

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1012533
Appellate Case No. 2017-001764

RECEIVED
FEB 05 2018
SC Court of Appeals

Chisolm Frampton, Employee, ... Appellant,

v.

S.C. Department of Natural Resources, Employer,
and S.C. State Accident Fund, Carrier, ... Respondents.

RECORD ON APPEAL

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON
SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599

John C. Land, III # 3118
LAND PARKER & WELCH
P.O. Box 138
Manning, SC 29102
(803) 435-8894

Attorneys for Appellant

Kirsten L. Barr # 15525
TRASK & HOWELL, LLC
P.O. Box 2167
Mt. Pleasant, SC 29465-2167
(843) 881-1027

Attorneys for Respondents

INDEX

Orders

Single Commissioner Order October 3, 2016	1
Appellate Panel Order July 24, 2017	14

Pleadings and Motions

Claimant's Form 50 (Request for Hearing)	31
Defendants' Form 51 (Answer)	32
Claimant's Form 58 (Pre-Hearing Brief)	33
Defendants' Form 58 (Pre-Hearing Brief)	37
Claimant's Form 30 (Request for Commission Review)	41
Defendants' Form 30 (Request for Commission Review)	42
Claimant's Brief to Appellate Panel (Appellant)	44
Defendants' Brief to Appellate Panel (Appellant)	48
Defendants' Brief to Appellate Panel (Respondent)	56
Claimant's Brief to Appellate Panel (Respondent)	60

Transcripts and Exhibits

Transcript of July 15, 2015 (Single Commissioner Hearing)	63
Transcript of March 21, 2017 (Appellate Panel Hearing)	129
Claimant's APA Submissions	156
Defendants' APA Submissions	224

Defendants' Hearing Exhibits

Exhibit A - TriCounty Radiology	243
Exhibit B - Charleston Neurosurgical of March 16, 2010	245
Exhibit C - Letter to Harry Gregory, Jr.	248
Exhibit D - Charleston Neurosurgical of March 15, 2011	251
Exhibit E - Charleston Neurosurgical of March 16, 2011	253
Certificate of Counsel	257

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

CHISHOLM FRAMPTON,	)	W.C.C. FILE NO. 1012533
	)	
Employee/Claimant,	)	
	)	
v.	)	DECISION & ORDER
	)	
S.C. DEPARTMENT OF NATURAL	)	
RESOURCES,	)	
	)	
Employer, and	)	
	)	
S.C. STATE ACCIDENT FUND,	)	
	)	
Carrier, Defendants.	)	

STATEMENT OF THE CASE

This matter came before the undersigned Commissioner for a hearing in Goose Creek, South Carolina, on July 15, 2017, pursuant to the Forms 50 and 51. The Claimant was present and represented by attorney John C. Land, III, of Land, Parker & Welch, P.A.. The Defendants were represented by attorney Kirsten L. Barr of Trask & Howell, L.L.C..

The Claimant alleges that on September 4, 2010, he was driving a truck across a dove field and injured his neck. He claims to have permanent injuries to his neck and both arms. According to the Claimant, he has lost more than 50% of his back and requires additional medical treatment.

The Defendants contend that the alleged events of September 4, 2010 caused nothing more than a cervical sprain or strain injury and that he did not aggravate any of his known pre-existing conditions, which include a C6-7 radiculopathy diagnosed approximately six months prior to the dove field incident. The Defendants further

argue that the Claimant reinjured his neck in a subsequent intervening accident on November 4, 2010, after which he required a cervical fusion surgery that was covered under the State Health Plan. The Claimant later reinjured his neck in a subsequent, intervening motor vehicle accident on May 16, 2011. Therefore, the Defendants respectfully contend that any permanent loss of use of the neck (back) and any need for medical treatment is not proximately related to the dove field incident on September 2, 2010.

STIPULATIONS

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The South Carolina Workers' Compensation Commission has jurisdiction over this claim
3. Venue is proper.
4. Notice of the hearing was timely and properly served upon all parties in interest.
5. The Commission's file, save self-serving declaration and unstipulated medical reports, shall be made part of the record in this case.
6. The Claimant's average weekly wage at the time in question was \$1299.31 and his applicable compensation rate is \$689.71.

APA SUBMISSIONS

Claimant's Submissions:

- 1 Doctors Care (9/7/10 – 9/22/10), pages 1 -8
- 2 Charleston Neurosurgical Associates – Dr. Byron Bailey (3/15/11 – 5/13/15),

- pages 9 – 29
- 3 Tricounty Radiology Associates (3/15/11), pages 30 – 31
 - 4 Charleston Neurosurgical Associates Rehabilitation Services – Dr. J. Reilly Keffer (3/16/11), pages 32 – 35
 - 5 Bon Secours St. Francis Hospital (3/21/11 – 9/2/14), pages 36 – 59
 - 6 Rehabilitation Centers of Charleston (11/8/12 – 12/3/12), pages 60 – 63
 - 7 Southeastern Spine Institute – Dr. Steven C. Poletti (6/4/15), pages 64 – 65

Defendant's Submissions:

- 8 *Geathers v. 3V, Inc.*, 371 S.C. 570, 641 S.E.2d 29 (2007), pages 66-72
- 9 HR Payroll Records (9/28/19–6/12/15), pages 73-75
- 10 Leave Statements (12/1/2010–6/30/15), pages 76-81

Exhibits:

- A TriCounty Radiology (3/16/10), 2 pages
- B Charleston Neurosurgical Associates (3/16/2010), 5 pages
- C Letter from Claimant to Harry Gregory (undated), 2 pages
- D Charleston Neurosurgical Associates (3/15/11), 2 pages
- E Charleston Neurosurgical Rehabilitation Services (3/16/11), 2 pages

EVIDENCE SUMMARY

The Claimant is a 50 year old college graduate. He has been employed by the Department of Natural Resources since 1993 and currently serves as a Colonel supervising the state's conservation officers.

According to the Claimant, on September 4, 2010, he was a passenger in a pick-up truck driving through a dove field. He believes that the bouncing in the truck that day caused his neck to hurt. The Claimant sought medical treatment at Doctors Care three days later and subsequently sought treatment from Dr. Byron Bailey for neck and arm pain.

The Claimant testified that he did not “recall” seeing Dr. Bailey prior to the alleged dove field incident on September 4, 2010 and denied having any problem with

his neck prior to September 4, 2010. However, Dr. Bailey's medical records clearly show that the Claimant began treating with Dr. Bailey for neck pain well before the incident. In a report dated March 16, 2010, Dr. Bailey noted that the Claimant had "numb dysestheias affecting his right arm" and a cervical MRI scan showed disc degeneration at C6-7 affecting both exiting foramen. Dr. Bailey prescribed physical therapy, Flexeril, and Lortab. (Defendants' Exhibits A & B).

When the Claimant returned to Dr. Bailey on March 16, 2011, he reported that his neck pain started "gradually" over a period of "14 months." (Defendants' Exhibit E). There is absolutely no mention of any alleged accident or injury on September 4, 2010 (or any incident in a dove field) in any of the records of Dr. Bailey. Dr. Bailey performed a cervical discectomy and fusion on March 21, 2011, which was paid under the Claimant's group health insurance. There is no mention of any work-related accident or injury in Dr. Bailey's operative notes. The Claimant received sick leave while out of work following this surgery.

The Claimant testified that in June 2011, he was involved in a motor vehicle accident with his family in south Florida while driving a state vehicle. The Claimant admits that he sought medical treatment for pain in his neck and arms with Doctors Care and with Dr. Bailey as a result of the motor vehicle accident. A report from Doctors Care dated June 27, 2011 states that the Claimant was in a motor vehicle accident on June 16, 2011 and now had "acute neck pain...reactivation of prior injury." (APA p.5). Dr. Bailey's records include a report dated July 1, 2011, which states that the Claimant was "involved in a motor vehicle accident in which the vehicle was totaled...resulting in immediate onset of neck pain." (APA p.12). As a result of the motor vehicle accident, Dr. Bailey prescribed several medications, including an anti-inflammatory, an analgesic,

and a muscle relaxer, and he also placed new work restrictions (light duty) as a result of this new accident. (APA p.12). Dr. Bailey's report dated August 23, 2011 states that the Claimant was "involved in a motor vehicle accident which has caused exacerbation of neck pain" and as a result, Dr. Bailey recommended physical therapy. (APA p.13).

On cross-examination, the Claimant was confronted with a letter he wrote to Harry B. Gregory, Jr., the Director of the State Accident Fund. In this letter, the Claimant stated that "there is no doubt in my mind that I was injured on November 4, 2010. I did not experience any pain of this magnitude in my neck prior to November 4, 2010." The Claimant testified that while he remembered writing this letter, he initially claimed "I was not injured on November 4th of 2010. I was injured in a dove field." (T. p.38, lines 2—13). Moments later, the Claimant testified that his neck problems in fact became worse on Thursday, November 4th, 2010. (T. p.40, lines 2—6). There is no mention of any injury or accident on Saturday, September 4, 2010 in the letter to Mr. Gregory.

At the hearing, the Claimant testified that he last saw Dr. Bailey in May 2015 because he was having "increasing pain in [his] neck." (T. p.28, line 14). However, the Claimant admits that he is working his regular, full time job and has been twice promoted since his neck surgery. He has not missed any significant period of time from work as a result of his neck and, at the time of the hearing, the Claimant was earning approximately \$103,000 per year. Nevertheless, the Claimant complained that he can no longer jump out of the back of trucks or "lay in a bed and read a book." (T. p.29, lines 17—19) and he believes that he has lost 75% of the use of his neck and 25% of the use of both arms. The Claimant admits that he does not take any prescription medications for his neck and does not use any braces or assistive devices. (T. p.53).

Dr. Bailey noted as early as August 29, 2012 that the Claimant was not on any medications for his neck. (APA p.15). Dr. Bailey placed him at maximum medical improvement on April 17, 2013, at which time he estimated "his impairment rating for his cervical spine to be 20%." (APA p.18, p.21). In follow up on August 29, 2014, Dr. Bailey noted that the Claimant was complaining of continued neck pain, he had "No radicular symptoms that are consistent" and "no focal weakness." (APA p.22). Thereafter, on September 1, 2014, Dr. Bailey changed his impairment rating to 26% of the whole person. (APA p.27). In his final note dated March 13, 2015, Dr. Bailey recommended an updated MRI scan, but did not recommend any medical treatment.

The Claimant was also evaluated by Dr. Poletti on June 4, 2015 at the request of his attorney. Dr. Poletti did not address the Claimant's pre-existing neck problems or his May 2011 motor vehicle accident. However, Dr. Poletti did give his opinion as to impairment and issued a rating of 33% of the whole person. According to Dr. Poletti, the Claimant was injured "while walking through an uneven plowed field." (APA. p.65) (emphasis added).

FINDINGS OF FACT

1. I find Claimant suffered from pre-existing neck pain and right arm numbness prior to his alleged work injury. Most notably, Claimant received treatment with Dr. Bailey, a neurosurgeon, on March 16, 2010, just six months prior to his alleged work injury, when Claimant was prescribed physical therapy, Lortab and Flexiril. (Defendants' Exhibit B). An MRI dated the same showed Claimant had spondylosis, most impressive at C5-6 and C6-7 and bilateral C6 in right grade and left C7 radiculopathy... (Defendants' Exhibit A).

2. Claimant's Form 50 Request for Hearing and Form 58 Pre-Hearing Brief alleges an injury by accident on September 4, 2010. Although Claimant sent a subsequent letter to Mr. Harry Gregory of the State Accident Fund alleging an injury on November 4, 2010, I find Claimant's testimony admitting the possibility of an error as well as a medical note dated September 7, 2010 support Claimant's allegation of a September 4, 2010 work accident.

3. Claimant returned to Dr. Baily on March 15, 2011. Claimant's intake sheet notes Claimant's complaints/problems began on February 20, 2010, prior to the date of either alleged work injury. Dr. Bailey again noted continued complaints of neck pain and right arm numbness and referred Claimant to Dr. Keffer for a nerve conduction study.

4. Claimant presented to Dr. Keffer on March 16, 2011 for a nerve conduction study. Claimant reported that his problems had started "14 months earlier", that his neck pain "gradually began", and that he had these problems "for years".

5. On March 21, 2011, Claimant underwent an anterior cervical discectomy and fusion. As of April 6, 2011, Claimant reported that he "had no further pain." (Claimant's APA p. 10).

6. On May 1, 2011, Claimant was released to return to work and he has been working full-time for the employer since.

7. I find there is no medical evidence stated to a reasonable degree of medical certainty that Claimant's September 4, 2010 dove field incident aggravated or exacerbated his pre-existing neck condition for which he was already treating with a neurosurgeon. Nevertheless, Defendants admitted the claim and provided medical treatment.

8. Claimant was involved in a major motor vehicle collision on June 16, 2011, which totaled his car and resulted in "immediate onset of neck pain" that required treatment to include prescription medication and physical therapy. Claimant was placed on light duty as a result of the accident and Dr. Bailey noted the motor vehicle collision caused an "exacerbation of neck pain." (Claimant's APA p. 13)

9. As of November 22, 2011, Claimant's exacerbation of neck pain resulting from the motor vehicle collision had "mostly subsided," as such, I do not find the June 16, 2011 motor vehicle collision was a superseding intervening act sufficient to break the chain of causation. (Claimant's APA p. 15).

10. Claimant continued to treat with Dr. Bailey throughout 2012 wherein there were some flare-ups in pain; however, as of April 17, 2013 when he was released, Claimant only complained of occasional pain and was not taking any medications for pain. Dr. Bailey issued Claimant a 20% impairment rating to his cervical spine. (Claimant's APA p. 18).

11. Dr. Bailey completed a Form 14B Physician's Statement on September 20, 2013. On the Form 14B, Dr. Bailey noted that Claimant treated with him from March 15, 2011 through April 17, 2013 and that Claimant was at maximum medical improvement as of April 17, 2013. Dr. Bailey noted Claimant would need continued medical treatment to include annual x-rays and periodic MRIs of the cervical spine. This information was contained in the last treatment note dated April 17, 2013 as well.

12. Claimant submitted a second Form 14B Physician's Statement dated the same, September 20, 2013, wherein Dr. Bailey increased Claimant's impairment rating from 20% to the whole person to 26% to the whole person. In addition, Dr. Bailey opined Claimant was unable to return to work at his current employer and, in addition to the

periodic x-rays and MRI scans, would also need medications as prescribed. Lastly, Dr. Bailey opined, "Patient may require further surgery in the future if he were to develop hardware failure or adjacent level degeneration." (Claimant's APA p. 26).

13. I find Claimant had returned to work full time as of May 1, 2011 and has not missed any time from work related to his neck since that time. This finding is based on the evidence as a whole including the Claimant's testimony. Furthermore, I find Claimant had received two promotions since returning from his work injury and at the time of the hearing was the Deputy Director of the Department of Natural Resources and earned an annual salary of \$102,500.00.

14. Based on Claimant's return to work and promotions received since his original date of injury, I give Dr. Bailey's revised Form 14B very little weight due to his opinion that Claimant couldn't return to his current employment. That opinion is completely disproven by the facts of the case and calls into question the additional information placed in the revised Form 14B.

15. I did not find Claimant's testimony to very credible with regard to the extent of his pre-existing neck condition and his current symptomology. The Findings of Fact contained herein are based strictly on the medical evidence and evidence of Claimant's employment history with SCDNR.

16. I find Claimant is at maximum medical improvement as of April 17, 2013 per Dr. Bailey.

17. I find Claimant is not permanently and totally disabled as alleged.

18. I find this claim is governed by S.C. Code Ann. Section 42-9-30(21).

19. I find Claimant has sustained 20% permanent partial disability to his back as a result of his work injury. This finding is based on the evidence as a whole including the

“20% medical impairment to the cervical spine” as noted in the original Form 14B and the “26% of the whole person medical impairment for the cervical spine” as noted in the revised Form 14B dated the same – which I did not give as much weight due to its inaccuracy regarding Claimant’s work status. I also considered Claimant’s continued full-duty, unrestricted employment and advancement/promotions within the Department of Natural Resources since his work injury. The opinions of Dr. Poletti have also been considered.

20. Claimant also alleges an injury to both arms as a result of this injury. At the hearing Claimant testified as to a loss of strength in his arms; however, I find this is not supported by a preponderance of the medical evidence and is therefore denied.

21. I find Claimant is entitled to yearly x-rays and periodic MRIs as recommended in Dr. Bailey’s Form 14B.

22. In the revised Form 14B, Dr. Bailey indicated Claimant would continue to need “medications as prescribed”; however, as of the last medical appointment with Dr. Bailey, April 17, 2013, Claimant was not taking any prescription medication. Additionally, at the hearing – two years after being released from Dr. Bailey for this work injury - Claimant admitted on cross-examination that he was not taking any prescription medication for his neck injury. As such, I find Claimant is not entitled to pain medication as a result of this work injury.

23. Claimant is not entitled to further surgical procedures due to adjacent level degeneration noted in Dr. Bailey’s revised Form 14B. I find the statement regarding the same is speculative and based on an event that may or may not occur.

18. I find Claimant is entitled to lifetime maintenance of the hardware in his cervical spine per the Act.

CONCLUSIONS OF LAW

1. The Claimant sustained an injury to his neck by accident arising out of and in the course of his employment on September 4, 2010 pursuant to S.C. Code Ann. § 42-1-160.
2. The Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35. The record is clear that he has a history of cervical radiculopathy that predates the September 4, 2010 accident and there is no competent medical evidence that the September 4, 2010 accident aggravated that pre-existing condition. In fact, the records of the Claimant's treating physician, Dr. Bailey, make no mention of any work-related accident or injury on or about September 4, 2010 and the Claimant's own statements to Dr. Bailey indicate that his neck problems began in January 2010.
3. Geathers v. 3V, Inc., 371 S.C. 570 (2007) holds that when a non-disabling work injury is aggravated by a subsequent accident, the Claimant is not entitled to any additional medical or compensation benefits as a result of the first accident. While the Claimant was involved in a major motor vehicle collision on June 16, 2011, which totaled his car and resulted in "immediate onset of neck pain" that required treatment to include prescription medication and physical therapy, as well as light duty restrictions, and while Dr. Bailey concluded that the motor vehicle collision caused an "exacerbation of neck pain," the court's holding in Geathers does not apply to the facts of this case.
4. Pursuant to S.C. Code Ann. § 42-9-10 and § 42-9-20, the Claimant has no loss of wage-earning capacity as a result of the September 4, 2010 accident and; therefore, he is not entitled to any benefits under these statutes.

5. Pursuant to S.C. Code Ann. § 42-9-30(21), the Claimant is entitled to 60 weeks of compensation at the rate of \$689.71 per week, representing benefits for a 20% loss of use of the back (neck).
6. Pursuant to S.C. Code Ann. § 42-15-60, the Claimant reached maximum medical improvement as of April 17, 2013 and there is no additional medical care or treatment that would tend to lessen the period of disability. Further, pursuant to S.C. Code Ann. § 42-15-60, the Claimant is entitled to yearly x-rays and periodic cervical MRI scans as recommended by Dr. Bailey, so long as they are causally-related to the September 4, 2010 accident and would tend to lessen the period of disability caused by the September 4, 2010 accident. The Claimant is also entitled to lifetime maintenance of the surgical hardware in his cervical spine.

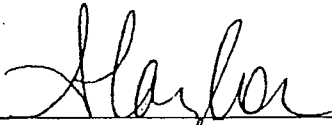
CONCLUSION

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is entitled to and the Defendants are liable for, payment of 60 weeks of compensation at the rate of \$689.71 per week, representing benefits for a 20% loss of use of the back (neck).

IT IS FURTHER ORDERED that the Claimant is entitled to lifetime maintenance of the surgical hardware retained in his cervical spine, as well as such periodic x-rays and cervical MRI scans that are recommended by Dr. Bailey as causally-related to the September 4, 2010 accident and would tend to lessen the period of disability caused by the September 4, 2010 accident.

IT IS FURTHER ORDERED that the Claimant is not entitled to any additional benefits under the South Carolina Workers' Compensation Act at this time.

IT IS SO ORDERED!



Commissioner Aisha Taylor

October 3, 2016

CERTIFICATE OF SERVICE

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

October 4, 2016

By: Renee Smith, Administrative Assistant to Commissioner Taylor

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

CHISHOLM FRAMPTON,	)	W.C.C. FILE NO. 1012533
	)	
Employee/Claimant,	)	
	)	
v.	)	DECISION & ORDER
	)	
S.C. DEPARTMENT OF NATURAL	)	
RESOURCES,	)	
	)	
Employer, and	)	
	)	
S.C. STATE ACCIDENT FUND,	)	
	)	
Carrier, Defendants.	)	

STATEMENT OF THE CASE

The Claimant alleges that on September 4, 2010, he was driving a truck across a dove field and injured his neck. He claims to have permanent injuries to his neck and both arms. According to the Claimant, he has lost more than 50% of his back and requires additional medical treatment.

The Defendants contend that the alleged events of September 4, 2010 caused nothing more than a cervical sprain or strain injury and that he did not aggravate any of his known pre-existing conditions, which include a C6-7 radiculopathy diagnosed approximately six months prior to the dove field incident. Therefore, the Defendants argue that S.C. Code Ann. § 42-9-35 bars the claim for benefits. The Defendants further argue that the Claimant reinjured his neck in a subsequent intervening accident on November 4, 2010, after which he required a cervical fusion surgery that was covered under the State Health Plan. The Claimant later reinjured his neck in a subsequent, intervening motor vehicle accident on May 16, 2011. Therefore, the Defendants contend

that any permanent loss of use of the neck (back) and any need for medical treatment is not proximately related to the dove field incident on September 2, 2010 and is not the responsibility of the Defendants.

The claim originally came before Commissioner Taylor for a hearing on July 15, 2017 pursuant to the Forms 50 and 51. In her October 3, 2016 Decision and Order, Hearing Commissioner Taylor found that the "Claimant suffered from pre-existing neck pain and right arm numbness" and that "there is no medical evidence stated to a reasonable degree of medical certainty that the Claimant's September 4, 2010 dove field incident aggravated or exacerbated his pre-existing neck condition for which he was already treating with a neurosurgeon." Commissioner Taylor also concluded that the "Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35." Neither these findings, nor this conclusion, were appealed by the Claimant and are; therefore, the law of the case. As such, the Defendants argue that the Hearing Commissioner erred as a matter of law in awarding the Claimant any benefits under the Act. We agree.

HEARING COMMISSIONER'S FINDINGS AND CONCLUSIONS

The Hearing Commissioner made the following Findings of Fact and Conclusions of Law in her October 3, 2016 Decision and Order:

FINDINGS OF FACT

1. I find Claimant suffered from pre-existing neck pain and right arm numbness prior to his alleged work injury. Most notably, Claimant received treatment with Dr. Bailey, a neurosurgeon, on March 16, 2010, just six months prior to his alleged work injury, when Claimant was prescribed physical therapy, Lortab and Flexeril. (Defendants' Exhibit B). An MRI dated the same showed Claimant had spondylosis,

most impressive at C5-6 and C6-7 and bilateral C6 in right grade and left C7 radiculopathy... (Defendants' Exhibit A).

2. Claimant's Form 50 Request for Hearing and Form 58 Pre-Hearing Brief alleges an injury by accident on September 4, 2010. Although Claimant sent a subsequent letter to Mr. Harry Gregory of the State Accident Fund alleging an injury on November 4, 2010, I find Claimant's testimony admitting the possibility of an error as well as a medical note dated September 7, 2010 support Claimant's allegation of a September 4, 2010 work accident.

3. Claimant returned to Dr. Baily on March 15, 2011. Claimant's intake sheet notes Claimant's complaints/problems began on February 20, 2010, prior to the date of either alleged work injury. Dr. Bailey again noted continued complaints of neck pain and right arm numbness and referred Claimant to Dr. Keffer for a nerve conduction study.

4. Claimant presented to Dr. Keffer on March 16, 2011 for a nerve conduction study. Claimant reported that his problems had started "14 months earlier", that his neck pain "gradually began", and that he had these problems "for years".

5. On March 21, 2011, Claimant underwent an anterior cervical discectomy and fusion. As of April 6, 2011, Claimant reported that he "had no further pain." (Claimant's APA p. 10).

6. On May 1, 2011, Claimant was released to return to work and he has been working full-time for the employer since.

7. I find there is no medical evidence stated to a reasonable degree of medical certainty that Claimant's September 4, 2010 dove field incident aggravated or exacerbated his pre-existing neck condition for which he was already treating with a neurosurgeon. Nevertheless, Defendants admitted the claim and provided medical treatment.

8. Claimant was involved in a major motor vehicle collision on June 16, 2011, which totaled his car and resulted in "immediate onset of neck

pain" that required treatment to include prescription medication and physical therapy. Claimant was placed on light duty as a result of the accident and Dr. Bailey noted the motor vehicle collision caused an "exacerbation of neck pain." (Claimant's APA p. 13)

9. As of November 22, 2011, Claimant's exacerbation of neck pain resulting from the motor vehicle collision had "mostly subsided," as such, I do not find the June 16, 2011 motor vehicle collision was a superseding intervening act sufficient to break the chain of causation. (Claimant's APA p. 15).

10. Claimant continued to treat with Dr. Bailey throughout 2012 wherein there were some flare-ups in pain; however, as of April 17, 2013 when he was released, Claimant only complained of occasional pain and was not taking any medications for pain. Dr. Bailey issued Claimant a 20% impairment rating to his cervical spine. (Claimant's APA p. 18).

11. Dr. Bailey completed a Form 14B Physician's Statement on September 20, 2013. On the Form 14B, Dr. Bailey noted that Claimant treated with him from March 15, 2011 through April 17, 2013 and that Claimant was at maximum medical improvement as of April 17, 2013. Dr. Bailey noted Claimant would need continued medical treatment to include annual x-rays and periodic MRIs of the cervical spine. This information was contained in the last treatment note dated April 17, 2013 as well.

12. Claimant submitted a second Form 14B Physician's Statement dated the same, September 20, 2013, wherein Dr. Bailey increased Claimant's impairment rating from 20% to the whole person to 26% to the whole person. In addition, Dr. Bailey opined Claimant was unable to return to work at his current employer and, in addition to the periodic x-rays and MRI scans, would also need medications as prescribed. Lastly, Dr. Bailey opined, "Patient may require further

surgery in the future if he were to develop hardware failure or adjacent level degeneration." (Claimant's APA p. 26).

13. I find Claimant had returned to work full time as of May 1, 2011 and has not missed any time from work related to his neck since that time. This finding is based on the evidence as a whole including the Claimant's testimony. Furthermore, I find Claimant had received two promotions since returning from his work injury and at the time of the hearing was the Deputy Director of the Department of Natural Resources and earned an annual salary of \$102,500.00.

14. Based on Claimant's return to work and promotions received since his original date of injury, I give Dr. Bailey's revised Form 14B very little weight due to his opinion that Claimant couldn't return to his current employment. That opinion is completely disproven by the facts of the case and calls into question the additional information placed in the revised Form 14B.

15. I did not find Claimant's testimony to very credible with regard to the extent of his pre-existing neck condition and his current symptomology. The Findings of Fact contained herein are based strictly on the medical evidence and evidence of Claimant's employment history with SCDNR.

16. I find Claimant is at maximum medical improvement as of April 17, 2013 per Dr. Bailey.

17. I find Claimant is not permanently and totally disabled as alleged.

18. I find this claim is governed by S.C. Code Ann. Section 42-9-30(21).

19. *I find Claimant has sustained 20% permanent partial disability to his back as a result of his work injury. This finding is based on the evidence as a whole including the "20% medical impairment to the cervical spine" as noted in the original Form 14B and the "26% of the whole person medical impairment for the cervical spine" as noted in the revised Form 14B dated the same — which I did not give as much weight due to its inaccuracy regarding Claimant's work status. I also considered Claimant's continued full-duty, unrestricted employment and advancement/promotions within the Department of Natural Resources since his work injury. The opinions of Dr. Poletti have also been considered.*
20. *Claimant also alleges an injury to both arms as a result of this injury. At the hearing, Claimant testified as to a loss of strength in his arms; however, I find this is not supported by a preponderance of the medical evidence and is therefore denied.*
21. *I find Claimant is entitled to yearly x-rays and periodic MRIs as recommended in Dr. Bailey's Form 14B.*
22. *In the revised Form 14B, Dr. Bailey indicated Claimant would continue to need "medications as prescribed"; however, as of the last medical appointment with Dr. Bailey, April 17, 2013, Claimant was not taking any prescription medication. Additionally, at the hearing — two years after being released from Dr. Bailey for this work injury - Claimant admitted on cross-examination that he was not taking any prescription medication for his neck injury. As such, I find Claimant is not entitled to pain medication as a result of this work injury.*
23. *Claimant is not entitled to further surgical procedures due to adjacent level degeneration noted in Dr. Bailey's revised Form 14B. I find the statement regarding the same is speculative and based on an event that may or may not occur.*

24 I find Claimant is entitled to lifetime maintenance of the hardware in his cervical spine per the Act.

CONCLUSIONS OF LAW

1. The Claimant sustained an injury to his neck by accident arising out of and in the course of his employment on September 4, 2010 pursuant to S.C. Code Ann. § 42-1-160.
2. The Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35. The record is clear that he has a history of cervical radiculopathy that predates the September 4, 2010 accident and there is no competent medical evidence that the September 4, 2010 accident aggravated that pre-existing condition. In fact, the records of the Claimant's treating physician, Dr. Bailey, make no mention of any work-related accident or injury on or about September 4, 2010 and the Claimant's own statements to Dr. Bailey indicate that his neck problems began in January 2010.
3. Geathers v. 3V, Inc., 371 S.C. 570 (2007) holds that when a non-disabling work injury is aggravated by a subsequent accident, the Claimant is not entitled to any additional medical or compensation benefits as a result of the first accident. While the Claimant was involved in a major motor vehicle collision on June 16, 2011, which totaled his car and resulted in "immediate onset of neck pain" that required treatment to include prescription medication and physical therapy, as well as light duty restrictions, and while Dr. Bailey concluded that the motor vehicle collision caused an "exacerbation of neck pain," the court's holding in Geathers does not apply to the facts of this case.
4. Pursuant to S.C. Code Ann. § 42-9-10 and § 42-9-20, the Claimant has no loss of wage-earning capacity as a result of the September 4, 2010 accident and; therefore, he is not entitled to any benefits under these statutes.

5. Pursuant to S.C. Code Ann. § 42-9-30(21), the Claimant is entitled to 60 weeks of compensation at the rate of \$689.71 per week, representing benefits for a 20% loss of use of the back (neck).
6. Pursuant to S.C. Code Ann. § 42-15-60, the Claimant reached maximum medical improvement as of April 17, 2013, and there is no additional medical care or treatment that would tend to lessen the period of disability. Further, pursuant to S.C. Code Ann. § 42-15-60, the Claimant is entitled to yearly x-rays and periodic cervical MRI scans as recommended by Dr. Bailey, so long as they are causally-related to the September 4, 2010 accident and would tend to lessen the period of disability caused by the September 4, 2010 accident. The Claimant is also entitled to lifetime maintenance of the surgical hardware in his cervical spine.

ISSUES ON APPEAL

The parties both appealed the Hearing Commissioner's October 3, 2016 Decision and Order. The Claimant's Form 30 raises only a single on appeal:

1. *The Single Commissioner erred in regard to the finding that the injured worker only lost 20% of the spine inasmuch as the finding is not consistent with the substantial evidence in the record, which indicates a greater percentage loss of use of the spine or a finding of permanent and total disability pursuant to § 42-9-30.*

The Claimant did not challenge any of the Hearing Commissioner's other Findings of Fact or Conclusions of Law.

