Dr. Hassler before this
15 injury for problems with your left shoulder; is
16 that right?

17 A. Yes.

18 Q. Okay. And you had seen Dr. Quaye
19 for those problems and he sent you to
20 Dr. Hassler; is that right?

21 A. Yes.

22 Q. Now, you were able to do your job
23 with that left shoulder?

24 A. Yes.

25 Q. Now, after Dr. Hassler released you

1 and since January of 2012, how has the
2 condition of that shoulder gotten?

3 A. Worser.

4 Q. All right. I want you to tell the
5 Commissioner how it's gotten worse.

6 A. In the process of trying to use a
7 shovel or broom or even try to pick up a five
8 gallon bucket, I can't do that now.

9 Q. Did you have to pick up five gallon
10 buckets before as part of your job with the
11 DOT?

12 A. Yes.

13 Q. And you had to use a shovel?

14 A. Yes.

15 Q. Can you use a shovel with that left
16 arm now?

17 A. No.

18 Q. Why not? Tell the Commissioner how
19 this condition of that arm is.

20 A. I can't -- I can't even lift it up
21 to use a shovel.

22 Q. Okay. Stand up for me. How high
23 can you raise that left arm?

24 A. Right there. That's as high as it
25 will go. (Witness indicates.)

1 Q. Now, if you use your right arm, can
2 you lift it higher than that?

3 A. Yes, sir.

4 Q. All right. So you can lift it up.
5 Let go of that arm.

6 A. (Witness complies.)

7 Q. All right. What kind of grip do you
8 have in that left arm?

9 A. None.

10 Q. Now, beforehand you were able to use
11 that arm to shovel with?

12 A. Yes.

13 Q. And did you use that left arm to
14 move that machine around?

15 A. Yes.

16 Q. Does that machine weigh more than 20
17 pounds?

18 A. Yes, a lot more than 20.

19 Q. And you had to steer it?

20 A. Yes.

21 Q. Okay. Now, who does most of the
22 driving now?

23 A. My wife.

24 Q. Why is that?

25 A. Because my arm gets numb and it goes

1 out and I cannot steer the steering wheel with
2 it.

3 Q. Now, in reference to the problems
4 with the numbness in that arm and that
5 shoulder, is it -- has that changed, the
6 numbness? I mean, is the numbness getting
7 worse or is it --

8 A. Yes, it's getting worse.

9 Q. What do you mean by that? How is it
10 getting worse?

11 A. It get to the point that it hurts
12 real bad and then it goes down to my finger and
13 I cannot even close my hand.

14 Q. And that's also something that's
15 changed since you saw Dr. Hassler and was
16 released by Dr. Hassler and all that, right?

17 A. Yes, sir.

18 Q. All right. You can sit back down,
19 Mr. Tucker. Mr. Tucker, of course, you worked
20 for the DOT 11 years. You did that job and all
21 that. Could you go back doing that job with
22 that left arm now?

23 A. No, sir.

24 Q. Did Dr. Mazoue talk to you about
25 what the condition was he found in that left

1 shoulder? Did he tell you anything about
2 brachial plexus? Did he ever use that word?

3 A. If he did, I can't remember.

4 Q. We pretty well covered it, but just
5 tell me if you would, you know, just anything
6 else, any kind of problems that you think the
7 Commissioner ought to know about the condition
8 of that arm now as compared to the way it was

9 when you worked for the DOT.

10 A. When I was working for the DOT, I
11 could use it a lot more. Now I can't even pick
12 it up.

13 Q. Have you got any useful use of that
14 arm now?

15 A. (Witness shakes head.)

16 Q. Remember you've got to speak up.

17 A. No, sir.

18 Q. That's fine. All right. I believe
19 you retired from the DOT?

20 A. Yes, sir.

21 Q. You get state disability retirement.
22 What all conditions was it that led you to
23 retire?

24 A. Not only my arm, but a heart attack.
25 I had a heart attack.

1 Q. But in reference purely to your arm
2 and shoulder, could you go back and do that job
3 with the DOT?

4 A. No, sir.

5 Q. Could you do any job you know of
6 with that arm in the condition it's in today as
7 compared to what it was right before that
8 accident?

9 A. No, sir.

10 Q. All right. Using your right arm,
11 tell me about -- can you tell me how high you
12 were able to lift that arm before -- before the
13 accident?

14 A. About like that. (Witness
15 indicates.)

16 Q. About shoulder high?

17 A. Yes, sir.

18 Q. I'm sure Ms. Alphin will point us
19 out if it's wrong, but I believe that is
20 basically your testimony. And you could lift
21 that left arm about shoulder high or close to
22 that at the time of the hearing last time; is
23 that right?

24 A. Uh-huh. Yes, sir.

25 MR. MCDANIEL: All right.

1 Commissioner, I don't think I have anything
2 further.

3 THE COURT: Okay. Ms. Alphin.

4 MS. ALPHIN: Thank you,
5 Commissioner.

6 CROSS-EXAMINATION

7 BY MS. ALPHIN:

8 Q. Mr. Tucker, let me start -- let me

9 start with that very last thing that you were
10 talking about. At the last hearing, do you
11 remember when we went to your hearing? It was
12 in Columbia.

13 A. Yes.

14 Q. And it was about your scapula
15 fracture; is that correct?

16 A. Yes.

17 Q. Okay. And you gave some testimony
18 about how far you could lift your left arm at
19 your hearing, correct?

20 A. Yes.

21 Q. And it was your testimony -- well,
22 let me back it up. You demonstrated for us.
23 You can lift your left arm about to your waist
24 today; is that right?

25 A. Uh-huh.

1 Q. Is that correct? Is that a yes?

2 A. Yes, ma'am.

3 Q. The uh-huhs and huh-uhs are hard for
4 later. Sorry. All right. So your testimony
5 today is that you can lift your left arm about
6 to your waist, correct?

7 A. Yes, ma'am.

8 Q. Wasn't it true that's as high as you
9 could lift it at the time of your hearing also?

10 A. No, ma'am.

11 Q. You think you could lift it higher
12 than that?

13 A. Yes, ma'am.

14 MS. ALPHIN: Commissioner, I would
15 like to submit -- I don't know if I need to
16 submit copies of the hearing transcript, but I
17 would like to use it and I have copies. I
18 don't know if it's freely available in the file
19 you have with you.

20 THE COURT: It's not in the file I
21 have with me.

22 MS. ALPHIN: I'd like to submit
23 this, please.

24 THE COURT: I mean, it is part of
25 the Commission file, but I did not bring it.

1 MS. ALPHIN: Well, I will do that so
2 that we can follow along. I am going to be
3 starting on Page 29.

4 BY MS. ALPHIN:

5 Q. Mr. Tucker, I'm going to hold this
6 copy right here for you. This was at your
7 hearing. On Page 23 the Commissioner asked
8 you, "All right. How high can you lift your

9 left arm? Can you demonstrate?"

10 By the Witness. That's you. And we
11 flip to the next page and you said, "Right
12 there. That's it."

13 By the Commission: "You can't lift
14 it beyond your waist?"

15 By the Witness: "No, ma'am."

16 So at your hearing back in 2012, you
17 could only lift your left arm to your waist,
18 correct, based on this transcript I just showed
19 you?

20 A. Based on that, yeah.

21 Q. I'm sorry?

22 A. Based on that, yeah.

23 Q. Okay. And so today that's still the
24 same height that you can lift it, correct?

25 A. Yes.

1 Q. Okay. So when we had your hearing
2 back in 2012, you could lift your left arm to
3 your waist based on this testimony, correct?

4 A. According to that testimony, yeah.

5 Q. Is that how you remember it too or
6 you don't remember?

7 A. I don't remember, but I'm going by
8 what you got there.

9 Q. And that's how high you can lift it
10 today too, correct?

11 A. No more than waist high.

12 Q. So back in 2012, you could lift your
13 left arm to your waist and today you can lift
14 your left arm to the waist, correct?

15 A. Uh-huh.

16 Q. So that's the same? Is that the
17 same?

18 A. Well, to me back then I could lift
19 it above my waist. Now I can lift it to the
20 waist.

21 Q. Okay. Now, this hearing transcript
22 I just showed you said you could lift it to the
23 waist, correct?

24 A. Uh-huh.

25 Q. And isn't that what you can lift it

1 to today, to your waist?

2 A. Yeah.

3 Q. All right. You talked, Mr. Tucker,
4 about having trouble picking things up with
5 your left hand; is that correct?

6 A. Yes, ma'am.

7 Q. Now, that's a problem you had back
8 at your hearing in 2012, is it not?

9 A. I can't recall.

10 Q. Okay. Your testimony today is you
11 could not lift a 5-pound bucket with your left
12 hand, correct?

13 A. Yes.

14 Q. You've got a cane with you?

15 A. Yes.

16 Q. Your cane is because you had a knee
17 injury?

18 A. Uh-huh.

19 Q. And that's not --

20 A. Yes, ma'am.

21 Q. -- related to this, correct?

22 A. No.

23 Q. How much does your cane weigh? Less
24 than a five pound bucket?

25 A. I would say yes, it weighs less than

1 a five pound bucket.

2 Q. And you can't pick that cane up with
3 your left hand right now, can you?

4 A. No, ma'am.

5 Q. Okay. And I'm going to show you
6 your hearing transcript. I'm referring to Page
7 23 now. And the Commission asked you on Line
8 6, "So what's the heaviest thing you can lift

9 with that -- with your left hand?"

10 Line 8 by the witness and you
11 responded on Line 9, "Sometimes I can't even
12 lift this cane." Referring to your cane
13 because you had that back then too, right?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yeah.

17 Q. Okay. So your testimony today is
18 that you could not lift a five pound bucket and
19 you cannot lift that cane with your left hand
20 today, correct?

21 A. Right.

22 Q. But that's the same as it was back
23 at your hearing in 2012 when you told the
24 Commission that you couldn't even lift your
25 cane? It's the same testimony, is it not?

1 A. Yes.

2 Q. Okay.

3 THE COURT: Where was that about the
4 cane?

5 MS. ALPHIN: I'm sorry,
6 Commissioner. That is Page 32, Line 6 through
7 9.

8 MR. MCDANIEL: You said 23.

9 MS. ALPHIN: Oh, gosh. I'm sorry.

10 It's 32. Sometimes I do numbers dyslexic.

11 BY MS. ALPHIN:

12 Q. Now, Mr. Tucker, your testimony
13 today is that you have trouble gripping things
14 with your left hand, correct?

15 A. Yes.

16 Q. So you're talking about being able
17 to hold them and pick them up and that sort of
18 thing?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes, ma'am.

22 Q. Now, you had problems like that back
23 at your original hearing, correct?

24 A. Not -- I can't recall.

25 Q. You can't recall?

1 A. Huh-uh.

2 Q. Okay. I'm going to get this page
3 right. Page 31 starting at the bottom and this
4 is going to be Line 24. This is Mr. McDaniel,
5 your attorney, asking you. "Tell me what kind
6 of problems with your grip. What kind of grip
7 strength do you have in that left arm now?"

8 And the answer by you, "At one time

9 I could grip pretty good. Now if I grip
10 anything, it would put pressure on my shoulder
11 and I would drop it."

12 And that was your testimony back at
13 the hearing, correct?

14 A. Yes. Because I couldn't pick it --
15 then I could grip it and pick it up. But if I
16 do it now, it drops.

17 Q. Well, is this testimony not -- from
18 your hearing, "Now if I could grip anything, it
19 would put pressure on my shoulder and I would
20 drop it," that was your testimony at the
21 hearing, correct?

22 A. I don't recall.

23 Q. Okay.

24 A. You know what I'm saying? I don't
25 recall.

1 Q. Okay. And at your last hearing you
2 were under oath and sworn to tell the truth,
3 correct?

4 A. Yes, ma'am.

5 Q. And we have a transcript of
6 everything you said at that hearing, correct?

7 A. Yes, ma'am.

8 Q. You don't dispute that you said

9 what's actually in this transcript?

10 A. No, ma'am.

11 Q. Okay. So if what's in this
12 transcript is the same thing you're saying
13 today, you would agree that you have the same
14 complaints today that you had at your hearing?

15 A. No, it's worser today.

16 Q. It's worse. Okay. But you agree
17 that your transcript when you testified under
18 oath to the Commission that you testified that
19 if you gripped things, you would drop it and
20 that you can't lift the cane with your left
21 arm, and that was your testimony back at the
22 time of your hearing, correct, from what I
23 showed you in here today?

24 A. Yes.

25 Q. Okay. And that's the same testimony

1 that you're giving today. Those are the same
2 problems you're having now, correct?

3 A. It's worsen. I can't even pick it
4 up now.

5 Q. Okay. Mr. Tucker, you -- unrelated
6 to your workers' comp claim, you have diabetes;
7 is that correct?

8 A. Yes, ma'am.

9 Q. And you had that before you ever
10 fell and hurt your left scapula?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes.

14 Q. Okay. Now you've been to see
15 Dr. Mazoue; is that correct?

16 A. Yes.

17 Q. And do you recall Dr. Mazoue using a
18 word "brachial plexus" or not really?

19 A. Not really.

20 Q. That's okay. And I'm going to be
21 referring to Page 8. Did Dr. Mazoue ever
22 explain to you that your brachial plexopathy,
23 meaning your brachial plexus injury, was likely
24 from diabetes and mild carpal tunnel syndrome?
25 Did he ever talk to you about that?

1 A. No, ma'am.

2 Q. But you do have diabetes?

3 A. Yes, ma'am.

4 MS. ALPHIN: Okay. And that was
5 Page 8 for the record.

6 BY MS. ALPHIN:

7 Q. Now, when you fell at work, the
8 accident that we're here about today that you

9 described, you went to the emergency room; is
10 that correct?

11 A. Yes.

12 Q. And then you started treating with
13 Dr. Hassler, correct?

14 A. I went to my family doctor first.

15 Q. So Dr. Quaye is your family doctor,
16 correct?

17 A. Right.

18 Q. And he's been your family doctor for
19 years before this?

20 A. Yes.

21 Q. And he's still your family doctor
22 now?

23 A. Yes.

24 Q. And when you go see Dr. Quaye, you
25 use your insurance and treat with Dr. Quaye

1 because he's your doctor, correct?

2 A. Yes.

3 Q. Now, Dr. Hassler when you were
4 seeing him for your scapula fracture, workers'
5 comp was paying for that, correct?

6 A. No.

7 Q. Do you know who paying for it?

8 A. My insurance.

9 Q. When you saw Dr. Hassler?

10 A. Yes.

11 Q. Okay. You treated -- you treated
12 with Dr. Hassler for some shoulder problems
13 before you ever fell at work, correct?

14 A. Yes.

15 Q. What about the scapula after you
16 fell at work, workers' comp covered that,
17 didn't they, or you don't remember?

18 A. I don't remember.

19 Q. Okay. Fair enough. So let me go
20 back to that. You treated with Dr. Hassler
21 because you had shoulder problems with your
22 left shoulder before you ever fell at work,
23 correct?

24 A. Right.

25 Q. And you also treated with Dr. Quayle

1 for left shoulder problems before you ever fell
2 at work, correct?

3 A. Yes.

4 Q. And those doctors said that you had
5 some rotator cuff issues; is that correct?

6 A. Yes.

7 Q. And Dr. Hassler indicated to you
8 when he released you that your left scapula

9 fracture was healed, correct?