By their cross-appeal, the Defendants raised the following issues in their Form

30:

1. *Did the Hearing Commissioner err as a matter of law in awarding medical and compensation benefits to the Claimant after finding and concluding that the Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35?*
2. *Did the Hearing Commissioner err as a matter of law in concluding that Geathers v. 3V, Inc., does not apply to the facts of the case?*
3. *Did the Hearing Commissioner err as a matter of law in failing to find and conclude that the Claimant is not entitled to any medical or compensation benefits based on the holding of Geathers v. 3V, Inc.?*
4. *Does the greater weight of the evidence support the Hearing Commissioner's finding that the Claimant's subsequent motor vehicle accident, which admittedly exacerbated the Claimant's alleged neck injury, did not "break the chain of causation"?*
5. *Did the Hearing Commissioner err in failing to find and conclude that any need for medical treatment is not causally-related to the alleged accident of September 4, 2010 based upon the greater weight of the evidence and the applicable law?*
6. *Did the Hearing Commissioner err in failing to find and conclude that any alleged permanent impairment or disability is not causally-related to the alleged accident of September 4, 2010 based upon the greater weight of the evidence and the applicable law?*

EVIDENCE SUMMARY

The Claimant is a 50-year-old college graduate. He has been employed by the Department of Natural Resources since 1993 and currently serves as a Colonel supervising the state's conservation officers.

According to the Claimant, on September 4, 2010, he was a passenger in a pick-up truck driving through a dove field. He believes that the bouncing in the truck that

day caused his neck to hurt. The Claimant sought medical treatment at Doctors Care three days later and subsequently sought treatment from Dr. Byron Bailey for neck and arm pain.

The Claimant testified that he did not "recall" seeing Dr. Bailey prior to the alleged dove field incident on September 4, 2010 and denied having any problem with his neck prior to September 4, 2010. However, Dr. Bailey's medical records clearly show that the Claimant began treating with Dr. Bailey for neck pain well before the incident. In a report dated March 16, 2010, Dr. Bailey noted that the Claimant had "numb dysesthesias affecting his right arm" and a cervical MRI scan showed disc degeneration at C6-7 affecting both exiting foramen. Dr. Bailey prescribed physical therapy, Flexeril, and Lortab. (Defendants' Exhibits A & B).

When the Claimant returned to Dr. Bailey on March 16, 2011, he reported that his neck pain started "gradually" over a period of "14 months." (Defendants' Exhibit E). There is absolutely no mention of any alleged accident or injury on September 4, 2010 (or any incident in a dove field) in any of the records of Dr. Bailey. Dr. Bailey performed a cervical discectomy and fusion on March 21, 2011, which was paid under the Claimant's group health insurance. There is no mention of any work-related accident or injury in Dr. Bailey's operative notes. The Claimant received sick leave while out of work following this surgery.

The Claimant testified that in June 2011, he was involved in a motor vehicle accident with his family in south Florida while driving a state vehicle. The Claimant admits that he sought medical treatment for pain in his neck and arms with Doctors Care and with Dr. Bailey as a result of the motor vehicle accident. A report from Doctors Care dated June 27, 2011 states that the Claimant was in a motor vehicle accident on

June 16, 2011 and now had "acute neck pain...reactivation of prior injury." (APA p.5). Dr. Bailey's records include a report dated July 1, 2011, which states that the Claimant was "involved in a motor vehicle accident in which the vehicle was totaled...resulting in immediate onset of neck pain." (APA p.12). As a result of the motor vehicle accident, Dr. Bailey prescribed several medications, including an anti-inflammatory, an analgesic, and a muscle relaxer, and he also placed new work restrictions (light duty) as a result of this new accident. (APA p.12). Dr. Bailey's report dated August 23, 2011 states that the Claimant was "involved in a motor vehicle accident which has caused exacerbation of neck pain" and as a result, Dr. Bailey recommended physical therapy. (APA p.13).

On cross-examination, the Claimant was confronted with a letter he wrote to Harry B. Gregory, Jr., the Director of the State Accident Fund. In this letter, the Claimant stated that

"there is no doubt in my mind that I was injured on November 4, 2010. I did not experience any pain of this magnitude in my neck prior to November 4, 2010."

The Claimant testified that while he remembered writing this letter, he initially claimed "I was not injured on November 4th of 2010. I was injured in a dove field." (T. p.38, lines 2-13). Moments later, the Claimant testified that his neck problems in fact became worse on Thursday, November 4th, 2010. (T. p.40, lines 2-6). There is no mention of any injury or accident on Saturday, September 4, 2010 in the letter to Mr. Gregory.

At the hearing, the Claimant testified that he last saw Dr. Bailey in May 2015 because he was having “increasing pain in [his] neck.” (T. p.28, line 14). However, the Claimant admits that he is working his regular, full time job and has been twice promoted since his neck surgery. He has not missed any significant period of time from work as a result of his neck and, at the time of the hearing, the Claimant was earning approximately \$103,000 per year. The Claimant admits that he does not take any prescription medications for his neck and does not use any braces or assistive devices. (T. p.53).

DISCUSSION

Pursuant to S.C. Code Ann. § 42-9-35, the Claimant was required to prove, with expert medical evidence stated to a reasonable degree of medical certainty, that the alleged accident on September 4, 2010 aggravated his pre-existing neck condition.¹ Only by meeting this statutory burden of proof may the Commission properly award medical or compensation benefits the Claimant under the Act.

Here, the Claimant did not meet his required burden of proof under S.C. Code Ann. § 42-9-35. In fact, the Commissioner Taylor entered the following conclusion of law with respect to this failure:

“The Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35. The record is clear that he has a history of cervical radiculopathy that predates the September 4, 2010 accident and there is no competent medical evidence that the September 4, 2010 accident aggravated that pre-

¹ By employing the term “shall” in S.C. Code Ann. § 42-9-35, the legislature has made the Claimant’s burden of proof mandatory. Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002)(“

existing condition. In fact, the records of the Claimant's treating physician, Dr. Bailey, make no mention of any work-related accident or injury on or about September 4, 2010 and the Claimant's own statement to Dr. Bailey indicate that his neck problems began in January 2010."

The Claimant's Form 30 makes no mention of this legal conclusion and raised no argument with regard to the application of S.C. Code Ann. § 42-9-35. Therefore, Commissioner Taylor's Conclusion of Law #2, which concludes that the Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35 is the law of the case. Atlantic Coast Builders v. Lewis, 398 S.C. 323, 329 (S.C. 2012) (citing Buckner v. Preferred Mut. Ins. Co., 225 S.C. 159 (1970) for the proposition that "an unappealed ruling, right or wrong, is the law of the case.").

The Hearing Commissioner also made a specific finding of fact regarding the Claimant's credibility (or rather, *lack thereof*) regarding this seminal issue under S.C. Code Ann. § 42-9-35. According to the Hearing Commissioner:

"I do not find Claimant's testimony to be very credible with regard to the extent of his pre-existing neck condition and his current symptomology."

This finding was not appealed and is the law of the case. In addition, the Hearing Commissioner decided to

"give Dr. Bailey's revised Form 14B very little weight due to his opinion that Claimant couldn't return to his current employment. That opinion is

completely disproven by the facts of the case and calls into question the additional information placed in the revised Form 14B.”

This finding is also the law of the case because it was not appealed.

Because the Claimant failed to meet his burden of proof under S.C. Code Ann. § 42-9-35 and because an award of benefits under the Act must be necessarily predicated on meeting this statutory burden, the Appellate Panel concludes that Commissioner Taylor erred as a matter of law in awarding the Claimant medical and compensation benefits. Therefore, the award of benefits under S.C. Code Ann. § 42-9-30(21) and § 42-15-60 is hereby reversed and vacated as a matter of law.

CONCLUSION

After careful consideration of the arguments of the parties and the Record in this case, the Appellate Panel hereby REVERSES Hearing Commissioner Taylor’s October 3, 2016 Decision and Order. The Appellate Panel; therefore, enters its own Findings and Conclusions consistent with S.C. Code Ann. § 42-17-50, as follows:

FINDINGS OF FACT

1. The Claimant’s Form 50 Request for Hearing and Form 58 Pre-Hearing Brief allege that the Claimant sustained an injury to his neck and right arm by accident on September 4, 2010.
2. The Hearing Commissioner found that the “*Claimant suffered from pre-existing neck pain and right arm numbness prior to his alleged work injury. Most notably, Claimant received treatment with Dr. Bailey, a neurosurgeon, on March 16, 2010, just*

six months prior to his alleged work injury, when Claimant was prescribed physical therapy, Lortab and Flexeril. (Defendants' Exhibit B). An MRI dated the same showed Claimant had spondylosis, most impressive at C5-6 and C6-7 and bilateral C6 in right grade and left C7 radiculopathy... (Defendants' Exhibit A)." These findings, which are supported by the greater weight of the evidence, were not appealed and are affirmed as the law of the case.

3. The Hearing Commissioner also found that the "Claimant returned to Dr. Bailey on March 15, 2011. Claimant's intake sheet notes Claimant's complaints/problems began on February 20, 2010..." This finding, which is supported by the greater weight of the evidence, was not appealed and is affirmed the law of the case.

4. In addition, the Hearing Commissioner found that the "Claimant presented to Dr. Keffer on March 16, 2011 for a nerve conduction study. Claimant reported that his problems had started '14 months earlier', that his neck pain 'gradually began', and that he had these problems 'for years'." These findings, which are supported by the greater weight of the evidence, were not appealed and are affirmed as the law of the case.

5. The Hearing Commissioner specifically addressed the Claimant's credibility in her Findings of Fact, as follows: "I do not find Claimant's testimony to be very credible with regard to the extent of his pre-existing neck condition and his current symptomology." This finding regarding the Claimant's lack of credibility regarding the seminal issue in this claim was not appealed and is the law of the case.

6. The Hearing Commissioner went on to find that "there is no medical evidence stated to a reasonable degree of medical certainty that Claimant's September 4, 2010 dove field incident aggravated or exacerbated his pre-existing neck condition for which he was already treating with a neurosurgeon." This finding, which is supported

by the greater weight of the evidence, was not appealed and is affirmed the law of the case.

7. The Claimant's physician, Dr. Bailey, never addressed the issue of whether the alleged accident on September 4, 2010 aggravated the pre-existing neck and right arm condition for which he had previously treated the Claimant and there are no other documents, records of other material that address this issue in the Record of this claim.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-9-35, an "employee shall establish by a preponderance of the evidence, including medical evidence, that ...the subsequent injury aggravated the pre-existing condition." (emphasis added). Use of the term "shall" mandates that this burden of proof is mandatory. Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("under the rules of statutory interpretation, use of the words 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement."). Based upon the greater weight of the evidence and the established facts of this case, § 42-9-35 applies to the present claim for benefits. The Hearing Commissioner ruled that the *"Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35. The record is clear that he has a history of cervical radiculopathy that predates the September 4, 2010 accident and there is no competent medical evidence that the September 4, 2010 accident aggravated that pre-existing condition. In fact, the records of the Claimant's treating physician, Dr. Bailey, make no mention of any work-related accident or injury on or about September 4, 2010 and the Claimant's own statements to Dr. Bailey indicate that his neck problems began in January 2010."*

The Hearing Commissioner's rulings in this regard were correct and, furthermore, because they were not appealed, they are affirmed as the law of the case.

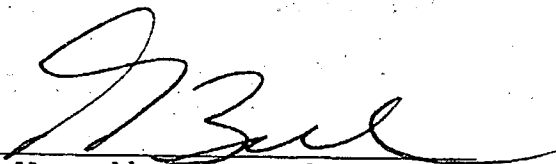
2. Because the Claimant has failed to satisfy his burden of proof under S.C. Code Ann. § 42-9-35, he is not entitled to any benefits under the Workers' Compensation Act as a matter of law.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is not entitled to and the Defendants are not liable for, any benefits under the South Carolina Workers' Compensation Act with respect to the alleged accident of September 4, 2010.

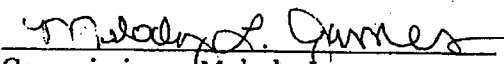
ITS IS FURTHER ORDERED that W.C.C. File No. 1012533 is hereby **DENIED** and **DISMISSED WITH PREJUDICE**.

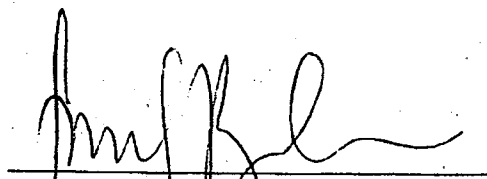
IT IS SO ORDERED!


The Honorable T. Scott Beck
S.C. Workers' Compensation Commissioner

Dated: July 24, 2017

WE CONCUR:


Commissioner Melody James


Commissioner Susan S. Barden

CERTIFICATE OF SERVICE

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

By Valerie Deller on July 24, 2017

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5723 www.wcc.sc.govWCC File #: **1012533**

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Alexander C. FramptonSSN: [REDACTED]Employer's Name: SC Dept. of Natural ResourcesAddress: [REDACTED]Address: PO Box 167City: John's IslandState: SCZip: [REDACTED]City: ColumbiaState: SCZip: 29202Home Phone: [REDACTED]Work Phone: () -Insurance Carrier: State Accident FundPreparer's Name: John C. Land, IIILaw Firm: Land, Parker & Welch, PAPreparer's Phone #: (803) 435 - 8894**A claim for workers' compensation benefits is made based on the following grounds:****Date of Injury or Illness:** 9/4/10☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to neck & right arm (Part(s) of Body Injured) on 9/4/10 (Month/Day/Year) in Berkeley county, state of SC.
 2. Body part(s) affected are: neck and right arm.

Briefly describe how the accident occurred. Injured worker was bouncing along in a pick-up truck in a rough dove field when pain suddenly occurred in his neck and right arm.

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 9/4/10 (Month/Day/Year) in the following manner:
Supervisor, Glenn Ward was notified.

☒ 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: neck and right arm.☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Injured worker used sick leave as opposed to temporary-total compensation.☒ 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 Loss9a. ☐ A determination of permanent disability is premature at this time.☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: surgical scars.10a. At the time of the injury, the Claimant was paid weekly wages of \$689.71 CR, 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/a11. Further grounds or unusual aspects of claim: All statutory rights including Utica-Mohawk provision, lump sum settlement and applicability of §42-9-400.11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Doctors Care, Folly Rd., Charleston, SC; Dr. Byron Bailey, Charleston Neurosurgical Associates, 9275B Medical Plaza Drive, N. Charleston, SC 29406; St. Francis West Ashley, Charleston, SC; RCC PT, West Ashley, Charleston, SC.11b. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: _____

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

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.14. Estimated time needed for hearing: 30 min.☒ 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 State Accident Fundaddress Post office Box 102100, Columbia, SC 29221-5000 on the 17th day of November 2014, by ☐ first class postage ☒ certified mail ☐ personal service.

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

Preparer's Signature

Attorney for Claimant
Titlepat@lpwlawfirm.com
Email11/17/14
Date

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

WCC Form # 50
Revised 7/13**50****Employee's Notice of Claim and/or
Request for Hearing**

South Carolina Workers' Compensation Commission

1612 Marion Street • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5739

www.wcc.sc.gov

WCC File #: **1012533**Carrier File #: **2010-3478**

Carrier Code #:

Employer FEIN #:

Claimant's Name: Alexander Frampton

SSN: [REDACTED]

Address: [REDACTED]

Employer's Name: Dept of Natural ResourcesCity: John's IslandState: SC

Zip: [REDACTED]

Address: 1000 Assembly St Room 136

Home Phone: () -

Work Phone: () -

City: ColumbiaState: SCZip: 29202Date of Injury: 09/04/2010Insurance Carrier: State Accident FundPreparer's Name: Erin Farthing, Esq.Law Firm: State Accident FundPreparer's Phone #: (803) 896-5891

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:

Date of Injury or Illness: 09/04/2010

1. It is Admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
The Defendants admit an injury to the cervical spine only; however, extent of injury and all other body parts are denied. The Defendants deny an injury to the right arm.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is Admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is Admitted that notice of injury was given the employer. The reasons for denial are:
6. It is Denied the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
The claimant reinjured the cervical spine on 06/16/2011 and is currently being treated for the cervical spine as a result of the 6/16/2011 injury.
7. It is Denied the employee is entitled to temporary total disability for the period(s) of :
All weekly benefits are being paid by the 06/16/2011 date of accident.
8. It is Denied the employee is permanently disabled. The reasons for denial are:
Disability, if any, to be determined by W.C.C.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 1299.31 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
12. 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: John C. Land, Esquire

Judicial Director, SCWCC

Address: P.O. Box 138 Manning, SC 29102

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

on the 5th day of December, 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.

Preparer's Signature: Erin FarthingAsst. Chief Counsel
TitleEFarthing@saf.sc.gov
EmailDate: 12/4/14

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.



Claimant's Name: Alexander Frampton Employer's Name: SC Dept. of Natural Resources
Address: [REDACTED] Address: 217 Fort Johnson Rd.
City: John's Island State: SC Zip: [REDACTED] City: Charleston State: SC Zip: 29422
Home Phone: [REDACTED] Work Phone: () - Carrier: SC State Accident Fund
Preparer's Name: John C. Land, III Preparer's Phone #: (803) 435-8894

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$689.71 2. AWW: \$ Date of Injury: 9/4/10
3. Type of injury and body part(s): Injury to neck (back) and both arms.
4. Facts in controversy: The degree of disability and loss of use of the neck (back) and both arms, and is the injured worker most probably permanently and totally disabled pursuant to law having lost more than 50% of his neck (back).
5. Legal issues involved: \$42-9-30
6. Unusual aspects: None.
7. Witnesses (designate if expert):* The injured worker will testify as to his injury, his medical treatment and his present disability and loss of use of the arms and neck (back) and that his limitations in his neck are greater than 50%.
8. Exhibits: None.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
See attached sheet.
10. Name, address, and specialty, if any, of the treating physician: Dr. Byron Bailey, Charleston Neurosurgical Associates, 2145 Henry Tecklenburg Drive, Suite 220, Charleston, SC 29414.
11. Impairment rating(s); body part(s); physician and date of opinion: (1) Dr. Byron Bailey, 9/2/14-Injured worker has an impairment rating of 75% for his cervical spine, and a whole person impairment rating of 25%. (2) Dr. Steven C. Poletti, 6/4/15-Injured worker has a 28% whole person impairment due to a two-level spinal fusion, a 5% impairment at the C6 level for persistent sensory deficit or pain. This would be additional impairment based on loss of use to the upper extremities, for a total impairment of 33% to the whole person.
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 Kirsten L. Barr, Esquire,

Address Trask & Howell, PO Box 2167, Mt. Pleasant, SC 29465 on the 24th day of June 2015 by; ☒ first class postage ☐ certified mail ☐ personal service.

Signature: _____ Email: pat@lpwlawfirm.com
Date of hearing: 7/15/15 @ 11:30 a.m. 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.

Re: Alexander Frampton vs. SC DNR
WCC File No.: 1012533

Medical Evidence:

1. APA - Doctors Care, 9/7/10-9/22/11 - 9/7/10-Working in field Saturday and end of day neck pain, worsened overnight, stiff, painful to flex. Assessment is cervical strain and trapezius strain. Prescribed Ibuprofen, Flexeril and Lortab. May return to work with no overhead lifting. 9/17/10-Resolving cervical muscle strain. May perform full duty as of 9/17/10. 6/22/11-Chief complaint: neck pain from MVA 6/16/11. Neurosurgeon fused 2 discs in March, released to full duty, was in MVA on 6/16/11 and now acute neck pain. Diagnosis: acute neck pain-reactivation of prior injury. Refer to neurosurgeon Dr. Bryan Bailey.

2. APA - Dr. Byron Bailey, 3/15/11-5/13/15 - 3/15/11-Following for cervical radiculopathy. He has had progressive symptoms of both neck pain and right arm discomfort. It seems to conform to a C6 distribution on the right-hand side. He described pain in his right shoulder blade extending into his right upper arm and forearm. He has numbness involving the index, thumb, and third digit of his right hand. He has suboccipital pain and paraspinal pain on the right-hand side. Impression: We are going to obtain a repeat MRI as well as EMG and nerve conduction studies. Once these studies are completed, we will decide whether surgical intervention would be the next course of action. 4/6/11-Patient is status post on 3/21/11 anterior cervical discectomy and fusion. Reports that he has had no further pain. He has occasional numbness and tingling. Impression: I think he is doing well. A follow-up x-ray will be helpful. Will probably allow him to return to work in 2 weeks, but will await his progress and direct him accordingly. 5/17/11-Reports he has been doing fairly well. Has some periodic aching of his cervical spine. Impression: Doing well. If gradual advancement of his activity would be warranted, we will place him on light duty for an additional 4 weeks. He will be able to return to full duty within 90 days. 7/1/11>Returns for follow-up. He reports that he is involved in a motor vehicle accident resulting in immediate onset of neck pain. He describes continued neck pain with decreased range of motion with significant pain particularly with left rotation. Impression: it appears that he has probably developed a cervical strain as a result of this motor vehicle accident and frontal collision. We will start him on conservative treatment to include a nonsteroidal anti-inflammatory medication, an analgesic and a muscle relaxant. We will restrict his activity to light duty and complete x-rays of his cervical spine. Return in 3 weeks. 8/23/11-Status post anterior cervical discectomy and fusion. During the interval, has been involved in a motor vehicle accident which has caused exacerbation of neck pain. He is scheduling physical therapy. He does have particularly decreased range of motion of his cervical spine with some pain on motion. Also has some nocturnal pain of his cervical spine. Impression: He is doing reasonably well. Initiation of physical therapy would be appropriate. If he responds well, we will have him return in 3 months. 11/22/11-eight month postop. Neck pain has mostly subsided. It only bothers him when he sits for prolonged periods with his neck flexed. Assessment: neck pain. See him back in 6 months. 8/29/12-Neck soreness. He has symptoms of neck pain that have progressed to include paraspinal spasms on the right. Exam finds reasonable range of motion-does have pain with thick neck extension and some limitation of rotation, right equal to left. Assessment: Cervical spondylosis. X-rays demonstrate some degenerative changes at C4-5 both anterior and posterior at that level. Treat with conservative measures to include nonsteroidal anti-inflammatory medication and evaluation by physical therapy. Will also encourage him to complete a program of home exercises. Return in 6 months. 4/17/13>Returns for follow-up. He reports he has occasional neck pain, particularly with certain activities and movement. Assessment: Cervical spondylosis. Has a stable appearing x-ray and clinical exam. He has reached maximal medical improvement at this point; however, he will continue to have cervical symptoms that ~~we will restrict his activity. He will need continued follow-up with annual x-rays and periodic MRI scans.~~ He is at risk for transitional changes, particularly at the C4-5 level. His impairment rating for his cervical spines is 20%. 9/20/13-(Form 14B)-Unable to return to work at his current employment. Has sustained a

20% medical impairment to the cervical spine. Will need future medical care as follows: annual x-rays along with periodic MRI scans of his cervical spine. 8/29/14>Returns for follow-up. He continues to complain of neck pain with decreased range of motion. He has most difficulty with neck extension and right rotation. He has had intermittent numbness and tingling involving his upper extremities. On examination, he has impaired range of motion of his cervical spine. Assessment: Cervical spondylosis. I think a course of therapy and instructions on a home exercise program for range of motion of the cervical spine would be helpful. He will require periodic x-rays and MRI scans as well as medical treatment, evaluation for therapy and efforts by the anesthesiologist for pain management. It is likely he will develop transitional stenosis and require additional surgery in the future. Follow-up in 6 months. 9/2/14-Form 14B-Injured worker has sustained a 26% medical impairment of the whole person and a 75% impairment to the cervical spine. 5/13/15-Is evaluated for symptoms of increasing neck pain with movement and associated crepitus. He describes restricted range of motion. Additionally complains of numbness and tingling affecting his hands bilaterally. Pain is described as located in the posterior cervical musculature at the base of the skull. Assessment: Cervical spondylosis. X-rays demonstrate a solid fusion at C5-6 and C6-7, minimal degenerative changes cephalad. Treatment: MR spine cervical. Follow up after MRI.

3. APA - TriCounty Radiology Associates, 3/15/11 - X-Ray Cervical Spine for history of cervical radiculopathy. Impression: Mild degenerative disc disease and facet arthropathy most pronounced C5-6 and C6-7. Cervical Spine MRI for cervical radiculopathy, C6/7 on the right. Impression: Cervical spondylosis most impressive at C5/6 and C6/7. Correlation for bilateral C6 and right greater than left C7 radiculopathies might be helpful. The C6/7 right foraminal stenosis borders on severe.

4. APA - Dr. J. Reilly Keffer, 3/16/11-Presents with neck pain and pain and numbness and tingling right upper extremity with onset of his RUE symptoms beginning about 2 months ago. EMG & NCV Findings: This is a normal electrodiagnostic study of the right upper extremity. There is no electrodiagnostic evidence of a right cervical radiculopathy, plexopathy, myopathy, or other neuropathy. Despite the negative EMG, I still suspect a right C6/C7 radiculitis causing his symptoms in the RUE. He does seem to be significantly symptomatic with his current symptoms.

5. APA - Bon Secours St. Francis Hospital, 3/21/11-9/2/14 - 3/21/11-Gentlemen who we have followed for degenerative disk disease of his cervical spine. Over the last 72 hours, he has had increasing symptoms, been unable to sleep, and unable to perform daily activities without significant neck and left arm pain. He has been refractory to all measures of conservative management and now presents for rather acute symptoms that need surgical decompression. He is in moderate distress due to his neck and left arm pain. He has decreased range of motion of his cervical spine, particularly in extension. He has decreased strength in his right hand. Overall Impression: as a result of the progression of symptoms despite conservative measures and the known motor weakness, we are electing to proceed with anterior cervical discectomy and fusion. He wishes to proceed. Procedure performed: Anterior cervical discectomy and fusion C5-6 and C6-7. Postoperative diagnosis: Cervical spondylosis with associated radiculopathy. 7/1/11-XR spine cervical for pain, history of previous MVA and previous cervical fusion. Impression: stable sequel of prior ACDF at C5-C6 and C6-C7, without specific adverse features. No evidence of translational instability. 11/22/11-XR cervical spine. Post-surgical changes are noted at C5-C6-C7. Anterior plate and screw device is noted. 8/29/12-XR spine for neck pain. No evidence of hardware failure or fracture. 4/17/13-XR cervical spine for cervical spondylosis with impression of stable satisfactory postoperative alignment. 8/28/14-XR cervical spine for cervical spondylosis. Impression: Prior ACDF at C5-C6 and C6-C7, features suggesting osseous fusion across the disc spaces; at C7-T1, detail is mostly precluded by overlap from the patient's shoulders, although there is probably grade 1 anterolisthesis.

6. APA - Rehabilitation Centers of Charleston, 11/8/12-12/3/12 - Presents for evaluation and treatment of cervical spine spondylosis. Chief complaint is neck pain. Reports the cause to be from whiplash when riding in a truck. Pain is constant. Rehabilitation potential: fair-good.

7. APA - Dr. Steven C. Poletti, 6/4/15 - IME for evaluation of neck and bilateral arm pain. On physical exam, he has pain with rotation of his neck. He has some diminution of thumb extension strength bilaterally right greater than left. His biceps and triceps reflexes are diminished bilaterally. He has positive Spurling's test with limited rotation and extension of his neck to the right. Impression: Cervical radiculopathy status post cervical fusion with adjacent-segment disc disruption C4-5 and C7-T1. He had appropriate surgical intervention and underwent two-level discectomy and interbody fusion. He has changes of degeneration or adjacent-segment problems at C4-5 and evidence of what would appear to be potential instability at C7-T1. This man will require future surgery in the form of extension of his fusion. I think it might be the C7-T1 level that bothers him first, but it certainly could be the C4-5 level. He has some measure of impairment as a consequence of segmental instability with radiculopathy. I would put him at 28% impairment to the whole person because this is a two-level spinal fusion. In addition, I would estimate he has sensory deficit to the C6 level. I think 5% would be a reasonable impairment that he should have as a consequence of loss of strength and sensation in the C6-7 distribution. This would be additional impairment based on loss of use to the upper extremities as a consequence of injuries sustained and subsequent surgery. His total impairment would be 33% to the whole person. This man requires ongoing follow-up, periodic scanning, and potentially will require surgery in the future. It would involve extension of his fusion.

South Carolina Workers' Compensation Commission

1333 Marion Street, Suite 500
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739



PRE-HEARING BRIEF
WCC FILE NO: 1012533

Chisolm Frampton

Claimant's Name

Address

Hollywood, SC

City

State

Zip

Home Phone

Work Phone

SC Department of Natural Resources

Employer's Name

Charleston Marine Research
Institute, 217 Fort Johnson

Road

Address

Charleston, SC 29422

City

State

Zip

South Carolina State Accident Fund

Carrier

Kirsten L. Barr

Preparer's Name

(843) 881-4228

Phone #

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

☒ Injury ☐ Illness

1. Compensation Rate: \$689.71 2. AWW: \$1299.31 Date of Injury: September 4, 2010
3. Type of injury and body part(s):

Claimant was walking in a dove field and later complained of neck pain.

4. Facts in controversy:

The Claimant alleges he is permanently and totally disabled. The Defendants deny that the Claimant is permanently and totally disabled because he is currently earning \$102,590.00 annually as a Deputy Director of the South Carolina Department of Natural Resources. The Claimant reported to Dr. Bailey on April 6, 2011 that he "has had no further pain. No radicular pain" (Claimant's APA p. 10) and the Claimant was released to return to work on May 1, 2011, after having been out of work for only 6 weeks. In the four years since his return to work, the Claimant has not missed any time due to his alleged neck problems.

On June 16, 2011, the Claimant aggravated his work-related neck injury in a motor vehicle accident that occurred while he was on vacation with his family in Palm Beach, Florida, and his vehicle was "totaled." (Claimant's APA p. 12). The Claimant was found to be at fault for this accident and admits on his Form 58, Pre-Hearing Brief, that June 15, 2011 motor vehicle accident resulted "in immediate onset of neck pain" and "caused exacerbation of neck pain," as well as decreased range of motion and significant pain particularly with left rotation.

(Claimant's attachment to Form 58, Claimant's APA p. 12). As a result of this subsequent, intervening accident, the Claimant required multiple prescription medications, physical therapy, and his work activities were restricted. (See Claimant's APA's p.5, p.8, p. 12, p. 13, and p.14).

The Claimant does not require any additional medical care or treatment as a result of the September 4, 2010 accident. He has not been prescribed or required any medication for his neck in several years. (See Claimant's APA p. 15, "He is not on any specific medications at this point."). According to Dr. Bailey's Form 14B dated September 20, 2013, the Claimant will not require any future medical treatment, though he did recommend "periodic MRI scans and x-rays." (Claimant's APA p. 21).

5. Legal issues involved:

Pursuant to Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E.2d 29 (2007), the Claimant is not entitled to, and the Defendants should have no liability for, any additional medical or compensation benefits as a matter of law because (1) the Claimant suffered a non-disabling neck injury as a result of the September 4, 2010 work accident and was working full duty without restrictions as of June 12, 2011; (2) the Claimant re-injured his neck in a non-work-related motor vehicle accident on June 16, 2011 resulting in the need for additional medical treatment, as well as the imposition of new work restrictions and alleged disability; and (3) the non-work-related motor vehicle accident on June 16, 2011 aggravated his pre-existing neck condition, as indicated by Dr. Bailey's statement that the motor vehicle accident "caused [an] exacerbation of neck pain."

In the alternative, the Claimant is not entitled to permanent and total disability benefits under S.C. Code Ann. § 42-9-30, as alleged, because he is currently working full time and earns \$102,590.00 annually as a Deputy Director of the South Carolina Department of Natural Resources. If the Claimant were entitled to any benefits for loss of use of the back (neck) under S.C. Code Ann. § 42-9-30(21) despite his subsequent, intervening accident, the Commission should take into account the effect of his subsequent, intervening motor vehicle accident and resulting neck injury in determining what portion of the Claimant's loss of use of the back (neck) is causally-related to the September 4, 2010 accident, for which he was originally

released to full duty without restrictions and for which no additional medical treatment was recommended. The impairment rating issued by Dr. Bailey, 20% to the cervical spine, was not issued until after the subsequent intervening motor vehicle accident (September 20, 2013).

If the Claimant were entitled to pursue future medical benefits under S.C. Code Ann. § 42-15-60 despite his subsequent, intervening motor vehicle accident, the Defendants deny he is entitled to any additional medical treatment pursuant to that statute because the Claimant does not currently require any medical treatment and there is no additional medical care or treatment that would tend to lessen the period of alleged disability causally-related to the September 4, 2010 accident. In fact, no additional medical treatment has even been recommended, not even by the Claimant's IME physician, Dr. Poletti.

6. Unusual aspects:

The Claimant maintains that he is permanently and totally disabled, despite working full time and earning \$102,590.00 annually as a state employee.

7. Witnesses (designate if expert*):

Col. Alvin A. Taylor, Ms. Terri McGee, Ms. Stephanie Welsh, and/or other representative of the South Carolina Department of Natural Resources; Dr. Byron Bailey* (via deposition on August 25, 2015).

8. Exhibits:

See Claimant's Notice of Submissions; Claimant's personnel file; Claimant's earnings reports; Claimant's medical records, news reports of Claimant's criminal domestic violence charge and subsequent suspension; surveillance of the Claimant's activities

9. Medical evidence:

See attached Notice of Submissions; Deposition of Dr. Bailey (scheduled for August 25, 2015) to be submitted upon receipt.

10. Name, address, and specialty, if any, of the treating physician:

Dr. Byron Bailey, Charleston Neurosurgical Associates (neurosurgeon)

11. Impairment rating(s); body part(s); physician and date of opinion:

20% to the "cervical spine" per Dr. Bailey on September 20, 2013

12. I am amending my Form 50/51 in the following manner: N/A

☐ **Mediation**

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: John C. Land, III, Esq., P.O. Box 138, Manning, SC 29102

on the 3rd day of July 2015

by ☒ first class postage ☐ certified mail ☐ personal service.

Signature: Kirsten L. Barr

Email: kbarr@trask-howell.com

Date of hearing: July 15, 2015 @ 11:30 a.m.

Time needed for hearing: 45 minutes

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.



Claimant's Name: Alexander Frampton SSN: [REDACTED] Employer's Name: SC Dept. of Natural Resources
Address: [REDACTED] Address: 217 Fort Johnson Rd.
City: John's Island State: SC Zip: [REDACTED] City: Charleston State: SC Zip: 29422
Home Phone: [REDACTED] Work Phone: () - Insurance Carrier: State Accident Fund
Preparer's Name: John C. Land, III Law Firm: Land, Parker & Welch, PA Preparer's Phone #: (843) 435-8894

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of Injury: 9/4/2010 (m/d/yyyy)

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

1. The Single Commissioner erred in regard to the finding that the injured worker only lost 20% of the spine inasmuch as the finding is not consistent with the substantial evidence in the record, which indicates a greater percentage of loss of use of the spine or a finding of permanent and total disability pursuant to §42-9-30.

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Kirsten L. Barr, Esquire

Name

Trask & Howell, Post Office Box 2167, Mt. Pleasant, SC 29465

Address

on the 17th day of October, 2016 by ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature

Attorney for Claimant
Title

October 17, 2016
Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

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

WCC File # 1012533
Carrier File # 2010-3478
Carrier Code #
Employer FEIN. 57-0000P24

Chisolm Frampton
Claimant's Name SSN
Address City State Zip
Home Phone Work Phone

SC Department of Natural Resources
Employer's Name
Charleston Marine Research
Institute, 217 Fort Johnson Road Charleston, SC 29422
Address City State Zip
South Carolina State Accident Fund
Insurance Carrier

Kirsten L. Barr
Preparer's Name

(843) 881-4228
Phone #

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of injury: September 4, 2010

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

See attached.

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Ms. Amy Bracy, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202-1715 and John C. Land, III, Esq., P.O. Box 138, Manning, SC 29102

on the 17th day of October, 2016 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Kirsten L. Barr
Preparer's Signature

Attorney for Defendants
Title

October 17, 2016
Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

Chisolm Frampton v. SC Department of Natural Resources
W.C.C. File No: 1012533
Carrier File No: 2010-3478
Date of Accident: September 4, 2010

Attachment to Form 30

1. Did the Hearing Commissioner err as a matter of law in awarding medical and compensation benefits to the Claimant after finding and concluding that the Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35?
2. Did the Hearing Commissioner err as a matter of law in concluding that Geathers v. 3V, Inc., does not apply to the facts of the case?
3. Did the Hearing Commissioner err as a matter of law in failing to find and conclude that the Claimant is not entitled to any medical or compensation benefits based on the holding of Geathers v. 3V, Inc. ?
4. Does the greater weight of the evidence support the Hearing Commissioner's finding that the Claimant's subsequent motor vehicle accident, which admittedly exacerbated the Claimant's alleged neck injury, did not "break the chain of causation"?
5. Did the Hearing Commissioner err in failing to find and conclude that any need for medical treatment is not causally-related to the alleged accident of September 4, 2010 based upon the greater weight of the evidence and the applicable law?
6. Did the Hearing Commissioner err in failing to find and conclude that any alleged permanent impairment or disability is not causally-related to the alleged accident of September 4, 2010 based upon the greater weight of the evidence an the applicable law?

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Chisholm Frampton, Employee,	)	WCC File No.: 1012533
	)	
Claimant/Appellant,	)	
	)	
Vs.	)	CLAIMANT'S BRIEF
	)	
SC Department of Natural Resources, Employer,	)	
	)	
And	)	
	)	
SC State Accident Fund, Carrier,	)	
	)	
Defendants/Respondent.	)	

STATEMENT OF THE CASE

The injured worker, Chisholm Frampton, requests review of the Order of the Single Commissioner, dated the 3rd day of October 2016, finding that even after cervical disc surgery and fusion of C5-6 and C6-7 that the injured worker only had a 20% disability and loss of use of the spine. The injured worker contends that the Single Commission should have found that he had lost more than 50% of the use of his back and that a medical questionnaire answered by the treating neurosurgeon gave the injured worker a 78% regional cervical impairment, and a 26% whole person impairment.

The injured worker is a 50 year old college graduate. He has been employed by the Department of Natural Resources since 1993 and currently is the highest ranking conservation officer supervising all other conservation officers.

The injured worker was a passenger in a pickup truck driving through a dove field on the 4th day of September 2010, when the bouncing in the truck caused an injury to his cervical spine, for which surgery was performed by Dr. Byron Bailey, described as an anterior cervical discectomy and fusion at C5-6 and C6-7.

QUESTION

I. DID THE SINGLE COMMISSIONER ERR IN REGARD TO FINDING THAT THE INJURED WORKER ONLY LOST 20% OF THE SPINE INASMUCH AS THE FINDING IS NOT CONSISTENT WITH THE SUBSTANTIAL EVIDENCE IN THE RECORD, WHICH INDICATES A GREATER PERCENTAGE OF LOSS OF USE OF THE SPINE, OR A FINDING PURSUANT TO §42-9-30(21)?

This is an admitted claim. This claim was accepted by the Director of the State Accident Fund, Mr. Harry Gregory, and benefits were accordingly provided to the injured worker, Chisolm Frampton.

The injured worker underwent cervical disc surgery and fusion at C5-6 and C6-7. The treating neurosurgeon, Dr. Byron Bailey, rated the injured worker on a Form 14B on or about the 20th day of September 2013, at which time Dr. Bailey stated that the injured worker had sustained a 20% medical impairment to the cervical spine and that the injured worker was unable to return to work at his current employment and would require annual x-rays along with periodic MRI scans of his cervical spine.

Later Dr. Byron Bailey changed his Form 14B to state that the injured worker had a whole person medical impairment of 26% to the cervical spine and was unable to return to work at his or her current employment and may require further treatment in the future if he were to develop hardware failure or adjacent level disc. As a result of this change of impairment rating, the State Accident Fund sent Dr.

Byron Bailey a questionnaire asking if he intended to assign a different impairment rating to which Dr. Bailey answered "yes", and stated that the injured worker had a regional cervical rating of 78% and a whole person rating of 26%.

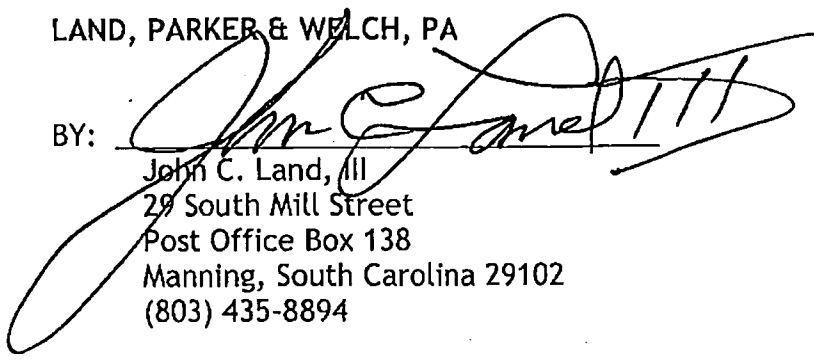
A careful reading of the Order filed by the Single Commissioner seemed to make her ruling based on the general disability statute, which would be predicated upon a showing of loss of earning capacity. This claim was awarded pursuant to 542-9-30, *SC Code of Laws, 1976*, which does not require a showing of loss of income earning capacity. The Single Commissioner in her Order referred to the fact that the injured worker was continuing his full duty, unrestricted employment and advancement/promotions within the Department of Natural Resources since his worker injury. All of this seems to relate to income earning capacity as opposed to a finding of a scheduled loss. It would appear in this case that a higher percentage of disability and loss of use of the spine would more accurately serve the ends of justice and fairness.

CONCLUSION

Accordingly, it is respectfully requested that this Panel review the submitted medical evidence and award a percentage of disability and loss of use to the spine of the injured worker that is fair and equitable.

Respectfully submitted,

LAND, PARKER & WELCH, PA

BY: 

John C. Land, III
29 South Mill Street
Post Office Box 138
Manning, South Carolina 29102
(803) 435-8894

Attorney for Claimant/Appellant

December 19, 2016

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

CHISHOLM FRAMPTON,	)	W.C.C. FILE NO. 1012533
	)	
Employee/Claimant,	)	
	)	
v.	)	APPELLANTS' BRIEF ON
	)	BEHALF OF THE EMPLOYER
S.C. DEPARTMENT OF NATURAL	)	AND CARRIER
RESOURCES,	)	
	)	
Employer, and	)	
	)	
S.C. STATE ACCIDENT FUND,	)	
	)	
Carrier, Defendants.	)	
	)	

STATEMENT OF THE CASE

The Claimant alleges that on September 4, 2010, he was driving a truck across a dove field and injured his neck. He claims to have permanent injuries to his neck and both arms. According to the Claimant, he has lost more than 50% of his back and requires additional medical treatment.

The Defendants contend that the alleged events of September 4, 2010 caused nothing more than a cervical sprain or strain injury and that he did not aggravate any of his known pre-existing conditions, which include a C6-7 radiculopathy diagnosed approximately six months prior to the dove field incident. The Defendants further argue that the Claimant reinjured his neck in a subsequent intervening accident on November 4, 2010, after which he required a cervical fusion surgery that was covered under the State Health Plan. The Claimant later reinjured his neck in a subsequent, intervening motor vehicle accident on May 16, 2011. Therefore, the Defendants respectfully contend that any permanent loss of use of the neck (back) and any need for

medical treatment is not proximately related to the dove field incident on September 2, 2010.

In her October 4, 2016 Decision and Order, Hearing Commissioner Taylor found that the "Claimant suffered from pre-existing neck pain and right arm numbness" and that "there is no medical evidence stated to a reasonable degree of medical certainty that the Claimant's September 4, 2010 dove field incident aggravated or exacerbated his pre-existing neck condition for which he was already treating with a neurosurgeon." Commissioner Taylor also concluded that the "Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35." Neither these findings, nor this conclusion, were appealed by the Claimant and are; therefore, the law of the case. As such, the Defendants respectfully contend that the Hearing Commissioner erred as a matter of law in awarding the Claimant any benefits under the Act.

Furthermore, the Hearing Commissioner found that the

"Claimant was involved in a major motor vehicle collision on June 16, 2011, which totaled his car and resulted in 'immediate onset of neck pain' that required treatment to include prescription medication and physical therapy. Claimant was placed on light duty as a result of the accident and Dr. Bailey noted the motor vehicle collision caused an 'exacerbation of neck pain.'"

The Claimant did not appeal this finding of fact and it is now the law of the case. Accordingly, the Defendants contend that the Claimant is not entitled to any benefits under the Act pursuant to the proper application of the Supreme Court's holding in Geathers v. 3V, Inc., 371 S.C. 560 (2007).

EVIDENCE SUMMARY

The Claimant is a 50 year old college graduate. He has been employed by the Department of Natural Resources since 1993 and currently serves as a Colonel supervising the state's conservation officers.

According to the Claimant, on September 4, 2010, he was a passenger in a pick-up truck driving through a dove field. He believes that the bouncing in the truck that day caused his neck to hurt. The Claimant sought medical treatment at Doctors Care three days later and subsequently sought treatment from Dr. Byron Bailey for neck and arm pain.

The Claimant testified that he did not "recall" seeing Dr. Bailey prior to the alleged dove field incident on September 4, 2010 and denied having any problem with his neck prior to September 4, 2010. However, Dr. Bailey's medical records clearly show that the Claimant began treating with Dr. Bailey for neck pain well before the incident. In a report dated March 16, 2010, Dr. Bailey noted that the Claimant had "numb dysestheias affecting his right arm" and a cervical MRI scan showed disc degeneration at C6-7 affecting both exiting foramen. Dr. Bailey prescribed physical therapy, Flexeril, and Lortab. (Defendants' Exhibits A & B).

When the Claimant returned to Dr. Bailey on March 16, 2011, he reported that his neck pain started "gradually" over a period of "14 months." (Defendants' Exhibit E). There is absolutely no mention of any alleged accident or injury on September 4, 2010 (or any incident in a dove field) in any of the records of Dr. Bailey. Dr. Bailey performed a cervical discectomy and fusion on March 21, 2011, which was paid under the Claimant's group health insurance. There is no mention of any work-related accident or

injury in Dr. Bailey's operative notes. The Claimant received sick leave while out of work following this surgery.

The Claimant testified that in June 2011, he was involved in a motor vehicle accident with his family in south Florida while driving a state vehicle. The Claimant admits that he sought medical treatment for pain in his neck and arms with Doctors Care and with Dr. Bailey as a result of the motor vehicle accident. A report from Doctors Care dated June 27, 2011 states that the Claimant was in a motor vehicle accident on June 16, 2011 and now had "acute neck pain...reactivation of prior injury." (APA p.5). Dr. Bailey's records include a report dated July 1, 2011, which states that the Claimant was "involved in a motor vehicle accident in which the vehicle was totaled...resulting in immediate onset of neck pain." (APA p.12). As a result of the motor vehicle accident, Dr. Bailey prescribed several medications, including an anti-inflammatory, an analgesic, and a muscle relaxer, and he also placed new work restrictions (light duty) as a result of this new accident. (APA p.12). Dr. Bailey's report dated August 23, 2011 states that the Claimant was "involved in a motor vehicle accident which has caused exacerbation of neck pain" and as a result, Dr. Bailey recommended physical therapy. (APA p.13).

On cross-examination, the Claimant was confronted with a letter he wrote to Harry B. Gregory, Jr., the Director of the State Accident Fund. In this letter, the Claimant stated that "there is no doubt in my mind that I was injured on November 4, 2010. I did not experience any pain of this magnitude in my neck prior to November 4, 2010." The Claimant testified that while he remembered writing this letter, he initially claimed "I was not injured on November 4th of 2010. I was injured in a dove field." (T. p.38, lines 2—13). Moments later, the Claimant testified that his neck problems in fact became worse on Thursday, November 4th, 2010. (T. p.40, lines 2—6). There is no

mention of any injury or accident on Saturday, September 4, 2010 in the letter to Mr. Gregory.

At the hearing, the Claimant testified that he last saw Dr. Bailey in May 2015 because he was having "increasing pain in [his] neck." (T. p.28, line 14). However, the Claimant admits that he is working his regular, full time job and has been twice promoted since his neck surgery. He has not missed any significant period of time from work as a result of his neck and, at the time of the hearing, the Claimant was earning approximately \$103,000 per year. The Claimant admits that he does not take any prescription medications for his neck and does not use any braces or assistive devices. (T. p.53).

ARGUMENTS

I. The Claimant is not entitled to any benefits as a matter of law pursuant to S.C. Code Ann. § 42-9-35.

Pursuant to S.C. Code Ann. § 42-9-35, the Claimant was required to prove, with expert medical evidence stated to a reasonable degree of medical certainty, that the alleged accident on September 4, 2010 aggravated his pre-existing neck condition.¹ Only by meeting this statutory burden of proof may the Commission properly award medical or compensation benefits the Claimant.

Here, the Claimant did not meet his required burden of proof under S.C. Code Ann. § 42-9-35. In fact, the Commissioner Taylor entered the following conclusion of law with respect to this failure:

¹ By employing the term "shall" in S.C. Code Ann. § 42-9-35, the legislature has made the Claimant's burden of proof mandatory. (cite)

"The Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35. The record is clear that he has a history of cervical radiculopathy that predates the September 4, 2010 accident and there is no competent medical evidence that the September 4, 2010 accident aggravated that pre-existing condition. In fact, the records of the Claimant's treating physician, Dr. Bailey, make no mention of any work-related accident or injury on or about September 4, 2010 and the Claimant's own statement to Dr. Bailey indicate that his neck problems began in January 2010."

The Claimant's Form 30 makes no mention of this legal conclusion and raised no argument with regard to the application of S.C. Code Ann. § 42-9-35. Therefore, Commissioner Taylor's Conclusion of Law #2, which concludes that the Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35 is the law of the case. Atlantic Coast Builders v. Lewis, 398 S.C. 323, 329 (S.C. 2012) (citing Buckner v. Preferred Mut. Ins. Co., 225 S.C. 159 (1970) for the proposition that "an unappealed ruling, right or wrong, is the law of the case.").

Because the Claimant failed to meet his burden of proof under S.C. Code Ann. § 42-9-35 and because an award of benefits under the Act was necessarily predicated on meeting this statutory burden, the Defendants respectfully contend that Commissioner Taylor erred as a matter of law in awarding the Claimant medical and compensation benefits. Therefore, the Defendants respectfully request that the award of benefits under S.C. Code Ann. § 42-9-30(21) and § 42-15-60 be reversed as a matter of law.

II. The Claimant is not entitled to any benefits based upon a proper application of *Geathers v. 3V, Inc.*

According to Commissioner Taylor, the

“Claimant was involved in a major motor vehicle collision on June 16, 2011, which totaled his car and resulted in ‘immediate onset of neck pain’ that required treatment to include prescription medication and physical therapy. Claimant was placed on light duty as a result of the accident and Dr. Bailey noted the motor vehicle collision caused an ‘exacerbation of neck pain.’”

The Claimant did not appeal this finding of fact and; therefore, it is the law of the case. See *Atlantic Coast Builders, supra*. However, despite this finding, Commissioner Taylor failed to properly apply the Supreme Court’s holding in *Geathers v. 3V, Inc.*, 371 S.C. 570 (2007), to the facts of this case.

In *Geathers*, the employee sustained a work-related back injury but had returned to work, when she was involved in a second accident, which necessitated new light duty restrictions and additional medical treatment. According to the Supreme Court, *Geathers* was not entitled to any additional benefits from the work accident as a matter of law because:

- “(1) Claimant suffered a non-disabling back injury during a workplace accident;
- (2) Claimant’s disability was caused by the second accident; and
- (3) the second injury ‘aggravated or accelerated or activated’ the pre-existing condition.”

This holding clearly applies to the facts of this case, which were not appealed.

Specifically, Commissioner Taylor found that

- (1) "On May 1, 2011, Claimant was released to return to work;"
- (2) "Claimant was placed on light duty as a result of the [June 16, 2011 motor vehicle] accident"; and
- (3) "Dr. Bailey noted the motor vehicle collision caused an 'exacerbation of neck pain.'"

Therefore, the Defendants respectfully contend that the proper application of the Geathers holding to the established facts of the present case compel reversal of Commissioner Taylor's conclusion that "Geathers does not apply" and her concomitant award of medical and compensation benefits under the Act.

CONCLUSION

Based upon the foregoing arguments, the Defendants/Appellants respectfully request that Hearing Commissioner Taylor's award of medical and compensation benefits to the Claimant be reversed as a matter of law pursuant to S.C. Code Ann. § 42-9-35 and Geathers v. 3V, Inc., 371 S.C. 570 (S.C. 2007).

Respectfully submitted,

Kirsten L. Barr

Kirsten L. Barr
Trask & Howell, LLC
P.O. Box 2167
Mount Pleasant, South Carolina 29465
Attorneys for the Defendants/Appellants

Dated: December 22, 2016
151181 Mdec-ord

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

CHISHOLM FRAMPTON,

Employee/Claimant,

v.

S.C. DEPARTMENT OF NATURAL
RESOURCES,

Employer, and

S.C. STATE ACCIDENT FUND,

Carrier, Defendants.

W.C.C. FILE NO. 1012533

**RESPONDENTS' BRIEF ON
BEHALF OF THE EMPLOYER
AND CARRIER**

STATEMENT OF THE CASE

Despite the fact that the Claimant presented no evidence that the alleged accident of September 4, 2010 aggravated his documented pre-existing neck pain and right arm numbness, and despite the fact that reinjured his neck in a motor vehicle accident on May 16, 2011, the Hearing Commissioner awarded the Claimant benefits for a 20% loss of use of the back under S.C. Code Ann. § 42-9-30(21). The Claimant appealed this award and contends that "a higher percentage of disability and loss of use of the spine would more accurately served the ends of justice and fairness."

The Defendants respectfully contend that justice, fairness, and the law dictates that the Claimant is not entitled to any benefits under S.C. Code Ann. § 42-9-30(21) because the Claimant did not meet his statutory burden of proof under S.C. Code Ann. § 42-9-35 and his claim is otherwise barred by *Geathers v. 3V, Inc.*, 371 S.C. 570 (2007). In the alternative, the Defendants respectfully contend that any permanent loss of use of

the back (neck) caused by the alleged events of September 4, 2010 do not exceed the 20% awarded by the Hearing Commissioner.

ARGUMENTS

The Hearing Commissioner made a specific finding of fact regarding credibility. According to the Hearing Commissioner:

“I do not find Claimant’s testimony to be very credible with regard to the extent of his pre-existing neck condition and his current symptomology.”

This finding was not appealed and is the law of the case. In addition, the Hearing Commissioner decided to

“give Dr. Bailey’s revised Form 14B very little weight due to his opinion that Claimant couldn’t return to his current employment. That opinion is completely disproven by the facts of the case and calls into question the additional information placed in the revised Form 14B.”

This finding is also the law of the case because it was not appealed.

Therefore, having discounted both the Claimant’s testimony and the opinions of Dr. Bailey, the Hearing Commissioner properly based her award under S.C. Code Ann. § 42-9-30 on the Claimant’s medical records and current abilities. The Claimant’s current abilities are well documented – he has been working full duty since May 1, 2011, with no lost time or restrictions. (Hrg. T. p. 52, line 22 – p. 52, line 2). At the time of the

hearing, the Claimant admitted that he does not take any prescription medications for his neck. (Hrg. T. p.53, lines 33-9). There is simply nothing in the record to indicate the Claimant's loss of use of the neck exceeds the 20% awarded.

Furthermore, the Defendants contend that the alleged events of September 4, 2010 caused nothing more than a cervical sprain or strain injury and that the Claimant did not aggravate any of his known pre-existing conditions, which include a C6-7 radiculopathy diagnosed approximately six months prior to the dove field incident. The Defendants further argue that the Claimant reinjured his neck in a subsequent intervening accident on November 4, 2010, after which he required a cervical fusion surgery that was covered under the State Health Plan. The Claimant later reinjured his neck in a subsequent, intervening motor vehicle accident on May 16, 2011. Therefore, the Defendants respectfully contend that any permanent loss of use of the neck (back) is not proximately related to the dove field incident on September 2, 2010.

In her October 4, 2016 Decision and Order, Hearing Commissioner Taylor found that the "Claimant suffered from pre-existing neck pain and right arm numbness" and that "there is no medical evidence stated to a reasonable degree of medical certainty that the Claimant's September 4, 2010 dove field incident aggravated or exacerbated his pre-existing neck condition for which he was already treating with a neurosurgeon." Commissioner Taylor also concluded that the "Claimant did not meet his burden of proof under S.C. Code Ann. § 42-9-35." Neither these findings, nor this conclusion, were appealed by the Claimant and are; therefore, the law of the case. As such, the Defendants respectfully contend that the Hearing Commissioner erred as a matter of law in awarding the Claimant any benefits under the Act.

In addition, the Hearing Commissioner found that the

"Claimant was involved in a major motor vehicle collision on June 16, 2011, which totaled his car and resulted in 'immediate onset of neck pain' that required treatment to include prescription medication and physical therapy. Claimant was placed on light duty as a result of the accident and Dr. Bailey noted the motor vehicle collision caused an 'exacerbation of neck pain.'"

The Claimant did not appeal this finding of fact and it is now the law of the case. Accordingly, the Defendants contend that the Claimant is not entitled to any benefits under the Act pursuant to the proper application of the Supreme Court's holding in Geathers v. 3V, Inc., 371 S.C. 560 (2007).

CONCLUSION

Based upon the foregoing arguments, the Defendants/Appellants respectfully request that Hearing Commissioner Taylor's award of medical and compensation benefits to the Claimant be reversed as a matter of law pursuant to S.C. Code Ann. § 42-9-35 and Geathers v. 3V, Inc., 371 S.C. 570 (S.C. 2007).

Respectfully submitted,

Kirsten L. Barr

Kirsten L. Barr
Trask & Howell, LLC
P.O. Box 2167
Mount Pleasant, South Carolina 29465
Attorneys for the Defendants/Appellants

Dated: January 5, 2017

151\81 vresp brf

Chisholm Frampton,	)	WCC File No.: 1012533
Employee,	)	
	)	
Employee/Claimant,	)	
	)	
Vs.	)	BRIEF OF RESPONDENT/EMPLOYEE/
	)	CLAIMANT TO APPELLANT'S BRIEF
SC Department of Natural Resources,	)	ON BEHALF OF THE EMPLOYER AND
Employer,	)	CARRIER
	)	
And	)	
	)	
SC State Accident Fund,	)	
Carrier,	)	
	)	
Carrier/Defendants.	)	

The Injured Worker, Chisholm Frampton, is responding to the Request for Review of the SC Department of Natural Resources, Employer, and the SC State Accident Fund, Carrier, Defendants. As has been stated, the Injured Worker was awarded 20 percent disability and loss of use of the spine due to an accidental injury in the course of his employment on the 4th day of September 2010. The Employer and the Carrier are requesting review of this finding by the Single Commissioner.

The Injured Worker was in a pickup truck driving through a dove field on the 4th day of September 2010, when the bouncing in the truck caused an injury to his

cervical spine, for which surgery was performed by Dr. Byron Bailey, described as an anterior cervical discectomy and fusion at C5-6 and C6-7.

This is an admitted and accepted claim having been accepted by the Director of the State Accident Fund, Mr. Harry Gregory, and benefits were accordingly provided to the Injured Worker, Chisolm Frampton.

ARGUMENTS

I. The Defendants argue that the Injured Worker is not entitled to any benefits as a matter of law pursuant to *S.C. Code Ann. §42-9-35*.

This is an admitted claim accepted by the Director of the State Accident Fund, Mr. Harry Gregory, and benefits were accordingly provided to the Injured Worker, Chisholm Frampton. The argument of the Defendants comes too late inasmuch as the Defendants have accepted the claim and now the question is should additional benefits be paid to the Injured Worker for permanent disability and loss of use of the spine.

II. The Defendants argue that the Injured Worker is not entitled to any benefits based on a proper application of *Geathers v. 3V, Inc.*

Again, this is an accepted and admitted case by the Defendants and benefits have been paid and the Single Commissioner found that *Geathers v. 3V, Inc.* does not apply because the case is accepted and admitted.

Therefore, the Injured Worker, Chisholm Frampton, respectfully contends that the Single Commissioner was correct in her finding that *Geathers v. 3V, Inc.* did not apply, and the Defendants accepted this claim and paid benefits, and that the injured worker had suffered a disability and loss of use of the spine.

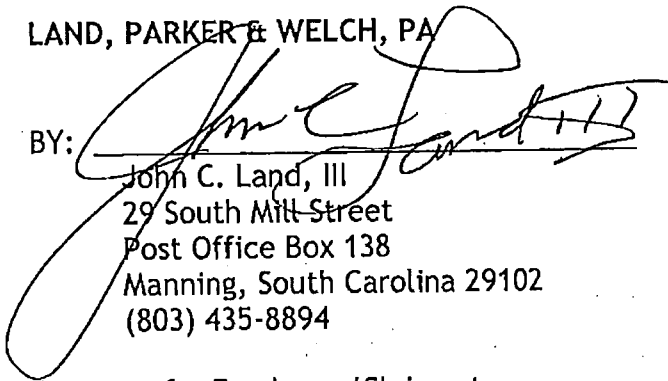
CONCLUSION

Based on the forgoing arguments, the Injured Worker respectfully requests that the Hearing Commissioner's award of medical and compensation benefits to the Injured Worker be affirmed with the exception of an increase of the degree of disability and loss of use.