10 A. No, ma'am.

11 Q. No. Okay. What's your
12 understanding when Dr. Hassler released you
13 about your left scapula?

14 A. He just told me that he released me,
15 but he didn't never told me it was healed.

16 Q. Okay. You have taken disability
17 retirement from the state, Mr. Tucker?

18 A. Yes, ma'am.

19 Q. Is that because of the heart attack
20 that you had?

21 A. Because of my shoulder also.

22 Q. And what about your knee, because of
23 that too?

24 A. Yes.

25 Q. You've had surgery on your knee not

1 related to workers' comp, correct?

2 A. Yes.

3 Q. Okay. So you've got some other
4 health conditions and isn't it true those keep
5 you from working?

6 A. Yes, but basically my shoulder.

7 Q. You think it's the shoulder?

8 A. And the arm, yes.

9 Q. When Dr. Hassler released you, he
10 released you with no work restrictions,
11 correct?

12 A. Yes.

13 Q. Okay. Have you tried to go back to
14 work anywhere since your work accident?

15 A. No.

16 Q. Mr. Tucker...

17 MS. ALPHIN: Actually, I do not have
18 any further questions right now, Commissioner.
19 Thank you.

20 THE COURT: Okay. Mr. McDaniel.

21 REDIRECT EXAMINATION

22 BY MR. MCDANIEL:

23 Q. Mr. Tucker, quite simply, no
24 question after this accident and the time we
25 came over here last year and you were having a

1 lot more problems with that arm than you were
2 before the accident; is that right?

3 A. Yes.

4 Q. Okay. And due to the injury at the
5 time, the state -- DOT didn't put you back to
6 work, did they?

7 A. No.

8 Q. You weren't able to do the job?

9 A. Right.

10 Q. Now, no question that you were
11 having more problems. But as compared to when
12 you came over here and testified before the
13 Commissioner under oath about the problems you
14 were having then, is the condition of that arm
15 worse?

16 A. Yes.

17 Q. All right. In reference to your
18 waist, can you get that arm up as high now in
19 reference to your waist? I know we're trying
20 to use your waistband as a reference point.
21 Can you get it up as high?

22 A. No more right at my waist.

23 Q. Than what you demonstrated earlier?

24 A. Uh-huh.

25 Q. Could you do better than that the

1 last time -- when we were over here the last
2 time?

3 A. Yes.

4 Q. Okay. But no question it was worse
5 than it was back when you were working?

6 A. Yes.

7 Q. Both then and now?

8 A. Then and now.

9 Q. Okay. All right. Mr. Tucker, in
10 reference to a five gallon bucket, when you
11 were working for the DOT and you were picking
12 up five gallon buckets, those buckets were
13 full, right?

14 A. Yes, sir.

15 MR. MCDANIEL: Nothing further,
16 Commissioner.

17 THE COURT: Ms. Alphin, anything
18 else?

19 MS. ALPHIN: I just have very few,
20 Commissioner.

21 RECROSS-EXAMINATION

22 BY MS. ALPHIN:

23 Q. Mr. Tucker, you just testified to
24 your attorney that you are not able to work
25 right now, but you haven't tried to go back to

1 work anywhere, have you?

2 A. No, ma'am.

3 Q. Then how do you know if you can work

4 anywhere?

5 A. Because my arm won't allow me to.

6 Q. But you have not tried; is that

7 correct?

8 A. Right.

9 Q. Okay. And your testimony is that

10 you believe your symptoms are worse today. Is

11 that just how they feel to you?

12 A. No. They are worser today than it

13 was.

14 Q. They feel worse to you?

15 A. Yes.

16 Q. And that's your testimony despite

17 the fact that this transcript we went over has

18 the same complaints?

19 A. They worser.

20 MS. ALPHIN: I don't have any other

21 questions.

22 THE COURT: Anything else,

23 Mr. McDaniel?

24 MR. MCDANIEL: Nothing further,

25 Commissioner.

1 THE COURT: Any other witnesses, Mr.
2 McDaniel?

3 MR. MCDANIEL: None from the
4 claimant.

5 THE COURT: That's your case?

6 MR. MCDANIEL: That's our case.

7 THE COURT: Ms. Alphin, any
8 witnesses?

9 MS. ALPHIN: I have no witnesses.

10 THE COURT: All right. Just before
11 we go off the record, we did talk before we
12 went on the record and if I feel the need to
13 learn the opinion of Dr. Hassler in this
14 matter, we'll have a telephone conference about
15 that before I proceed in that direction if I
16 find the need that I want to hear from him
17 before making a decision. Now, if I feel like
18 I can make that decision without hearing from
19 him, I'm just going to go ahead and issue the
20 order instructions. All right?

21 MR. MCDANIEL: Thank you, Your
22 Honor.

23 THE COURT: Any other questions,
24 folks, because that's a little convoluted from
25 the usual routine? But if that works for

1 y'all, we'll do it that way. All right. That
2 concludes this hearing. Thank y'all very much.

3 (The hearing concluded at 3:20 p.m.)
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KIMBERLY T. POWER, CCR (803) 622-9057

1 CERTIFICATE OF REPORTER

2
3 I, Kimberly T. Power, Court Reporter
4 and Notary Public for the State of South
Carolina at Large, do hereby certify:

5 That the foregoing transcript of
6 proceedings was taken before me on the date and
7 at the time and location stated on Page 1 of
8 this transcript; that the witness was duly
sworn to testify to the truth; that the
testimony of the witness and all objections
made at the time of the proceeding were

9 recorded stenographically by me and were
10 thereafter transcribed; that the foregoing
11 transcript of proceedings as typed is a true,
accurate, and complete record of the
proceedings made at the time to the best of my
ability.

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

15 Witness my hand, I have hereunto
16 affixed my official seal this 20th day of May,
2015, Lexington County, South Carolina.

17
18
19
20
21 Kimberly T. Power, Court Reporter
Notary Public State of South Carolina
22 My Commission Expires: 07/22/201520
23
24
25

P.275
KIMBERLY T. POWER, CCR (803) 622-9057

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1106689

JOHNNY TUCKER,	)	
	)	FULL COMMISSION HEARING
CLAIMANT,	)	PANEL B
vs.	)	
	)	COMMISSIONER CAMPBELL
SOUTH CAROLINA	)	COMMISSIONER WILKERSON
DEPARTMENT OF	)	COMMISSIONER TAYLOR - CHAIR
TRANSPORTATION,	)	
	)	
AND	)	
	)	
SOUTH CAROLINA STATE	)	
ACCIDENT FUND,	)	
	)	
DEFENDANTS.	)	
	)	

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
10:13 A.M., TUESDAY, JULY 21, 2015, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

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

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

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REPORTED BY

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

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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 REPORTER: Today is July 21st, 2015.
2 This is South Carolina Workers' Compensation Case
3 Number File 1106689. This is the case of Johnny
4 Tucker, Claimant, versus Department of Transportation,
5 Employer and the State Accident Fund is the Carrier.
6 The Appellant is the Claimant, represented by
7 Attorney Preston F. McDaniel. The Respondent is
8 represented by Attorney Sarah S. Alphin.

9 Each side is allowed ten minutes for oral
10 argument and the Appellant three minutes in reply.
11 You are requested to argue the grounds of exception
12 and stay within the record.

13 THE COURT: Mr. McDaniel.

14 BY MR. MCDANIEL: Thank you, Commissioner. May
15 it please the Commission. The last payment of
16 compensation -- this is on a change of condition. We
17 had -- the last payment of compensation was on
18 November 28, 2012. Prior to actually filing a claim
19 for a change of condition which is what this case is
20 really about, on March 18 and on April 8, 2013 I wrote
21 a letter to Ms. Alphin who had represented the
22 Defendants in the case the first time around and we --
23 she advised me that she had not been retained and
24 advised me to contact the adjuster. So on May 2, 2013
25 approximately six months -- or five months after the

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 131 BROWNING COURT - LEF.2780N, SOUTH CAROLINA 29073
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1 last payment of compensation we filed a claim and
2 notified the adjuster that -- what did they want to
3 do, did they want to provide medical care, did they
4 want to send her for an evaluation, whatever? We
5 didn't -- heard nothing. Those -- all those
6 communications are in the record along with another
7 communication on July 26 of 2013 wherein at Ms.
8 Alphin's direction, again she had recommended that we
9 contact the adjuster to see what they wanted to do.

10 We heard nothing from the State Accident Fund. My
11 client proceeded to get medical care, there were other
12 communications, however eventually they took no
13 position, they never advised us as to whether or not
14 they were denying the change of condition, whether or
15 not they were going to provide any medical care,
16 whether or not they wanted an evaluation or whatever.
17 So we filed for a hearing on July 26 of 2014 -- July
18 30 of 2014. Now, we filed a claim within six months
19 of the date of the last payment of compensation. We
20 then requested a hearing on that claim on July 30 of
21 2014. They filed a responsive 51 and in that
22 responsive 51 they found no affirmative defenses that
23 we had not timely requested a -- had not filed a claim
24 or change of condition. We then -- then they now hire
25 Ms. Alphin to represent them and in the Prehearing

1 Brief ten days before the hearing she does allege that
2 we had not timely filed for a hearing in the
3 Prehearing Brief. This is the first notice that we
4 had that there was any -- that they were alleging that
5 we had not timely filed. We then go to hearing and
6 the Hearing Commissioner ruled that all -- that we had
7 not timely filed for a hearing, that he interpreted
8 the word application required to file for both the
9 claim and the hearing. As a result of that decision
10 we are here requesting review and requesting that this
11 matter be reversed and remanded for a De Novo Hearing.
12 You know, our first issue is this. The Commission
13 Regulations and the Statute the Supreme Court has held
14 and the Court of Appeals have affirmed that if you're
15 going to raise certain what are referred to as
16 affirming defenses under the Act, one of those being
17 that you -- you have not timely filed a request for a
18 change of condition that you must affirmatively allege
19 that in your pleadings. That was not done in the Form
20 51 responsive to our 50 that was filed by the State
21 Accident Fund. We had absolutely no notice that this
22 was going to be an issue that they were -- and I want
23 to make it clear, they're alleging that you must file
24 a claim and request a hearing under the Act. As far
25 as I know there's no case law to that effect, but

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1 first of all, they must affirmatively allege that
2 affirmative defense. They did not do that, they did
3 not put us on notice that this was going to be an
4 issue and therefore under the Regulations, under the
5 Supreme Court Decisions and under the Statute that
6 decision -- the decision of the Commissioner needs to
7 be reversed. Now, second, and I think more
8 importantly is that for quite some time we've really

9 looked at the claim and the hearing process
10 bifurcated. The only place in the Act that refers to
11 the word "claim" in reference to time is in 42-15-40
12 and that Statute specifically provides that you must
13 file a claim within two years of the date of the
14 accident. That's the only place the word actual claim
15 is referred to. You know, in our Regulations the
16 Commission in Rule 67-206 refers to the filing of the
17 claim and that -- that includes the filing of a claim
18 for a change of condition. Then in Rule 67-603
19 actually we refer to a hearing on a claim for change
20 of condition. I take the position and I think it's
21 clear, you know, of course the Commission is required
22 to liberally construe in favor of benefits. In
23 addition to that we're not supposed to go beyond what
24 the -- the Supreme Court has decided and the Supreme
25 Court has decided and -- and what the Statute says and

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1 on all those bases the Supreme Court in Allen said
2 that in the case where the Claimant had filed a claim
3 for a -- a change of condition but the matter was not
4 heard until after the one year run, that this is what
5 the Legislature contemplated that you must file a
6 claim within 12 months of the last payment of
7 compensation.

8 COMMISSIONER TAYLOR: Right. But a claim as in a
9 request for hearing, not a claim as in notice of a
10 claim. Because under -- under your argument -- let me
11 ask you this. If you file a Form 50, just notice of
12 claim without requesting a hearing could you then sit
13 for five years and send your request for a hearing and
14 do you think that change of condition would still be
15 valid?

16 MR. McDANIEL: Correct.

17 COMMISSIONER TAYLOR: Okay.

18 MR. McDANIEL: Because okay, for example, let's
19 go to what we do on a regular basis in reference to an
20 asbestos claim where a person is found to have
21 asbestos, we filed a claim. Numerous cases of
22 occupational disease, you are not entitled to benefits
23 under the Act until you become disabled from the,
24 occupational disease. So you file a claim, you know
25 Coley -- Coble versus Bailey all that, this is -- this

1 is standard operating procedure, you know, you filed a
2 claim. And you used the word "notice". There's not
3 -- there's not -- it's filing a claim, it's not, you
4 know --

5 COMMISSIONER TAYLOR: Well, I'm -- when I say
6 notice that's the two boxes. One says I'm filing a
7 notice of a claim and one says I'm requesting a
8 hearing.

9 MR. McDANIEL: Correct.

10 COMMISSIONER TAYLOR: And so your first pleading
11 was just this top box.

12 MR. McDANIEL: Filing a claim for a change of
13 condition. We did not know -- and, you know, remember
14 Commissioner, also the Statute provides that when you
15 file a claim they shall contact the Claimant and
16 advise us of their position. They -- you -- nowhere
17 in the record are you going to find that they ever
18 denied -- they never told us what -- whether or not
19 they wanted to get -- they didn't even request an
20 evaluation until less than ten days before the hearing
21 in this case. They did nothing and -- and in addition
22 to that, so we have this -- they don't file an
23 affirmative defense, they don't tell us their
24 position, they don't comply with the Act in any
25 regard. You know, Commissioner, and -- and in

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1 reference to a liberal interpretation of the Act, you
2 know, since the Act speaks in applying for an
3 application for a change of condition, I don't think
4 it's a liberal conception of the Act to say that, you
5 know, we've got to file. Because the hearing -- the
6 Commission has decided to bifurcate the process. I
7 mean if we're going to require that the Claimant, oh
8 no, you've got to file for a hearing, then we need --

9 we need to make sure that that's clear in the Rules.
10 That's -- that's not the requirement. I mean Rule
11 67-206 says -- refers to the filing of the claim for a
12 change of condition. Then Rule 67-603 refers to the
13 setting of a hearing on a claim for a change of
14 condition, you know. So I -- I think the Rules and
15 the Statute are clear and especially if you give a
16 liberal interpretation. I mean you know, the unwary
17 Claimant out there with or without counsel, you know,
18 trying to do what you do -- but even what we do, I
19 mean here I've been doing this 36 years. I've never
20 had this issue raised before in my life. I -- but
21 however, --

22 COMMISSIONER WILKERSON: Mr. McDaniel, let me ask
23 you, make sure I understood the -- your position is
24 that they did not file an affirmative request denying
25 the change of condition or they didn't file it saying

1 it was a one year -- help me understand this.

2 MR. McDANIEL: Okay. When they filed their Form

3 51 --

4 COMMISSIONER WILKERSON: Right.

5 MR. McDANIEL: -- they generally denied the
6 change of condition. Their basis was that they were
7 denying he had sustained a change of condition.

8 COMMISSIONER WILKERSON: That's what this is.

9 MR. McDANIEL: But they -- but they did not file
10 an affirmative defense that they -- that we had not
11 timely filed on the basis of the hearing. I mean for
12 example what we're talking about is a bifurcated
13 concept here. You know, no -- at any time -- and that
14 leads me to -- actually to my third argument which is
15 that I think they ought to be equitably estopped, you
16 know, from -- from alleging the -- from alleging the
17 claim, you know, because we were misled to our
18 detriment. You know, the Statute affirmatively
19 requires them to notify us after we notify them of the
20 claim. The Statute says you shall contact the
21 Claimant and advise the Claimant of your position in
22 reference to any claim. They did not do that. They
23 then -- we -- we made numerous contacts with them
24 trying to find out what they wanted to do. Did they
25 want to provide the medical care or did they want to

1 do it. I think they should be equitably estopped in
2 their conduct but from being able to allege this --
3 this defense in -- in addition to the other arguments.
4 However, I think it's clear that we filed a timely
5 file. Thank you.