Respectfully submitted,

LAND, PARKER & WELCH, PA

BY:



John C. Land, III
29 South Mill Street
Post Office Box 138
Manning, South Carolina 29102
(803) 435-8894

Attorney for Employee/Claimant

January 9, 2017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1012533

EMPLOYEE/CLAIMANT: CHISHOLM A. FRAMPTON

EMPLOYER: DEPARTMENT OF NATURAL RESOURCES

CARRIER: STATE ACCIDENT FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 15TH DAY
OF JULY, 2015, COMMENCING AT THE HOUR OF 12:19 P.M., IN
GOOSE CREEK, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA
TAYLOR, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

ORIGINAL

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

JOHN C. LAND, III, ESQUIRE, OF THE FIRM
LAND, PARKER & WELCH, PA
POST OFFICE BOX 138
MANNING, SOUTH CAROLINA 29102

ATTORNEY FOR THE CLAIMANT,

KIRSTEN L. BARR, ESQUIRE, OF THE FIRM
TRASK & HOWELL, LLC
POST OFFICE BOX 2167
MOUNT PLEASANT, SOUTH CAROLINA 29465-2167

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MR. ALVIN TAYLOR
MR. GEOFF WENDT
MS. TERRI MCGEE
MS. STEPHANIE WELCH

I N D E X

	<u>PAGE</u>
 <u>CHISHOLM A. FRAMPTON:</u>	
DIRECT EXAMINATION BY MR. LAND.....	12
CROSS EXAMINATION BY MS. BARR.....	33
REDIRECT EXAMINATION BY MR. LAND.....	55
RECROSS EXAMINATION BY MS. BARR.....	59
REDIRECT EXAMINATION BY MR. LAND.....	62
RECROSS EXAMINATION BY MS. BARR.....	63
 CERTIFICATE OF NOTARY PUBLIC.....	 67

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN GOOSE CREEK,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 (PRIOR TO HEARING, COURT REPORTER MARKS MRI REPORT
7 CLAIMANT'S EXHIBIT "A")

8 * * * * * * * * * * * * * * *

9 BY COMMISSIONER TAYLOR:

10 TODAY IS WEDNESDAY, JULY 15TH, 2015. WE ARE
11 HERE ON WORKERS' COMP FILE NUMBER 1012533. THIS IS
12 THE CLAIM OF MR. ALEXANDER FRAMPTON, WHO IS PRESENT
13 HERE TODAY AND REPRESENTED BY MR. JOHN C. LAND, III.
14 THE EMPLOYER IS THE SOUTH CAROLINA DEPARTMENT OF
15 NATURAL RESOURCES, AND THE CARRIER IS THE STATE
16 ACCIDENT FUND. BOTH THE EMPLOYER AND CARRIER ARE
17 REPRESENTED TODAY BY MS. KIRSTEN BARR. I HAVE AN
18 ORIGINAL DATE OF INJURY OF SEPTEMBER 4TH, 2010. THE
19 CLAIMANT IS AT THE MAXIMUM COMPENSATION RATE FOR
20 2010 OF \$689.71.

21 WE ARE HERE TODAY ON THE CLAIMANT'S FORM 50,
22 REQUEST FOR HEARING. I WILL ALLOW THE PARTIES TO
23 PUT DETAILED POSITION STATEMENTS ON THE RECORD.
24 HOWEVER, PRIOR TO DOING SO, ARE THERE ANY OBJECTIONS
25 TO APAs, JURISDICTION, VENUE, OR ANY OTHER ITEMS?

1 MR. LAND?

2 BY MR. LAND:

3 NOT FROM THE CLAIMANT.

4 BY THE COMMISSIONER:

5 OKAY. MS. BARR?

6 BY MS. BARR:

7 NONE FROM THE DEFENDANTS, BUT I WOULD NOTE THAT
8 WE MADE A MOTION TO ADJOURN THE HEARING AT TODAY'S
9 CONCLUSION FOR THE DEPOSITION OF DR. BAILEY.

10 BY THE COMMISSIONER:

11 AND JUST FOR THE RECORD, PRIOR TO GOING ON THE
12 RECORD WE DID HAVE A PREHEARING CONFERENCE WITH THE
13 ATTORNEYS, WHEREIN THE DEFENDANTS HAVE REQUESTED TO
14 LEAVE THE RECORD OPEN FOR THE SUBMISSION OF DR.
15 BAILEY'S DEPOSITION, WHICH WAS PREVIOUSLY SCHEDULED
16 FOR JULY 7TH BUT WAS CANCELED BY DR. BAILEY. IT IS
17 NOW RESET FOR AUGUST 25TH. THE CLAIMANT HAS
18 OBJECTED TO HOLDING THE RECORD OPEN FOR THE
19 DEPOSITION. AS THIS MATTER -- SINCE IT WAS
20 SCHEDULED PRIOR TO TODAY'S HEARING AND IT WAS
21 CANCELED DUE TO NO FAULT OF EITHER PARTY, I WILL GO
22 AHEAD AND LEAVE THE RECORD OPEN FOR THE SUBMISSION
23 OF THAT DEPOSITION AT A LATER TIME.

24 I BELIEVE, MR. LAND, YOU ALSO HAD SOMETHING YOU
25 WANTED TO SUBMIT OUTSIDE OF WHAT WAS PREVIOUSLY

1 SUBMITTED?

2 BY MR. LAND:

3 I DO. I HAVE AN MRI THAT WAS TAKEN ON THE 26TH
4 OF JUNE THAT I THOUGHT WOULD BE OF INTEREST TO THE
5 COMMISSION, WHERE IT DOES SHOW ONGOING PROBLEMS IN
6 THE NECK BELOW THE SURGERY SITE.

7 BY THE COMMISSIONER:

8 OKAY. MS. BARR, ANY RESPONSE TO THE
9 SUBMISSION?

10 BY MS. BARR:

11 SINCE WE'VE RAISED A SUBSEQUENT INTERVENING
12 ACCIDENT DEFENSE, WE WOULD ARGUE THAT IT'S NOT
13 RELEVANT AS WE BELIEVE HIS CURRENT CONDITION IS NOT
14 CAUSALLY RELATED TO THE SEPTEMBER 4, 2010, ACCIDENT,
15 AND THE MRI CAN BE ADDRESSED AT DR. BAILEY'S
16 DEPOSITION. SO I THINK THAT WILL SATISFY OUR
17 CONCERNS.

18 BY THE COMMISSIONER:

19 OKAY, ALL RIGHT. WELL, BASED ON THAT I WILL
20 ALLOW THE MRI -- THE REPORT TO BE ADMITTED INTO
21 EVIDENCE. IT WILL BE ADMITTED AS CLAIMANT'S EXHIBIT
22 "A." IT WILL JUST BE ATTACHED TO THE BACK OF
23 CLAIMANT'S APA SUBMISSIONS, NOTING, HOWEVER, THE
24 DEFENDANTS' POSITION WITH REGARD TO THE SUBSEQUENT
25 INTERVENING ACCIDENT AS WELL AS OTHER MEDICAL

1 RECORDS ALREADY IN THE FILE.

2 WITHOUT ANY FURTHER OBJECTION THE COMMISSION'S
3 FILE BECOMES A PART OF THE APAs WITH THE EXCEPTION
4 OF SELF-SERVING DECLARATIONS AND UNSTIPULATED
5 MEDICAL REPORTS.

6 MR. LAND, YOUR POSITION STATEMENT, PLEASE.

7 BY MR. LAND:

8 YES, MA'AM. WE TAKE THE POSITION THAT MR.
9 FRAMPTON, WAS INJURED ON THE 4TH DAY OF SEPTEMBER,
10 2010, WHEN HE WAS DRIVING A PICKUP TRUCK ACROSS A
11 DOVE FIELD BOUNCING UP AND DOWN AND AS A RESULT
12 HERNIATED A DISC IN HIS CERVICAL SPINE. HE HAS BEEN
13 OPERATED ON FOR THAT, AND WE TAKE THE POSITION THAT
14 HE HAS DISABILITY IN HIS SPINE AS WELL AS BOTH OF
15 HIS ARMS, AND WE HAVE RATINGS FROM DR. BAILEY OF 75
16 PERCENT FOR THE CERVICAL SPINE AND A WHOLE PERSON
17 IMPAIRMENT OF 26 PERCENT. DR. STEVEN POLETTI SAYS
18 HE HAS A 28 PERCENT WHOLE PERSON WITH A FIVE PERCENT
19 IMPAIRMENT -- ADDITIONAL IMPAIRMENT FOR THE
20 INVOLVEMENT OF BOTH ARMS, EQUALING 33 PERCENT TO THE
21 WHOLE PERSON. WE TAKE THE POSITION THAT EVEN THOUGH
22 HE IS WORKING, FULLY WORKING, DOING HIS JOB, DOING
23 IT WELL, AND HOPEFULLY WILL CONTINUE DOING THAT,
24 THAT HE HAS LOST MORE THAN 50 PERCENT OF HIS BACK.
25 THEREFORE, HE SHOULD BE COMPENSATED UNDER 42-9-30 ON

1 THE BASIS OF 500 WEEKS INSTEAD OF 300 WEEKS AND
2 SHOULD BE COMPENSATED ON THE BASIS OF THE 500 WEEKS.
3 AND THE DOCTOR CLEARLY SAYS -- BOTH DOCTORS CLEARLY
4 SAY THAT HE WILL NEED ADDITIONAL MEDICAL TREATMENT,
5 SUCH AS X-RAYS AND MRIs. IN FACT, SINCE THAT
6 OPINION HE HAS BEEN ORDERED TO HAVE AN MRI BY DR.
7 BAILEY, AND THAT MRI IS BEFORE YOU, AND HE RETURNS
8 TO DR. BAILEY FOR INTERPRETATION OF THAT IN THE NEXT
9 FEW DAYS, WHENEVER THAT APPOINTMENT IS SET UP BY DR.
10 BAILEY. WE DON'T THINK THAT DEFEATS OUR POSITION
11 THAT HE HAS REACHED MAXIMUM MEDICAL HEALING BECAUSE
12 ALL OF THAT WAS PREDICTED. AND DR. POLETTI CLEARLY
13 SAYS, AS DOES DR. BAILEY, THAT HE WILL PROBABLY NEED
14 ADDITIONAL SURGERY ABOVE OR BELOW THE SURGICAL SITE
15 FOR THE CERVICAL DISC SURGERY.

16 BY THE COMMISSIONER:

17 ALL RIGHT. THANK YOU VERY MUCH. ALL RIGHT,
18 MS. BARR.

19 BY MS. BARR:

20 THANK YOU, YOUR HONOR. MAY IT PLEASE THE
21 COMMISSION. IT'S OUR POSITION THAT ANY INJURY MR.
22 FRAMPTON SUSTAINED ON SEPTEMBER 4, 2010, WHILE
23 WALKING THROUGH A DOVE FIELD WAS SIMPLY A CERVICAL
24 SPRAIN OR STRAIN, AS INDICATED IN THE
25 CONTEMPORANEOUS MEDICAL REPORTS OF DOCTORS CARE

1 CONTAINED IN THE RECORD, PAGES ONE THROUGH THREE.
2 YOU'LL SEE HE HAD A RESOLVING CERVICAL MUSCLE SPRAIN
3 AND WAS RELEASED AT FULL DUTY ON SEPTEMBER 17, 2010.
4 IT IS OUR POSITION THAT THERE IS NO EVIDENCE THAT
5 THE CLAIMANT SUSTAINED ANY ADDITIONAL INJURY OR
6 EXACERBATED HIS KNOWN PREEXISTING CONDITION AS A
7 RESULT OF THE SEPTEMBER 4, 2010, ACCIDENT. THE
8 CLAIMANT HAS A KNOWN PREEXISTING CONDITION, AS
9 INDICATED IN DR. BAILEY'S RECORDS. DR. BAILEY
10 DIAGNOSED HIM WITH A C6-7 RADICULOPATHY
11 APPROXIMATELY SIX MONTHS PRIOR TO THE DOVE FIELD
12 INCIDENT. THE CLAIMANT HAS A BURDEN OF PROOF BY A
13 PREPONDERANCE OF THE EVIDENCE THAT THAT PREEXISTING
14 CONDITION WAS AGGRAVATED OR EXACERBATED. WE DON'T
15 BELIEVE HE'S MET THAT BURDEN OF PROOF. BUT YOU'LL
16 SEE THAT DESPITE THE PREEXISTING CONDITION AND
17 DESPITE THE CERVICAL SPRAIN AND STRAIN THERE'S NO
18 MENTION OF A SEPTEMBER 4, 2010, INCIDENT OR REALLY
19 ANY WORK-RELATED INCIDENT IN DR. BAILEY'S RECORDS.

20 WE DO HAVE INDICATION THAT THERE WAS, PERHAPS,
21 AN INTERVENING ACCIDENT BASED ON CORRESPONDENCE THAT
22 THE CLAIMANT SENT TO THE STATE ACCIDENT FUND OF AN
23 ACCIDENT INVOLVING HIS NECK ON NOVEMBER 4TH OF 2010,
24 AND THAT AFTER HE WAS RELEASE TO FULL DUTY FOLLOWING
25 HIS CERVICAL FUSION SURGERY, WHICH, AGAIN, WAS PAID

1 UNDER HIS BLUE CROSS BLUE SHIELD HEALTH BENEFITS,
2 AND THERE'S NO INDICATION FROM DR. BAILEY THAT IT
3 WAS IN ANY WAY RELATED TO THE SEPTEMBER 4TH
4 INCIDENT. FOLLOWING THAT SURGERY HE WAS RELEASED TO
5 FULL DUTY, SEEMED TO BE DOING WELL, BASED ON THE
6 REPORTS OF DR. BAILEY, UNTIL HE WAS IN A MOTOR
7 VEHICLE ACCIDENT ON MAY 16TH OF 2011. WE BELIEVE
8 THAT ACCIDENT, BASED ON THE CLEAR INDICATIONS IN THE
9 RECORDS FROM DR. BAILEY, PAGE 13, PAGE 14, PAGE 15,
10 AND PAGE 12, THAT THE MOTOR VEHICLE ACCIDENT
11 AGGRAVATED AND EXACERBATED HIS -- ANY PREEXISTING
12 NECK CONDITION, RESULTED IN THE NEED FOR NEW WORK
13 RESTRICTIONS THAT HE DID NOT REQUIRE BEFORE THE
14 MOTOR VEHICLE ACCIDENT, AND ALSO REQUIRED MEDICAL
15 TREATMENT THAT HE DID NOT NEED BEFORE THE ACCIDENT,
16 INCLUDING PRESCRIPTION MEDICATIONS AND PHYSICAL
17 THERAPY, WHICH WAS STILL ONGOING AS LATE AS NOVEMBER
18 AND DECEMBER OF 2012, BASED ON THE CLAIMANT'S APA
19 NUMBER SIX, THE R.C.C. RECORDS, WHICH INDICATE THAT
20 HE WAS THERE FOR PHYSICAL THERAPY AS A RESULT OF A
21 MAY 16, 2011, ACCIDENT. WE BELIEVE THAT IS
22 SUFFICIENT TO MEET OUR BURDEN OF PROVING A
23 SUBSEQUENT INTERVENING ACCIDENT, AS INDICATED BY THE
24 SUPREME COURT IN THE GEATHERS DECISION, AND AS SUCH
25 THE CLAIMANT WOULD NOT BE ENTITLED TO ANY ADDITIONAL

1 MEDICAL COMPENSATION BENEFITS AS A MATTER OF LAW.

2 SHOULD THE COMMISSION REACH THE ISSUE OF
3 PERMANENCY DESPITE THESE INTERVENING ACCIDENTS, WITH
4 RESPECT TO THE SEPTEMBER 4, 2010, ACCIDENT, AGAIN
5 IT'S OUR POSITION THAT THERE IS NO INDICATION THAT
6 ANY IMPAIRMENT RATING OR CURRENT PROBLEMS THAT HE
7 HAS ARE CAUSALLY RELATED TO THAT ACCIDENT. WE WOULD
8 ALSO NOTE THAT THE CLAIMANT HAS BEEN WORKING NOT
9 ONLY FULL DUTY WITHOUT RESTRICTIONS SINCE 2011, HE
10 HAS NOT MISSED ANY SIGNIFICANT TIME. HE'S BEEN
11 PROMOTED, AND NOW HIS SALARY IS ALMOST DOUBLE WHAT
12 IT WAS PRIOR TO THE ACCIDENT.

13 IF THE COMMISSION FINDS THAT THE CLAIMANT COULD
14 BE ENTITLED TO ADDITIONAL MEDICAL TREATMENT DESPITE
15 THE INTERVENING ACCIDENTS, WE'D SUBMIT TO YOU THAT
16 THE CLAIMANT HAS NOT MET HIS BURDEN OF PROOF. WHILE
17 THE 14-B DOES INDICATE HE WOULD NEED PERIODIC X-RAYS
18 AND MRI SCANS, X-RAYS AND MRI SCANS ARE NOT
19 TREATMENT. THE FACT THAT HE MAY OR MAY NOT NEED
20 FUTURE TREATMENT IN THE FUTURE IS SPECULATIVE AT
21 THIS POINT, AND NOTHING IS BEING RECOMMENDED. THE
22 CLAIMANT IS NOT EVEN MAINTAINED ON PRESCRIPTION
23 MEDICATION. SO THERE'S CURRENTLY NO MEDICAL
24 TREATMENT THAT WOULD LESSEN HIS PERIOD OF
25 DISABILITY, WHICH IS THE QUESTION BEFORE THE

1 COMMISSION. ANYTHING ELSE WOULD HAVE TO BE
2 ADDRESSED ON A CHANGE OF CONDITION.

3 BY THE COMMISSIONER:

4 ALL RIGHT. THANK YOU. MADAM COURT -- OH,
5 ACTUALLY, MR. FRAMPTON, WILL YOU PLEASE COME HAVE A
6 SEAT RIGHT HERE. THANK YOU.

7 MADAM COURT REPORTER, WILL YOU PLEASE SWEAR MR.
8 FRAMPTON.

9 BY THE COURT REPORTER:

10 SIR, IF YOU WOULD RAISE YOUR RIGHT HAND,
11 PLEASE.

12 * * * * *

13 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
14 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
15 MATTER HEREIN:

16 ALEXANDER CHISHOLM FRAMPTON,

17 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
18 FOLLOWS:

19 BY THE COMMISSIONER:

20 .MR. LAND.

21 DIRECT EXAMINATION BY MR. LAND:

22 Q. YOUR NAME IS ALEXANDER CHISHOLM FRAMPTON; IS THAT
23 CORRECT?

24 A. YES.

25 Q. YOU ARE 50 YEARS OLD?

1 A. YES.

2 Q. YOU ARE MARRIED? YOU HAVE TWO CHILDREN, AGES 12 AND
3 23?

4 A. YES.

5 Q. YOU ARE A HIGH SCHOOL GRADUATED, 1984; YOU ATTENDED
6 COLLEGE OF CHARLESTON, GOT A B.S. DEGREE IN 1989; IS
7 THAT CORRECT?

8 A. YES, SIR.

9 Q. AND DURING THAT PERIOD OF TIME YOU ALSO WENT OFF TO
10 FLORIDA IN 1987 AND ENROLLED IN THE CHAPMAN SCHOOL
11 OF SEAMANSHIP, AND YOU GOT A CERTIFICATE IN MARINE
12 SURVEYING, WHICH MEANS THAT YOU KNOW ALL ABOUT BOATS
13 AND MOTORS AND HOW THEY RUN AND WHERE THEY RUN AND
14 WHAT HORSEPOWER AND WHAT TONNAGE, AND YOU'RE A BOAT
15 CAPTAIN, ALSO; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. OKAY. YOU HAVE RUN BOATS UP TO A HUNDRED TONS UP
18 AND DOWN THE EAST COAST; IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. ALL RIGHT, SIR. AND YOU HAVE BEEN WITH THE
21 DEPARTMENT OF NATURAL RESOURCES FOR 22 YEARS NOW,
22 STARTING IN 1993?

23 A. THAT'S CORRECT.

24 Q. AND YOUR WORK HISTORY BEFORE THAT WAS THAT ALL THE
25 WHILE YOU WERE AT THE COLLEGE OF CHARLESTON YOU

1 WORKED FOR VAN SMITH CONCRETE AS EQUIPMENT OPERATOR
2 AND A DISPATCHER, AND AFTER COLLEGE YOU ALSO WORKED
3 AT JOHN KEENAN CRAB HOUSE BARTENDING AND WITH FOOD
4 SERVICE, AND FROM 1980 ON YOU WORKED AS A CAPTAIN OR
5 A FIRST MATE OF YACHTS FOR VARIOUS PEOPLE PRIVATELY;
6 IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. ALL RIGHT. AND WHEN YOU WENT TO WORK WITH THE
9 DEPARTMENT OF NATURAL RESOURCES, YOU GOT A
10 CERTIFICATE IN CRIMINAL JUSTICE; IS THAT CORRECT?

11 A. YES, SIR; THAT'S CORRECT.

12 Q. IN FACT, YOU'VE HELD EVERY RANK THAT A CONSERVATION
13 OFFICER CAN HAVE, BEGINNING WITH THE LOWEST, GOING
14 UP TO SERGEANT, GOING TO LIEUTENANT, GOING TO
15 CAPTAIN, GOING TO MAJOR, AND NOW YOU ARE THE ONLY
16 COLONEL IN THE DEPARTMENT OF NATURAL RESOURCES?

17 A. YES, SIR.

18 Q. AND YOU ARE OVER ALL CONVERSATION OFFICERS; IS THAT
19 CORRECT?

20 A. THAT IS CORRECT.

21 Q. ALL RIGHT. AND IS THAT AN APPOINTED POSITION?

22 A. YES, SIR.

23 Q. DO YOU HAVE ANY GRIEVANCE RIGHTS WHATSOEVER AS
24 COLONEL?

25 A. NO, SIR.

1 Q. YOU ARE WHAT YOU CALL AN AT-WILL EMPLOYEE?

2 A. YES, SIR.

3 Q. YOU CAN BE RELEASED FOR NO CAUSE OR CAUSE; IS THAT
4 CORRECT?

5 A. THAT'S CORRECT.

6 Q. ALL RIGHT, SIR. AND YOU HAVE BEEN IN THAT POSITION
7 SINCE APRIL OF 2011, I BELIEVE; IS THAT CORRECT?

8 A. I BELIEVE THAT'S CORRECT.

9 Q. ALL RIGHT. NOW, I WANT YOU TO TELL ME WHAT HAPPENED
10 TO YOU ON THE 4TH DAY OF SEPTEMBER OF 2010. TALK TO
11 THE COMMISSIONER, PLEASE.

12 A. THANK YOU. I APPRECIATE THE OPPORTUNITY TO EXPLAIN.
13 I WAS WORKING IN A DOVE FIELD. I WAS NOT DRIVING
14 THE VEHICLE. I WAS A PASSENGER IN A 2500 SERIES
15 PICKUP TRUCK. WE WERE INSPECTING PUBLIC DOVE FIELDS
16 WITH RECREATIONAL HUNTERS. WE WERE GOING ACROSS THE
17 DOVE FIELD, ACROSS THE PLANTED ROWS, AND WERE TRYING
18 TO GET TO THE OTHER SIDE OF THE FIELD TO CHECK SOME
19 HUNTERS THAT APPEARED TO BE LEAVING THE FIELD
20 QUICKLY AFTER REALIZING WE WERE THERE. IN THAT TIME
21 I HURT MY NECK IN THE STIFFNESS OF THE SUSPENSION OF
22 THE TRUCK AND THE BOUNCING UP AND DOWN TRYING TO
23 CROSS THAT DOVE FIELD.

24 Q. AS A RESULT OF THAT DID YOU SEEK MEDICAL ATTENTION?

25 A. YES, I DID.

1 Q. OKAY. THE SUBMITTED MEDICAL RECORDS INDICATE THAT
2 YOU WENT TO DOCTORS CARE ON SEPTEMBER 7, 2010; IS
3 THAT CORRECT?

4 A. THAT'S CORRECT. I REPORTED THE INCIDENT TO MY
5 SUPERVISOR AT THAT TIME.

6 Q. WHO WAS THAT?

7 A. IT WAS GLENN WARD. I DON'T REMEMBER HIS RANK AT THE
8 TIME. BUT I DID REPORT THE INCIDENT TO MY
9 SUPERVISOR AT THAT TIME AND FOLLOWED THROUGH, WAS
10 ADVISED TO GO TO DOCTORS CARE, WENT ---

11 Q. WHO ADVISED YOU TO GO TO DOCTORS CARE?

12 A. I BELIEVE -- I CAN'T RECALL WHO I TALKED TO THAT
13 ADVISED ME TO GO TO DOCTORS CARE, WHETHER IT WAS OUR
14 WORKERS' COMPENDIUM FOLKS, BUT I WAS ADVISED TO GO
15 TO -- BECAUSE IT WAS ON DUTY I WAS -- I WAS ADVISED
16 BY GLENN WARD TO GET WHATEVER MEDICAL TREATMENT I
17 NEEDED AT THAT TIME.

18 Q. DO YOU REMEMBER HOW YOU PAID FOR THAT AT DOCTORS
19 CARE?

20 A. NO, SIR; I DO NOT.

21 Q. OKAY. AND DO YOU RECALL WHAT YOU REPORTED TO THEM
22 AND WHAT THEY DID FOR YOU?

23 A. I REPORTED TO THEM THE INCIDENT, WHAT HAD HAPPENED
24 IN THE DOVE FIELD, AND THE PAIN I HAD IN MY NECK.

25 Q. OKAY. AND THE RECORDS ALSO INDICATE THAT YOU

1 RETURNED BACK TO DOCTORS CARE ON THE 17TH OF
2 SEPTEMBER, ABOUT TEN DAYS LATER. DO YOU RECALL
3 GOING BACK AT THAT TIME?

4 A. I DO RECALL GOING BACK.

5 Q. OKAY. AND, ALSO, THE RECORDS INDICATE THAT YOU WENT
6 BACK TO DOCTORS CARE AGAIN IN JUNE OF 2011. IS THAT
7 CORRECT?

8 A. THAT'S A TOTAL OF TWO OR THREE VISITS BACK TO
9 DOCTORS CARE.

10 Q. OKAY, ALL RIGHT. AND EACH TIME YOU WERE GOING ABOUT
11 YOUR NECK?

12 A. YES, SIR.

13 Q. OKAY. AND ON ONE IT SAYS THAT -- ON 6-22 OF '11 IT
14 SAYS THAT YOU WERE THERE BECAUSE OF A MOTOR VEHICLE
15 ACCIDENT ON THE 16TH DAY OF JUNE, 2011; DO YOU
16 RECALL THAT?

17 A. ARE WE REFERRING TO THE ORIGINAL INCIDENT?

18 Q. I THINK THAT'S THE FLORIDA WRECK, JUNE OF 2011; IS
19 IT NOT?

20 A. I DON'T RECALL GOING TO DOCTORS CARE AFTER THE
21 FLORIDA INCIDENT.

22 Q. OKAY. WELL, THEY HAVE A RECORD. IT SAYS, ON 6-22-
23 11, CHIEF COMPLAINT, NECK PAIN FROM MOTOR VEHICLE
24 ACCIDENT ON 6-16-11.

25 BY MS. BARR:

1 IT'S APA PAGE FIVE, COMMISSIONER.

2 WITNESS ANSWERS:

3 A. I CAN'T -- I CAN'T -- I CAN'T DISPUTE THAT, IF
4 THAT'S WHAT IT IS.

5 DIRECT EXAMINATION RESUMED BY MR. LAND:

6 Q. OKAY, ALL RIGHT. WELL, JUST LET ME ASK YOU THIS.
7 YOU SOMEHOW GOT TO DR. BYRON BAILEY. WHO REFERRED
8 YOU THERE?

9 A. I WAS REFERRED BY WORKERS' COMPENSATION TO DR.
10 BAILEY FOR FURTHER CARE BECAUSE MY NECK CONDITION
11 HAD NOT GOTTEN ANY BETTER.

12 Q. OKAY. THIS WAS -- IT APPEARS THAT YOU WENT TO DR.
13 BAILEY ON THE 15TH OF MARCH OF 2011?

14 A. THAT'S CORRECT.

15 Q. OKAY. AND WHAT WERE YOUR COMPLAINTS AT THAT
16 PARTICULAR TIME?

17 A. MY COMPLAINTS AT THAT TIME, THAT I HAD PAIN IN MY
18 NECK, I HAD A PAIN IN MY ARMS, AND I HAD TINGLING IN
19 MY HANDS.

20 Q. OKAY. NOW, HAD YOU EVER BEEN TO DR. BAILEY BEFORE?
21 THERE'S SOME CONFUSION AS TO WHETHER OR NOT YOU HAD
22 SEEN HIM BEFORE THAT.

23 A. I DO NOT RECALL SEEING DR. BAILEY PRIOR TO THE
24 INCIDENT. NO, SIR.

25 Q. OKAY. WELL, IF THEY HAVE MEDICAL RECORDS INDICATING

- 1 THAT SOMETIME PRIOR TO THIS INCIDENT YOU SAW DR.
2 BAILEY, COULD THAT HAVE BEEN TRUE?
- 3 A. I SUPPOSE IT COULD BE TRUE; YES, SIR.
- 4 Q. OKAY. AND DO YOU REMEMBER WHAT -- WERE YOU HAVING
5 ANY PROBLEMS IN YOUR NECK OR HANDS PRIOR TO THIS
6 ACCIDENT?
- 7 A. I DON'T RECALL HAVING PROBLEMS IN MY NECK OR HANDS
8 PRIOR TO THIS ACCIDENT. I RECALL AFTER THIS
9 ACCIDENT I HAD SIGNIFICANT ISSUES IN MY NECK AND IN
10 MY HANDS, AND WHEN I WENT TO DOCTORS CARE THEY TOLD
11 ME THAT, YOU KNOW, I NEED -- AFTER I WENT TWICE THAT
12 I WOULD BE REFERRED ON TO SOMEBODY ELSE TO LOOK AT
13 MY CONDITION BECAUSE IT WAS NOT ANY BETTER.
- 14 Q. AND YOU WENT TO DR. BAILEY?
- 15 A. AND I WENT TO DR. BAILEY; YES, SIR.
- 16 Q. OKAY. DO YOU -- IT WAS REPRESENTED THAT BLUE CROSS
17 BLUE SHIELD PAID FOR THAT VISIT. IS THAT TRUE, OR
18 DO YOU KNOW?
- 19 A. I DO NOT KNOW.
- 20 Q. OKAY, ALL RIGHT. ANYWAY, TELL US WHAT DR. BAILEY
21 DID FOR YOU WHEN YOU WENT TO HIM ON THE 15TH OF
22 MARCH OF 2011.
- 23 A. DR. BAILEY EXAMINED ME, EXAMINED MY -- THE STRENGTH
24 IN MY HANDS, THE STRENGTH IN MY ARMS, MY NECK
25 MOBILITY. DR. BAILEY HAD ME SENT FOR A NERVE TEST.

1 DR. BAILEY GOT THOSE RESULTS BACK AND INFORMED ME
2 THAT ---

3 BY MS. BARR:

4 OBJECTION TO HEARSAY.

5 BY THE COMMISSIONER:

6 SUSTAINED. DON'T TELL US WHAT HE SAID. YOU
7 CAN TELL US WHAT TREATMENT YOU RECEIVED OR WHAT YOU
8 SAID BUT NOT WHAT THE DOCTOR SAID.

9 BY THE WITNESS:

10 YES, MA'AM. I WAS ADVISED THAT I NEEDED TO
11 HAVE NECK SURGERY.

12 BY MS. BARR:

13 OBJECTION TO HEARSAY.

14 BY THE COMMISSIONER:

15 SUSTAINED.

16 DIRECT EXAMINATION RESUMED BY MR. LAND:

17 Q. YOU SAID DR. BAILEY REFERRED YOU FOR AN MRI AND
18 EMGs?

19 A. YES, SIR.

20 Q. OKAY. AND DID YOU GO FOR THOSE TESTS?

21 A. YES, SIR.

22 Q. ALL RIGHT. AS A RESULT OF THOSE TESTS, DID DR.
23 BAILEY PERFORM ANY SURGERY ON YOU?

24 BY MS. BARR:

25 OBJECTION. IT CALLS FOR A CONCLUSION. I THINK

1 THE MEDICAL RECORDS SPEAK FOR THEMSELVES. HE'S
2 LEADING THE WITNESS.

3 BY THE COMMISSIONER:

4 SUSTAINED AS TO THE WORDS "AS A RESULT." JUST
5 ASK HIM IF AFTER HE RECEIVED THOSE TESTS DID HE THEN
6 NEED SURGERY.

7 DIRECT EXAMINATION RESUMED BY MR. LAND:

8 Q. AFTER YOU RECEIVED THOSE TESTS WHAT DID DR. BAILEY
9 DO FOR YOU?

10 A. HE PERFORMED SURGERY ON MY NECK.

11 Q. OKAY. AND DO YOU KNOW WHAT KIND OF SURGERY IT WAS?

12 A. I DO KNOW, BUT I CAN'T REMEMBER AT THIS EXACT MOMENT
13 WHAT YOU CALL IT.

14 Q. OKAY. DO YOU -- IF THE MEDICAL RECORDS INDICATE
15 THAT YOU HAD SURGERY ON MARCH 21 OF 2011, WOULD THAT
16 BE CORRECT?

17 A. YES, SIR.

18 Q. OKAY. AND AFTER THAT, DURING THIS PERIOD OF TIME
19 DID YOU LOSE ANY TIME FROM WORK?

20 A. I LOST TIME FROM WORK WHEN I WAS IN RECOVERY AND I
21 WAS GOING THROUGH THERAPY WITH MY NECK; YES, SIR.

22 Q. ALL RIGHT. DO YOU KNOW WHETHER OR NOT YOU EVER
23 RECEIVED ANY WEEKLY WORKERS' COMPENSATION CHECKS?

24 A. NO, SIR; I DID NOT.

25 Q. OKAY. AND WHAT DID YOU RECEIVE DURING THAT PERIOD

1 OF TIME?

2 A. I USED MY SICK LEAVE.

3 Q. OKAY. DO YOU RECALL SIGNING ANY PAPER ELECTING TO
4 RECEIVE YOUR SICK LEAVE?

5 A. I DON'T RECALL.

6 Q. OKAY. AND DO YOU KNOW WHO PAID FOR YOUR SURGERY?

7 A. I WAS UNDER THE IMPRESSION THAT WORKERS'
8 COMPENSATION HAD PAID FOR MY SURGERY.

9 Q. OKAY. AND LET ME ASK YOU THIS. AFTER YOUR SURGERY
10 DID YOU CONTINUE TO SEE DR. BAILEY?

11 A. YES.

12 Q. OKAY. AND SOMETIME IN JUNE OF 2011 DID YOU GO TO
13 FLORIDA?

14 A. I DID.

15 Q. AND WERE YOU INVOLVED IN AN AUTOMOBILE ACCIDENT?

16 A. I WAS.

17 Q. OKAY. AND I ASK YOU FIRST, WHAT VEHICLE WERE YOU
18 DRIVING?

19 A. I WAS DRIVING MY STATE-ISSUED CHEVROLET PICKUP
20 TRUCK.

21 Q. OKAY. AND WHY WERE YOU IN FLORIDA?

22 A. I WAS IN FLORIDA ATTENDING THE SOUTH ATLANTIC
23 FISHERS MANAGEMENT COUNSEL LAW ENFORCEMENT ADVISORY
24 COMMITTEE, WHICH I AM THE CHAIR OF.

25 Q. OKAY. AND DID YOU HAVE YOUR FAMILY WITH YOU?

1 A. I DID HAVE MY FAMILY WITH ME.

2 Q. OKAY. DID YOU GET PERMISSION TO TAKE YOUR FAMILY
3 WITH YOU?

4 A. I DID HAVE PERMISSION TO TAKE MY FAMILY WITH ME
5 THROUGH MY SUPERVISOR, DIRECTOR TAYLOR.

6 Q. OKAY. AND DID DIRECTOR TAYLOR AUTHORIZE YOU TO GO
7 TO FLORIDA FOR THAT MEETING?

8 A. HE DID AUTHORIZE ME TO GO TO FLORIDA. HE AUTHORIZED
9 ME TO DRIVE MY STATE VEHICLE TO FLORIDA, AND HE WAS
10 ALSO AWARE THAT MY FAMILY WOULD BE ACCOMPANYING ME
11 TO FLORIDA.

12 Q. OKAY. AND WHAT WERE YOU DOING WHEN YOU GOT IN A
13 WRECK?

14 A. I WAS RETURNING HOME FROM THE TRIP.

15 Q. OKAY. AND AS A RESULT OF THAT ACCIDENT, DID YOU
16 SEEK MEDICAL ATTENTION THAT DAY?

17 A. NO, I DID NOT.

18 Q. DID ANYBODY IN THE CAR SEEK MEDICAL ATTENTION THAT
19 DAY?

20 A. NO, THEY DID NOT.

21 Q. DID ANYBODY IN THE CAR, EXCLUDING YOU, EVER SEEK
22 MEDICAL ATTENTION FROM THAT ACCIDENT?

23 A. NOT THAT I RECALL, NO, SIR.

24 Q. OKAY. DID YOU SEEK MEDICAL ATTENTION BECAUSE OF
25 THAT ACCIDENT?

1 A. YES.

2 Q. OKAY. AND WHO DID YOU SEE?

3 A. DR. BAILEY.

4 Q. OKAY. AND WHAT DID YOU TELL DR. BAILEY?

5 A. I INFORMED DR. BAILEY THAT I HAD BEEN IN AN
6 AUTOMOBILE ACCIDENT IN FLORIDA AND THAT I WANTED TO
7 -- THAT I WAS SORE AND I WAS HAVING NECK PAIN, AND I
8 WANTED HIM TO KNOW BECAUSE I HAD BEEN SEEING DR.
9 BAILEY ON A REGULAR BASIS TO HAVE MY NECK X-RAYED
10 AND TO HAVE CHECKUPS AS TO MY IMPROVEMENT.

11 Q. DID YOU GO TO DR. BAILEY ON THE 7-1-11 BECAUSE OF
12 BEING IN THE ACCIDENT, OR WAS THAT A PREARRANGED
13 APPOINTMENT?

14 A. I BELIEVE IT WAS A PREARRANGED APPOINTMENT, AND I
15 INFORMED DR. BAILEY AT THAT APPOINTMENT WHAT HAD
16 TRANSPIRED IN THE VEHICLE.

17 Q. AND THE RECORDS SHOW THAT YOU HAD HAD SURGERY JUST
18 THREE MONTHS EARLIER ON YOUR NECK; IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. OKAY. DID THE PROBLEMS THAT YOU EXPERIENCED IN YOUR
21 NECK FROM THAT AUTOMOBILE ACCIDENT, DO THEY PERSIST?

22 BY MS. BARR:

23 OBJECTION TO LEADING.

24 BY THE COMMISSIONER:

25 SUSTAINED.

DIRECT EXAMINATION RESUMED BY MR. LAND:

Q. DID YOU HAVE ONGOING PROBLEMS FROM THE ACCIDENT IN
FLORIDA IN YOUR NECK?

A. YES.

BY MS. BARR:

OBJECTION TO LEADING.

BY THE COMMISSIONER:

SUSTAINED.

BY MR. BARR:

I'D ASK THAT IT BE STRICKEN.

BY THE COMMISSIONER:

THE WITNESS HAD ALREADY ANSWERED.

DIRECT EXAMINATION RESUMED BY MR. LAND:

Q. ALL RIGHT. AFTER THE ACCIDENT IN FLORIDA, WHAT WAS
THE CONDITION IN YOUR NECK?

A. SORENESS, PAIN IN MY ARMS, AND TINGLING IN MY HANDS.

Q. AND HOW LONG DID IT PERSIST?

A. IT WAS A MONTH OR SO. IT WAS -- IT WAS A MONTH OR
SO.

Q. ALL RIGHT. DO YOU HAVE AN RESIDUAL DISABILITY IN
YOUR NECK AS A RESULT OF THE ACCIDENT?

BY MS. BARR:

OBJECTION TO THE LEADING.

BY THE COMMISSIONER:

SUSTAINED. SUSTAINED. THAT'S A LEADING

1 QUESTION. DON'T ANSWER THAT. CAN YOU PLEASE
2 REPHRASE THE QUESTION.

3 DIRECT EXAMINATION RESUMED BY MR. LAND:

4 Q. ALL RIGHT. AFTER THAT ACCIDENT DID YOU HAVE ANY
5 MORE PROBLEMS IN YOUR NECK THAN YOU DID BEFORE?

6 BY MS. BARR:

7 OBJECTION TO THE LEADING.

8 BY THE COMMISSIONER:

9 THAT ONE IS OKAY. I'M GOING TO OVERRULE THAT
10 ONE.

11 BY MS. BARR:

12 I WOULD JUST SAY THE MEDICAL RECORDS SPEAK FOR
13 THEMSELVES.

14 BY THE COMMISSIONER:

15 OKAY. YOU CAN ANSWER THAT.

16 WITNESS ANSWERS:

17 A. YES. YES, I CONTINUED TO HAVE SORENESS AND PAIN IN
18 MY NECK.

19 DIRECT EXAMINATION RESUMED BY MR. LAND:

20 Q. ALL RIGHT. AND THE SORENESS THAT YOU WERE
21 EXPERIENCING, WHAT DID IT COME FROM?

22 A. THE SORENESS IN MY NECK HAS COME FROM THE INJURIES I
23 RECEIVED IN MY NECK AND THE SURGERY.

24 Q. OKAY, ALL RIGHT. AND SINCE THAT TIME HAVE YOU
25 CONTINUED TO SEE DR. BAILEY?

1 A. YES.

2 Q. OKAY. AND WHEN YOU WERE DISCHARGED FROM HIM, WHAT
3 WAS YOUR UNDERSTANDING AS TO ANY FUTURE MEDICAL
4 NEEDS? NOT WHAT HE SAID. WHAT WAS YOUR
5 UNDERSTANDING AS TO WHAT YOU WERE TO DO IN THE
6 FUTURE?

7 BY THE COMMISSIONER:

8 I'M GOING TO ALLOW IT. YOU CAN ANSWER.

9 WITNESS ANSWERS:

10 A. I WAS ADVISED THAT I SHOULD BE ---

11 BY MS. BARR:

12 OBJECTION TO THE HEARSAY. HE CAN'T SAY THAT HE
13 WAS ADVISED. HE CAN TESTIFY WHAT HIS UNDERSTANDING
14 WAS. HE'S PUTTING WORDS IN THE DOCTOR'S MOUTH.

15 BY MR. LAND:

16 I SAID WHAT WAS HIS UNDERSTANDING AS TO WHAT HE
17 SHOULD DO FOR HIMSELF IN THE FUTURE MEDICALLY.

18 BY THE COMMISSIONER:

19 I'M GOING TO SUSTAIN THE OBJECTION. WHAT I'D
20 LIKE TO KNOW IS WHAT -- HE CAN TELL ME WHAT HE HAS
21 BEEN DOING SINCE THIS PERIOD OF TIME, AND THAT WILL
22 GIVE US AN IDEA.

23 DIRECT EXAMINATION RESUMED BY MR. LAND:

24 Q. OKAY. WHEN -- WERE YOU EVER FORMALLY RELEASED FROM
25 DR. BAILEY?

1 A. NO.

2 Q. OKAY. AND HAVE YOU CONTINUED TO SEE HIM?

3 A. YES.

4 Q. AND WHEN IS THE LAST TIME YOU SAW HIM?

5 A. I DON'T RECALL THE EXACT DATE. I HASN'T BEEN THAT
6 LONG AGO.

7 Q. THE MEDICAL RECORDS INDICATE THAT YOU SAW HIM ON THE
8 13TH OF MAY OF 2015 FOR EVALUATION OF SYMPTOMS OF
9 INCREASING NECK PAIN WITH MOVEMENT?

10 A. THAT'S CORRECT.

11 Q. OKAY. AND WHY DID YOU GO TO HIM AT THAT PARTICULAR
12 TIME?

13 A. I WENT TO -- I WENT TO SEE DR. BAILEY TO ADVISE HIM
14 OF THE INCREASING PAIN IN MY NECK AND MY INCREASING
15 LIMITATIONS IN MY NECK.

16 Q. WHY DID YOU THINK YOU NEEDED TO GO BACK AND TELL HIM
17 THAT?

18 A. BECAUSE I HAD HAD A CHANGE IN MY NECK AND IN THE
19 PAIN AND WHAT I CAN DO WITH MY NECK.

20 Q. OKAY, ALL RIGHT. WELL, I WANT TO SKIP BACK TO YOUR
21 JOB NOW. ARE YOU WORKING FULL TIME?

22 A. YES, SIR.

23 Q. ARE YOU DOING YOUR JOB?

24 A. YES, SIR.

25 Q. ARE YOU DOING A HUNDRED PERCENT OF YOUR JOB?

1 A. YES, SIR.

2 Q. DO YOU THINK YOU'RE DOING YOUR JOB WELL?

3 A. I HOPE SO.

4 Q. HAS YOUR SUPERVISOR, MR. ALVIN TAYLOR, TOLD YOU
5 OTHERWISE?

6 A. NO, SIR.

7 Q. DO YOU DO EVERYTHING HE TELLS YOU?

8 A. I TRY TO.

9 Q. OKAY, ALL RIGHT. DO YOU HAVE LIMITATIONS IN YOUR
10 WORK?

11 A. YES.

12 Q. AND WHAT ARE THOSE LIMITATIONS AND WHERE?

13 A. I HAVE LIMITATIONS IN WHAT I CAN PHYSICALLY DO. I
14 HAVE TO BE EXTREMELY CAREFUL THE POSITIONS I PUT
15 MYSELF IN WITH REGARDS TO MY NECK AND RE-INJURING IT
16 OR AGGRAVATING IT WORSE. I WILL TELL YOU THAT I
17 WON'T GET TO STAND ON THE BACK OF A PICKUP TRUCK AND
18 JUMP OUT THE TAILGATE. I WON'T DO IT. I CAN'T LAY
19 IN A BED AND READ A BOOK. MY NECK CANNOT STAND IT.
20 I HAVE TO BE VERY CAREFUL OF PUTTING MYSELF IN
21 POSITIONS WHERE I ACTUALLY JAR MY NECK. SO I DON'T
22 -- I DON'T JOG BECAUSE IT JARS MY NECK. I DON'T
23 JUMP OUT OF PICKUP TRUCKS 'CAUSE IT JARS MY NECK. I
24 AM VERY CAREFUL OF THINGS I DO THAT CAN CAUSE PAIN
25 OR AGGRAVATE MY NECK.

1 Q. SUCH AS?

2 A. RUNNING, JUMPING OUT OF PICKUP TRUCKS, JUMPING --
3 YOU KNOW, JUMPING IN ANY WAY, SHAPE OR FORM, I AM
4 VERY CAREFUL TO, PLAYING SPORTS THAT ARE -- THAT ARE
5 IMPACT SPORTS THAT WOULD IMPACT MY NECK. I AM VERY
6 LIMITED ON WHAT I CAN DO.

7 Q. OKAY. AND PRIOR TO YOUR ACCIDENT ON THE 4TH DAY OF
8 SEPTEMBER 2010, DID YOU HAVE ANY LIMITATIONS OR
9 DISABILITY IN YOUR NECK AT ALL?

10 A. NO, SIR.

11 Q. YOU CONSIDERED YOURSELF A HUNDRED PERCENT?

12 A. YES, SIR.

13 Q. OKAY. DO YOU CONSIDER YOURSELF A HUNDRED PERCENT
14 NOW?

15 A. NO, SIR.

16 Q. ALL RIGHT. DO YOU THINK YOU HAVE LOST SOME USE OF
17 YOUR NECK ---

18 A. YES, SIR.

19 Q. --- AND SPINE?

20 A. YES, SIR.

21 Q. AND CAN YOU EXPRESS THAT TO THE COMMISSIONER IN A
22 PERCENTAGE?

23 A. I CONCUR WITH DR. BAILEY'S PERCENTAGE THAT I AM AT
24 LEAST 75 PERCENT IN MY NECK.

25 Q. AND WHY DO YOU SAY THAT?

1 A. I SAY THAT BECAUSE OF THE -- BECAUSE OF, ONE, THE
2 PAIN IN MY NECK AND WHAT I CAN NO LONGER DO THAT I
3 USED TO BE ABLE TO DO PRIOR TO THIS INJURY.

4 Q. ALL RIGHT. AND TELL THE COMMISSIONER WHAT YOU CAN'T
5 DO IN MOVEMENTS IN YOUR NECK NOW THAT YOU COULD DO
6 BEFORE.

7 A. WELL, I HAVE LIMITED MOVEMENT IN MY NECK GOING RIGHT
8 TO LEFT, LESS ON THE RIGHT SIDE THAN THE LEFT. I
9 HAVE LIMITED MOVEMENT IN MY NECK LOOKING STRAIGHT
10 DOWN, TO THE POINT THAT IF I PUSH IT AND I LOOK
11 STRAIGHT DOWN HARD, I CAN MAKE MYSELF DIZZY.

12 Q. OKAY. IN REGARD TO YOUR ARMS, DO YOU HAVE THE SAME
13 STRENGTH IN YOUR ARMS THAT YOU DID PRIOR TO THIS
14 ACCIDENT?

15 A. NO, I DO NOT.

16 Q. AND CAN YOU EXPRESS TO THE COMMISSIONER WHY -- THE
17 PERCENTAGE YOU THINK YOU HAVE LOST IN YOUR ARMS.

18 A. I PROBABLY HAVE LOST 25 PERCENT IN MY ARMS. I NO
19 LONGER HAVE THE CAPABILITY TO EXERT GREAT PHYSICAL
20 EXERCISE ON SOMETHING WITHOUT FEELING IT IN MY NECK,
21 PICKING UP HEAVY OBJECTS. I CAN EVEN FEEL IT WHEN
22 -- YOU CARRY GROCERY BAGS SOMETIMES AND YOU CARRY IT
23 THE RIGHT WAY, YOU CAN FEEL IT IN YOUR NECK. I AM
24 VERY AWARE ON A DAILY BASIS OF MY NECK AND WHAT I
25 CAN DO AND WHAT I CAN'T DO.

1 Q. OKAY. AND BACK TO YOUR ARMS AGAIN, DR. POLETTI IN
2 HIS SUBMITTED REPORT TALKED ABOUT YOU LOSING MUSCLE
3 MASS IN YOUR ARMS?

4 A. THAT WOULD BE CORRECT.

5 Q. ALL RIGHT. AND EXPLAIN THAT TO THE COMMISSIONER AND
6 THE AMOUNT OF THAT.

7 A. TWENTY -- I WOULD SAY 25 PERCENT IN MY ARMS BECAUSE
8 OF NOT BEING ABLE TO DO THE STRENUOUS THINGS I DID.
9 IF YOU WANT TO STAY STRONG, YOU'VE GOT TO WORK OUT
10 AND YOU'VE GOT TO DO THOSE THINGS. SO I AM LIMITED
11 IN THE FACT OF WHAT I CAN DO WITH MY NECK AS FAR AS
12 STRAINING AND DOING THINGS LIKE THAT.

13 Q. YOU TALKED ABOUT BEING A BOAT CAPTAIN AND A FIRST
14 MATE PRIOR TO THAT?

15 A. YES.

16 Q. DO YOU HAVE ANY LIMITATIONS THAT WOULD RELATE TO
17 OPERATING A BOAT?

18 A. I HAVE LIMITATIONS ON JARRING MY NECK. I WOULD HAVE
19 TO BE VERY CAUTIOUS AS TO WHAT TYPE OF OCEAN STATE I
20 WENT IN AND MY NECK AND THE SIZE BOAT AND THE
21 CONDITIONS.

22 Q. ARE YOU CALLED UPON IN YOUR WORK NOW TO OPERATE A
23 BOAT OR RIDE IN A BOAT?

24 A. I COULD BE CALLED UPON JUST -- YES. THAT'S NOT WHAT
25 I DO ON A DAILY BASIS, BUT THAT'S NOT OUT OF THE

1 QUESTION FOR ME TO GO IN A BOAT, TO OPERATE A BOAT,
2 TO ASSIST.

3 Q. ALL RIGHT, SIR. AND DO YOU KNOW WHEN YOUR NEXT
4 APPOINTMENT WITH DR. BAILEY IS?

5 A. I DO NOT. I WILL SAY THAT I SHOULD HAVE A FOLLOW-UP
6 APPOINTMENT WITH DR. BAILEY FOR THE READING OF THE
7 MRI I JUST HAD.

8 Q. OKAY, ALL RIGHT. AND ARE YOU TAKING ANY MEDICATIONS
9 NOW FOR YOUR CONDITION?

10 A. NO, SIR, NOT FOR MY NECK.

11 BY MR. LAND:

12 OKAY. THAT'S ALL THE QUESTIONS I HAVE.

13 BY THE COMMISSIONER:

14 OKAY, THANK YOU. MS. BARR.

15 BY MS. BARR:

16 THANK YOU, YOUR HONOR.

17 CROSS EXAMINATION BY MS. BARR:

18 Q. MR. FRAMPTON, WE'VE MET BEFORE, BUT MY NAME IS
19 KIRSTEN BARR, AND I REPRESENT THE DEPARTMENT OF
20 NATURAL RESOURCES AND THE STATE ACCIDENT FUND. YOUR
21 NECK PROBLEMS STARTED IN FEBRUARY OF 2010; IS THAT
22 CORRECT?

23 A. I DON'T HAVE THOSE DATES IN FRONT OF ME, AND I HAVE
24 NOT STUDIED THE TIME LINE.

25 Q. YOU ADMIT YOU HAD NECK PROBLEMS PRIOR TO THIS

1 INCIDENT IN THE DOVE FIELD ON SEPTEMBER 4 OF 2010
2 THAT WERE SO BAD THAT YOU SOUGHT TREATMENT FROM A
3 NEUROSURGEON?

4 A. AFTER THE DOVE FIELD INCIDENT, YES.

5 Q. SIX MONTHS PRIOR TO THE DOVE FIELD INCIDENT, YOUR
6 NECK PAIN AND YOUR RIGHT ARM NUMBNESS AND PAIN WAS
7 SO BAD YOU SOUGHT TREATMENT WITH DR. BAILEY, WHO IS
8 A NEUROSURGEON; DID YOU NOT?

9 A. I DO NOT RECALL.

10 Q. DO YOU DENY IT?

11 A. NO.

12 Q. SO, IF DR. BAILEY'S RECORDS INDICATE THAT YOU SAW
13 HIM ON MARCH 16TH OF 2010 FOR A THREE-WEEK HISTORY
14 OF NUMBNESS IN YOUR RIGHT ARM, NUMBNESS AND TINGLING
15 IN THE ULNAR ASPECT OF YOUR ARM, TRICEPS REGION IN
16 YOUR UPPER ARM, AND YOUR RIGHT HAND FOR WHICH YOU
17 WERE PRESCRIBED PHYSICAL THERAPY, LORTAB, FLEXERIL,
18 DO YOU ADMIT THAT THAT HAPPENED ON MARCH 16TH OF
19 2010?

20 A. IF DR. BAILEY HAS THAT IN HIS REPORTS, I'M NOT GOING
21 TO DISPUTE THAT.

22 Q. ALL RIGHT, GOOD. ALL RIGHT. DO YOU DISPUTE THAT HE
23 PRESCRIBED YOU THE LORTAB AND THE FLEXERIL IN MARCH
24 OF 2010 ---

25 A. NO.

1 Q. --- FOR NECK PAIN?

2 A. NO.

3 Q. ALL RIGHT. AND YOU HAD AN MRI SCAN ON MARCH 16,
4 2010, BECAUSE OF YOUR NECK AND RIGHT ARM PAIN,
5 DIDN'T YOU?

6 A. YES.

7 Q. AND DO YOU ADMIT THAT THE DOCTOR'S IMPRESSION
8 FOLLOWING THAT MRI SCAN WAS SPONDYLOSIS, MOST
9 IMPRESSIVE AT C5-6 AND C6-7, BILATERAL C6 IN RIGHT
10 GRADE AND LEFT C7 RADICULOPATHY, C6-7 RIGHT
11 FORAMINAL STENOSIS, BORDERS ON SEVERE?

12 BY MR. LAND:

13 I'D STIPULATE THAT SHE COULD SUBMIT THAT IF
14 THAT'S WHAT IT SAYS. SHE DOESN'T HAVE TO READ IT.

15 BY THE COMMISSIONER:

16 JUST FOR THE RECORD, THE DEFENDANTS ARE
17 ENTERING INTO EVIDENCE A MEDICAL REPORT FROM TRI-
18 COUNTY RADIOLOGY ASSOCIATES DATED MARCH 16TH, 2010.
19 THAT WILL BE MARKED AS DEFENDANTS' EXHIBIT "A."

20 BY MS. BARR:

21 I THINK WHAT WAS ATTACHED TO IT, JUST FOR MY
22 EASE, WAS THE MRI FROM MARCH 15 OF 2011, WHICH IS
23 ALREADY MARKED IN THE APAs.

24 BY THE COMMISSIONER:

25 OKAY, OKAY.

1 (COURT REPORTER MARKS MEDICAL REPORT DEFENDANTS' EXHIBIT
2 "A")

3 CROSS EXAMINATION RESUMED BY MS. BARR:

4 Q. SO YOU WOULDN'T HAVE GONE TO SEE DR. BAILEY AND HAD
5 AN MRI SCAN OF YOUR NECK IF YOU WEREN'T HAVING NECK
6 AND RIGHT ARM NUMBNESS AND TINGLING AND PAIN, WOULD
7 YOU?

8 A. NO.

9 Q. DID YOU COMPLETE THE PHYSICAL THERAPY THAT HE
10 ORDERED?

11 A. I WENT TO PHYSICAL THERAPY. I WAS NOT AWARE THERE
12 WAS A COMPLETION DATE. I WAS GIVEN HOME EXERCISES
13 TO DO FROM THE PHYSICAL THERAPIST.

14 Q. AND THIS WAS BEFORE THE INCIDENT IN THE DOVE FIELD
15 ON SEPTEMBER 4TH OF 2010?

16 A. I DON'T RECALL THAT. I RECALL GOING TO PHYSICAL
17 THERAPY AFTER MY SURGERY.

18 BY MS. BARR:

19 YOUR HONOR, I'D ASK THAT THIS BE MARKED AS
20 DEFENDANTS' TWO. IT'S THE REPORT OF DR. BAILEY
21 DATED MARCH 16TH OF 2010, WHEREIN THE PRESCRIPTION
22 FOR PHYSICAL THERAPY WAS ISSUED, PRESCRIPTION FOR
23 FLEXERIL, NON-STEROIDAL ANTI-INFLAMMATORIES. THOSE
24 PRESCRIPTIONS ARE ATTACHED.

25 BY MR. LAND:

1 AND WE HAVE NO -- WE STIPULATE TO THAT. WE
2 DON'T HAVE ANY PROBLEM WITH THAT.

3 BY THE COMMISSIONER:

4 AND JUST FOR THE RECORD, WE'RE GOING TO MARK IT
5 AS DEFENDANTS' "B."

6 BY MS. BARR:

7 "B." OKAY. SORRY.

8 (COURT REPORTER MARKS MEDICAL REPORT DEFENDANTS' EXHIBIT
9 "B")

10 CROSS EXAMINATION RESUMED BY MS. BARR:

11 Q. NOW, AFTER THIS INCIDENT IN THE DOVE FIELD ON
12 SEPTEMBER 4TH OF 2010, YOU HAD ANOTHER INJURY TO
13 YOUR NECK ON NOVEMBER 4TH OF 2010, IS THAT RIGHT?

14 A. WHAT WAS THE INJURY? WHAT WERE THE SURROUNDING
15 FACTS OF THE INJURY?

16 Q. YOU WROTE A LETTER TO HARRY GREGORY AT THE STATE
17 ACCIDENT FUND INDICATING THAT YOU HAD NO DOUBT IN
18 YOUR MIND THAT YOU WERE INJURED ON NOVEMBER 4, 2010,
19 AND THAT, QUOTE, "I DID NOT EXPERIENCE ANY PAIN OF
20 THIS MAGNITUDE IN MY NECK PRIOR TO NOVEMBER 4 OF
21 2010"?

22 A. I NEVER SPOKE TO MR. GREGORY UNTIL AFTER I HAD BEEN
23 REFERRED TO WORKERS' COMPENSATION.

24 Q. SO, SOMETIME AFTER YOU HAD THE SURGERY YOU WROTE A
25 LETTER TO HARRY GREGORY; DO YOU RECALL THAT?

1 A. YES.

2 Q. AND IN THIS LETTER YOU EXPLAINED THAT WHILE ON DUTY
3 ON NOVEMBER 4TH OF 2010 THAT YOU INJURED YOUR NECK
4 AND YOU'D NEVER HAD NECK PAIN OF THAT MAGNITUDE
5 PRIOR TO NOVEMBER 4TH OF 2010?

6 A. YES. AND NOVEMBER 4TH IS THE DATE OF THE ACCIDENT
7 IN THE DOVE FIELD, CORRECT?

8 Q. THE ACCIDENT WE'RE HERE ABOUT TODAY IS SEPTEMBER 4TH
9 OF 2010, IS WHAT YOUR ATTORNEY HAS ALLEGED. THE
10 LETTER YOU WROTE TO MR. GREGORY INDICATES YOU WERE
11 INJURED ON NOVEMBER 4TH, 2010.

12 A. I WAS NOT INJURED ON NOVEMBER 4TH OF 2010. I WAS
13 INJURED IN A DOVE FIELD.

14 BY MS. BARR:

15 YOUR HONOR, JUST SO WE CAN -- THIS IS A LETTER
16 WRITTEN ON SCDNR LETTERHEAD.

17 CROSS EXAMINATION RESUMED BY MS. BARR:

18 Q. THIS IS YOUR SIGNATURE, MR. FRAMPTON?

19 A. THAT'S CORRECT.

20 BY MS. BARR:

21 IF THAT COULD BE MARKED AS EXHIBIT "C."

22 (COURT REPORTER MARKS LETTER DEFENDANTS' EXHIBIT "C")

23 CROSS EXAMINATION RESUMED BY MS. BARR:

24 Q. IS THIS A LETTER THAT YOU WROTE TO HARRY GREGORY,
25 THE DIRECTOR OF THE STATE ACCIDENT FUND, AFTER YOU

1 HAD SURGERY ON YOUR NECK?

2 A. WHEN WAS THIS LETTER WRITTEN? I DON'T SEE IT DATED.

3 Q. I DON'T KNOW. I'M ASKING YOU; YOU WROTE IT.

4 A. I'M TELLING YOU THAT I DON'T SEE A DATE ON HERE, TO
5 ANSWER YOUR QUESTION.

6 Q. DO YOU RECALL WHEN YOU WROTE IT?

7 A. NO, I DO NOT.

8 Q. DO YOU RECALL WHY YOU WROTE IT?

9 A. I RECALL WRITING IT BECAUSE -- TO ASK HIM TO
10 RECONSIDER MY WORKERS' COMPENSATION CLAIM.

11 Q. ALL RIGHT. AND YOU COMPLAINED TO HIM THAT YOU WERE
12 INJURED, THAT YOU SPECIFICALLY INJURED YOUR NECK ON
13 NOVEMBER 4, 2010, A THURSDAY; IS THAT WHAT THIS
14 LETTER SAYS?

15 A. YES.

16 Q. ALL RIGHT. AND YOU SAID IT MORE THAN ONCE, THAT
17 THERE WAS NO DOUBT IN YOUR MIND THAT YOU WERE
18 INJURED ON NOVEMBER 4TH OF 2010?

19 A. BY THIS LETTER I WAS INJURED ON NOVEMBER THE 4TH,
20 2010, YES.

21 Q. AND YOU AGREE THAT YOU DID NOT EXPERIENCE ANY PAIN
22 OF, QUOTE, "THIS MAGNITUDE IN MY NECK PRIOR NOVEMBER
23 4, 2010." IS THAT A CORRECT STATEMENT?