6 THE COURT: And you'll still get three minutes on
7 rebuttal. Thank you. Ms. Alphin.

8 BY MS. ALPHIN: Thank you, Commissioner. As you

9 have become aware today the Single Commissioner ruled
10 in this case that the Claimant's change of condition
11 was not timely filed because he did not request a
12 hearing within one year from the last payment of
13 compensation. There's no dispute whatsoever as to the
14 timeline in this case. November 28, 2012 was the last
15 payment of compensation. There was not a Form 50
16 hearing request filed until 20 months later; that's
17 July 30, 2014. Yes, there was a Form 50 claim only
18 filed in that -- within that one year time period, but
19 it's our position that that does not meet the time
20 requirement for 42-17-90. 42-17-90 says that an
21 application, and I think that's the important word, an
22 application of a party for request of review has to be
23 done within one year. So then the question is what
24 does an application mean and as it's laid out in the
25 hearing Order, an application is defined by Black's

1 Law Dictionary as request for some action to be taken
2 or a request for something to be done. And there is
3 no request by simply filing a claim only and it's our
4 position that a claim only, or notice of a claim does
5 not meet 42-17-90. It's not a request to do anything
6 when you file a claim only and -- and I would dispute
7 the position that you can file a claim only within a
8 year and then wait and file for your hearing request.

9 at any time in the future. If you allow that to be
10 the interpretation you basically nullify the very
11 Statute and the whole purpose of the Statute -- the
12 whole purpose of the Statute is the change of
13 condition needs to occur within the year. You should
14 not get to file a claim only on day 300 and then not
15 request your hearing for three, four, five, six,
16 however many years. If that was the interpretation
17 every Claimant would file a change only within the
18 year and then show up, who knows when, down the road.
19 And such an interpretation would just negate the whole
20 purpose for the Statute. The -- the defense that it
21 was not timely was pled on the Form 58. It was pled
22 in advance. I would like to address the Allen case
23 that was raised in oral argument by Mr. McDaniel and
24 it's also addressed in his Brief. The Allen case is
25 -- is -- well, actually that case is misplaced. That

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131 BROWNING COURT - LEP.2870N, SOUTH CAROLINA 29073
803-397-0189

1 was a situation, the fact of that claim the Claimant
2 filed his Form 50 request for hearing within the year.
3 There's no dispute about that. The issue is the
4 Commission did not docket that case to be heard until
5 after a year. And the Court said as long as the
6 Claimant files his request for hearing within a year
7 the Claimant's not going to be prejudiced based on the
8 scheduling of the docketing at the Commission. So

9 that was a situation where the hearing simply wasn't
10 held within a year. But it was a situation where the
11 application, and they actually used that word in that
12 case, they talk about the application for a change of
13 condition, and it was made within the one year. And
14 they use that interchangeably with the request for a
15 hearing. So I would assert that the Allen case is
16 misplaced reliance and if anything, it shows us that
17 the Supreme Court looked at the application for a
18 review as the same thing as a request for a hearing.
19 And -- and I don't -- some case law was mentioned --
20 I'm sorry, some Statute was mentioned about the
21 procedure that we have for filing a claim; that's an
22 underlying claim. 42-15-40 talks about a Statute of
23 Limitations and how to file a claim at the Commission
24 for the underlying claim. You cannot compare those
25 laws and those Statutes with what is required for the

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1 change of condition. There's a specific Statute
2 addressing change of condition. And there's a reason
3 why it is that way. I would also like to raise that
4 the argument that we did not timely raise our defense
5 was not raised at the hearing. It was not raised
6 until this appeal and we would assert that a -- an
7 argument cannot be raised for the first time on
8 appeal, it's not properly before the Commission.

9 Beyond that I will quickly address the estoppel. One
10 of the grounds of estoppel is that the party sought to
11 be estopped has to have made some sort of
12 representation or done something that made the person
13 believe they were going to take some action. By his
14 own admission the Claimant admits that the Defendants
15 didn't do anything to make him think that we were
16 accepting the claim and in -- for that reason we
17 cannot be estopped. And silence is not -- is not an
18 affirmative reason for estoppel. In fact, if -- if
19 there was no communication back and no indication that
20 they were accepting the claim or sending for an
21 evaluation or providing any benefits then you would
22 think the exact opposite, that the -- that the
23 Claimant was saying they're not doing anything,
24 they're not accepting my claim and they're not
25 providing me any benefits; which was the situation.

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803-397-0189

1 So the Defendants respectfully request today that you
2 affirm the Single Commissioner Order in full and find
3 that the change of condition was not timely filed.
4 Thank you.

5 THE COURT: Thank you. Mr. McDaniel.

6 BY MR. McDANIEL: Commission, first off, you
7 know, in reference to this, well, they may -- they
8 just I'll file a claim and then wait five or ten

9 years, first off the purpose of the -- any of the
10 timing Statutes on the Workers' Compensation Act is to
11 insure that the Defendants have an opportunity to
12 investigate the claim. All right. So that's the very
13 fundamental purpose of the two year Statute of
14 Limitations, and I'll say that. Now, whether or not
15 they choose to investigate that is their -- their
16 decision. Now, in addition to that, of course, if --
17 if we waited five years we'd be faced with another
18 possible defense that's been recognized by the Supreme
19 Court and that is the defense of Laches. In other
20 words, like you haven't done anything for five or six
21 years, that kind of thing. You know, of course they
22 have to come in court and then prove that they were
23 prejudiced by that and -- and if they -- and as you
24 all know to file a change of condition we can't just
25 simply file a change of condition, file a change in

1 point. We have to have what; a medical report
2 establishing it. So -- and we had a medical report,
3 we sent that to Ms. Alphin when I thought she was
4 representing, three months beforehand. She tells me
5 we have -- we tried to send it to her twice, we
6 finally get a response and I'm -- she -- I'm not
7 representing, contact the adjuster. We contact the
8 adjuster, we hear nothing. We then advise them, we
9 ask them how they want to proceed in July; we hear
10 nothing. You know, the silence they can't -- they can
11 be estopped from their silence by their actions from
12 their silence in failure to advise us of their
13 position. They failed to comply with the Act by not
14 letting us know what their position was. It says
15 shall do this. Now, the next thing is, is that
16 there's also the defense, and Commissioner, I'll ask
17 you to talk to your brethren about this. You've got
18 to come in with the doctrine of clean hands if we're
19 talking about equity. Okay? In other words -- and
20 they've got to come in here and -- and show some kind
21 of equity. So in other words basically okay, we're
22 going -- hey, look, if he doesn't file this thing in a
23 proper hearing we're going to come in here and
24 bifurcate -- say the claim -- bifurcation between the
25 claims process and the hearing process and so let's

1 just let him sit out there and then wait for that one
2 year to run and then -- then we'll just hit him with
3 that and deny the claim. If a -- Commission, the
4 word, yes application is used in 42-17-90, okay.
5 That's correct. Application. I sort of wonder where
6 since neither -- in the records, you're not going to
7 find any records from Black's Law Dictionary in argue
8 if I miss app only. I sort of wonder where that came
9 from. I sort of wonder -- the analysis of it, there's
10 actually, I think, some cases that are cited that when
11 they -- being cited by Ms. Alphin. You know -- and
12 we're supposed to be placed on notice if the
13 Commissioner contacts anybody in reference to issues
14 before the Commission, you know, that was considered.
15 However, not going there, the big important thing is
16 this, let's look at a -- at an interpretation. This
17 Commission is supposed -- is duty bound to make a
18 liberal interpretation of the Act in favor of
19 benefits. Think of what this is going to do --

20 COMMISSIONER WILKERSON: Where is that in the
21 law?

22 MR. McDANIEL: It's in the --

23 COMMISSIONER WILKERSON: Liberal interpretation
24 of coverage, tell me where it says liberal
25 interpretation of benefits?

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131 BROWNING COURT - LEP.2920N, SOUTH CAROLINA 29073
803-397-0189

1 MR. McDANIEL: The -- of benefits, no.

2 COMMISSIONER WILKERSON: Okay.

3 MR. McDANIEL: Now, -- well, as a matter of fact
4 the -- the Commission -- we could get into another
5 entire argument on the issue of benefits, but it -- it
6 is more than covered. The Supreme Court recently, in
7 the case of Anne's which is cited there, talks of --
8 it is not an issue of coverage. That is an issue

9 there of -- of what the -- the Act shall be liberally
10 construed. As a matter of fact the Allen case says
11 that the language shall be liberally construed. This
12 -- the very case that we're all talking about here, it
13 says app -- that the case -- that the provision of the
14 Act shall be liberally interpreted in favor of
15 benefits to the injured worker. So it's not just a
16 coverage issue. The Defendants for years have tried
17 to argue that, but the Supreme Court has put that to
18 rest many -- a long time ago. So we're talking about
19 the language of the Statute, Commissioner. And I'm
20 not asking for, you know, a liberal interpretation of
21 benefits, okay, what I'm asking for is a liberal
22 interpretation of -- of the wording of the Statute in
23 favor of benefits to the injured worker, because our
24 right to sue for compensation -- sue have been taken
25 away. It was a tradeoff years ago and we're partially

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131 BROWNING COURT - LE^{P.293}N, SOUTH CAROLINA 29073
803-397-0189

1 compensated. So if liberally interpreting the word
2 application, we filed an application. We filed a
3 claim. The -- your Regulations say that we're
4 supposed to file a claim -- under 67-206 we're
5 supposed to file a claim and they are required -- they
6 shall notify us. We filed a claim.

7 THE COURT: Thank you very much.

8 MR. McDANIEL: Thank you, ma'am.

9 THE COURT: That concludes the hearing..

10 (The hearing concluded at 10:33 a.m.)

11

12

13

14

15

16

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 19
 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 4TH DAY OF
 FEBRUARY, 2016.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES DECEMBER 31, 2024

CORA ELLIS BRUTON - COURT REPORTER
 131 BROWNING COURT - LP.295TON, SOUTH CAROLINA 29073
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Matthew Robertson

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Facsimile (803) 252-0709

March 27, 2015

URGENT! IMMEDIATE
ATTENTION REQUESTED PLEASE

VIA EMAIL - klindler@wcc.sc.gov
AND US MAIL:
Commissioner Gene McCaskill
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Johnnie Tucker v. SC Dept. of Transportation
WCC File No.: 1106689

PROPOSED ORDER

Dear Commissioner McCaskill:

This is to respectfully request that you ask Ms. Alphin not to forward you a proposed Order until next Friday, April 3rd.
Reason:

1. Ms. Alphin on March 20th (Friday afternoon) while I am in Charleston at a seminar emails me proposed Order.
2. Monday, March 23rd - as you are aware I was in Hearings all day.
3. Tuesday, March 24th - Hearings/Conference Calls
4. Thursday, March 26th - a) Brief filed in the Court of Appeals and b) but reviewed Order; serious reservations drafted in email to Ms. Alphin; at 6:00 to 7:00 p.m. requesting revised Order; drafted email to you plus this email to you.
5. Friday, March 27th - all day mediation in Hartsville but will review draft letters to Ms. Alphin and you via email and telephone and will try to get them out.

I am requesting an extension until Friday, April 3rd which will give Ms. Alphin and me time to get together an Order and for you to review by email/respond. By copy of this letter; I am notifying Ms. Alphin of this request.

P.296

Commissioner Gene McCaskill
March 27, 2015
Page 2 of 2

Sincerely yours,

DICTATED BUT NOT READ

Preston F. McDaniel

PFM/kth

cc: Gerald Malloy, Esquire (via email and US Mail)
Sarah S. Alphin, Attorney at Law (via email and US Mail)

P.297

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Matthew Robertson

Facsimile (803) 252-0709

March 27, 2015

VIA EMAIL - klindler@wcc.sc.gov
AND US MAIL
Commissioner Gene McCaskill
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Johnnie Tucker v. SC Dept. of Transportation
WCC File No.: 1106689

Dear Commissioner McCaskill:

Ms. Alphin had forwarded me a proposed Order which I have asked her to revise but in the meantime I would ask you for reconsideration or at least to confirm something that I have found in the file.

I have looked back in the file and have found the Form 51 that was filed by the Defendants in response to our Form 50 requesting a hearing. I would ask you to review that Form 51 and ask you to note that the Defendants did not raise as a ground for defense that the change of condition was not timely filed. This is an affirmative Statute of Limitations type defense and the Act requires that we be given specific notice of that defense and particularly since the Amendments to the Act in 2007. Based on this if you find that I am correct that this defense was not raised in the Form 51 which requires us to be given notice of all affirmative defenses, I would ask that you so rule and remand this case for a de novo hearing on the change of condition request.

I have also reviewed the Pre-Hearing Brief and case law cited to you and the position taken by Ms. Alphin in reference to this affirmative defense. I do not find that the Supreme Court or Court of Appeals have ever made any specific findings in reference to filing an application versus filing a request for hearing. It is my understanding that the Commission is duty bound to apply the law in reference to the statutory provisions; the Commission's Regulations and must apply any existing Supreme Court or Court of Appeals decisions interpreting the law but the Commission cannot make new legal determinations. In addition the Commission is bound by the statutory principle that the Act shall be liberally construed in favor of benefits to the injured worker and I have cited the

P.298

Commissioner Gene McCaskill
March 27, 2015
Page 2 of 2

premier case in that regard quoting from Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941).

"its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed towards the end of providing coverage rather than non-coverage"

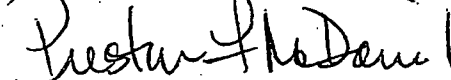
* * * *

"Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents and to prevent the burden of injured employees and their dependents from becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws shall be liberally construed in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted and to avoid any incongruous or harsh results." Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). (Emphasis added).

Based on all of the above, I would respectfully request reconsideration and due to the time between the last hearing and now, and because the defense was not raised, I would request that this matter be set for a de novo hearing.

By copy of this email, I am notifying Ms. Alphin of this communication and request for reconsideration. Please note again that this is a jurisdictional/procedural due progress issue that can be raised at any point.

Sincerely yours,



Preston F. McDaniel

PFM(kth)
cc:

Gerald Malloy, Esquire (via email and US Mail)
Sarah S. Alphin, Attorney at Law (via email and US Mail)

P.299

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL AND US MAIL

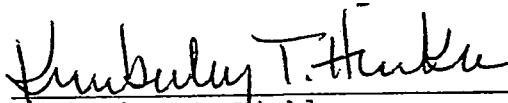
WCC File No. 1106689

I hereby certify that I have on this day served the following in the matter of Johnnie Tucker v. Dept of Transportation with a copy of the Claimant's REQUEST FOR RECONSIDERATION by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

VIA EMAIL - klindler@wcc.sc.gov
AND US MAIL
Commissioner Gene McCaskill
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

VIA EMAIL - ssalphin@wjlaw.net
AND US MAIL
Sarah S. Alphin, Attorney at Law
Wilson, Jones, Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

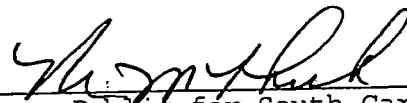
I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal

SWORN TO BEFORE ME this

27 day of March, 2015.



Notary Public for South Carolina (L.S.)

My Commission Expires: 2/4/24

P.300

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Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 525-0709

April 1, 2015

VIA EMAIL ONLY - klindler@wcc.sc.gov

Ms. Kellie Lindler

~~SC Workers' Compensation Commission~~

Post Office Box 1715

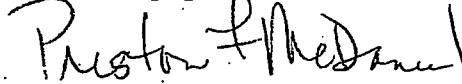
Columbia, South Carolina 29202

RE: Johnnie Tucker v. SC Dept. of Transportation
WCC File No.: 1018814

Dear Kellie:

I decided to send this to the Commissioner at least for the Record since I just received the signed Order. If the Commissioner will consider this, I will be glad to draft an Order withdrawing this one until after he has an opportunity to consider this.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Gerald Malloy, Esquire (via email - gmalloy@bellsouth.net)
Sarah Alphin, Attorney at Law (via email - ssalphin@wjlaw.net)

P.301

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Matthew Robertson

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April 1, 2015.

VIA US MAIL AND EMAIL - klindler@wcc.sc.gov
Ms. Kellie Lindler
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Johnnie Tucker v. SC Dept. of Transportation
WCC File No.: 1018814

Dear Kellie:

I received Ms. Alphin's revised Order and I still object to the inclusion of IV. Evidence of the Case and would only ask the Commissioner to review his Findings which were specifically limited to the fact that in his opinion we did not timely file. There is no indication that he reviewed the evidence and this is clearly Ms. Alphin's take on the evidence which because it was not part of the ruling should not be included.

I also had advised Ms. Alphin that I did not think it was fair and appropriate not to include the fact that we had filed a claim for a change of condition on May 2, 2013 but since that is included in the Findings of Fact #6 unless the Commissioner wants to add that himself, that is okay by me.

Also and more importantly, I would ask the Commissioner to please note that this is not an accurate Statement of the Case in reference to the issue upon which he made his decision. I would ask him to specifically refer to our APA Submissions, Tab 4, Pages 67-70 which should be included in the Statement of the Case. The Full Commission should know how we repeatedly and I want to reiterate repeatedly both before and after we filed the claim back in 2013 for a change of condition requested medical care. That in my opinion is absolutely imperative to a proper statement of the history of the Case on the decision of timeliness. I intend to raise waiver and estoppel as part of our appeal to the Full Commission if this continues to be the Order.

Next, I have again reviewed Ms. Alphin's Pre-Hearing Brief and her referral to the cases of Shealy and Krell but I find absolutely no referral or citation by Ms. Alphin or by me as to those cases, Black's Law Dictionary, the specific provisions of S.C. Code §42-17-90 (A, B and C) or the case of Wallace vs.

P.302

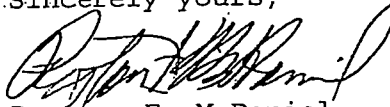
Ms. Kellie Lindler
April 1, 2015
Page 2

Campbell Limestone Company. Since neither party cited those cases and references, I would be truly interested where those came from.

Finally, again Ms. Alphin does not state a position on the law that a challenge or defense to timeliness based on S.C. Code §42-17-90 is an affirmative defense that must be plead.

I look forward to receiving the Commissioner's direction, a conference call to discuss those issues or to receiving the Order. By copy of this email, I am notifying Ms. Alphin of this communication.

Sincerely yours,



Preston F. McDaniel

PFM/abh/kth

cc: Gerald Malloy, Esquire (via email - gmalloy@bellsouth.net)
Sarah Alphin, Attorney at Law (via email - ssalphin@wjlaw.net)

Kim Hinkle

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Wednesday, April 01, 2015 3:03 PM
To: Kim Hinkle
Cc: Gerald Malloy; Greta Elliotte; Sarah S. Alphin
Subject: RE: Johnnie Tucker v. SC Dept. of Transportation; WCC File No. 1018814

Thank you. I will give this to Commissioner McCaskill to review.

From: Kim Hinkle [mailto:kim@pfmcdlaw.com]
Sent: Wednesday, April 01, 2015 2:56 PM
To: Lindler, Kellie
Cc: Gerald Malloy; Greta Elliotte; Sarah S. Alphin
Subject: Johnnie Tucker v. SC Dept. of Transportation; WCC File No. 1018814
Importance: High

The attached is being sent to you at the request of Preston F. McDaniel.

Kimberley T. Hinkle, Senior Paralegal
to: Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
T: 803-771-7211
F: 803-252-0709



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P.304

Preston mcDaniel

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Wednesday, February 18, 2015 11:28 AM
To: 'Sarah S. Alphin'; preston@pfmcdlaw.com
Cc: jnthomas@wjlaw.net; PSNYDER@SAF.SC.GOV; VJACKSON@SAF.SC.GOV;
JMURRAY@SAF.SC.GOV; Kim Hinkle
Subject: Tucker Johnny - order instuctions 1106689

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC File Number: 1106689
Date of Hearing: 10/21/14
Place of Hearing: Darlington County

CLAIMANT: Johnny Tucker
EMPLOYER: Department of Transportation
CARRIER: State Accident Fund

Claimant's Attorney: Preston F.
McDaniel

Defendants' Attorney: Sarah S. Alphin

DOI: 05/02/11

AWW: \$419.31 CR: \$279.55

Court Reporter: Kim Power

P.305

PO Box 2403
Lexington, SC 29071
kimberlytpower@aol.com
(803) 622-9057

FINDINGS OF FACT AND DIRECTIVES

Ms. Alphin, please draft the order consistent with the below findings and return to this office within 30 days.

1. The Claimant suffered a compensable left scapula fracture injury arising out of and within the course and scope of his employment.
2. The Claimant now alleges a change of condition.
3. The Defendants deny that there has been a change of condition.
4. The Defendants object to this matter coming before the Commission asserting that the Commission does not have jurisdiction to hear this claim as the Form 50 request for a hearing was filed more than 12 months after last payment of compensation.
5. The Form 19, which is a part of the Commission file, shows last payment of compensation was 11/28/12.
6. The Claimant filed a Form 50 alleging a change of condition on 05/02/13.
7. The Claimant argues, citing the case of Allen vs. Benson, 112 S.E. 2d 722 as case law on point, that when an application is made within twelve months, the Commission is not restricted to hold the hearing in twelve months nor is the Claimant restricted to requesting a hearing during that time frame.
8. The Claimant asserts that §42-17-90 speaks in terms of making an application for a change of condition. It does not say a request for a hearing.
9. It is the Claimant's position, given their filing for a change of condition for the worse on 05/02/13, the statute is effectively tolled.
10. §42-17-90 reads in part, *"...on the application of a party in interest on the ground of a change of condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded..."*
11. §42-17-90 does not use the words – request of hearing.
12. Within this framework, I must examine what does "application" mean in the context of this section of the Act.
13. In Allen v. Benson the Court said in part, *"...the application for review must be made within one year after the last payment of compensation."*
14. In Allen, the application that was made was a request for a hearing.
15. Black's Law Dictionary (9th edition) defines "application" as "a request or petition".
16. When I consider the language of §42-17-90, the language in Allen vs. Benson, and the definition provided by Black's, I must conclude that "application" must be interpreted to mean "a request" as in seeking action on the part of the Commission.

17. What the Claimant did on 05/02/13 was to give notice to the Commission. The Claimant then requests a hearing on 07/30/14 after the twelve month window provided for in the Act has run. Notice does not equate to application.
18. Application is a request for action. There is no such request in the Form 50 filing on 05/02/13. The request for action comes with the filing on another Form 50 on 07/30/14.
19. There is no language in §42-17-90 which provides for the statute to be tolled. Allen vs. Benson does not speak to tolling the statute.
20. §42-17-90(A) begins with, "*On its own motion or on the application of a party in interest on the ground of a change of condition...*" A plain reading of this language further supports the conclusion that an application of a party has the same result as a motion of the commission. Both are an action to resolve a question under the Act. The vehicle for that resolution is a hearing.
21. §42-17-90(B) and (C) while dealing with repetitive trauma and occupational disease, mirror the mechanism found in (A) for the timing related to review. Those sections do, however, contain different language not found in (A). *Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.* This language does not appear in (A) which is the applicable section to this case. That being said, sections (B) and (C) must be read in context, and the first sentence of (B) and (C) like the first sentence of (A) require a motion or application.
22. §42-17-90(A) is clear in its intent. While the Commission does not have to have a hearing in the case within the twelve months from the date of the last payment of compensation, the Claimant must have sought a hearing during that statutorily established timeframe; otherwise the time period in which the party can file for a change of condition is concluded.
23. In Wallace v. Campbell Limestone Co. (S.C. 1941) 198 S.C. 196, 17 S.E. 2d 309 the Court wrote, "The conclusiveness of this provision is inescapable."
24. Based on my review, I must conclude that for the application or request for hearing to have been timely, a request for hearing would have to have been filed on or before 11/28/13.
25. That did not occur in this case. As such, the claim is dismissed with prejudice.

INSTRUCTIONS: Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact. You may also add additional Findings of Fact consistent with the above ruling. The Order should include biographical information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it **immediately** from the court reporter listed above. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission.

When submitting the proposed Order to the Commission, please email only to klindler@wcc.sc.gov. The Commission no longer needs hard copies of the proposed order unless the claimant is *pro se*.

Matters to include in the Order:

1. APA Submissions
2. Stipulations
3. Statement of the Case (contentions of the parties – stated concisely)

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4. Evidence of the Case (synopsis of the evidence – including testimony and medical reports)
5. Findings of Fact [numbered] (Do not delete any of the above findings.) The prevailing party may add to support the decision, except regarding credibility unless you have been so instructed.
6. Conclusions of Law (cite applicable statutory sections and case law)
7. Award

Do not address credibility in the Order, unless it has been addressed in the preceding Order Notes.

Commissioner Gene McCaskill
South Carolina Workers' Compensation Commission
1333 Main Street
Columbia, South Carolina 29201

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission JUN 06 2016
Appellate Panel

SC Court of Appeals

Appellate Case No.: 2015-002575

Johnny Tucker, Employee, ... Appellant,

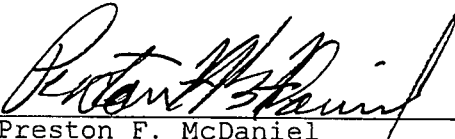
v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

Dated: June 6, 2016



Preston F. McDaniel
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Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No.: 2015-002575

RECEIVED

JUN 27 2016
SC Court of Appeals

Johnny Tucker, Employee, ... Appellant,

v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier, ... Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. WHERE THE RECORD ESTABLISHES THAT THE CLAIMANT FILED A CLAIM AND APPLICATION FOR A CHANGE OF CONDITION WITH THE COMMISSION WITHIN ONE (1) YEAR OF THE DATE OF THE LAST PAYMENT OF COMPENSATION (LESS THAN SIX (6) MONTHS) AS REQUIRED BY THE ACT, DID THE COMMISSION ERR AS A MATTER OF LAW BY DENYING THE CLAIMANT'S APPLICATION FOR A CHANGE OF CONDITION ON THE BASIS THAT A REQUEST FOR HEARING ON THE CHANGE OF CONDITION WAS NOT TIMELY FILED?
- II. WHERE THE DEFENSE THAT THE CLAIM WAS NOT TIMELY FILED IS AN AFFIRMATIVE DEFENSE THAT MUST BE PLED AND IT WAS NOT PLED, DID THE COMMISSION ERR AS A MATTER OF LAW BY DENYING THE CLAIM FOR A CHANGE OF CONDITION BASED ON THE AFFIRMATIVE DEFENSE THAT THE CLAIMANT DID NOT TIMELY FILE FOR A HEARING FOR A CHANGE OF CONDITION WITHIN 12 MONTHS OF THE LAST PAYMENT OF COMPENSATION?
- III. DID THE COMMISSION ERR AS A MATTER OF LAW BY DENYING THE CLAIMANT'S APPLICATION FOR A CHANGE OF CONDITION ON THE BASIS IT WAS NOT TIMELY FILED WHERE THE DEFENDANTS ARE ESTOPPED FROM ALLEGING THIS DEFENSE UNDER THE FACTS OF THIS CASE?
- IV. DID THE COMMISSION ERR AS A MATTER OF LAW BY NOT SUBMITTING THE MOTION AND PETITION FOR REHEARING TO THE APPELLATE PANEL THAT ISSUED THE INITIAL DECISION AND BY NOT MAKING DETAILED FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY LAW ON ALL OF THE ESSENTIAL ISSUES PRESENTED TO IT FOR DECISION?

STATEMENT OF THE CASE

Following an Award by the Commission wherein benefits were paid on November 28, 2012, on May 2, 2013 the Claimant filed a Form 50 filing a claim for both a, "change of condition and undiagnosed condition claim". (R., pp. 51-52). After repeated communications between the parties, as set forth in the Record on Appeal, on July 20, 2014 the Claimant filed a Form 50 requesting a hearing on the change of condition and the undiagnosed condition claim. (R. pp. 57-60). On August 20, 2014 the Defendants filed a Form 51 denying the Claimant had sustained a change of condition for the worse and containing no affirmative defenses (R., pp. 61-62). A hearing was set for October 21, 2014 and the Claimant's Pre-Hearing Brief and APA Submissions were timely filed on October 6th and the Defendants timely filed their Pre-Hearing Brief and APA Submissions on October 10, 2014. (R., p. 63; pp. 64-142; pp. 143-173; pp. 223-275). Four and one half (4 ½) months after the hearing, the Commissioner issued a Request for Proposed Order on February 18, 2015. (R., p. 305). Both a request for time to review the proposed Order and a letter requesting reconsideration prior to a formal Order being issued were filed on March 27, 2015. (R., pp. 296-297). A revised proposed Order, revised as to certain issues, was submitted

and that Order was issued on April 1, 2015 (R., pp. 16-24). That same day, April 1st, a letter requesting both reconsideration of the revised proposed Order that had been submitted and the Order issued on April 1st was filed with the Commission via email. (R., pp. 301-303). The Commissioner sent an email acknowledging receipt of request for reconsideration of the revised proposed Order that same day, April 1, 2015. (R., p. 304). Thereafter an Amended Decision and Order was issued by the Hearing Commissioner on April 14, 2015. (R., pp. 25-33).

A timely Form 30 was then filed to the Amended Decision and Order on April 21, 2015 setting forth the grounds for review. (R., pp. 174-176). The Claimant submitted a Brief with the Full Commission (R., pp. 177-191) and the Defendants filed a responsive Brief. (R., pp. 192-199). After the issues were joined, a hearing was held by a Full Commission Panel on July 21, 2015 on the Request for Review. (R., pp. 176-295). The Decision and Order of the Full Commission was issued on September 11, 2015 and a Motion and Request for Rehearing to the Order was filed on October 8, 2015. (R., pp. 210-215; p. 200-209). A response to the Motion was filed by the Defendants on October 16, 2015 and a Reply was filed to that Response by the Claimant on October 23, 2015. (R., 210-214; pp. 215-217).

Thereafter on November 16, 2015, a "Judicial Conference Decision" was issued by the Commission on the Motion for Rehearing listing all Commissioners including the Hearing Commissioner as having considered the Motion for Rehearing, which form Order "dismissed" the request. (R., p. 47).

Notice of Intent to Appeal the final Decisions of the SC Workers' Compensation Commission was timely filed on December 16, 2015 setting forth the Grounds for the appeal. (R., pp. 218-222). This appeal follows.