24 A. YES.

25 Q. ALL RIGHT. AND YOU STAND BY THAT STATEMENT TODAY?

1 A. YES.

2 Q. ALL RIGHT. AND YOU SAY THAT THIS ACCIDENT, WHEN YOU
3 INJURED YOUR NECK AND WORSENERD ANY PRIOR PROBLEMS
4 WITH YOUR NECK, WAS ON A THURSDAY, NOVEMBER 4TH,
5 2010?

6 A. YES.

7 Q. ALL RIGHT. AND THAT'S SOMETHING DIFFERENT THAN AN
8 INCIDENT IN A DOVE FIELD ON SEPTEMBER 4TH OF 2010,
9 BECAUSE DOVE WASN'T EVEN IN SEASON ON NOVEMBER 4TH,
10 2010, WAS IT?

11 A. I DON'T RECALL THE SEASON IN 2010.

12 Q. OKAY. BUT YOU ADMIT THAT YOU HAD A NEW INJURY TO
13 YOUR NECK ON THIS DATE; THAT'S WHY YOU WROTE THIS
14 LETTER TO HARRY GREGORY?

15 A. YES.

16 BY THE COMMISSIONER:

17 JUST FOR THE RECORD, JUST SO WE'RE ALL CLEAR,
18 I'M NOT SURE, BUT THIS LETTER REFERENCES A DOVE
19 FIELD AS WELL, IS THAT ---

20 BY MS. BARR:

21 IT COULD BE. IT'S HIS LETTER, BUT IT CLEARLY
22 STATES THAT IT WAS NOVEMBER 4TH, 2010, AND THERE'S
23 NOT ---

24 BY THE WITNESS:

25 YOU'RE CORRECT.

1 BY MS. BARR:

2 THERE'S NOT A NOVEMBER 4TH, 2010, ACCIDENT
3 PENDING BEFORE THE COMMISSION. SO THIS WOULD BE
4 SUBSEQUENT TO THE CLAIM WE'RE HERE FOR TODAY.

5 BY THE COMMISSIONER:

6 OKAY.

7 BY THE WITNESS:

8 THIS -- THIS IS THE CLAIM WE'RE HERE FOR TODAY.
9 I'M VERY CONFUSED. THIS IS THE CLAIM WE'RE HERE FOR
10 TODAY.

11 CROSS EXAMINATION RESUMED BY MS. BARR:

12 Q. WELL, HOW CAN IT BE THE SAME, BECAUSE IT'S A
13 DIFFERENT DATE? IT'S TWO MONTHS LATER?

14 A. YOU'RE SAYING I CLAIMED PRIOR TO THIS INCIDENT A
15 WORKERS' COMPENSATION CLAIM WITH THE DEPARTMENT OF
16 NATURAL RESOURCES ABOUT A NECK INJURY?

17 Q. THAT'S WHAT WE'RE HERE ABOUT.

18 A. MA'AM?

19 Q. YES. WE'RE HERE FOR A CLAIM THAT YOU INJURED YOUR
20 NECK ON SEPTEMBER 4, 2010, AND I JUST SHOWED YOU A
21 LETTER YOU WROTE TO HARRY GREGORY SAYING YOU INJURED
22 YOUR NECK ON NOVEMBER 4, 2010. I MEAN, YOU WOULDN'T
23 HAVE WRITTEN THIS LETTER IF YOU DIDN'T BELIEVE YOU
24 WERE INJURED ON NOVEMBER 4, 2010? I MEAN, YOU SAY
25 RIGHT HERE THAT THERE WAS NO DOUBT IN YOUR MIND THAT

1 YOU WERE INJURED ON THAT DATE. YOU'VE HAD A CHANCE
2 TO REVIEW THIS LETTER THAT YOU DRAFTED. HAVING
3 REVIEWED THAT, YOU DON'T DISPUTE THAT YOU ALLEGED TO
4 THE DIRECTOR OF THE STATE ACCIDENT FUND THAT YOU
5 INJURED YOUR NECK ON NOVEMBER 4, 2010, AND THAT YOU
6 DID NOT EXPERIENCE PAIN OF THAT MAGNITUDE IN YOUR
7 NECK PRIOR TO NOVEMBER 4 OF 2010?

8 A. THAT'S CORRECT.

9 Q. OKAY. NOW, WE KNOW THAT YOU WENT BACK TO DR. BAILEY
10 ON MARCH 15 OF 2011. DID YOU SEE HIM AT ANY TIME
11 BETWEEN MARCH OF 2010 AND MARCH OF 2011?

12 A. I DON'T RECALL THE DATES.

13 Q. NOW, WHEN YOU WENT BACK TO DR. BAILEY ON MARCH 15 OF
14 2011, DO YOU RECALL COMPLETING SOME INTAKE FORMS,
15 THE FORMS YOU COMPLETE IN THE OFFICE BEFORE YOU SEE
16 THE DOCTOR?

17 A. CERTAINLY.

18 Q. ALL RIGHT. AND YOU INFORMED DR. BAILEY AT THAT
19 TIME, ON MARCH 15TH OF 2011, THAT YOUR PROBLEMS
20 STARTED ON FEBRUARY 20, 2010, AND WHEN YOU WERE
21 ASKED IF YOU WERE INJURED ON THE JOB, YOU PUT A
22 QUESTION MARK; IS THAT WHAT YOU TOLD DR. BAILEY WHEN
23 YOU SAW HIM ON THAT DATE?

24 A. I DON'T RECALL.

25 Q. IF DR. BAILEY HAS INDICATED THAT THAT'S WHAT YOU

1 TOLD HIM, WOULD YOU DISPUTE IT?

2 A. NO.

3 Q. SO YOU ADMIT THAT YOUR NECK PROBLEMS BEGAN ON
4 FEBRUARY 20TH OF 2010?

5 BY MR. LAND:

6 WE'LL STIPULATE TO THE MEDICALS THAT SHE'S
7 REFERRING TO.

8 BY THE COMMISSIONER:

9 WELL -- BUT I THINK HER QUESTION IS -- I DON'T
10 THINK WE CAN STIPULATE TO THE QUESTION. YOU CAN
11 STIPULATE TO THE MEDICAL RECORD COMING IN, BUT I
12 THINK THE WITNESS STILL NEEDS TO ANSWER THE
13 QUESTION.

14 BY MR. LAND:

15 SURE.

16 WITNESS ANSWERS:

17 A. YES.

18 CROSS EXAMINATION RESUMED BY MS. BARR:

19 Q. AND I'LL SHOW THIS TO YOU. ON THE FIRST PAGE
20 THERE'S "WERE YOU INJURED ON THE JOB?" AND HOW DID
21 YOU RESPOND?

22 A. QUESTION MARK.

23 Q. AND THIS IS YOUR HANDWRITING, RIGHT?

24 A. YES.

25 Q. AND THEN "DATE AND TIME THE PROBLEM WAS RECOGNIZED?"

1 AND HOW DID YOU RESPOND?

2 A. THIS DOESN'T SAY THAT THIS IS ABOUT A NECK INJURY.

3 Q. WELL, WERE YOU SEEING DR. BAILEY FOR SOMETHING OTHER
4 THAN YOUR NECK?

5 A. NO, BUT YOU ASKED ME, AND I'M JUST READING FROM THE
6 FORM.

7 Q. OKAY. SO, DID YOU -- I MEAN, THIS INTAKE FORM THAT
8 YOU COMPLETED IN YOUR OWN HAND AT CHARLESTON
9 NEUROSURGICAL ASSOCIATES ON MARCH 15, 2011,
10 INDICATES THAT YOU WERE UNSURE AT THAT TIME WHETHER
11 OR NOT YOU WERE INJURED ON THE JOB. DO YOU ADMIT
12 THAT'S THE CASE?

13 A. THAT'S -- I DON'T KNOW. I KNOW THAT AFTER I WAS IN
14 THE DOVE FIELD IN THE PICKUP TRUCK I HAD SUBSTANTIAL
15 -- I COULD HARDLY MOVE THE NEXT DAY.

16 Q. BUT THAT'S NOT WHAT YOU TOLD DR. BAILEY; YOU SAID
17 YOU RECOGNIZED THE PROBLEM ON FEBRUARY 20TH OF 2010,
18 CORRECT?

19 A. I MAY HAVE SEEN DR. BAILEY. I CAN'T DISPUTE THE
20 MEDICAL RECORD.

21 Q. AND THEN THE NEXT DAY, ON MARCH 16TH, YOU TESTIFIED
22 THAT DR. BAILEY HAD SENT YOU FOR A NERVE CONDUCTION
23 STUDY AND YOU SAW HIS PARTNER, DR. KEEFER; IS THAT
24 -- DO YOU RECALL THAT?

25 A. YES.

1 Q. ALL RIGHT. AND WOULD YOU ADMIT THAT YOU TOLD DR.
2 KEEFER ON MARCH 16TH OF 2011 THAT YOUR PROBLEM HAD
3 STARTED 14 MONTHS EARLIER AND THAT PROBLEM WAS
4 DEFINED AS NECK PAIN?

5 A. I DON'T RECALL THAT.

6 Q. THIS REPORT, WHICH SAYS CHARLESTON NEUROSURGICAL
7 ASSOCIATES REHABILITATION SERVICE, IS DATED MARCH 16
8 OF 2011, AND THEN IT APPEARS THAT IT'S COMPLETED IN
9 YOUR HANDWRITING. IS THAT YOUR HANDWRITING?

10 A. YES, IT IS.

11 Q. ALL RIGHT. ON PAGE TWO OF THIS FORM WHAT DID YOU
12 INDICATE WAS THE REASON -- CHIEF -- REASON FOR YOUR
13 VISIT, CHIEF COMPLAINT?

14 A. NECK PAIN.

15 Q. AND WHEN ASKED, "WHEN DID THE PROBLEM START," HOW
16 DID YOU RESPOND?

17 A. I RESPONDED 14 MONTHS.

18 Q. ALL RIGHT. AND YOU WERE ASKED, "IS THIS PROBLEM A
19 WORK-RELATED INJURY?" AND HOW DID YOU RESPOND?

20 A. I HAVE A QUESTION MARK.

21 Q. YOU WERE ASKED, "HOW DID YOUR SYMPTOMS BEGIN?" AND
22 HOW DID YOU RESPOND?

23 A. "THEY GRADUALLY BEGAN."

24 Q. ALL RIGHT. AND YOU WERE ASKED, "HOW LONG HAVE YOU
25 HAD THESE SYMPTOMS?" AND HOW DID YOU RESPOND?

1 A. "YEARS."

2 Q. AND YOU WERE TRUTHFUL TO DR. BAILEY? YOU WERE THERE
3 SEEKING TREATMENT. I WOULD ASSUME YOU HAD NO REASON
4 NOT TO BE?

5 A. I HAVE NO REASON NOT TO BE TRUTHFUL.

6 Q. ALL RIGHT.

7 A. AND I WILL SAY THAT I'M BEING TRUTHFUL, THAT AFTER
8 THE INCIDENT IN THE DOVE FIELD IN A 2500 SERIES
9 PICKUP TRUCK MY NECK WAS INJURED.

10 Q. CAN YOU SHOW ME ANYWHERE IN DR. BAILEY'S RECORDS
11 WHERE YOU EVEN MENTION THAT INCIDENT?

12 A. I HAVEN'T SEEN DR. BAILEY'S RECORDS.

13 Q. YOU DIDN'T SAY ANYTHING ABOUT A DOVE FIELD OR A
14 DODGE PICKUP OR SEPTEMBER 4, 2010, OR NOVEMBER 4,
15 2010, WHEN YOU WERE ASKED TO DESCRIBE YOUR INJURIES
16 WHEN YOU SAW DR. BAILEY IN MARCH OF 2011, DID YOU?

17 A. NO, BECAUSE I HAD ALREADY GONE THROUGH THAT WITH
18 WORKERS' -- WITH THE ORIGINAL DOCTORS CARE I SAW.

19 Q. WELL, YOU SAY NOW THAT YOU'RE CERTAIN THAT THINGS
20 CHANGED ON SEPTEMBER 4TH, 2010. IF THAT WAS -- THAT
21 OBVIOUSLY WASN'T THE CASE BACK IN MARCH OF 2011,
22 ONLY FEW SHORT MONTHS AFTER THIS ALLEGED INCIDENT?
23 I MEAN, WHY WOULD YOU HAVE SAID INJURED ON THE JOB,
24 QUESTION MARK, INSTEAD OF SAYING YES, IF YOU FELT SO
25 STRONGLY ABOUT IT?

1 A. I DON'T KNOW.

2 Q. WHEN YOU HAD SURGERY, THERE'S A LAPSE IN DR.
3 BAILEY'S RECORDS; YOU HAD AN MRI, AND THEN THE NEXT
4 THING WE HEAR FROM DR. BAILEY IS HIS SURGICAL
5 RECORD, AND IN THAT RECORD ---

6 BY MS. BARR:

7 WHICH, COMMISSIONER, IS CONTAINED IN THE APAs
8 AT NUMBER FIVE.

9 CROSS EXAMINATION RESUMED BY MS. BARR:

10 Q. --- DR. BAILEY SAYS THAT YOU CAME TO SURGERY BECAUSE
11 -- AND THIS IS ON MARCH 21ST OF 2011 -- OVER THE
12 LAST 72 HOURS, QUOTE, "HE HAS HAD INCREASING
13 SYMPTOMS." DO YOU RECALL THAT?

14 A. NO.

15 Q. DID YOUR SYMPTOMS INCREASE IN THE 72 HOURS PRIOR TO
16 YOUR SURGERY?

17 A. I DON'T RECALL THAT. I RECALL BEING TOLD THAT I
18 WOULD NEED TO HAVE NECK SURGERY. I RECALL THAT IF I
19 DID NOT HAVE NECK SURGERY, I COULD HAVE PERMANENT
20 DAMAGE, PERMANENT NERVE DAMAGE IN MY HANDS, AND THAT
21 I WOULD BE INFORMED WHEN THAT SURGERY WOULD BE AND
22 WHAT HOSPITAL TO GO TO.

23 Q. BUT IF DR. BAILEY SAYS THAT YOU HAD HAD INCREASING
24 SYMPTOMS OVER THE LAST 72 HOURS PRIOR TO MARCH 21ST,
25 2011, YOU DON'T DISPUTE THAT, DO YOU?

1 A. NO.

2 Q. CAN YOU TELL US WHAT YOU WERE DOING IN THE 72 HOURS
3 BEFORE SURGERY THAT PRECIPITATED THIS INCREASE IN
4 YOUR SYMPTOMS?

5 A. NO. LIKE I SAID, I WAS TOLD THE WEEK PRIOR THAT
6 THEY WOULD WORK ON SCHEDULING SURGERY AND THAT WHEN
7 DR. BAILEY HAD AN AVAILABLE SLOT OR AN AVAILABLE
8 TIME CAME FOR AN OPERATION ROOM, THAT I WOULD BE
9 NOTIFIED WHEN TO -- WHEN TO BE AT THE HOSPITAL FOR
10 THE SURGERY.

11 Q. AFTER SURGERY DR. BAILEY RETURNED YOU TO WORK IN
12 YOUR REGULAR JOB IN MAY OF 2011; IS THAT CORRECT?

13 A. YES.

14 Q. YOU CAME BACK TO YOUR REGULAR JOB AT D.N.R.?

15 A. I CAME BACK TO WORK AT D.N.R.; YES.

16 Q. AND WAS THAT BEFORE OR AFTER YOUR PROMOTION?

17 A. WHICH PROMOTION; TO COLONEL OR TO MAJOR?

18 Q. TO COLONEL. HOW MANY TIMES HAVE YOU BEEN PROMOTED
19 SINCE SEPTEMBER 4TH OF 2010?

20 A. I BELIEVE I'VE BEEN PROMOTED TWICE.

21 Q. OKAY. SO WHEN YOU RETURNED TO WORK IN MAY OF 2011,
22 WHAT WAS YOUR RANK?

23 A. COULD YOU REPEAT THAT? I'M TRYING TO GET THE DATES
24 STRAIGHT TO GIVE YOU THE BEST ANSWER I CAN.

25 Q. FAIR ENOUGH. WHEN YOU HAD SURGERY, DR. BAILEY

1 RELEASED YOU ABOUT THREE MONTHS LATER TO RETURN TO
2 FULL-DUTY WORK, AND YOU CAME BACK TO WORK?

3 A. YES.

4 Q. ALL RIGHT. WHAT WAS THE JOB YOU WERE DOING WHEN YOU
5 CAME BACK TO WORK?

6 A. I BELIEVE I WAS THE COLONEL.

7 Q. OKAY. ALL RIGHT. YOU WERE NOT THE COLONEL ON
8 SEPTEMBER 4TH OF 2010?

9 A. I DO NOT BELIEVE SO.

10 Q. OKAY. SO YOU WERE PROMOTED SOMETIME AFTER THAT
11 INCIDENT?

12 A. I BELIEVE I WAS PROMOTED IN APRIL.

13 Q. AND AS A RESULT OF THAT PROMOTION, YOU HAD A
14 SIGNIFICANT INCREASE IN YOUR SALARY; DID YOU NOT?

15 A. YES, I DID.

16 Q. YOUR CURRENT SALARY IS ABOUT \$102,000, \$103,000?

17 A. YES, MA'AM.

18 Q. SO YOU CAME BACK TO WORK IN YOUR JOB AS COLONEL, AND
19 THEN ON JUNE 16TH, 2011, YOU TOTALED THE CAR IN PALM
20 BEACH, CORRECT?

21 A. I DID.

22 Q. ALL RIGHT. AND AS A RESULT OF THAT ACCIDENT, YOU
23 WENT TO DOCTORS CARE ---

24 BY MS. BARR:

25 THIS IS APA NUMBER FIVE, COMMISSIONER.

CROSS EXAMINATION RESUMED BY MS. BARR:

Q. YOU WENT BACK TO DOCTORS CARE COMPLAINING OF ACUTE
NECK PAIN ON JUNE 22, 2011; SO, SIX DAYS LATER?

A. I DO NOT RECALL THAT.

Q. ALL RIGHT. WELL, YOU HAD TESTIFIED PREVIOUSLY THAT
YOU DIDN'T SEEK MEDICAL TREATMENT FOLLOWING THAT
MOTOR VEHICLE ACCIDENT. IF THE RECORDS YOUR
ATTORNEY SUBMITTED TO THE COMMISSION INDICATE THAT
YOU WERE SEEN ON JUNE 22, 2011, AT DOCTORS CARE FOR
A COMPLAINT OF A MOTOR VEHICLE ACCIDENT ON JUNE 16,
2011, NOW ACUTE NECK PAIN, REACTIVATION OF PRIOR
INJURY, YOU WOULDN'T HAVE REASON TO DISPUTE THE
VERACITY OF THAT REPORT YOUR OWN LAWYER SUBMITTED,
WOULD YOU?

A. NO. I DO NOT RECALL THAT.

Q. OKAY. BUT YOU DO RECALL TELLING DR. BAILEY WHEN YOU
SAW HIM ON JULY 1 OF 2011 THAT YOU HAD BEEN INVOLVED
IN THIS MOTOR VEHICLE ACCIDENT AND THAT YOU HAD
SIGNIFICANT PAIN AND AN AGGRAVATION OF YOUR NECK
PROBLEM?

A. YES.

Q. OKAY. AND AFTER YOU SAW DR. BAILEY AND TOLD HIM
THAT YOU HAD REINJURED YOUR NECK IN THE MOTOR
VEHICLE ACCIDENT, HE GAVE YOU LIGHT-DUTY
RESTRICTIONS; IS THAT CORRECT? THAT'S WHAT HIS

1 RECORDS SHOW.

2 A. I DON'T RECALL THAT. I RECALL DR. BAILEY WANTING ME
3 TO GO HAVE AN X-RAY SO THAT HE COULD LOOK AT THE
4 PLATES AND THE SCREWS IN MY NECK AND MAKE SURE THAT
5 THEY HAD NOT BEEN REINJURED OR BEEN INJURED.

6 Q. DR. BAILEY, YOUR OWN DOCTOR'S RECORDS, INDICATE THAT
7 HE RESTRICTED YOUR ACTIVITY TO LIGHT DUTY ON JULY 1,
8 2011, AS A RESULT OF THAT MOTOR VEHICLE ACCIDENT.
9 YOU DON'T DISPUTE THAT, DO YOU?

10 A. I CAN'T RECALL IT TO DISPUTE IT.

11 Q. ALL RIGHT. AND YOU DON'T DISPUTE THAT AS A RESULT
12 OF THIS MOTOR VEHICLE ACCIDENT HE PRESCRIBED YOU
13 MUSCLE RELAXANTS, ANALGESICS, AND PHYSICAL THERAPY,
14 DO YOU?

15 A. NO.

16 Q. AND YOU SAW DR. BAILEY AGAIN IN AUGUST, LATE AUGUST,
17 AUGUST 23RD OF 2011, ---

18 BY MS. BARR:

19 IT'S PAGE 13, YOUR HONOR.

20 CROSS EXAMINATION RESUMED BY MS. BARR:

21 Q. --- AGAIN COMPLAINING OF THE EXACERBATION OF NECK
22 PAIN YOU EXPERIENCED IN A MOTOR VEHICLE ACCIDENT; IS
23 THAT CORRECT?

24 A. YES. I CONTINUED TO SEE DR. BAILEY ON A REGULAR
25 BASIS SINCE SURGERY.

1 Q. AND EVEN IN NOVEMBER OF 2011 YOU WERE COMPLAINING OF
2 NECK PAIN THAT WAS EXACERBATED BY THE MOTOR VEHICLE
3 ACCIDENT TO DR. BAILEY; DID YOU NOT?

4 A. YES.

5 Q. AND, IN FACT, APA NUMBER SIX INDICATES THAT IN
6 NOVEMBER AND DECEMBER OF 2011 -- EXCUSE ME; NOVEMBER
7 AND DECEMBER OF 2012 -- YOU WERE REFERRED FOR
8 PHYSICAL THERAPY AS A RESULT OF THE INJURIES YOU
9 SUSTAINED ON JUNE 16, 2011, WHICH WAS THAT MOTOR
10 VEHICLE ACCIDENT?

11 A. YES.

12 Q. SO IT'S CLEAR THAT THE MOTOR VEHICLE ACCIDENT IN
13 JUNE OF 2011 MADE THE PROBLEMS WITH YOUR HECK WORSE;
14 IS THAT FAIR TO SAY?

15 A. IT'S FAIR TO SAY THAT IT AGGRAVATED MY NECK.

16 Q. ALL RIGHT. AND AS A RESULT OF THAT AGGRAVATION OF
17 YOUR NECK PROBLEM SUSTAINED IN THE MOTOR VEHICLE
18 ACCIDENT, YOU REQUIRED ADDITIONAL MEDICAL TREATMENT
19 WITH DR. BAILEY, INCLUDING PHYSICAL THERAPY AND
20 MEDICATIONS?

21 A. YES.

22 Q. YOU ESSENTIALLY HAVE BEEN WORKING FULL DUTY SINCE
23 2011?

24 A. YES.

25 Q. NO SIGNIFICANT MISSED TIME FROM WORK AS A RESULT OF

1 YOUR NECK, HAS THERE BEEN?

2 A. NO.

3 Q. YOU DON'T TAKE ANY PRESCRIPTION MEDICATIONS?

4 A. I TAKE HIGH BLOOD PRESSURE MEDICINE.

5 Q. YOU DON'T TAKE ANY PRESCRIPTION MEDICATIONS FOR YOUR
6 NECK?

7 A. NO.

8 Q. NO PRESCRIPTIONS FOR YOUR ARMS?

9 A. NO, MA'AM.

10 Q. DO YOU USE ANY ASSISTIVE DEVICES?

11 A. NO.

12 Q. NO BRACES OR ANYTHING LIKE THAT?

13 A. NO, MA'AM.

14 Q. YOU'RE ABLE TO HOLD YOUR HEAD UP, HEAD ERECT WITHOUT
15 SUPPORT FROM ANYBODY ELSE?

16 A. I WILL SAY, YES, I AM ABLE TO HOLD MY HEAD UP, BUT I
17 HAVE SIGNIFICANT PAIN IN MY NECK.

18 BY MS. BARR:

19 JUST ONE MOMENT.

20 CROSS EXAMINATION RESUMED BY MS. BARR:

21 Q. I JUST HAVE ONE MORE QUESTION FOR YOU, AND IT
22 CONCERNS AN ISSUE WE HAVE WITH DR. BAILEY'S RECORDS.
23 DR. BAILEY STATED ON SEPTEMBER 20TH, 2013, THAT YOU
24 WERE UNABLE TO RETURN TO WORK AT YOUR CURRENT
25 EMPLOYMENT. DID YOU NOTIFY YOUR EMPLOYER AT THAT

1 TIME THAT DR. BAILEY HAD SAID YOU WERE UNABLE TO
2 RETURN TO WORK?

3 A. TELL ME THAT DATE AGAIN. SORRY.

4 Q. SEPTEMBER 20 OF 2013.

5 BY MS. BARR:

6 APA PAGE 21, YOUR HONOR.

7 WITNESS ANSWERS:

8 A. THAT I WAS TOLD THAT I COULD NOT RETURN TO WORK?

9 CROSS EXAMINATION RESUMED BY MS. BARR:

10 Q. CORRECT.

11 A. I'VE NEVER BEEN TOLD I COULD NOT RETURN TO WORK.

12 Q. ALL RIGHT. DO YOU BELIEVE YOU'RE CAPABLE OF WORKING
13 IN YOUR POSITION?

14 A. YES.

15 Q. ALL RIGHT. BUT IN ISSUING YOUR IMPAIRMENT RATING
16 DR. BAILEY STATED THAT YOU COULD NOT RETURN TO WORK.
17 HAVE YOU DISCUSSED THAT AT ALL WITH HIM?

18 A. NO.

19 Q. WERE YOU AWARE PRIOR TO JUST NOW THAT DR. BAILEY HAD
20 SAID ON SEPTEMBER 20TH, 2013, THAT YOU WERE UNABLE
21 TO RETURN TO WORK?

22 A. YES, I AM UNAWARE OF THAT.

23 Q. OKAY. WHEN WAS THE LAST TIME YOU DISCUSSED WORK
24 RESTRICTIONS WITH DR. BAILEY?

25 A. SOMETIME SHORTLY AFTER MY SURGERY, AFTER I WAS

1 RELEASED TO COME BACK TO WORK.

2 Q. AND THEN YOU ALL DISCUSSED IT AGAIN AFTER THE MOTOR
3 VEHICLE ACCIDENT?

4 A. I WOULD ASSUME WE DID.

5 Q. SO YOU NEVER DISCUSSED THESE WORK RESTRICTIONS OR
6 DR. BAILEY'S OPINION REGARDING YOUR ABILITY TO
7 RETURN TO WORK WITH DIRECTOR TAYLOR OR ANYBODY ELSE
8 AT D.N.R.?

9 A. ON THE 2013?

10 Q. CORRECT.

11 A. NO, MA'AM. I WASN'T -- I'M NOT AWARE OF THAT. I'VE
12 NEVER BEEN TOLD THAT, THAT I RECALL.

13 BY MS. BARR:

14 THANK YOU, YOUR HONOR. THAT'S ALL FOR THIS
15 WITNESS.

16 REDIRECT EXAMINATION BY MR. LAND:

17 Q. MR. FRAMPTON, THE SURGERY ON YOUR NECK WAS PRIOR TO
18 THE WRECK IN FLORIDA?

19 A. YES, SIR.

20 Q. OKAY. AND ON SEPTEMBER 4TH OF 2010, YOU TESTIFIED
21 EARLIER THAT YOU WERE IN A DOVE FIELD AND HURT YOUR
22 NECK, IS THAT RIGHT?

23 A. I AM TOTALLY CONFUSED ON THE DATES; I HAVE TO ADMIT.

24 Q. ALL RIGHT. BUT THE MEDICAL RECORDS, DOCTORS CARE,
25 ON SEPTEMBER 7TH, THREE DAYS AFTER SEPTEMBER THE

1 4TH, "WORKING IN FIELD SATURDAY AND AT END OF DAY
2 HAD NECK PAIN, WORSENERD OVERNIGHT."

3 A. THAT'S CORRECT.

4 Q. IS THAT WHAT YOU TOLD THE DOCTOR?

5 A. YES.

6 Q. OKAY. NOW, THE LETTER TO THE NATURAL RESOURCES
7 WHERE IT HAS NOVEMBER 4TH IN THERE, YOU STATED THE
8 SAME THING, THAT YOU WERE BOUNCING IN A TRUCK IN A
9 DOVE FIELD; IS THAT CORRECT?

10 BY MS. BARR:

11 OBJECTION. THAT'S NOT WHAT THE RECORD REVEALS.

12 BY THE COMMISSIONER:

13 WELL, THE LETTER IS IN THE RECORD.

14 BY MS. BARR:

15 RIGHT. DOCTORS CARE SAYS WALKING. HE'S
16 TALKING ABOUT RIDING IN A TRUCK IN THE LETTER.

17 BY MR. LAND:

18 IT WAS -- EXCUSE ME.

19 BY THE COMMISSIONER:

20 THERE'S STILL AN OBJECTION ON THE RECORD. I'M
21 GOING TO ALLOW THE QUESTION BECAUSE THE LETTER
22 REFERENCES RIDING IN THE TRUCK, BUT IT ALSO
23 REFERENCES THE FACT THAT SOMETHING FROM DEFENDANTS
24 INDICATED HE WAS WALKING, AND THAT WAS INCORRECT.
25 SO I'M GOING TO RELY ON THIS, DEFENDANTS' EXHIBIT

1 "C." SO I WILL ALLOW THE QUESTION.

2 REDIRECT EXAMINATION RESUMED BY MR. LAND:

3 Q. SO YOU STATED IN THAT, "WE WERE DRIVING THROUGH
4 EXTREMELY ROUGH TERRAIN IN A LAW ENFORCEMENT DODGE
5 RAM"; IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. OKAY. AND IS THAT WHAT YOU WERE IN ON SEPTEMBER 4TH
8 OF 2010?

9 A. THAT'S CORRECT.

10 Q. ALL RIGHT. COULD YOU HAVE BEEN WRONG ON THE DATE
11 THAT YOU HAVE IN THE LETTER?

12 A. ABSOLUTELY.

13 Q. OKAY. DID YOU SEEK -- DO YOU HAVE ANY MEDICAL
14 RECORDS INDICATING THAT YOU SOUGHT ANY KIND OF
15 MEDICAL ATTENTION RELATING TO A NOVEMBER 4TH, 2010,
16 ACCIDENT?

17 A. NO, SIR.

18 Q. OKAY, ALL RIGHT.

19 BY MR. LAND:

20 THAT'S ALL THE QUESTIONS I HAVE OF HIM. THANK
21 YOU, MA'AM.

22 BY THE COMMISSIONER:

23 MS. BARR?

24 BY THE WITNESS:

25 CAN I JUST ---

1 BY MR. LAND:

2 SURE.

3 BY THE WITNESS:

4 WHEN YOU CHECK A DOVE FIELD, YOU ARE IN AND OUT
5 OF THE TRUCK. YOU'RE -- IT DEPENDS ON HOW MANY DOVE
6 FIELDS YOU'RE CHECKING, THE SIZE OF THE DOVE FIELD.
7 SO, I COULD HAVE BEEN WALKING AT SOME POINT DURING
8 THE TIME. I WAS RIDING IN THE TRUCK AT SOME POINT
9 DURING THE TIME. I WAS IN AND OUT OF THE TRUCK
10 WHILE CHECKING PUBLIC DOVE FIELDS AND WORKING WITH
11 THE PUBLIC.