STATEMENT OF FACTS

Following an Award by the Commission, benefits were paid on November 28, 2012. On May 2, 2013, the Claimant filed a Form 50 filing a claim for both a, **"change of condition and undiagnosed condition claim"**. Attached to the claim was the opinion of an authorized treating physician, Dr. Emmanuel O. Quaye, who found that Mr. Tucker had undergone a change of condition for the worse and had referred him to an orthopaedist, Dr. Christopher Mazoue. In his initial evaluation, in addition to the previous diagnoses and conditions, Dr. Mazoue stated that Mr. Tucker most likely had sustained a brachial plexus injury and possibly cervical spine pathology and recommended electro-diagnostic studies. The claim specifically requested authorization for the recommended medical care. (R., pp.

51-52).

As is set out in the Record, both before and after filing the claim for a change of condition, the Claimant through his Counsel contacted prior Defense Counsel (hereinafter Ms. Alphin) first on March 18, 2013 and then a second request was made on April 8, 2013 requesting specifically:

"I would appreciate your thoughts on this case and would appreciate it if you would get with the State Accident Fund and see how they want to proceed." (R., pp. 138-141).

Thereafter at the direction of Ms. Alphin, Counsel for the Claimant on May 2, 2013, in addition to serving the adjuster with the claim, wrote the assigned claims adjuster, Ms. Robin Oxner-King, requesting medical care. Again on July 26, 2013 in writing, Claimant's Counsel contacted the assigned adjuster, at the direction of Ms. Alphin, and again requested the medical care as found to be necessary pursuant to the medical reports already provided to the Defendants since March of 2013. (R., pp. 136-137).

Thereafter, Mr. Tucker made repeated requests for authorization for medical care or as to how the Defendants wanted to proceed. There was no reply and there is no evidence in the Record of any reply to those requests or communications, as required by Regulation, denying,

accepting or offering any further medical care. There being no reply, on July 30, 2014 the Claimant filed for a hearing on the change of condition claim previously filed on May 2, 2013 requesting the medical care, evaluations and treatment, that was being provided at that time by Dr. Christopher Mazoue and previously by an authorized treating physician, Dr. Quaye, and requesting temporary total weekly compensation as determined by the Commission to be due, and paid until maximum medical improvement. The Request for Hearing requested a hearing on the bases of both a, "**change of condition and undiagnosed condition**". (R., p. 58).

A responsive Form 51 was filed on August 20, 2014 which set out as to the reasons for denial: "Defendants deny the Claimant has sustained a change of condition for the worse." On the Form 51, "Employer's Answer to Request for Hearing", question #11: "Further contentions, grounds of defense, or unusual aspects:" was left blank. In other words, no other defenses were listed. (R., p. 62).

(Emphasis added).

Subsequent to the Request for Hearing and the responsive Form 51, this matter came to be heard on October 21, 2014. In his Pre-Hearing Brief, Mr. Tucker specifically noted he was filing both a change of condition and an undiagnosed condition claim. On October 10, 2014,

the Defendants filed their Form 58 Pre-Hearing Brief and for the first time alleged a defense of, "whether the claimant timely filed a hearing request for change of condition".

At the hearing, the Defendants asserted the position that the Claimant must both file a claim and file for a hearing within twelve (12) months after the payment of compensation and the Claimant stated his position that only a "claim" needs to be filed within twelve (12) months and cited as authority, Allen v. Benson Outdoor Advertising Co., 236 S.C. 22, 112 S.E.2d 722 (1960).

Subsequent to the hearing on February 18, 2015, the Commissioner issued his notes for a proposed Order and on March 27, 2015 a proposed Order was forwarded to Counsel for the Claimant. On March 27, 2015, Claimant's Counsel filed both a request for additional time to review and a Request for Reconsideration before formal Order: 1) noting specifically that the Defendants had not raised the affirmative defense that the request for a change of condition had not been timely filed; 2) requesting the application of existing case law and requesting a liberal construction of the Act as the Commission is required to do; and 3) requesting a reversal and remand for a de novo hearing based on the violation of the Claimant's due

process rights for failure to give him notice of the issues to be heard at the hearing.

The Hearing Commissioner issued an Order on April 1, 2015. Immediately upon receipt of the signed Order on April 1st, Claimant's Counsel objected to the Order and specifically to the Statement of the Case and Defense Counsel's failure to include any reference in the Statement to the application (the claim) for a Change of Condition that had been filed on May 2, 2013. He specifically objected to the failure of Defense Counsel to refer to his numerous requests for medical care and his attempts to determine the position of the Defendants in reference to the application for a Change of Condition that had occurred between the filing of the "claim" and the date that the Claimant "requested a hearing" on the claim/application for a Change of Condition. He also objected to the inclusion of legal authority not referred to during argument by either party and to the inclusion of a Statement of Evidence of the Case presented at hearing since the Hearing Commissioner's decision was based only on the affirmative defense. Finally, the Claimant specifically objected to the failure to include any reference to established precedent that holds that a challenge or defense to timeliness based on a filing of a Change of Condition is an

affirmative defense under the Regulations and law that must be pled. An Amended Order was then filed on April 14, 2015. The revised Order struck the Evidence of the Case section; however, the legal precedents not referred to by either Counsel at argument before the Commissioner were still included in the Order and the Order made no reference to whether or not a defense based on timeliness of the filing of Change of Condition is an affirmative defense.

Thereafter the Request for Review by the Full Commission proceeded in the normal course of procedure and an Order affirming the Hearing Commissioner was issued.

The Claimant then filed a Request for Rehearing or Reconsideration as to the Decision of the Full Commission. In that Request for Rehearing, the Claimant specifically noted all of the various law and statutes and Regulations that require the Commission to address all of the issues that are presented to it for review. The Claimant specifically noted that the Claimant had raised seven (7) Grounds for Review before the Full Commission, six (6) of which specifically involved errors of law by the Single Commissioner and specifically that the Commission had failed to note and comply with the Regulations and statutory law that requires Finding of Fact and Conclusions of Law to be made by the Commission on each material issue

raised. There was simply no decision made on the Claimant's legal errors by the Full Commission.

Further in reference to the actual Decision made and entered, the Motion that was before the Commission was a Motion/Petition for Rehearing but the Motion was not heard and decided by the original Hearing Panel but was submitted to and a decision on it was made by the Judicial Conference Committee and consisted of a one-page Form Order not denying the Motion for Rehearing but dismissing the Motion for Rehearing. All seven (7) Commissioners including the original Hearing Commissioner are listed as having concurred in that Decision.

ARGUMENTS

- I. WHERE THE RECORD ESTABLISHES THAT THE CLAIMANT FILED A CLAIM AND APPLICATION FOR A CHANGE OF CONDITION WITH THE COMMISSION WITHIN ONE (1) YEAR OF THE DATE OF THE LAST PAYMENT OF COMPENSATION (LESS THAN SIX (6) MONTHS) AS REQUIRED BY THE ACT, THE COMMISSION ERRED AS A MATTER OF LAW BY DENYING THE CLAIMANT'S APPLICATION FOR A CHANGE OF CONDITION ON THE BASIS THAT A REQUEST FOR HEARING ON THE CHANGE OF CONDITION WAS NOT TIMELY FILED.

The Defendants do not question that the, "claim" for a change of condition was timely filed but that under their interpretation of the law, not only must a claim be filed but a hearing must be requested. Neither the Statute nor the Commission Rules, nor the prior interpretation of the

Statute by the Supreme Court and Court of Appeals require or support this interruption. The filing of a claim is all that is necessary and the Commission's decision to the contrary is contrary to the law.

The Commission's authority is derived "strictly" from the Act and its provisions which are in derogation of the common law. Price v. Peachtree Electrical Services, Inc., 396 S.C. 403, 721 S.E.2d 461 (SC App. 2011), aff. modified 405 S.C. 455, 748 S.E.2d 229. The Commission must liberally construe the Act in favor of benefits and coverage in order to serve the beneficial purposes of the Act. James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730, reh. den. (2010). This liberal interpretation principle of the wording of the Act in favor of benefits to the injured worker wherein the,

"workers' compensation law must be resolved in favor of the claimants, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed towards the end of providing coverage, rather than non-coverage,"

must be applied. Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). Contrary to the statement made during oral argument by a Commissioner, this liberal interpretation is required to be applied by the Commission to all aspects of the Act including any interpretation of

the wording in reference to benefits and any other provisions of the Act. This concept and the application of this fundamental construction principle which is required to be applied by the Commission is nowhere referenced in the Full Commission Order. Further, the Supreme Court has cautioned the Commission that the Act is required to be, "liberally" construed in favor of benefits and not, "literally" or narrowly construed to deny benefits. Hamm v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940).

In addition to the requirement that the Commission must liberally interpret the Act in favor of benefits to the injured worker and the previous Supreme Court decisions interpreting the law in reference to the various time limitations for filing any type of a claim with the Commission, the Commission has adopted Regulations to implement the provisions of the Act.

Regulation 67-206 deals with the filing of any type of, "claim" with the Commission and specifically does not require that a request for hearing be filed at the same time that a claim is filed and the Rule basically allows for a bifurcated process. Note: that Regulation also requires that the employer's representative upon the filing of any type of a claim, "shall immediately contact the

claimant" in regard to the claim.

The Commission has adopted separate and distinct Regulations concerning when matters will be set for hearing. In addition to the provisions of the Act and the APA concerning the requirement that there must be issue(s) in controversy or in other words, a, "contested case" for a hearing to be set, Regulation 67-601(B) specifically provides that a hearing will not be set until a conflict arises. Regulation 67-602 deals with the setting of hearings and subsection (C) specifically refers to the setting of a hearing on,

"a claim involving a change of condition . .
."

Therefore, not only are the filing of, "claims" and "requests for hearing" dealt with under separate sections of the Regulations, but based on a clear reading of the Commission's own Regulations, there is no requirement that the request for a hearing must be filed on a change of condition within twelve (12) months; only that a "claim" must be filed. Under the Regulations, a "request for hearing" is separate and distinct from the filing of any, "claim".

The Commission is an Administrative Body that is charged with administering the Workers' Compensation Act

and has absolutely no authority to interpret the law except where the law has been interpreted by our Courts which the Commission must follow. The Commission must apply the plain and ordinary meaning of the Statutes, and is duty bound to interpret the law in reference to the best interest of the injured worker and under that principle must resolve any ambiguities in favor of the injured worker. In addition, while the Commission is given deference to the interpretation of the law and as to its Regulations, where the Commission's interpretation is contrary to the law, this is an error of law. The Commission has already interpreted the word, "application" to mean a "claim". Regulation 67-206(B); 67-602(C); and the Commissioner's reinterpretation or contrary interpretation is an error of law. An Agency's interpretation of its own Regulation that is contrary to that Regulation's plain language is an error of law. Brown v. SC Dept. of Health and Environmental Control, 348 S.C. 507, 560 S.E.2d 410 (2002). In this case, there is no Statute, Regulation or Supreme Court decision interpreting the word "application" to mean anything other than filing of a claim.

When one adds to this the Supreme Court's specific holding in Allen, supra, (wherein the Court specifically held that the hearing does not have to be held within the

one year, only that the application for review must be filed within one (1) year), under any interpretation of the Statute, the Commission's Regulations and the previous rulings of the Supreme Court and Court of Appeals the filing of a request for hearing is separate from the required filing of a claim to toll the statute. Quoting from Allen:

"Appellants (the insurance carrier in that case) say that the forgoing statutory limitations 'is directed to the Industrial Commission rather than to the parties to the action', and that it is not sufficient for the application for review to be made within one year after the last payment of compensation but the application must be heard by the Commission within that period."

* * *

"We do not agree with Appellant's view. It represents a literal and strict construction of §72-359 when under the well settled Rule a liberal construction is required. To sustain Appellant's contention would lead to a rather unreasonable result clearly not within the intent of a Legislature".

Quoting further from the Allen decision:

"In Wilkes v. State Compensation Commissioner, supra, the Court said [120 W.Va. 424, 198 S.E. 871]:

"The filing of a claim for further compensation within the Statutory period and partial but not complete development thereof within such period, with loss of jurisdiction by the Commission during the

progress of the case, would be an absurd result which the Legislature certainly did not have in mind and we feel warranted in holding that the Statute in question should be given a construction which permits the Commissioner to hear and pass upon any application in writing for a further adjustment of a claim, if filed within a statutory period applicable to the nature of the claim filed." (Emphasis added).

The Defendants interpretation would also result in unnecessary litigation, discourage resolution of issues, and add a requirement to the Act not within its clear meaning. Therefore, under the statute the Commission's Regulations, and the interpretation of that Statute by the Supreme Court and Court of Appeals, the Commission erred by interpreting the Statute and Regulations to require that the Claimant has to, in addition to filing a claim timely, request a hearing on that claim within the 12-month period. The decision must be reversed and this case remanded for a de novo hearing.

II. WHERE THE DEFENSE THAT THE CLAIM WAS NOT TIMELY FILED IS AN AFFIRMATIVE DEFENSE THAT MUST BE PLED AND IT WAS NOT PLED, THE COMMISSION ERRED AS A MATTER OF LAW BY DENYING THE CLAIM FOR A CHANGE OF CONDITION BASED ON THE AFFIRMATIVE DEFENSE THAT THE CLAIMANT DID NOT TIMELY FILE FOR A HEARING FOR A CHANGE OF CONDITION WITHIN 12 MONTHS OF THE LAST PAYMENT OF COMPENSATION.

As noted in the Statement of the Case, in the responsive Form 51 filed to the Claimant's request for a hearing, the Defendants did not raise any affirmative

defense and specifically the defense that the Claimant was time barred under SC Code §42-17-90. (R., p. 62).

Commission Reg. 67-603(B) specifically provides that the Form 51 must be filed within 30 days and that,

"the employer's attorney shall fully state his position and defenses, if any, replying to each specification in the Form 50".

Under subsection (C) where a Defendant fails to do this and fails to place the Claimant on notice of certain affirmative defenses, those defenses not pled are forfeited. Subsection (C) states in pertinent part:

"shall forfeit each special and affirmative defense allowed by the Act including the Defenses available in §42-9-60, §42-15-20, §42-15-40 and §42-17-90 of the Act."
(Emphasis added).

The Supreme Court specifically ruled in Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 846 (1967) that such defenses not pled are waived; citing to 100 C.J.S. Workers' Compensation Section 500 that,

"An objection that the claim for compensation was not made or filed in the requisite time must be raised by the pleadings before the hearing."

Chapman further recognized the authority of the Commission to adopt Rules and Regulations implementing the provisions of the Act. In the case of Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (SC App. 1984),

this Court reaffirmed the holding in Chapman that affirmative defenses must be pled in the responsive Form 51 (the Defendants' pleading) or they are waived.

Since the Defendants did not raise in its pleading the affirmative defense in this case that the change of condition was not timely filed under §42-17-90, it was waived. The Decision of the Commission must be reversed and this matter remanded for a de novo hearing.

III. THE COMMISSION ERRED AS A MATTER OF LAW BY DENYING THE CLAIMANT'S APPLICATION FOR A CHANGE OF CONDITION ON THE BASIS IT WAS NOT TIMELY FILED WHERE THE DEFENDANTS ARE ESTOPPED FROM ALLEGING THIS DEFENSE UNDER THE FACTS OF THIS CASE.

In this case, on March 18, 2013, six (6) weeks before the Claimant filed a claim for a change of condition on May 2, 2013, Counsel for the Claimant forwarded a copy of the medical report establishing a change of condition to Counsel for the Defendants and requested that Defense Counsel get in touch with the State Accident Fund and see how they wanted to proceed with a repeat, follow-up second request being sent on April 8, 2013. Then simultaneously with the filing of the claim on May 2nd, and at the direction of Defense Counsel, Ms. Alphin, the adjuster for the State Accident Fund was contacted concerning the medical reports (at that point involving two medical reports; one stating the Claimant had undergone a change of

condition), and was specifically asked as to how the Defendants wanted to proceed concerning the request for medical care. Thereafter as is specifically reflected in the Record on July 26, 2013 the Claimant again contacted the adjuster assigned to the file stating that Ms. Alphin had advised that she had closed her file and that she had not yet been retained on the change of condition and that again she had instructed Counsel to contact the adjuster. Claimant's Counsel expressed the feeling that possibly he had not been contacted before concerning the request for additional medical care by the adjuster because he had, "sent a copy to her (Ms. Alphin) and you". Counsel requested that the adjuster, "please let us know whether you accept the change of condition and will authorize treatment so we can get this man treated." Between the filing of the claim on 5/2/13 and the hearing request on 7/30/14, there is simply no evidence in the Record that the Claimant was ever advised whether the claim was being accepted or being denied.

What the Record clearly establishes is that Ms. Alphin who represented the Defendants on the initial claim and who advised the Claimant multiple times to contact the adjuster concerning obtaining medical care, and who knowing the Form 51 had not raised the defense, then raised the issue of an

untimely hearing request for the first time at the hearing. (Again there is no evidence in the Record reflecting any denial or position in any way denying the claim or any evidence at all that the Claimant was advised that they were rejecting the change of condition.)

The State Accident Fund was served with the May 2, 2013 claim and Commission Reg. 67-206 in reference to any, "claim" that is filed provides under subsection (E) that upon notice to the employer's representative of the filing of a claim that:

"The employer's representative shall immediately contact the Claimant."

There was no required contact by the adjuster.

Assuming for the point of argument that the 12-month limitation under §42-17-90 requires not only the filing of a claim but a request for hearing, the Supreme Court and Court of Appeals have both held that the Defendants may be deemed to have waived and/or be estopped from asserting such a defense based on their actions. Chapman v. Foremost Dairies, Inc., supra; Lovell v. C.A. Timbes, Inc., 263 S.C. 384, 210 S.E.2d 610 (1974); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (S.C. App. 1984). Under the doctrine of estoppel, for estoppel to apply the essential elements are that:

1. The party asserting estoppel lacks knowledge and/or the means of knowledge of the truth as to the facts in question;

2. Relies upon the conduct of the party estopped; and

3. Any action taken by the party alleging estoppel is based upon that action and that his action is of such character as to change his position prejudicially. It is the essence of equitable estoppel that the party entitled to invoke the principle, "shall have been misled to his injury".

As to the doctrine of waiver, while equitable estoppel and waiver are distinct propositions and principles of law, in many cases they may be indistinguishable. Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007). However, waiver is the voluntary and intentional relinquishment of a known right and may be expressed or implied from a party's conduct and may be applied to bar a statute of limitations defense. Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (1991). Our Courts have specifically held in reference to a statute of limitations defense, as we have here, that waiver of the right to allege or claim the defense may result from either express agreement,

"or by an action or inaction manifestly inconsistent with an intention to insist on the statute"

being applied. Mende v. Conway Hospital, Inc., 304 S.C. 313, 404 S.E.2d 33 (1991). (Emphasis added).

In this case, there is no question that the claim for a change of condition was timely filed. The evidence establishes that thereafter the Defendants did not contact the Claimant as required by Regulation concerning the claim for a change of condition. Also, the evidence establishes that the Claimant repeatedly contacted both Ms. Alphin (who ultimately became the Defense Counsel that tried this case and who belatedly raised this issue) and the adjuster to try to obtain medical care. Most importantly like Mende, supra, Ms. Alphin, instructed the Claimant to contact the adjuster about medical care which is totally inconsistent with the intention to assert the twelve (12) month statute of limitations. The evidence is uncontested that at no time up until ten (10) days before the date of the hearing did the Defendants ever notify the Claimant that they would take any position other than that the Claimant had not established that he had undergone a change of condition for the worse. The Defendants then for the first time, and again not even in their Form 51, but ten (10) days before the hearing alleged a legal argument that they were

interpreting the law to require both the filing of a claim and a request for hearing. Therefore, where the Defendants: did not raise this legal issue at the time of filing the claim or at any time during the twelve (12) months when medical care was being requested and even up to and including in their Form 51 pleadings; and where they did not ever contact the Claimant per Regulation after notice and did not take or give any indication by their conduct that they would take this position within the one (1) year of the payment of compensation, the Defendants should be estopped from asserting and should be deemed to have waived this defense, especially in light of the guiding principle of the Workers' Compensation Act in that all provisions of the Act and the Regulations must be read and applied on the basis of a liberal interpretation in favor of benefits to the injured worker.

IV. THE COMMISSION ERRED AS A MATTER OF LAW BY NOT SUBMITTING THE MOTION AND PETITION FOR REHEARING TO THE APPELLATE PANEL THAT ISSUED THE INITIAL DECISION AND BY NOT MAKING DETAILED FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY LAW ON ALL OF THE ESSENTIAL ISSUES PRESENTED TO IT FOR DECISION.

The initial Decision in this matter based on a Request for Review filed with the Full Commission was entered by a Three-Commissioner Panel appointed by the Chairman of the Commission with the consent of a majority of the other

Commissioners. Our Appellate Courts have held that under the Administrative Procedures Act, SC Code §1-23-380 as specifically affirmed in the case of Rhame v. Charleston County School District, 412 S.C. 273, 772 S.E.2d 159 (2015), the Claimant has a specific right to request rehearing of that decision. As noted, this was a Petition for Rehearing and was addressed to the Commission as such but in this circumstance in actuality it was being addressed to the Three-Member Panel that made the initial decision on behalf of the Full Commission pursuant to law. However, instead of being heard by that same Three-Member Panel, the Motion was submitted to what is referred to as a Judicial Conference wherein all seven (7) Commissioners apparently voted on the Motion including the original Hearing Commissioner whose Decision had been appealed. The actual final Decision of the Commission on the Motion did not deny the Motion but in fact, "dismissed" the Motion. Therefore, from a procedural standpoint, the Commission did not properly handle the Motion for Rehearing, did not submit it to the Panel that originally heard this matter, and did not take an appropriate action on the Motion, meaning that they did not either grant or deny the Motion, but instead dismissed the Motion.

Next, in the Petition for Rehearing the Claimant reiterated that in the Request for Review by the Full Commission, the Claimant had raised seven (7) specific issues to be addressed, six (6) of which were specific errors of law that were alleged to have been committed by the Hearing Commissioner. As set forth in that Petition and as the Court is aware, both the Commission's Regulations and several statutes, including SC Code §42-17-40, §1-23-350 and §1-23-340 all require that the Commission make specific findings of fact and rulings of law on all of the questions or essential issues raised before the Commission for decision.

In addition, our Appellate Courts have repeatedly held that the Commission is required to make detailed Findings of Fact and Conclusions of Law on each contested and essential issue of fact and on each issue of law that is presented to it for decision and it is specifically an error of law for the Commission not to make a decision on each specific issue of law or fact which is presented to it for decision. See specifically: Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962); Hill v. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970); etc.

As noted from the other three arguments made in this case and as noted from the Decision of the Commission, the

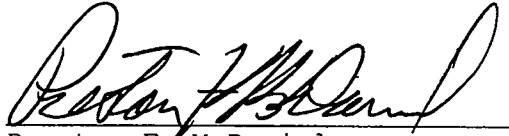
Decision of the Hearing Commissioner was based specifically on legal issues and the Commission was duty bound to rule on those specific legal issues and errors of law that were alleged and upon which review was requested. The Commission did not address whether or not the Defendants had failed to raise the affirmative defense that served as the basis for decision; the Full Commission did not address whether or not the concepts and legal doctrines of estoppel and/or waiver applied; and the Commission did not address our Appellate Courts' determinations on the application of the law and the meaning of the law and its decisions as to the actual wording of the statute applying the concept of a liberal interpretation in favor of benefits to the injured worker, all of which the Commission is required to do under law.

The Commission erred procedurally in the way it handled the Motion for Rehearing and in addition, erred by not making detailed Findings of Fact and Conclusions of Law on the essential issues of law and fact that were presented to it for decision. This requires reversal of the decision.

CONCLUSION

For all the foregoing reasons, the Decision of the Commission should be reversed and remanded to the Commission for a hearing on the claim for a change of condition and for an undiagnosed condition.

Respectfully submitted,



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June 27, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No.: 2015-002575

RECEIVED

JUN 27 2016

SC Court of Appeals

Johnny Tucker, Employee, ... Appellant,

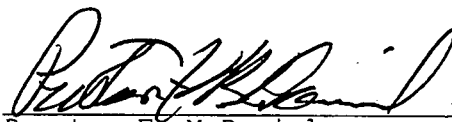
v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant
complies with Rule 211(b), SCACR.

Dated: June 27, 2016



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No.: 2015-002575

RECEIVED

JUL 12 2016
SC Court of Appeals

Johnny Tucker, Employee.....Appellant,

v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier.....Respondents.

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Commission correctly ruled Appellant failed to timely file a change of condition due to Appellant's failure to request a hearing within twelve months from date of last payment of compensation as statutorily mandated by S.C. Code Ann. §42-19-90.
- II. Whether the Commission correctly denied the Appellant's request for a change of condition due to Appellant's failure to request a hearing for a change of condition within twelve months of the last payment of compensation.
- III. Whether the Commission correctly ruled Respondents were not barred by estoppel from raising Appellant's failure to timely file a change of condition as a defense.
- IV. Whether the Commission properly denied Appellant's request for rehearing within the Commission's discretion.

STATEMENT OF THE CASE

Appellant sustained an admitted injury to his left shoulder, specifically a left scapula fracture, on May 2, 2011. (R. p. 144). As a result of this injury, Appellant was awarded permanent partial disability compensation by the Workers' Compensation Commission and received such compensation from Respondents on November 28, 2012. (R. pp. 14, 48-49). On May 2, 2013, Appellant filed a Form 50 Notice of Claim alleging Appellant sustained a change in condition. (R. p. 50). On July 30, 2014, Appellant filed a Form 50 Request for Hearing seeking additional medical treatment and temporary total disability for a change of condition from the injury sustained on May 2, 2011. (R. pp. 58-60). On August 20, 2014, Respondents timely filed a Form 51 Answer to Request for Hearing denying Appellant's change of condition for the worse. (R. p. 62). Respondents timely filed their Pre-Hearing Brief alleging Appellants failed to timely file his Request for Hearing for change of condition. (R. pp. 144-145).

On October 21, 2014, the Single Commissioner held a hearing in Hartsville, South Carolina. (R. p. 63). Arguments were presented by both parties on the issues of whether Appellant is entitled to medical treatment from a change of condition. Respondents maintained that Appellant's Form 50 Request for Hearing was filed more than twelve months from the date of last payment of compensation, and therefore, Appellant's request for a change of condition was not timely and the Commission had no jurisdiction over the same. (R. pp. 226, line 18-p.228, line 6). Appellant argued he filed a Form 50 Notice of Claim within twelve months after last payment of compensation, and therefore, his change of condition request is timely. (Id.)

The Single Commissioner found that Appellant failed to file for a change of condition for the worse within the statutorily required time period because the filing of a Form 50 Notice of Claim was not a sufficient “application” within the meaning of S.C. Code Ann. §42-17-90. (R. pp. 30-32). The Single Commissioner found that “application” within the meaning of the statute required the Appellant to request the Commission take some action as opposed to simply giving the Commission notice of a claim. (Id.)

On April 21, 2015, Appellant filed a Form 30 Request for Commission Review. (R. pp. 174-176). Appellant filed a Brief with the Full Commission, (R. pp. 177-191) and Respondents filed a responsive Brief. (R. pp. 192-199). On July, 21, 2015, a Full Commission Hearing was held on Appellant’s Form 30 Request for Commission Review. (R. pp. 276-294). On September 11, 2015, the Full Commission affirmed the Single Commissioner’s ruling in full. (R. pp. 34-46). On October 8, 2015, Appellant filed a Request for Rehearing, (R. pp. 201-209) and on October 16, 2015, Respondents filed a response. (R. pp. 211-214). On November 16, 2015, the Commission dismissed Appellant’s Motion for Rehearing. (R. pp. 47).

On December 16, 2015, Appellant filed his Notice of Intent to Appeal. (R. pp. 218-222). This appeal follows.

STATEMENT OF THE FACTS

Appellant sustained a left shoulder injury on May 2, 2011 and was awarded permanent partial disability benefits for the same by the Commission. (R. pp. 1-15). Appellant received the last payment of compensation of his workers’ compensation benefits on November 28, 2012. (R. pp. 48-49). On May 2, 2013, Appellant filed a Form 50 Notice of Claim alleging a change of condition. (R. pp. 51-56). Appellant specifically

marked Box 13a. indicating that he was not requesting a hearing at that time. (R. p. 51). Nearly fifteen months later, on July 30, 2014, Appellant filed a Form 50 Request for Hearing alleging a change of condition. (R. pp. 58-60). Respondents timely filed a Form 51 Answer to Request for Hearing denying that Appellant had sustained a change of condition for the worse. (R. p. 62).

A hearing was held on October 21, 2014. (R. p. 223). Prior to the hearing, Respondents timely filed their Pre-Hearing Brief noting that one of the facts in controversy is "whether the Claimant timely filed Hearing request for change of condition." (R. pp. 144-145). Furthermore, Respondents amended their Form 51 by way of the Pre-Hearing Brief to assert that Appellant failed to request Commission review of the change of condition within the required time period. (R. p. 145). Appellant never raised an objection prior to or during the hearing to Respondents' assertion that Appellant's alleged change of condition was not timely. (R. pp. 223-275). The Single Commissioner determined that pursuant to S.C. Code Ann. §42-17-90, an application for review of change of condition requires a hearing request to be made within twelve months from the date of last payment of compensation. (R. pp. 21-24). On September 11, 2015, the Appellate Panel affirmed the Single Commissioner's ruling in full and ordered that Appellant did not timely file for a change of condition. (R. pp. 34-46).

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The South Carolina Administrative Procedures Act, S.C. Code Ann.

§1-23-380(5)(1976), establishes the “substantial evidence” rule as the standard for judicial review of a decision of the Commission:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the administrative agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (d) affected by other error of law; [or]
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

An appellate court, in workers’ compensation appeals, may overturn a conclusion of the Workers’ Compensation Commission if that conclusion is “clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

The test is whether the decision of the Commission is supported by substantial evidence. 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 in order to justify its action.

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

Therefore, an appellate court may overturn findings of fact of the Commission if there is no reasonable probability that the facts could be as related by the witnesses upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Further, an award cannot be based on surmise, conjecture, or speculation. Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); *see also*, McDowell v. Stilley Plywood Co., 210

S.C. 173, 41 S.E.2d 872 (1947) (holding testimony that is based on surmise, conjecture, and speculation has no probative value). While a finding of fact of the Commission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation; instead, it must be founded on evidence of sufficient substance to afford a reasonable basis for it. Edwards v. Pettit Constr. Co., 273 S.C. 576, 257 S.E.2d 754 (1979).