12 REDIRECT EXAMINATION RESUMED BY MR. LAND:

13 Q. I ASK YOU, DO YOU KNOW WHETHER OR NOT YOU HAVE ANY
14 PERMANENT INJURY FROM THE FLORIDA WRECK?

15 A. NO.

16 Q. OKAY. WHERE IS YOUR PERMANENT INJURY THAT YOU
17 DESCRIBED TO THE COMMISSIONER; WHERE DID IT COME
18 FROM?

19 A. IT CAME FROM THIS INCIDENT IN THE DOVE FIELD IN THE
20 TRUCK.

21 Q. ON WHAT DATE?

22 A. IN SEPTEMBER.

23 Q. OKAY. NOT NOVEMBER 4TH?

24 A. NOT NOVEMBER 4TH.

25 BY MR. LAND:

1 THAT'S ALL THE QUESTIONS I HAVE.

2 BY THE COMMISSIONER:

3 MS. BARR, ANYTHING FURTHER?

4 BY MS. BARR:

5 THANK YOU.

6 RECROSS EXAMINATION BY MS. BARR:

7 Q. WHERE DID YOUR SUDDEN CLARITY COME FROM ON THE DATE?

8 A. WELL, I REALIZE SOMEWHERE IN HERE THAT I HAD WRITTEN
9 THE WRONG MONTH IN THIS LETTER.

10 Q. NOT ONLY THE WRONG MONTH; YOU WENT INTO GREAT DETAIL
11 AND SAID THAT THE INJURY OCCURRED ON A THURSDAY, YOU
12 FELT PAIN ON A THURSDAY EVENING. SO, YOU WERE WRONG
13 ON THE DATE AND THE DAY? I MEAN, I THINK THE
14 COMMISSIONER ---

15 A. DIDN'T WE SAY SEPTEMBER 4TH, AND THIS IS NOVEMBER
16 THE 4TH?

17 Q. YES. AND THEN YOU WENT INTO DETAIL AND SAID IN YOUR
18 LETTER, WHICH IS, I BELIEVE, EXHIBIT "C," THAT THE
19 INJURY WAS ON A THURSDAY. I THINK THE COMMISSIONER
20 CAN TAKE JUDICIAL NOTICE OF THE FACT THAT SEPTEMBER
21 4TH, 2010, WAS A SATURDAY.

22 A. I'M TRYING TO BE AS TRUTHFUL AS I CAN WITH THE
23 INCIDENT THAT OCCURRED SEVERAL YEARS AGO. I HAVE
24 NOT REVIEWED ALL THE DATES, BUT WHAT I HAVE WRITTEN
25 IN THIS LETTER IS CORRECT. THE DATE MAY BE WRONG,

1 BUT THE CIRCUMSTANCES AROUND MY INJURY ARE CORRECT,
2 AND I STAND BY THEM.

3 Q. SO YOU STAND BY YOUR STATEMENT THAT THE INJURY
4 OCCURRED ON A THURSDAY?

5 A. I DON'T HAVE A CALENDAR IN FRONT OF ME TO CLARIFY
6 THE DATES. THE INJURY OCCURRED ON THE DOVE FIELD
7 THAT DAY IN THE TRUCK.

8 Q. ALL RIGHT. THIS LETTER WAS WRITTEN BEFORE TODAY, AT
9 A TIME WHEN YOUR MEMORY SHOULD HAVE BEEN FRESHER
10 REGARDING THE INCIDENT, CORRECT?

11 A. THIS LETTER WAS WRITTEN SEVERAL YEARS AGO.

12 Q. ALL RIGHT. AND YOU WENT INTO DETAIL SAYING THAT YOU
13 HAD PAIN AND DISCOMFORT ON THURSDAY EVENING AND THAT
14 YOU FELT IT ON A FRIDAY, WHICH WAS THE NEXT DAY, AND
15 ON SATURDAY FOLLOWING THE ACCIDENT YOU RELAXED, AND
16 THIS WAS IN NOVEMBER OF 2010. I MEAN, WHY WOULD YOU
17 SUGGEST THAT THIS IS WRONG NOW WHEN YOU WENT INTO
18 SUCH GREAT DETAIL ---

19 A. I'M NOT SUGGESTING ---

20 Q. --- WRITING IT TO MR. GREGORY?

21 A. I'M NOT SUGGESTING THAT THE LETTER IS WRONG; I'M
22 SUGGESTING THAT I MAY BE WRONG ON THE DATE.

23 Q. BUT YOU WERE NOT ONLY WRONG ON THE DATE, YOU WERE
24 WRONG ON THE DATE AND ALL THE DETAILS YOU PROVIDED
25 REGARDING THE PROGRESSION OF YOUR SYMPTOMS; WERE YOU

1 NOT?

2 A. I DISAGREE WITH THAT. I FEEL LIKE -- YOU KNOW, I
3 KIND OF FEEL LIKE I SHOULD FEEL BAD FOR GETTING HURT
4 ON THE JOB; I'VE GOT TO TELL YOU.

5 Q. I'M DISPUTING WHETHER OR NOT AND HOW MUCH YOU GOT
6 HURT ON THE JOB.

7 A. I UNDERSTAND.

8 Q. WE ARE HERE TODAY BECAUSE YOU CLAIM TO BE
9 PERMANENTLY AND TOTALLY DISABLED. I MEAN, YOU ADMIT
10 YOU'RE NOT PERMANENTLY AND TOTALLY DISABLED, I WOULD
11 HOPE AT THIS POINT, BECAUSE THAT'S WHAT YOUR BRIEF
12 SAYS?

13 A. THAT'S CORRECT.

14 Q. SO DO YOU FEEL BAD THAT YOU HAD TO BRING IN YOUR
15 COWORKERS AND YOUR SUPERIORS ON A CLAIM THAT YOU
16 CLAIM TO BE PERMANENTLY AND TOTALLY DISABLED?

17 A. I DID NOT BRING IN MY COWORKERS.

18 Q. DO YOU DENY THAT YOU CLAIM TO BE PERMANENTLY AND
19 TOTALLY DISABLED?

20 BY MR. LAND:

21 YOUR HONOR, THAT'S A LEGAL ---

22 BY THE COMMISSIONER:

23 IT IS ASKED AND ANSWERED. HE ANSWERED THE
24 QUESTION.

25 BY MR. LAND:

1 I DID THAT.

2 BY THE COMMISSIONER:

3 I UNDERSTAND.

4 BY MR. LAND:

5 UNDER THE LAW IT STATES THAT HE'S TO BE TREATED
6 AS IF PERMANENTLY AND TOTALLY DISABLED IN REGARD TO
7 COMPENSATION.

8 BY THE COMMISSIONER:

9 RIGHT, WHICH IS A LEGAL CONCLUSION, AND I DON'T
10 THINK IT'S APPROPRIATE. THE WITNESS IS NOT ---

11 BY MS. BARR:

12 I KNOW. IT'S JUST SO FRIVOLOUS; IT WAS HARD TO
13 SWALLOW. HIS GUMPTION SEEMED OUT OF PLACE.

14 BY THE COMMISSIONER:

15 ALL RIGHT. ANY FURTHER QUESTIONS FOR THE
16 WITNESS?

17 BY MS. BARR:

18 NO, YOUR HONOR.

19 BY THE COMMISSIONER:

20 OKAY. ANYTHING FURTHER, MR. LAND?

21 BY MR. LAND:

22 FINE.

23 REDIRECT EXAMINATION BY MR. LAND:

24 Q. THE QUESTION REMAINS, DID YOU INJURE YOURSELF ON
25 SEPTEMBER 4TH, 2010, IN A DOVE FIELD?

1 A. YES, SIR.

2 Q. OKAY. AND DID YOU GO TO DOCTORS CARE ON THE 7TH OF
3 SEPTEMBER THEREAFTER COMPLAINING ABOUT YOUR NECK?

4 A. YES.

5 Q. AND TO YOUR KNOWLEDGE, HAS THE WORKERS' COMPENSATION
6 STATE ACCIDENT FUND ACCEPTED YOUR CASE?

7 A. YES, THEY HAVE.

8 BY MR. LAND:

9 OKAY. THAT'S ALL THE QUESTIONS I HAVE.

10 BY THE COMMISSIONER:

11 ALL RIGHT.

12 BY MS. BARR:

13 IF I MAY.

14 RE CROSS EXAMINATION BY MS. BARR:

15 Q. YOU ADMIT THAT YOU SUFFERED A SUBSEQUENT ACCIDENT IN
16 YOUR CAR IN PALM BEACH, FLORIDA, IN MAY OF 2011 AND
17 REINJURED YOUR NECK, CORRECT?

18 BY THE COMMISSIONER:

19 WAS THAT JUNE OF 2011?

20 BY MS. BARR:

21 JUNE 16, 2011. THANK YOU.

22 RE CROSS EXAMINATION RESUMED BY MS. BARR:

23 Q. YOU ADMIT THAT, THAT YOU REINJURED YOUR NECK ON THAT
24 DATE?

25 A. I ADMIT THAT I HAD AGGRAVATING CIRCUMSTANCES FROM

1 THE WRECK. THE TRUCK WAS TOTALED. THE AIR BAGS IN
2 THE FRONT WENT OFF. IT WOULD BE HARD NOT FOR
3 ANYBODY TO BE SORE AFTER THAT.

4 Q. SORE ENOUGH THAT YOU SOUGHT TREATMENT AT DOCTORS
5 CARE AND THEN COMPLAINED ABOUT IT TO DR. BAILEY?

6 A. AS I STATED, I DON'T RECALL GOING TO DOCTORS CARE
7 AFTER THAT.

8 BY MS. BARR:

9 OKAY. THE RECORDS CAN SPEAK FOR THEMSELVES,
10 YOUR HONOR. THANK YOU.

11 BY THE COMMISSIONER:

12 THANK YOU. ALL RIGHT. THE WITNESS IS EXCUSED.

13 BY MR. LAND:

14 THAT'S THE CLAIMANT'S CASE.

15 BY THE COMMISSIONER:

16 ALL RIGHT. ANY OTHER WITNESSES? THAT IS THE
17 CLAIMANT'S CASE. ANY WITNESSES ON BEHALF OF THE
18 DEFENDANTS?

19 BY MS. BARR:

20 JUST A MOMENT.

21 BY THE COMMISSIONER:

22 SURE.

23 BY MS. BARR:

24 NONE, YOUR HONOR. WE WILL RELY ON THE MEDICAL
25 RECORDS.

1 BY THE COMMISSIONER:

2 AND JUST FOR THE RECORD, YOU DID HAND UP THESE
3 OTHER TWO THINGS. I DON'T KNOW THAT WE REALLY GOT
4 ANYTHING FROM THEM. DO YOU WANT THEM TO BE MARKED
5 AS WELL?

6 BY MS. BARR:

7 YES, YOUR HONOR.

8 BY THE COMMISSIONER:

9 OKAY.

10 BY MR. LAND:

11 NO OBJECTION.

12 BY THE COMMISSIONER:

13 ALL RIGHT. I'LL MARK THE MARCH 15TH, 2011, AS
14 DEFENDANTS' "D" AND THEN THE MARCH 16TH, 2011,
15 RECORD AS DEFENDANTS "E."

16 BY MR. LAND:

17 DO YOU STILL WANT THE DR. BAILEY DEPOSITION?

18 BY MS. BARR:

19 YOUR HONOR, I DON'T KNOW THAT WE NEED DR.

20 BAILEY'S DEPOSITION SINCE THESE RECORDS ARE IN.

21 BY THE COMMISSIONER:

22 OKAY.

23 (OFF THE RECORD)

24 (COURT REPORTER MARKS INTAKE FORM DEFENDANTS' EXHIBIT "D"
25 AND MEDICAL RECORD DEFENDANTS' EXHIBIT "E")

1 BY THE COMMISSIONER:

2 THAT CONCLUDES THIS MATTER.

3 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
4 CONCLUDED AT THE HOUR OF 1:31 P.M.)

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1012533

Chisolm A. Frampton,
Claimant,
v.
Department of Natural Resources,
Employer,
and
State Accident Fund,
Carrier/Defendants.

COPY

FULL COMMISSION HEARING

Tuesday, March 21, 2017
10:29 a.m. - 10:59 a.m.

The Full Commission Hearing was heard before Commissioners Melody L. James, T. Scott Beck, and Susan S. Barden, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 21st day of March, 2017, before Sonia D. Wallace-Sanders, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

John C. Land, III, Esquire
 Land, Parker & Welch, P.A.
 29 South Mill Street
 Manning, South Carolina 29102
 Attorney for the Claimant

Kirsten L. Barr, Esquire
 Trask and Howell, L.L.C.
 763 Johnnie Dodds Boulevard # 2
 Mount Pleasant, South Carolina 29464
 Attorney for the Defendants

Also Present:

Chisolm A. Frampton
 Lindsay Saddler

INDEX

<u>CALL TO ORDER:</u>	<u>PAGE:</u>
COURT REPORTER	3
<u>ARGUMENT BY:</u>	
MR. LAND	3
MS. BARR	9
<u>REPLY BY:</u>	
MR. LAND	16
MS. BARR	23
Certificate	28

EXHIBITS

(There were no exhibits marked during the hearing.)



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 CALL TO ORDER:

2 COURT REPORTER: Today is March 21st, 2017. This is
3 South Carolina Workers' Compensation Case
4 Number 1012533. This is the case of Chisolm A.
5 Frampton, claimant versus Department of Natural
6 Resources, employer and State Accident Fund,
7 carrier. This is a cross appeal. The first
8 appellant is the claimant/defendant represented
9 by John C. Land, III. The second appellant is
10 the claimant/defendant represented by Kirsten
11 L. Barr. Each side is allowed eight minutes
12 for oral argument and the appellant three
13 minutes in reply. You are requested to argue
14 the grounds of exception and stay within the
15 record.

16 CHAIR: And you actually have 10, but if you can take
17 eight, that's great. And if you need the 10,
18 you're certainly allotted the 10.

19 MS. BARR: And reply for both parties.

20 CHAIR: Absolutely. Okay. We'll start with you, Mr.
21 Land?

22 ARGUMENT BY MR. LAND:

23 MR. LAND: Thank you, ma'am. Good morning to each
24 and everyone of you, I'm John Land. I'm
25 representing Mr. Chisolm Frampton, who sits



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 here today, who I believe is about 51 years
2 old. Finished at College of Charleston, during
3 which time he did some construction work and
4 worked in a bar. And after that he went down
5 to Savannah, I believe it was, and got a cer-
6 -- degree, I guess you would call it, in marine
7 survey which means he can drive a big boat, a
8 real big one. And he's a sea captain. And he
9 went with the Department of Natural Resources
10 about 23 years ago. And because of his brain,
11 he has worked himself up to the top cop, to the
12 head of the -- all conservation offices in the
13 state. On September 4th, of 2010, this is '17,
14 2010, he was riding in a truck with another
15 officer bouncing across a dove field and
16 injured his neck. This is an accepted case,
17 accepted by no other than Harry Gregory, the
18 head of the State Accident Fund, accepted as to
19 the back. He has had cervical disk surgery.
20 And during the period of time that he was
21 convalescing and after the surgery, he has
22 risen to the rank of Colonel of the
23 Conservation Offices, two promotions during
24 that period of time. And he's back at work
25 full-time. And the treating doctor gave him a



1 20 percent to the whole person and a 75 percent
2 to the cervical spine and said he could not
3 return to work. Later the treating physician,
4 for reasons unknown to me and maybe to no one,
5 changed the Form 14B to 26 percent of the
6 whole person because of the back and 75 or
7 maybe 76 percent to the cervical spine and said
8 he could not return to work. We believe this
9 is the classic Clemons case. And, of course,
10 the cite on that, Madam Court Reporter, is Case
11 Number 2015-001350. I have copies of the case
12 if anyone would like for me to pass that up.
13 But this is the identical case. In the order
14 by the single Commissioner, where she chose the
15 20 percent as his disability is the -- and in
16 that, she found that he had gotten promotions.
17 And that he had -- was making 102,000,
18 \$103,000. And that he was back at work full-
19 time and hadn't missed any work. All of which
20 went to -- in loss of income earning capacity,
21 part of 2910. And this case was brought under
22 42-9-30-21 and the Commissioner so found that
23 this case was there. There's nothing in her
24 findings that would support anything less than,
25 cause he had lost more than 50 percent of his



1 spine and was entitled to being compensated
2 based on five hundred weeks. And, of course,
3 the Clemons case that just came out says it so
4 clearly. It says that evidence of claimants
5 build a whole gainfully employment alone cannot
6 preclude a determination of permanent and total
7 disability. I think we all get confused
8 sometimes. We're not saying he's permanently
9 and totally disabled. We're saying that the
10 law says he is. It says if he has lost more
11 than 50 percent of his spine, then he is
12 compensated as if he were permanently and
13 totally disabled. This is a classic case.
14 Nothing competes with any of that. Nothing
15 competes with the limitations in his neck, that
16 he has to be very careful of his position.
17 Can't jump off of a tailgate, can't lay in bed
18 and read, can't jar his neck, can't jog,
19 limited on any kinds of sports, loss of -- he
20 thinks he's lost 75 percent of his neck, which
21 is uncontradicted. The 76 percent, I think,
22 what Dr. Bailey, the treating doctor gives, is
23 uncontradicted.

24 COMMISSIONER JAMES: Which is the regional rating?

25 MR. LAND: Ma'am?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 COMMISSIONER JAMES: Is the regional rating? You
2 said it was his cervical.

3 MR. LAND: Right. And the other's a whole person
4 rating.

5 COMMISSIONER JAMES: Okay.

6 MR. LAND: And, of course, the Clemons case made no
7 distinction between that. They went with the
8 disability of the cervical spine impairment to
9 claim that this person had lost more than 50
10 percent of his spine. And back to the arms,
11 which is a contested matter in here, because
12 the State Accident Fund did not accept the
13 arms. But he testified, which is
14 uncontradicted, 25 percent of the arms, loss of
15 strength, can't carry heavy objects, loss of
16 muscle mass, which is backed up in the -- Dr.
17 Poletti's report, can't work out, can't run a
18 boat without extreme caution. And again, this
19 is an admitted case. This factual situation
20 has been sifted twice. Now, one time by Harry
21 Gregory, and you'll hear something about a
22 letter that says I was hurt on November 4th.
23 Well, he was hurt on September 4th. But Harry
24 Gregory made the decision to accept the case
25 September 4th, September 4th, the same day he



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 alleges. The Commissioner even found that,
2 said there's no problem with this it's just a
3 missed typing on the letter. It should have
4 been September 4th and even she found that.
5 But I submit to you this is a classic Clemons
6 case. And I'm kind of proud of myself because
7 the Clemons case hasn't come out yet. But in
8 my brief, in my appeal, I stated all of the
9 findings go to general disability. None go to
10 the scheduled loss and that's where this case
11 is being decided. And the Commissioner decided
12 it in that area. I believe that the correct
13 finding in this matter should be that this man
14 has lost more than 50 percent of his spine and
15 should be compensated pursuant to 42-9-30-21
16 and awarded 500 weeks for his disability.

17 **COMMISSIONER BECK:** Mr. Land?

18 **MR. LAND:** Yes, sir.

19 **COMMISSIONER BECK:** I'm looking at the APAs from both
20 parties. There doesn't appear to have been a
21 vocational assessment done by either side in
22 this matter. Is that correct?

23 **MR. LAND:** No, sir.

24 **COMMISSIONER BECK:** That's correct?

25 **MR. LAND:** No, sir. No vocational assessment at all,



1 cause he's back at work. And that can't be
2 used against him. And the findings in the
3 order relate to his general -- to his loss of
4 earning -- income earning capacity. And we
5 don't think he has, but he has limitations.

6 **COMMISSIONER BECK:** Okay.

7 **MR. LAND:** And we think it should be -- of course
8 you ruled in our favor and we think it should
9 be increased to over 50 percent of the spine.
10 Thank you very much.

11 **CHAIR:** All right. Ms. Barr?

12 **ARGUMENT BY MS. BARR:**

13 **MS. BARR:** Thank you, Your Honor. I would note that
14 you'll see from the claimant's briefs, that he
15 did not argue in those briefs that he was
16 entitled to a greater than 50 percent loss of
17 use in the spine or that he was permanently and
18 totally disabled. More importantly, however,
19 this claim is clearly distinguished from the
20 Clemons decision that we just received last
21 week. Most notably, you'll see that the
22 claimant didn't meet his burden of proof under
23 42-9-35, therefore, the issue of benefits is
24 irrelevant. You'll see that, yes, the claim
25 was initially accepted. And there's



1 correspondence with Harry Gregory, that was
2 accepted because ---

3 COMMISSIONER BECK: Well, I understand you disagree
4 with that, but Commissioner Taylor made a very
5 specific finding that the 42-9-35 was not
6 applicable in this matter, didn't she?

7 MS. BARR: No, actually, Your Honor, conclusion of
8 law number 2, states, and this was not appealed
9 and is therefore the law of the case.
10 Conclusion of law number 2, page 11, the
11 claimant did not meet his burden of proof under
12 section -- South Carolina Code annotated in
13 Section 42-9-35. The record is clear that he
14 has a history of cervical radiculopathy that
15 predates the September 4th, 2010 accident. And
16 there's no competent medical evidence that the
17 September 4th, 2010 accident aggravated his
18 preexisting condition. In fact, the records of
19 the claimant's treating physician, Dr. Bailey,
20 made no mention of any work related accident or
21 injury on/or about September 4th, 2010. And
22 the claimant's own statements to Dr. Bailey
23 indicate that his neck problems began in
24 January of 2010. That conclusion of law was
25 not appealed. It is the law of the case. And



1 it compels a finding that, in fact, he's not
2 entitled to any benefits as a matter of law.
3 The reason the claim was accepted is because he
4 denied having a preexisting condition. He was
5 denying that he had treated with Dr. Bailey in
6 the months and years prior to the alleged dove
7 field incident, at the hearing. Which is why
8 Commissioner Taylor made a specific finding
9 that the claimant's testimony regarding his
10 preexisting condition and his current symptoms
11 was not credible. She also found that the 14
12 -- amended 14B issued by Dr. Bailey ---

13 **COMMISSIONER BECK:** But doesn't the finding of fact
14 number 7, indicate that there's no medical
15 evidence stated with a reasonable degree of
16 medical certainty, that the dove field incident
17 aggravated or exacerbated the preexisting neck
18 condition?

19 **MS. BARR:** Correct, that was not appealed.

20 **COMMISSIONER BECK:** Okay.

21 **MS. BARR:** So, yes, he -- that was the finding that
22 supports her unappealed conclusion that he
23 didn't meet his burden of proof under 42-9-35.
24 The dove field incident is what he alleges was
25 his work accident.



1 COMMISSIONER BECK: I understand. I understand it
2 is.

3 MS. BARR: And there's no evidence that that incident
4 aggravated his preexisting condition.

5 COMMISSIONER BECK: All right.

6 MS. BARR: So we have an unappealed conclusion of
7 law, which says he didn't meet his proof in a
8 42-9-35. If you don't meet your burden of
9 proof under 42-9-35, you're not entitled to any
10 benefit as a matter of law. Again, as I was
11 saying, further distinguishing this from the
12 Clemons decision, there are findings that the
13 claimant's testimony, regarding his current
14 condition was not credible. She also found
15 that the amended 14B from Dr. Bailey was not
16 credible because it says things like, he can't
17 return to his current employment. Not only did
18 the claimant immediately return to his current
19 employment, he's had the promotions. He's been
20 working the whole time, with the exception of
21 a subsequent intervening motor vehicle
22 accident, when he had his family in a
23 government vehicle in Palm Beach, Florida and
24 got in a car accident. There's also specific
25 unappealed findings that that car accident



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 caused an aggravation, led to new work
2 restrictions and additional medical treatment.
3 We would submit to you, as we argued in our
4 brief, that that compels a finding or a
5 conclusion under the Gathers decision that that
6 subsequent intervening accident broke the chain
7 of causation. Lastly, distinguishing this from
8 the Clemons case, you will see the original
9 Form 14B, which is what the Commissioner
10 specified in her rulings on the finding under
11 42-9-30, the 14B says, 20 percent of the
12 cervical spine, which, again, as Commissioner
13 James noted is a regional rating. But even if
14 you take their argument that we're now applying
15 cervical spine ratings and pretending that
16 means the whole back or there's some
17 equivalency there, we have one and it's 20
18 percent and it's less than 50. So it's not
19 like Clemons, where all of the regional
20 impairment ratings were inflated to something
21 over that magic number of 50. We have a 20
22 percent cervical spine rating and ---

23 **COMMISSIONER BECK:** What page is that in the APAs?

24 **MS. BARR:** It's page 21.

25 **COMMISSIONER BECK:** Of yours or Mr. Land's?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 MS. BARR: Mr. Land's.

2 COMMISSIONER BECK: 21?

3 MS. BARR : Yes, Your Honor. That's the original
4 Form 14B that was issued on September 20th of
5 2013. No explanation given. He's not getting
6 any medical treatment. He doesn't even take
7 medications, no prescriptions, no restrictions
8 on his activities at work. I mean, he's
9 working a full unqualified, unrestricted, job
10 in the state government. And yet, there was an
11 increase in the impairment rating. The
12 Commissioner specifically found that that was
13 not credible. So, unlike Clemons, we've got
14 credibility determinations on the ratings.
15 We've got variations in the ratings. We've got
16 regional ratings that are less than 50 percent.
17 We have a claimant who was found not to be
18 credible. And those credibility findings were
19 not challenged on appeal, like everything else.
20 Most importantly, that conclusion of law under
21 42-9-35 are the law of the case. So I think
22 for those reasons, that we -- we're not bound
23 by that decision, which I'm not sure is set in
24 stone quite yet. And the talk of disability
25 and we know disability being a term of art,



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 means loss of wage earning capacity. The
2 argument that someone's ability to earn wages
3 may not deem him less than permanently and
4 totally disabled. It doesn't mean you can't
5 consider that. I mean, we've always considered
6 the impact an injury has on someone. And so,
7 like, you may not use it to penalize a claimant
8 as Justice Hearn might suggest. It's still a
9 relevant factor, how has this accident affected
10 the claimant. Well, it hasn't affected him
11 vocationally. And the activities, he says he
12 has to be careful when he jumps out of the bed
13 of a pick up truck. But otherwise, he doesn't
14 need medications to go about his business. He
15 is able to get up and go to work every single
16 day. He was able to drive that company vehicle
17 to Palm Beach with his family in tow. These
18 are all relevant and germane to the
19 determination. And I think supportive and
20 corroborative of the award made by Commissioner
21 Taylor.

22 **CHAIR:** All right.

23 **MS. BARR:** Commissioner Beck looks like he has a
24 question.

25 **COMMISSIONER BECK:** Nope.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 MS. BARR: Okay. Thank you.

2 COMMISSIONER BECK: Thank you.

3 CHAIR: Thank you. All right. Mr. Land, you can get
4 started ---

5 COMMISSIONER BECK: Mr. Land, if you would address,
6 before you get too far into your three minutes.
7 There are two APAs near page 18 and 21 in your
8 submissions, that both rate the cervical spine,
9 not the whole person, is in 18, page 18. It's
10 a medical note from, let's see which doctor
11 this is, Dr. Bailey, that says I would estimate
12 his impairment rating for his cervical spine to
13 be 20 percent. And then the 14B says the same
14 thing.

15 REPLY BY MR. LAND:

16 MR. LAND: Okay. And he submitted a later one. He's
17 the authorized treating physician.

18 COMMISSIONER BECK: I'm talking about the subsequent
19 14B.

20 MR. LAND: Right.

21 COMMISSIONER BECK: That Commissioner Taylor didn't
22 place any weight ---

23 MR. LAND: He filed another one.

24 COMMISSIONER BECK: The one that she didn't place any
25 weight in.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 MR. LAND: Right. And to scratch that out. And I
2 think that wiped out the first one. But with
3 the 20 percent to the cervical spine because
4 it's the treating doctor who had seen him in
5 between, who now on his own motion or at a
6 request from the State Accident Fund and I
7 don't know which, said he had a 26 percent
8 whole ---

9 COMMISSIONER JAMES: Is there a narrative note with
10 the 26 percent 14B?

11 MR. LAND: No, ma'am. But I'll get to the next part.
12 It may be the same as a narrative note. And
13 said that he had 76 percent loss of use of his
14 cervical spine. And again, both Form 14Bs,
15 I'll take the position the first one's off the
16 table because this second one came in. But
17 both of them say that he could not return to
18 his employment. And you wouldn't put a law
19 enforcement man with melon in his neck back out
20 there fighting with the public and arrests and
21 so forth. But anyway ---

22 COMMISSIONER BECK: But he did.

23 MR. LAND: He did, yeah. He did. And that's not to
24 go against him, it's a fight -- it's an
25 interest that we try to get folks back to work.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 All right. Commissioner Barden, I think to ask
2 you a question, the State Accident Fund,
3 through Lindsay Saddler, who sits right here
4 back to this day, wrote Dr. Bailey a letter
5 after that 14B came out. And said, did you
6 intend to assign Mr. Frampton a different
7 impairment rating? Yes. If the answer is yes,
8 please provide both a regional impairment
9 rating and a whole person rating. Cervical
10 rating 75/6 percent, whole person rating 76.
11 So that other Form 14B is off the table. This
12 wipes it out. And it was asked, did you really
13 mean that? And he said, yes, I meant that. And
14 this is what I meant, 26 percent whole person,
15 not cervical. 76 percent cervical. So this --
16 as I said, this case has been sifted twice.
17 Harry Gregory sifted it compensable. And then
18 Commissioner Taylor ---

19 **COMMISSIONER JAMES:** What about the issue of 42-9-35?

20 I've heard the defense ---

21 **MR. LAND:** This is an accepted case. How many times
22 do you have to prove an accepted case?

23 **COMMISSIONER JAMES:** Well, there -- and I'll go back
24 and look at the transcript. But from what I
25 understand from the argument of the defendants



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 is that at the point of the hearing that it was
2 not accepted. They're not accepting it as a
3 preexisting condition, that they were arguing a
4 preexisting condition or, at least, that's how
5 the order reflects.

6 MR. LAND: Well, there was no reservations in their
7 Form 51. It clearly accepted this case, as to
8 the back, I'll give them the arms.

9 COMMISSIONER JAMES: I'm just looking at the order
10 which that is ---

11 MR. LAND: I understand.

12 COMMISSIONER JAMES: --- was presented in the
13 argument. And so the order says that and
14 whatever the order says unless parts have been
15 appealed by y'all and we make a decision.
16 There -- I mean, it's an issue in front of us
17 then, the 42-9-35 or is it not an issue in
18 front of us? Ms. Barr says it's not. She says
19 that the law states ---

20 MR. LAND: I don't think it's an issue brought up
21 here because it's an accepted case. You don't
22 go back and prove an accepted case, you start
23 out there. But if this case is denied, then
24 what we do is try to prove our case.

25 COMMISSIONER JAMES: Okay.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 MR. LAND: If it's accepted, why would you plow that
2 furrow ---

3 COMMISSIONER BECK: But she did raise it in the
4 hearing. And the transcript says since we
5 raised the subsequent intervening accident
6 defense, we would argue that it's not relevant
7 as we believe his current condition is not
8 causally related to the September 4th accident.
9 And the MRI can be addressed at Dr. Bailey's
10 deposition. I think that will satisfy our
11 concerns. So it was addressed at the hearing.