ARGUMENT

- I. **The Commission correctly ruled Appellant failed to timely file a change of condition due to Appellant's failure to request a hearing within twelve months from date of last payment of compensation as statutorily mandated by S.C. Code Ann. §42-17-90.**

South Carolina Code Ann. §42-17-90 addresses a claimant's right to seek Commission review of an award on a change of condition. In order prevail on a change of condition, a claimant must: (1) make an application on the ground of a change in condition; (2) prove by a preponderance of the evidence that there has been a change of condition after last payment of compensation; and (3) review must not be made after twelve months from date of last payment of compensation. S.C. Code Ann. §42-17-90. The law specifically dictates the time within which a change of condition claim must be asserted, stating "the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award by this title." (Id.) The South Carolina Supreme Court interpreted this language to mean an application for review must be made within one year after the last payment of compensation. Allen v. Benson Outdoor Advertising Co., 236 S.C. 22, 112 S.E.2d 722 (1960). Based on the holding in Allen, S.C. Code Ann. §42-17-90 establishes a one year statutory requirement for filing a

request for hearing on a change of condition and allowing hearing requests to be filed after this established statutory period violates the statute.

- A. **The plain language of S.C. Code Ann. § 42-17-90(A) indicates that a claimant must file a Request for a Hearing on the ground of a change of condition within twelve months from the date of the last payment of compensation.**

Appellant failed to make an application for review on the ground of change of condition within twelve months from last payment of compensation, and therefore, he cannot meet the statutory requirements of S.C. Code Ann. §42-17-90. The canons of statutory construction dictate that unless the language of a statute is ambiguous, the court's analysis should rest on the ordinary meaning of the statutory language as it is written. Strickland v. Strickland, 375 S.C. 76, 88, 650 S.E.2d 465, 472 (2007). Therefore, the first step in this case is to determine if the plain meaning of the language in S.C. Code Ann. §42-17-90(A) is clear. Section 42-17-90(A) states in pertinent part:

On its own motion or on the application of a party in interest on the ground of a change in condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. . . . The review does not affect the award as regards any monies paid and the review **must not be made after twelve months from the date of the last payment of compensation** pursuant to an award provided by this title.

(emphasis added).

-----The word "application" signifies that a claimant must petition the Commission to
take action. Indeed, Black's Law Dictionary defines the term application to mean a

“request or petition.” Black’s Law Dictionary 108 (8th ed. 2004). Similarly, a motion is defined as a written or oral application requesting a court to make a specified ruling or order. Id. at 1036. Taking the words in the statute together, “motion” and “application” can be used interchangeably and both mandate an affirmative request be made. Thus, the statute is clear that in order for a claimant to seek the Commission’s review of a previous award based on a change of condition, he must request a hearing on the matter. The Commission lacks jurisdiction over an alleged change of condition if a hearing is not requested within twelve months after payment of last compensation.

Appellant argues that filing notice of a claim for change of condition is sufficient to satisfy S.C. Code Ann. §42-17-90. However, simply filing a notice of claim is not a request or petition and in no way is a request for the Commission to take action. To accept Appellant’s position would be to ignore the plain language of the statute that mandates making an application to the Commission for review.

Moreover, the South Carolina Supreme Court has stated that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). “The text of a statute as drafted by the legislature is considered the best evidence of the legislative intent or will.” Id. It is clear that the legislature specifically included the one year application requirement in S.C. Code Ann. §42-17-90 to allow claims to reach resolution and prevent prejudice to employers and insurance carriers alike. Conversely, Appellant’s proposed interpretation of the statute would incentivize claimants to file a “Notice of Claim” to toll the one year statutory requirement for a change in condition

even if they had not yet experienced a worsening of condition. They could then, at any point in the future, file a request for hearing and be awarded benefits.

Appellant's proposed interpretation would effectively nullify the one year statutory filing requirement and would be in complete dereliction to the legislature's intent. It is inconceivable that the legislature included the twelve month application period merely to test claimants' acumen for filing paperwork. Appellant's argument asks this Court to interpret the plain and ordinary meaning of a time limit in a way that would render such time limit meaningless. Accepting Appellant's argument would allow claimants to file meaningless claim notices to meet a time requirement and then sit idle for years to come before asking the Commission to take some action. The legislature did not intend claimants to circumvent the clear time period in such a way, as evidenced by the fact that there is a time period at all.

The controlling statute for a change of condition is not ambiguous. A claimant must make an application, by requesting a hearing, on the grounds of a change of condition within one year of the last payment of compensation. The legislative intent is clear. The legislature purposely chose the language in the statute to restrict claimants from seeking additional benefits years after the adjudication of the original claim.

Appellant makes the blanket assertion that "there is no statute, Regulation or Supreme Court decision interpreting the word 'application' to mean anything other than filing of a claim." (Appellant's Final Br. 13.) However, Appellant cites no controlling authority supporting this broad and inaccurate conclusion. Appellant purports to rely on Allen to establish that the Commission should use a liberal construction of the statute to allow for the Commission's review of the claim. Though the Court in Allen did apply a

liberal construction to the change of condition statute, it did so to prevent a timely and properly submitted hearing request for a change of condition from being time barred under the statute where the Commission itself did not hear the claim within a one year period. 236 at 30, 112 S.E.2d at 726. Allen prevents injured workers from being penalized for timing and scheduling factors out of their control once their request for hearing has been properly submitted to the Commission. This rationale does not apply to the facts at hand as Appellant is not being penalized by scheduled factors out of his control. Appellant simply did not request a hearing within the statutorily required period.

Additionally, Appellant quotes the Allen decision and emphasizes the word "claim" in support of the notion that filing a "claim only" is akin to applying for a hearing. (Appellant's Final Br. 14-15.) The quote is from a West Virginia case and was used by the Court in Allen to support its holding that the claimant should not be penalized for external factors. 236 S.C. at 30, 112 S.E.2d at 726. The Court did not quote West Virginia's holding to establish that filing a "Notice of Claim" meets the statutory requirements of S.C. Code Ann. §42-17-90. In fact, this was never an issue in Allen as the claimant in that case, unlike the case at hand, timely filed an application for a hearing.

Lastly, the court is to give deference to an administrative agency's interpretation of an applicable statute and its own regulations. Brown v. South Carolina Dep't Health and Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410 (2002). Procedurally, the Single Commissioner found in Respondents favor interpreting S.C. Code Ann. §42-17-90 to mean that an "application" requires the Appellant to request the Commission to take some action as opposed to simply providing the Commission notice of a claim. (R. pp.

25-33). This decision was subsequently affirmed by the Workers' Compensation Appellate Panel. (R. pp. 34-46).

B. SC Workers' Compensation Commission Regulations support the Commission's determination that the claim for a change of condition is only properly established through the filing of a Request for a Hearing.

In an effort to circumvent the plain language of S.C. Code Ann. §42-17-90, Appellant attempts to identify inconsistencies in the Regulations of the Act to bolster his argument that the word "application" means anything other than a request for a hearing. Appellant argues that S.C. Reg. 67-206 and 67-207 "basically" allows for a bifurcated process in which he can simply file a claim with the Commission on a change of condition without requesting a hearing at the same time. (Appellant's Final Br. 11.) However, S.C. Reg. 67-206 and 67-207 only detail the required information and filing instructions for completing forms, including a hearing request and a notice of claim. The regulations do not purport to establish the sufficiency of any form to comply with the requirements of any statute, recommend the merits or usage of any form, or create a bifurcated system under any statute.

Appellant continues his crusade to evade the plain meaning of S.C. Code Ann. §42-17-90 by quoting a portion of S.C. Reg. 67-602(c) as proof that the Workers' Compensation Act allows for filing a "claim only" for a change of condition and that this is somehow separate and apart from filing a hearing request on the grounds of change of condition. (Appellant's Final Br. 12.) In doing so, he conveniently omits the remaining language of the Regulation. S.C. Reg. 67-602(c) states that "[i]n a claim involving a change of condition, the moving party must attach to the *hearing request form* a medical report(s) indicating a change in condition." (*emphasis added*). S.C. Reg. 67-207(B) states

that filing a Form 50 Request for a Hearing simultaneously establishes a claim with the Commission. In other words, it is not a bifurcated process. Therefore, Appellant is correct in his assertion that S.C. Reg. 67-602 specifically refers to the requirements of setting a hearing on "a claim involving a change of condition," but he ignores that the establishment of that "claim" is only accomplished through filing a Form 50 Request for a Hearing.

II. . . . Respondents properly pled the defense that Appellant failed to make an application for a change of condition within twelve months from the date of last payment of compensation.

As set forth above, Appellant does not meet the statutory requirements of S.C. Code Ann. §42-17-90. It is inherent that if Appellant did not meet all the requirements, then he did not sustain a change of condition for the worse under the law. Respondents assert the inquiry ends there as failure to meet the requirements bars Appellant from receiving any further benefits and deprives the Commission of jurisdiction. However, in another attempt to circumvent the entire meaning and purpose of the law, Appellant asserts that Respondents are barred from arguing that Appellant cannot meet the requirements of S.C. Code Ann. §42-17-90.

Appellant argues that Respondents are barred from asserting Appellant's request for a hearing for a change of condition was untimely because Respondents did not raise this defense in their Form 51 response. Notably, Appellant never even raised this argument at the Single Commissioner Hearing. (R. pp. 223-275). As discussed above, this argument must fail because the one year filing period is not an affirmative defense to be pled but instead an express requirement of the statute itself. A claimant must comply with the time limitation requirements of the statute for the Commission to have

jurisdiction regardless of whether the defendants assert untimeliness as a defense. It is not Respondents' burden to detail how Appellant has failed to comport with the statute, and Appellant cites no authority otherwise.

Regardless, Respondents properly pled that Appellant did not sustain a change of condition for the worse. Respondents asserted in their Pre-Hearing Brief that Appellant did not timely make an application for review of a change of condition. (R. pp. 144-145). Respondents also specifically amended their Form 51 by way of the Pre-Hearing Brief and pled the defense that Appellant failed to request a hearing on a change of condition within one year. (R. p. 145). Therefore, Appellant's assertion that Respondents did not raise this defense in their Form 51 is inaccurate.

Appellant cites S.C. Reg. 67-603 as support for his argument and combines subsection B and C to create the proposition that where the defendants fail to reply to each specification in the Form 50, the defendants forfeit the corresponding defenses. (Appellant's Final Br. 15-17.) This is an inaccurate reading of the Regulation because subsection C specifically applies to defendants *failing* to file a Form 51. Reg. 67-603(C). The Regulation states that where no Form 51 is filed within the statutorily required period, the defendants shall forfeit each special and affirmative defense. (*Id.*) Subsection C is inapplicable to the case at hand because Respondents timely filed a Form 51 denying Appellant met the requirements of a change of condition under S.C. Code Ann. §42-17-90, giving Appellant notice of the denial.

III. Estoppel does not apply to bar the Respondents' assertion that Appellant failed to comply with the twelve month statutory filing requirement contained in S.C. Code Ann. §42-17-90.

The South Carolina Court of Appeals described the elements of estoppel as being divided between the estopped party and the party claiming the estoppel. Kelley v.

Kelley, 368 S.C. 602, 609, 629 S.E.2d 388, 392 (S.C. App., 2006) (citations omitted).

For Appellant's estoppel argument to succeed, Appellant must prove "1) conduct which amounts to a false representation, or conduct calculated to convey the impression that the facts are otherwise, 2) the intention that such conduct shall be acted upon by the other party, and 3) knowledge of the true facts." Id.

Appellant argues Respondents should be estopped from asserting Appellant's hearing request was untimely because "there is simply no evidence in the Record of the Appellant being advised as to whether the claim was being accepted or whether it was being denied." (Appellant's Final Br. 18 (emphasis removed).) Thus, by his own assertion, Appellant establishes estoppel does not apply in this matter because Respondents made no representation to Appellant on which he could justifiably rely in delaying his hearing application. Appellant cannot satisfy the elements for estoppel because Respondents gave Appellant no indication his claim was going to be accepted. Further, Respondents did not engage in conduct amounting to a misrepresentation or conduct calculated to convey the impression that the facts are otherwise. Additionally, Appellant cannot be said to have justifiably relied on the alleged silence of the Respondents for nearly fifteen months as a representation that Respondents intended to accept the change of condition claim such that the Appellant would reasonably believe he need not request a hearing.

IV. The Commission has discretion as to whether to entertain motions for rehearing, and therefore, the Commission properly dismissed Appellant's Motion for Rehearing within their discretion.

The South Carolina Supreme Court recently held that S.C. Code Ann. §1-23-380(1) affords claimants the right to petition the Workers' Compensation Appellate Panel

for a rehearing. Rhame v. Charleston County School Dist., 412 S.C. 273, 772 S.E.2d 159 (2015). The Court was presented with the issue of whether the Workers' Compensation Appellate Panel has the authority to entertain motions for rehearing. Id., 412 at 275, 772 at 160. The Court explained that the "plain and common sense interpretation [of §1-23-380(1)] envisions an expansive view of exhaustion of potential remedies before the agency and thus promotes judicial economy and avoids unnecessary appeals." Id., 412 at 277, 772 at 161. Therefore, the Supreme Court held in Rhame that the Appellate Panel of the Workers' Compensation Commission has the authority to entertain motions for rehearing. However, the Appellate Panel is not mandated to entertain such a motion for rehearing. Id. Appellant seems to confuse the discretionary authority granted to the Appellate Panel to rehear a case as a mandate to grant all motions for rehearing.

Appellant argued for rehearing on the basis that "review of the Commission Order will establish that the Commission did not address any of the specific legal issues and errors of law before it for review in its Full Commission Decision." (R. pp. 201-209). On August 4, 2015, the Full Commission issued a Request for a Proposed Order giving full affirmation to the findings of the Single Commissioner, and Respondents timely submitted the Proposed Order, which was then adopted, signed, and issued by the Commission. (R. pp. 34-46). The Workers' Compensation Commission properly acted within its authority to dismiss Appellant's petition for rehearing. A second review by the Appellate Panel of the sufficiency of its own procedures and its Findings that Appellant failed to timely exercise his rights would not have promoted judicial economy and prevented this appeal. Instead such rehearing on an issue of Appellant's neglect of his statutory rights would have been a misuse of the Commission's time.

Most importantly, the issue as to whether the Commission erred by not entertaining Appellant's Motion for Rehearing is moot as Appellant appealed this matter to this Court. There is no mandate that Appellant must be reheard by the Appellate Panel before appealing to the higher court. Rhame, 412 at 277, 772 at 161. Appellant was not prejudiced in any way, and in fact, if Appellant prevails on this Appeal the matter will be remanded back down to the Commission for adjudication in conformance with this Court's ruling. S.C. Code Ann. §1-23-380(5)(1976). This ground for Appellant's appeal has already been resolved through the filing of the Appeal itself.

CONCLUSION

S.C. Code Ann. §42-17-90 requires that a claimant make an "application" for review on a change of condition within twelve months from the date of payment of last compensation. The plain meaning of this statute and the word application means Appellant is required to make a request or petition of the Commission. Simply filing a notice of claim within twelve months of last payment of compensation does not satisfy S.C. Code §42-17-90 as a notice of claim is neither an application, request, nor petition for the Commission to take any action.

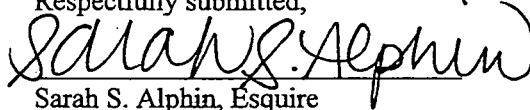
It is undisputed that Appellant's last payment of compensation was November 28, 2012. Appellant did not make an application, by way of a hearing request, to the Commission for a change of condition until July 30, 2014. This hearing request was filed more than twelve months after last payment of compensation, and therefore, Appellant fails to satisfy the requirements of S.C. Code Ann. §42-17-90.

Respondents properly pled that Appellant did not sustain a change of condition for the worse. Respondents asserted in their Pre-Hearing Brief that Appellant did not

timely make an application for review of a change of condition and specifically amended their Form 51 by way of the Pre-Hearing Brief to plead the same.

It is inherent that if the Claimant did not meet all the requirements set forth in the plain and clear language of §42-17-90, then he did not sustain a change of condition for the worse under the law. Accordingly, Respondents requests that this Court affirm the Workers' Compensation Commission Full Appellate Panel's September 11, 2015 Decision and Order.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sarah S. Alphin".

Sarah S. Alphin, Esquire
John Paul Simkovich, Esquire
Willson Jones Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, SC 29209
(803) 227-2885
Attorneys for Respondents

Date: July 12, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-002575

RECEIVED
JUL 12 2016
SC Court of Appeals

Johnny Tucker, Employee.....Appellant,
v.
SC Department of Transportation, Employer and
State Accident Fund Carrier Respondents.

CERTIFICATE OF COUNSEL

Respondents, by and through their undersigned counsel, certify that the
Respondents' Final Brief complies with Rule 211(b), SCACR.

Sarah S. Alphin

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Attorneys for Respondents

July 12, 2016
Columbia, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Johnny Tucker, Employee, Appellant,

v.

SC Department of Transportation, Employer, and State
Accident Fund, Carrier, Respondents.

Appellate Case No. 2015-002575

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2017-UP-379
Submitted September 1, 2017 – Filed October 18, 2017

REVERSED AND REMANDED

Preston F. McDaniel, of McDaniel Law Firm, of
Columbia; and Gerald Malloy, of Malloy Law Firm, of
Hartsville, for Appellant.

Sarah Sutusky Alphin and John Paul Simkovich, both of
Willson Jones Carter & Baxley, P.A., of Columbia, for
Respondents.

PER CURIAM: Johnny Tucker appeals the order of the Appellate Panel of the
South Carolina Workers' Compensation Commission (the Appellate Panel) that
affirmed the decision of the single commissioner to dismiss his claim with

prejudice because his application for a change of condition was not timely filed. On appeal, Tucker argues the Appellate Panel erred in affirming the single commissioner's denial of his application for a change of condition (1) on the basis that his application was not timely filed, (2) when the South Carolina Department of Transportation (SCDOT) and the State Accident Fund (collectively, Respondents) failed to plead untimeliness as an affirmative defense, and (3) when Respondents were estopped from alleging untimeliness under the facts of the case. Additionally, Tucker argues the Workers' Compensation Commission (the Commission) erred as a matter of law by not submitting his motion and petition for rehearing to the Appellate Panel that issued the initial decision and by not making detailed findings of fact and conclusions of law as required by law on all of the essential issues presented to it for decision. Based on this court's decision in *Wilson v. Charleston County School District*, 419 S.C. 442, 798 S.E.2d 449 (Ct. App. 2017), *petition for cert. filed*, (S.C. July 24, 2017), we reverse and remand to the single commissioner to consider the merits of Tucker's change of condition application.

This court can modify the Appellate Panel's decision when its "decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010). "A change in condition occurs when the claimant experiences a change in physical condition as a result of [his] original injury, occurring after the first award." *Gattis v. Murrells Inlet VFW No. 10420*, 353 S.C. 100, 109, 576 S.E.2d 191, 196 (Ct. App. 2003). A "change of condition" application is governed by section 42-17-90(A) of the South Carolina Code (2015):

On its own motion or on the application of a party in interest on the ground of a change in condition, the [C]ommission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. . . . The review does not affect the award as regards any monies paid and the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title.

In *Wilson*, the claimant had a 45% percent disability to her back due to cervical and lumbar injuries. 419 S.C. at 458, 798 S.E.2d at 457. The Form 19, reflecting the date of last payment of compensation to the claimant, was filed on January 25, 2008. *Id.* On January 6, 2009, the claimant filed a Form 50 Notice of Claim alleging a change of condition that her back injury was affecting her mental health. *Id.* The claimant did not request a hearing at that time and did not file a Form 50 Request for Hearing on her change of condition claim until March 29, 2011. *Id.* at 458, 798 S.E.2d at 457-58. This court held:

Although [the claimant] did not file the subsequent Form 50 requesting a hearing on her change of condition claim until March 29, 2011, we find her January 6, 2009 Form 50 Notice of Claim alleging a change of condition satisfied the statute's plain and unambiguous requirement that such a claim be filed within the twelve-month deadline.

Id. at 458, 798 S.E.2d at 458.

Here, Tucker sustained an admitted injury to his left shoulder by accident arising out of and in the course and scope of his employment with SCDOT on May 2, 2011. He was awarded 5% permanent partial disability to his left shoulder. The Form 19 reflecting the date of last payment of compensation was filed on November 28, 2012. Subsequently, on May 2, 2013, Tucker filed a Form 50 Notice of Claim alleging a change of condition. On July 30, 2014, Tucker filed a Form 50 Request for Hearing seeking additional medical treatment and temporary total disability for his change of condition. Because Tucker filed his Form 50 Notice of Claim for a change of condition before the twelve-month statutory deadline, we find his application for a change of condition was timely filed. *See Wilson*, 419 S.C. at 458, 798 S.E.2d at 458 (holding the claimant's filing of a Form 50 Notice of Claim within twelve months of the last date of payment of compensation satisfied the statute's twelve-month deadline despite the claimant not filing a Form 50 Request for Hearing until after twelve months from the last date of payment of compensation).¹

¹ Because the Appellate Panel's error as to this issue requires this court to reverse and remand to the single commissioner for a decision on the merits, we decline to address Tucker's remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) ("[An] appellate

REVERSED AND REMANDED.²

SHORT, KONDUROS, and GEATHERS, JJ., concur.

court need not address remaining issues when disposition of [a] prior issue is dispositive.").

² We decide this case without oral argument pursuant to Rule 215, SCACR.

1

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

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November 2, 2017

(via hand delivery)

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

Re: Johnny Tucker v. S.C. Department of Transportation
 WCC File No.: 1106689
 Appellate Case No.: 002575

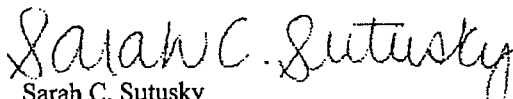
Dear Ms. Kitchings:

Pursuant to Rule 221, SCACR, please find enclosed for filing an original and six (6) copies of Respondents' Petition for Rehearing, along with Proof of Service for the same. Pursuant to Rule 240(d), no filing is required as this Petition is being filed by an agency of the state of South Carolina.

By copy of this letter, I am also serving a copy of Respondents' Petition for Rehearing on the attorneys for the Appellant by United States Mail with first class postage prepaid.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Sarah C. Sutusky
Bar No.: 78645

Enclosures

cc: Ms. Meredyth Harden (via email)
 Mr. Preston McDaniel, Esquire
 Mr. Gerald Malloy, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No.: 2015-002575

RECEIVED
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SC Court of Appeals

Johnny Tucker, Employee.....Appellant,

v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier.....Respondents.

PETITION FOR REHEARING

This is an appeal involving a workers' compensation case. Respondents, by and through their undersigned counsel, hereby files this Petition for Rehearing pursuant to Rule 221, SCARC. On October 18, 2017, this Court filed an opinion reversing the September 11, 2015 Decision and Order of the South Carolina Workers' Compensation Full Commission Appellate Panel ("Appellate Panel"). Tucker v. SCDOT, Opinion No. 2017-UP-379 (S.C. Ct. App. filed October 18, 2017). As a matter of background, the Single Commissioner denied Appellant's request for a change of condition for the worse within the statutorily required time period because the filing of a Form 50 Notice of Claim was not a sufficient "application" within the meaning of S.C. Code Ann. §42-17-90. Specifically, the Single Commissioner found that "application" within the meaning of the statute required the Appellant to request the Commission take action on the request instead

of simply putting the Commission on notice of a claim. The Appellate Panel affirmed in full on September 11, 2015, and this Court subsequently reversed on October 18, 2017.

As grounds for this Petition, Respondent would respectfully argue that this Court may have overlooked or misapprehended the law and arguments and effectively eliminated the legislature's statutory requirement under S.C. Code Ann. §42-17-90.

ARGUMENT

An injured worker's right to seek benefits for a change of condition is set forth in S.C. Code Ann. §42-17-90. A successful request for a change of condition requires the injured worker to do the following: (1) make an application on the ground of a change in condition; (2) prove by a preponderance of the evidence that there has been a change of condition after last payment of compensation; and (3) review must not be made after twelve months from date of last payment of compensation. S.C. Code Ann. §42-17-90. The statute specifically dictates the time within which a change of condition claim must be asserted, stating "the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award by this title." (Id.)

The South Carolina Supreme Court interpreted this language to mean an application for review must be made within one year after the last payment of compensation. Allen v. Benson Outdoor Advertising Co., 236 S.C. 22, 112 S.E.2d 722 (1960). Based on the holding in Allen, S.C. Code Ann. §42-17-90 establishes a one year statutory requirement for filing a request for hearing on a change of condition and allowing hearing requests to be filed after this established statutory period violates the statute. Although the proper interpretation of a statute is normally a question of law subject to de novo review. (*see* Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699

S.E.2d 687, 689 (2010), “[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).

I. The Court misapprehended or overlooked the evidence, law, or arguments involving requirement that an application for review must be made within twelve months from date of last payment of compensation as statutorily mandated by S.C. Code Ann. §42-17-90.

Appellant failed to make an application for review on the ground of change of condition within twelve months from last payment of compensation, and therefore, he does not meet the statutory requirements of S.C. Code Ann. §42-17-90. The canons of statutory construction dictate that unless the language of a statute is ambiguous, the court’s analysis should rest on the ordinary meaning of the statutory language as it is written. Strickland v. Strickland, 375 S.C. 76, 88, 650 S.E.2d 465, 472 (2007). S.C. Code Ann. §42-17-90(A) is clear in stating that a party must make an “application” for review on change of condition within twelve months from last payment of compensation.

The word “application” signifies that an injured worker must petition the Commission to take action. Indeed, Black’s Law Dictionary defines the term application to mean a “request or petition.” Black’s Law Dictionary 108 (8th ed. 2004). Similarly, a motion is defined as a written or oral application requesting a court to make a specified ruling or order. Id. at 1036. Thus, the statute is clear that in order for an injured worker to seek the Commission’s review of a previous award based on a change of condition, he must request a hearing on the matter.

In its current opinion, this Court finds that simply filing a claim for a change of condition within twelve months from last payment of compensation, without requesting

the Commission to take action, constitutes a timely "application" for review. Such an interpretation effectively nullifies the one year statutory filing requirement and is in complete dereliction to the legislature's intent. The purpose of the twelve month requirement is to limit a reopening of a claim for benefits to changes that have occurred within the twelve months. Accepting this Court's interpretation means an injured worker only has to file a claim within twelve months from last payment of compensation and allege that a change of condition has occurred without seeking any relief for such an allegation, eliminating the need to even have a limit on a change of condition. It is inconceivable that the legislature included the twelve month application period merely to test claimants' acumen for filing paperwork. This Court's interpretation of time for filing of a change of condition renders such time limit meaningless. Such interpretation would allow claimants to file meaningless claim notices to meet a time requirement and then sit idle for years to come before asking the Commission to take some action. The legislature did not intend claimants to circumvent the clear time period in such a way, as evidenced by the fact that there is a time period at all.

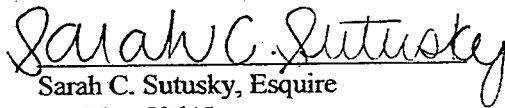
Furthermore, in its opinion, this Court has failed to give deference to the Commission's interpretation of the statute. The Commission construed the legislature's use of the word "application" set forth in S.C. Code Ann. §42-17-90 to require an injured worker to make a request or petition, by filing a hearing request, to satisfy the statute. Statutory construction of workers' compensation statutes made by the S.C. Workers' Compensation Commission should be given respectful consideration and not be overturned without compelling reasons as the Commission is the agency charged with the

administration of workers' compensation statutes. Dunton v. S.C. Bd. Of Exam'rs In Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

CONCLUSION

Respondents respectfully submit that this Court's decision may have overlooked or misapprehended the law or arguments regarding the twelve month limitation for making an application for review and that Commission's statutory construction of the same. Respondents respectfully request that this Court grant their Motion for Rehearing.

Respectfully submitted,



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Attorneys for Respondents

November 2, 2017
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-002575

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SC Court of Appeals

Johnny Tucker, Employee Appellant,

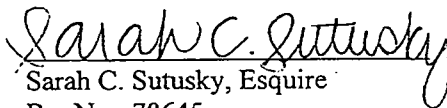
v.

S.C. Department of Transportation, Employer and
State Accident Fund, Carrier Respondents.

PROOF OF SERVICE

I certify that I, Sarah C. Sutusky, have properly served an original and six (6) copies
of **Respondents' Petition for Rehearing**, by hand delivery to the following on November
2, 2017:

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


Sarah C. Sutusky, Esquire
Bar No.: 78645
Willson, Jones, Carter & Baxley
3600 Forest Drive, Suite 204
Columbia, SC 29204
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scsutusky@wjlaw.net

November 2, 2017
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-002575

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NOV 02 2017

SC Court of Appeals

Johnny Tucker, Employee

v.

S.C. Department of Transportation, Employer and
State Accident Fund, Carrier

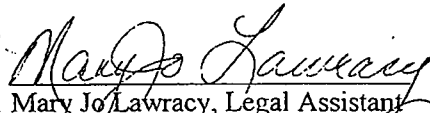
Appellant,
Respondents.

PROOF OF SERVICE

I certify that I, Mary Jo Lawracy, legal assistant to Sarah C. Sutusky, have properly served **Respondents' Petition for Rehearing**, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on November 2, 2017:

Presenton F. McDaniel, Esquire
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
Attorney for Appellant

Gerald Malloy
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Hartsville, SC 29551
Attorney for Appellant


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November 2, 2017
Columbia, South Carolina

The South Carolina Court of Appeals

Johnny Tucker, Employee, Appellant,

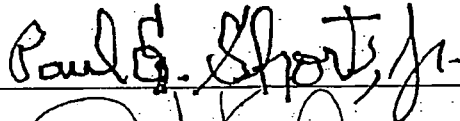
v.

SC Department of Transportation, Employer, and State
Accident Fund, Carrier, Respondents.

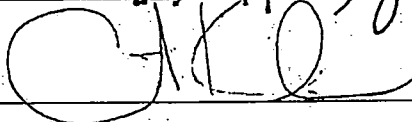
Appellate Case No. 2015-002575

ORDER

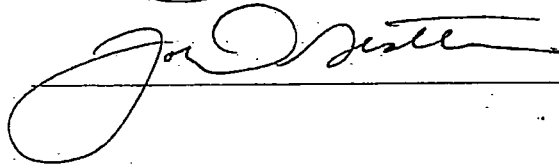
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Preston F. McDaniel, Esquire
Sarah Sutusky Alphin, Esquire
John Paul Simkovich, Esquire

FILED

December 14, 2017

Gerald Malloy, Esquire
Amy Bracy