12 MR. LAND: Well, the intervening accident clearly
13 aggravated his symptoms and it came back down,
14 it subsided.

15 COMMISSIONER BECK: Okay.

16 COMMISSIONER JAMES: And ---

17 MR. LAND: Dr. Bailey found that. He testified to
18 that.

19 COMMISSIONER JAMES: Right. And ---

20 MR. LAND: Nothing to compete with that.

21 COMMISSIONER JAMES: But that's not my question. I
22 understand that, that the -- and I'm not sure
23 that it may be being raised, but I'm going back
24 to the beginning of the 42-9-35. If it's
25 preexisting, is there any medical evidence to



1 indicate that, that it was an aggravation?

2 MR. LAND: Well, we still take the position that
3 under an admitted case you don't have to go
4 prove that.

5 COMMISSIONER JAMES: And I need to look at the
6 record. But I know that if y'all came in
7 there with the issue, even if it was originally
8 admitted and it came in as an issue as to what
9 was related and what wasn't related, then the
10 Commission still has to rule on it.

11 MR. LAND: Well, the Commission ruled ---

12 COMMISSIONER JAMES: I mean, there's ---

13 COMMISSIONER BECK: And I mean it appears ---

14 MR. LAND: --- several things, but said however,
15 Harry Gregory accepted the case.

16 COMMISSIONER BECK: It appears that both the issues
17 of Gethers and 42-9-35 were addressed at the
18 call of the case. As I'm looking at the
19 transcript on page 9, where Ms. Barr puts in
20 the record, claimant has the burden -- has a
21 burden of proof by preponderance of the
22 evidence that a preexisting condition was
23 aggravated or grew exacerbated. We don't
24 believe that he met the burden of proof.

25 MR. LAND: All right.



1 COMMISSIONER BECK: So that issue was addressed, was
2 up for the hearing commissioner to decide at
3 the hearing.

4 MR. LAND: Right.

5 MR. COMMISSIONER BECK: Whether or not it was pled
6 on the 51 or not, it was certainly addressed at
7 the hearing when it was called.

8 MR. LAND: Well, I understand. But I still say in
9 acceptance of a case ---

10 COMMISSIONER JAMES: Well, there's some case ---

11 MR. LAND: --- that, you know, I don't know where we
12 would stop if a case was accepted if you have
13 to go back and try to reprove it over and over
14 and over again. And, of course, you found that
15 there was no intervening accident that alters
16 the side ---

17 COMMISSIONER JAMES: But there is case law that
18 indicates that the, just the providing of the
19 medical and the initial acceptance is not --
20 does not stop the defendants from defending a
21 case. I may have misquoted, I mean, I remember
22 it because it was Dozier versus American Red
23 Cross, I think. So you're saying the
24 acceptance is what continues ---

25 MR. LAND: Once a case is accepted, then you don't



1 have to reprove it. And ---

2 COMMISSIONER JAMES: It -- I just need to look at
3 the transcript then to see what the issues were
4 before the commissioner.

5 MR. LAND: Yes, ma'am.

6 CHAIRMAN: All right.

7 MR. LAND: All right.

8 COMMISSIONER BECK: Thank y'all.

9 CHAIRMAN: Thank you. Ms. Barr?

10 REPLY BY MS. BARR:

11 MS. BARR: Thank you. Regarding the timing, I've
12 argued a very similar case years ago in the
13 Court of Appeals. I think it went to the
14 Supreme Court. It's Frederick v. Wellman, the
15 same situation where a claim was picked up,
16 benefits were provided and in this case was
17 very limited because the surgery he had, he
18 paid for with his group health insurance. And
19 his time out of work was paid with sick leave.
20 But then a claim was initially accepted with
21 the understanding that there was no preexisting
22 condition because the claimant told everybody I
23 didn't have a preexisting condition. It was
24 only once you get into litigation you find, as
25 here, that actually he had been treating for



1 the exact same condition for some time. And
2 there was no evidence stated to a reasonable
3 degree of medical certainty that his current
4 condition is causally related to riding in a
5 truck in a dove field, as opposed to the
6 preexisting condition. So there's two parts of
7 that, 42-9-35 could speak to the convincibility
8 of the whole claim, but it's certainly
9 necessary that he meet that burden to be
10 entitled to benefits under 42-9-30 or 42-15-60,
11 which is all we're talking about here. And if
12 he can't meet his burden under 42-9-35, there
13 can't be an award under 42-9-30, regardless of
14 the prior posture of the case. And all of
15 these issues were there. He was questioned at
16 length about that preexisting condition. And
17 you will see he testified and the Commissioner
18 noted that he didn't recall that he had been
19 seeing Dr. Bailey in those months prior to this
20 dove field incident.

21 **CHAIRMAN:** The same physician that he was seeing?

22 **MS. BARR:** Same physician he was seeing all along.
23 So (a), I think we can raise it at anytime and
24 we did. And (b), it's certainly the
25 claimant's burden to meet his burden of proof



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 under 42-9-35 before an award can be made. But
2 more importantly, regardless of the arguments
3 and the pleadings, there is an order. There is
4 an unappealed conclusion of law saying he did
5 not meet his burden of proof under this
6 statute. If they felt so strongly that they
7 didn't have to prove 42-9-35 or they somehow
8 thought there was a legal error with this
9 conclusion, it should have been appealed.
10 Because it was not, it is the law of the case
11 and it governs the disposition of this case and
12 any award that should be made. With regard to
13 the arguments that's one 14B superceded the
14 other, again, the Commissioner addressed this
15 by finding that subsequent 14B was not
16 credible. Mainly, because the doctor suggest
17 that he couldn't do the job that he had been
18 doing all this time. It wasn't credible. It
19 didn't meet the real world smell test. And so
20 she rightfully, within her discretion,
21 disregarded that. And as Commissioner Beck
22 noted, he had previously said 20 percent to the
23 cervical spine both times. Cervical spine is
24 not a rated or scheduled body member. If he
25 wants an award for a cervical spine impairment,

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 then he needs to prove wage loss under 42-9-10,
2 because the cervical spine is not a scheduled
3 body member. Otherwise ---

4 **COMMISSIONER BECK:** That's not what Clemons says, is
5 it?

6 **MS. BARR:** Clemons doesn't address it. And Clemons
7 kind of makes a wreck of the record, I think we
8 can all agree. It said that the whole person
9 and the cervical spine ratings were not the
10 same. It does not elucidate what a whole back
11 rating is. I think that we can do that under
12 the AMA guides because we know that the
13 cervical spine is considered 80 percent of the
14 whole person. So you can do a conversion
15 factor, multiplied by .38 and you can take a
16 cervical spine rating and take it to a whole
17 back rating. It's essentially the whole person
18 rating as noted by the Court of Appeals in
19 another one of my earlier cases, it's Sanders
20 v. Midwest VACo, and you'll see in the footnote
21 that they discuss the fact that we have always
22 considered the whole person as the same as the
23 whole back. There was no disagreement about
24 that. In this record there was no argument
25 that those whole person rating did not apply or



1 not equivalent of the whole back. And so I
2 think a fact finder can consider that based on
3 precedent, based on, you know, the notation of
4 the Court of Appeals that they can be the same.
5 Again, conclusion of law number 2, we never get
6 there.

7 CHAIRMAN: Thank you.

8 MR. BARR: Thank you.

9 CHAIRMAN: That concludes this matter. Y'all have a
10 good rest of the day.

11 MR. LAND: Thank you, very much.

12 (There being nothing further, the hearing concluded
13 at 10:59 a.m.)
14
15
16
17
18
19
20
21
22
23
24
25



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1012533

Alexander Frampton,
Employee,
Claimant,

vs.

SC Dept. of Natural Resources,
Employer,

And

SC State Accident Fund,
Carrier,

Defendants.

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF
THE CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND KIRSTEN L. BARR, ESQUIRE, ATTORNEY FOR EMPLOYER/CARRIER:

PLEASE TAKE NOTICE THAT the Claimant pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330, Code of Laws of South Carolina, 1976, as amended, herewith submit(s) the following written medical reports, copies of which are attached hereto, as direct evidence on behalf of the Claimant:

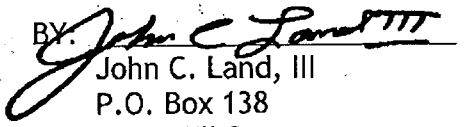
FACILITY	PHYSICIAN	TREATMENT DATES	PAGE NUMBER
Doctors Care		9/7/10-9/22/10	1-8
Charleston Neurosurgical Assoc.	Dr. Byron Bailey	3/15/11-5/13/15	9-29
TriCounty Radiology Assoc.		3/15/11	30-31
Charleston Neurosurgical Assoc. Rehabilitation Services	Dr. J. Reilly Keffer	3/16/11	32-35
Bon Secours St. Francis Hosp.		3/21/11-9/2/14	36-59
Rehabilitation Centers of Charleston		11/8/12-12/3/12	60-63
Southeastern Spine Institute	Dr. Steven C. Poletti	6/4/15	64-65

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any 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 evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant. The Claimant is expected to testify.

LAND, PARKER & WELCH, P.A.

BY: 
John C. Land, III
P.O. Box 138
29 S. Mill Street
Manning, S.C. 29102
803-435-8894

Manning, South Carolina
June 24, 2015

Rm#5@355



4422

ACCOUNT NUMBER	DATE	TIME	REFERRAL TYPE	TICKET NO.
282407	09/27/10	03:48pm	JAMES ISLAND, APPT ONLY	1219509
NAME & ADDRESS			INSURANCE	
FRAMPTON, ALEXANDER			BALANCE \$2.00	
DOB: [REDACTED] / 1965 (45 years)			ACCOUNT BALANCE \$0.00	
GENDER: M			CURRENT CHARGES	
HOLLYWOOD, SC [REDACTED]			AMOUNT PAID	
IRG: [REDACTED]			NEW BALANCE	
CELL: [REDACTED]			CASH [] CHECK [] MO [] CC []	
WRK: INSURED: FRAMPTON, ALEXANDER			RELATION: OTHER	
INS: WC/STATE ACCIDENT FUND			COPAY: WKC	
REASON: NECK PAIN				
NICKNAME:				
Personal Hx:	Family Hx	Social Hx	Allergies:	
OM []	DM []	Alcohol []	N/A	
HTN []	HTN []	Tobacco []	Medications:	
Prev. chart rev., no sig chg [] Above Hx reviewed []			Ginapril	
WGT []	BP []	Pulse []	Resp []	Temp []
82	124/80	64	12	98
PHYSICAL: (see reverse) Omit if N/A			Chief Complaint: working in rose field on sat./	
(V) If nrm., O: if abnrm. & give details			Neck pain started and has gotten worse	
General []			HPI	
HEENT []			45 yo M -> Says walked through a	
Neck []			plowed field Saturday ~ 2:45 hrs end	
Nodes []			of day neck pain, worsened overnight	
Lungs []			stiff, painful to flex/extended p/c p/r/d	
CV []			Sees Dr. Barry for (1) hand tying R/w PT.	
Abd []			MRI of c-spine, some disc dy. & tying now	
Back []			constant.	
Ext []			Constant.	
GU []				
Neuro []				
Skin/Breast []				
I.V. []				
Injection []				
Nebulizer []				
Procedure []				
Labs - Send Out []				
ASSESSMENT / DIAGNOSIS:				
(1) Cervical strain (2) Trapezium strain				
Referrals, Tests, Treatments				
(4) Heat. []				
Rx: 00028211				
(1) Rx Ibuprofen 800mg				
#40 TTD 9AC x 5-7.				
(2) Rx Flexeril 10mg				
#30 TTD prn				
(3) Rx Lorazepam 5/500 #20 + p 96pm				
Off Work / School				
PSR Notes:				
2203 - 1411:50				
5691-063				
5377-00				
5745-08				
Rx: 00018092				
Patient Care Instructions Discussed:				
Lifestyle Modification				
Preventative Recommendation(s)				
Prescriptions / OTC Meds				
Side Effects Discussed				
Date to Return:				
If worse: Sooner				
If not better: Forever				
For Follow-Up: Forever				
Go to ER if:				
I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the use of medical and other health care professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations of Doctors Care.				
I consent to the use and disclosure of my health information for purposes of obtaining payment for services rendered to me by the patient, treatment and health care operations consistent with Doctors Care's Notice of Privacy Practices.				
I authorize payment of medical benefits to Doctors Care physicians or their designees for services rendered.				
Ident or Authorized Person's Signature: [Signature]				
Date: 9-27-10				
Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation regarding my health records and this treatment I have received or will receive.				
Ident or Authorized Person's Signature: [Signature]				
Date: 9-27-10				



Return To Work Form

- ☐ 1510 South River Road, Port Royal, SC 29935 (843) 770-0676
- ☐ 6111 Union Road, Bluffton, SC 29910 (843) 757-0676
- ☐ 3424 Shelby Ray Court, Charleston, SC 29414 (843) 402-6831
- ☐ 10100 Dorchester Road, Stannerville, SC 29485 (843) 871-7900
- ☐ 3074 Highway 17 North, Mt. Pleasant, SC 29406 (843) 834-6424
- ☒ 748 Folly Road, Charleston, SC 29412 (843) 762-2161

- ☐ 631 Jan... Dodds Blvd., Mt. Pleasant, SC 29464 (843) 881-0815
- ☐ 8091 Riverview Avenue, N. Charleston, SC 29406 (843) 572-7000
- ☐ 410 North Main Street, Summerville, SC 29483 (843) 371-3277
- ☐ 1851 Sun Rittenberg Blvd., Charleston, SC 29407 (843) 556-5585
- ☐ 459 Highway 52 North, Blakes Corner, SC 29461 (843) 899-1870

Name: A C Draper Arrival Time: 3:30 Discharge Time: 4:40

Date: 9-7-2010 Company Name: SCDNR

WORK STATUS: (Check Appropriate Boxes)

- ☐ 1. May perform Full Duty as of _____ without accommodations.
- ☐ 2. Off Duty due to work-related condition.
Estimated return to work date modified duty: _____
Estimated return to work date full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON 9/7/10 Time: _____

- ☒ 3. May work with the following accommodations as of: 9/7/10
 - ☐ No lifting more than _____ lbs.
 - ☐ No operation of hazardous or fast-moving machinery, no driving.
 - ☐ Ground level work only, no ladders or heights.
 - ☐ No repeat bending, stooping, squatting, pushing, jerking, twisting, or bounding.
 - ☐ No continuous standing and/or sitting.
 - ☐ Minimum walking, climbing (including stairs)
 - ☐ Limited use of _____
 - ☒ No overhead lifting.
 - ☐ No high repetitive hand activities for extended periods of time.
 - ☐ No use of _____

- ☐ 4. Has reached Maximum Medical Improvement (MMI)
- ☒ 5. Return for re-evaluation at this office on 9/14/10 Time: 8AM-8PM

Additional Comments:

PATIENT DISCHARGE INSTRUCTIONS:

- Medications: ☒ as directed ☐ as needed
- Wound Care or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks
- ☐ Ice every _____ ☒ apply heat every 8 hours
- ☐ home exercise instructions given ☐ follow instructions sheet give ☐ bed rest for _____

Diagnosis: Cervical Strain / Trapezius Strain

REFERRAL: If a referral is made to therapy, or another physician, please complete this section

To: _____ Date: _____ Time: _____
For: _____
Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer

Employee Signature: A C Draper Date: 9-7-2010
Provider Signature: [Signature] Date: 9/7/10

(MED-F015-(7-09))

3
4

925

EXAM ROOM TIME



CHECKOUT TIME

9:45 AM

TICKET NO.

ACCOUNT NUMBER	DATE	TIME	LOCATION	TICKET NO.
282497	07/17/10 FRIDAY	09:21am	JAMES ISLAND, APPT ONLY	1202178

NAME & ADDRESS FRAMPTON, ALEXANDER [REDACTED] HOLLYWOOD, FL [REDACTED] [REDACTED] INSURED: FRAMPTON, ALEXANDER INS: NC STATE ACCIDENT FUND REASON: EVAL NICKNAME: CHISOLM	DOB: [REDACTED] 1965 (45 years)	RELATION: OTHER	CO-PAY: WKC
	GENDER: M		
	ISS: [REDACTED]		
	CELL: [REDACTED]		
		INSURANCE BALANCE \$141.50	
		ACCOUNT BALANCE \$141.50	
		CURRENT CHARGES	
		AMOUNT PAID	
		NEW BALANCE	
		CASH CHECK M.O. C.C.	

Personal Hx DM HTN	Family Hx DM HTN	Social Hx Alcohol Tobacco	ROS (V or O): Fatigue, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Sore Throat, CP, SOB, Cough, Sputum, Wheezing, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash ☐ All others negative	Allergies: NKDA Medications: Quinapril, Ibuprofen 800 Flexeril, Lorazepam ☐ Med List Reviewed
Prev. chart rev., no sig chg. Above Hx reviewed DEM				
WGT 213.2	BP 120/84	Pulse 84	Resp 14	Temp 98.3
			☐ Pulse Ox	☐ LMP
			☐ Chaperone	☐ Tetanus DT

PHYSICAL: (see reverse) Omit if N/A (✓ if nm., O if abnml. & give details) ☐ General ☐ HEENT ☐ Neck ☐ Nodes ☐ Lungs ☐ CV ☐ Abd ☐ Back ☐ Ext ☐ GU ☐ Neuro ☐ Skin/Breasts ☐ I.V. ☐ Injection ☐ Nebulizer ☐ Procedure ☐ Labs - Send Out	Chief Complaint: Follow up, neck pain HPI: See prior note - SI Spine just medial to R Scapula - C-T-L Spine. ☐ CBC ☐ EKG ☐ FBS ☐ Flu ☐ Heme ☐ Hgb A1C ☐ H. Pylori ☐ KOH ☐ Microab ☐ Mono ☐ Strep ☐ U/A ☐ U Preg ☐ Wet Prep ☐ X-Ray
--	--

ASSESSMENT / DIAGNOSIS: 1) Resolving Cervical Muscle Strain E919.2 2) Ice - Massage 840.8 847.0 3) Full Duty Date to Return: ASAP ☐ If worse: ☐ If not better: ☐ For Follow-Up: Go to ER If:	Referrals, Tests, Treatments Off Work / School	PSR Notes: ESTAB 99214 - 141 1411W
--	---	---

Stat: 1. I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctors Care. 2. I consent to the use and disclosure of my/the patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctors Care Notice of Privacy Practices. 3. I authorize payment of medical benefits to Doctors Care physicians or their designee for services rendered.	
Patient or Authorized Person's Signature: <u>AC Frank</u>	Date: <u>9-17-2010</u>
4. Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding medical records and the treatment I have received or will receive.	



Return To Work Form

- ☐ 1110 South Main Road, Port Royal, SC 29935 (843) 770-0676
- ☐ 61 Waffon Road, Bluffton, SC 29910 (843) 757-0676
- ☐ 3424 Shelby Hay Court, Charleston, SC 29414 (843) 402-6334
- ☐ 10161 Dorchester Road, Summerville, SC 29485 (843) 871-7900
- ☐ 3074 Highway 17 North, Mt. Pleasant, SC 29466 (843) 881-6434
- ☒ 743 Folly Road, Charleston, SC 29412 (843) 762-2360

- ☐ 631 J. White Dadds Blvd., Mt. Pleasant, SC 29464 (843) 881-0815
- ☐ 8091 Rivers Avenue, N. Charleston, SC 29406 (843) 572-7000
- ☐ 410 North Main Street, Summerville, SC 29483 (843) 871-3277
- ☐ 1851 Sam Rittenberg Blvd., Charleston, SC 29407 (843) 536-5583
- ☐ 459 Highway 52 North, Moncks Corner, SC 29461 (843) 899-3870

Name: Alex C. Thompson Arrival Time: 9:20 am Discharge Time: 9:45

Date: 9-17-10 Company Name: S.C. DNR

WORK STATUS: (Check Appropriate Boxes)

- ☒ 1. May perform Full Duty as of 9/17/10 without accommodations.
- ☐ 2. Off Duty due to work-related condition.
Estimated return to work date modified duty: _____
Estimated return to work date full duty: _____
RETURN FOR RE-EVALUATION AT THIS LOCATION ON _____ Time: _____
- ☐ 3. May work with the following accommodations as of: _____
- ☐ No lifting more than _____ lbs.
 - ☐ No operation of hazardous or fast-moving machinery, no driving.
 - ☐ Ground level work only, no ladders or heights.
 - ☐ No repeat bending, stooping, squatting, pushing, jerking, twisting, or bouncing.
 - ☐ No continuous standing and/or sitting.
 - ☐ Minimum walking, climbing (including stairs)
 - ☐ Limited use of _____
 - ☐ No overhead lifting.
 - ☐ No high repetitive hand activities for extended periods of time.
 - ☐ No use of _____
- ☐ 4. Has reached Maximum Medical Improvement (MMI)
- ☐ 5. Return for re-evaluation at this office on _____ Time: _____

Additional Comments:

PATIENT DISCHARGE INSTRUCTIONS:

- Medications: ☐ as directed ☐ as needed ☒ Diagnosis: Resolving Cervical Muscle Str
- Wound Care or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks
- ☐ Ice every _____ ☐ apply heat every _____
- ☐ home exercise instructions given ☐ follow instructions sheet give ☐ bed rest for _____

REFERRAL: If a referral is made to therapy, or another physician, please complete this section

To: _____ Date: _____ Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my Employer

Employee Signature: AC Thompson

Date: 9-17-10

Provider Signature: [Signature]

Date: 9/17/10

[MED-F015-(7-89)]

Rm2
9:10



CHECKOUT TIME 9:48

ACCOUNT NUMBER 202407	DATE 06/22/11	TIME 09:03	CHECKOUT TIME 9:48
NAME & ADDRESS FRAMPTON, ALEXANDER [REDACTED] HOLLYWOOD, SC [REDACTED]			INSURANCE BALANCE \$0.00 ACCOUNT BALANCE \$0.00 CURRENT CHARGES AMOUNT PAID NEW BALANCE
DOB: [REDACTED] 1965 (46 years) GENDER: M IBG: CELL:			RELATION: OTHER
INSURED: FRAMPTON, ALEXANDER INS: WC/STATE ACCIDENT FUND REASON: EVALUATION Neck Injury NICKNAME: CHISOLM			CORP: WLC

Personal Hx: DM HTN	Family Hx: DM HTN	Social Hx: Alcohol Tobacco	ROS (V or O): Fatigue, Dizzy, Weak, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Ear Pain, Sore Throat, SOB, CP, Cough, Sputum, Wheeze, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash ☐ All others negative	Allergies: NADA Medications: Quinapril Celebra
Accident? ☐ Yes ☐ No If yes, which state: Date of Accident: Prev. chart rev., no sig chg.: Above tx rev.: 1/1/11			☐ Meds/Allergies Reviewed 1/1/11	

WT 241.8	HT 72	BMI 32.3	BP 128/88	PULSE 72	RESP 16	TEMP 97.7	☐ LMP ☐ Tetanus
PHYSICAL: (see reverse) Omit if N/A ☒ If nmrl., O'll abnml. & give details				Chief Complaint: Neck pain from MVA 6/16/11			
☐ General ☐ HEENT ☐ Neck ☐ Nodes ☐ Lungs ☐ CV ☐ Abd ☐ Back ☐ Ext ☐ GU ☐ Neuro ☐ Skin/Breasts ☐ Chaperone ☐ I.V. ☐ Injection ☐ Nebulizer ☐ Procedure ☐ Pulse Ox				HPI Neurosurgeon - fused 2 discs - in March - Released to full duty - was in MVA on 6/16/11 -> Now acute neck pain - T331 E850 FCMV			

DIAGNOSIS: Acute neck pain - reactivation of prior injury	Crutches/Splints/Supplies ☐ Given ☐ Recommended	PSR Notes: 99214 - ESTAB (141)
☐ Patient Care Instructions Discussed ☐ Lifestyle Modification ☐ Preventative Recommendation(s) ☐ Prescriptions / OTC Meds ☐ Side Effects Discussed ☐ Follow-Up: 1 week Return: ☐ Worsening symptoms: ☐ If not better: Go to ER if:	Refer to Neurosurgeon Dr Bryan Bailey Wall/Bailey Off Work / School	

I, [Signature], M.D., D.O., P.A., F.N.P. 1. I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatment or examinations at Doctors Care. 2. I consent to the use and disclosure of my/our patient's protected health information for purposes of obtaining payment for services rendered in my/our patient, treatment and health care operations consistent with the Doctors Care Notice of Privacy Practices. 3. I authorize payment of medical benefits to Doctors Care physicians or their designees for services rendered. Patient or Authorized Person's Signature: [Signature] Date: 06/22/11 4. Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurer, carrier or other professionals involved in my care or rehabilitation, regarding my medical records and the treatment I have received or will receive. Patient or Authorized Person's Signature: _____
--



Return To Work Form

☐ 1510 South ... Road, Port Royal, SC 29935 (843) 770-8676
☐ 641 ... Road, Bluffton, SC 29910 (843) 757-8676
☐ 3424 Shelby Ray Court, Charleston, SC 29414 (843) 402-4834
☐ 10160 Dorechester Road, Summerville, SC 29485 (843) 871-7900
☐ 3074 Highway 17 North, Mt. Pleasant, SC 29466 (843) 884-6424
☐ 743 Folly Road, Charleston, SC 29412 (843) 762-2360

☐ 631 ... Dr. Blvd., Mt. Pleasant, SC 29464 (843) 881-0815
☐ 8091 Rivers Avenue, N. Charleston, SC 29406 (843) 572-7000
☐ 410 North Main Street, Summerville, SC 29483 (843) 871-3277
☐ 1831 Sun Kittenberg Blvd., Charleston, SC 29407 (843) 536-5583
☐ 459 Highway 52 North, Moncks Corner, SC 29461 (843) 899-3870

Name: Alexander Frampton Arrival Time: _____ Discharge Time: 9:48

Date: _____ Company Name: _____

WORK STATUS: (Check Appropriate Boxes)

- ☒ 1. May perform full duty activities as of 6/22/11 without accommodations.
- ☐ 2. Off duty due to work-related condition.
 Estimated return to work date with modified duty: _____
 Estimated return to work date for full duty: _____
 RETURN FOR RE-EVALUATION AT THIS LOCATION ON _____ Time: _____
- ☐ 3. May work with the following accommodations as of: _____
- ☐ No lifting more than _____ lbs.
 - ☐ No operation of hazardous or fast-moving machinery, no driving.
 - ☐ Ground level work only, no ladders or heights.
 - ☐ No repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing.
 - ☐ No continuous standing and/or sitting.
 - ☐ Minimum walking or climbing (including stairs)
 - ☐ Limited use of _____
 - ☐ No overhead lifting.
 - ☐ No high repetitive hand activities for extended periods of time.
 - ☐ No use of _____
- ☐ 4. Has reached Maximum Medical Improvement (MMI)
- ☒ 5. Return for re-evaluation at this office on 1 week if not seen Time: _____

Additional Comments:

by neurosurgeon

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Cervical strain/pain Medications: ☐ as directed ☐ as needed

Wound or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks

☐ Ice every _____ ☐ apply heat every _____

☐ home exercise instructions given ☐ follow instructions sheet give ☐ bed rest for _____

REFERRAL: If a referral is made for physical therapy, or to another physician, please complete this section:

To: Dr. Bryan Bailey Date: _____ Time: _____

For: evaluation

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employee Signature: _____ Date: _____

Provider Signature: David Brooks, MD Date: 6/22/11

(MED-F015-(8-09))



medical affiliates

Fax Cover Sheet

Company Sent By:



medical affiliates



Lubcroff



Doctors Wellness Center
L. Doss, D. Markson, R. R. R.



Progressive Physical Therapy



Carolina Sports Medicine

TO: State Accident Fund

FROM: PSR

ATTN: Workers Comp Robert Peppers

RE: Alexander Frampton

877-762-2340

DESTINATION FAX #: 877-710-2667

803-612-2424

DATE: 6-22

TIME: 15:10

PAGES (including cover): 4

CENTER NAME: James Island

ADDRESS: 743 Folly Rd
(optional): Charleston, SC 29412

SENDER'S FAX #: 843-762-2340

SENDER'S PHONE #: 843-762-2360

☐ URGENT

☐ FYI

☐ APPROVE

☐ REPLY REQUESTED

☐ REVIEW/ADVISE

☐ PER YOUR REQUEST

☐ PLEASE POST TO STAFF

☐ OTHER

COMMENTS:

needs referral to
neuro surgeon.

7-12 adj. Robert out of town until 7-18
→ supervisor Jackie pt seeing Dr. Bailey
PH TF 792-2424 MUSC
L will v to see if have notes to send
pt has not been seen since 6-16
723-8832 chaz Neuro will fax

SIGNED/STAMPED:

The information contained in this fax message is privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copies of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately and destroy this fax, thank you.

[CORP-F003-(7-07)]

Doctors Care James Island
David Meacher, M.D. NPI 1790740744 Alexei Decastro, M.D. NPI 1396710919
Nancy Brooks, PA-C NPI 1437187168 Marisa Fialka, PA-C NPI 1194939199
Phone: 843-762-2360
Fax: 843-762-2340

DIAGNOSTIC & REFERRAL PRESCRIPTION

Patient: Alexander Frampton Date: 6/22/11

Home Phone: [REDACTED] Cell Phone: _____

DOB: [REDACTED] 10/5 Insurance: WR

Doctors Care provider: N. Brooks, PA

ROUTINE (7-14) ASAP (48-96 HOURS) TODAY

Cardiology Dermatology Endocrine ENT GI OB/GYN Heme/Onc

Nephrology Neurology Ophthalmology Orthopedics Psychiatry Psychology

Pulmonology Rheumatology Surgery Urology Other: Neurosurgeon

Preferred provider or specialist office: Dr. Bryan Bailey

Preferred date or time: _____

DIAGNOSTIC PROCEDURES

CT CTA MRI MRA US Doppler (arterial/venous) Mammogram DEXA Nuclear

Head Sinus C-Spine T-Spine L-Spine Neck Carotids Thyroid Chest Abdomen

CB Liver Pelvis Kidney Kidney Stone Sleep study Other: _____

Diagnosis: acute cervical pain & radiculopathy

Provider signature: Nancy Brooks, PA

Appointment information

Date: _____ Time: _____

Practice name/Doctor: _____

Address: _____

Phone: _____ Fax: _____

Chart faxed date: _____ Patient notified date: _____

Special instructions: _____

Alexander Frampton -> #90417 Transcription
Patient #: 21973 • DOB: 5/27/1965 • Provider: None

Patient: Alexander Frampton
Document #: 90417
Status: Preliminary
Appointment: None
Subject: None
Template: Office Notes
Body:

Type: Transcription
Document By: Geraldine San Jaun
Document Date: 3/15/2011

3/15/2011: This is a gentleman who we are following for cervical radiculopathy. He has had progressive symptoms of both neck pain and right arm discomfort. It seems to conform to a C6 distribution on the right-hand side. He describes pain in his right shoulder blade extending into his right upper arm and forearm. He has numbness involving the index, thumb, and third digit of his right hand. He has suboccipital pain and paraspinal pain on the right-hand side. He cannot extend his right arm without precipitating symptoms. These have progressed from the study that was done approximately a year ago.

Exam: Examination finds him to have no interval change in neurologic function, although he does have asymmetry of his right triceps reflex at 1/4. The remaining seemed to be fairly symmetric and normal. He has good strength, although he has less powerful triceps and grip on the right-hand side, and that is his dominant arm.

Overall Impression: We are going to obtain a repeat MRI scan as well as EMG and nerve conduction studies. He does not have evidence of carpal tunnel syndrome, although his numbness seems to be out of proportion to what you would expect for C6, and he does have symptoms in his hand occasionally that seem to predominate. He did not have a Phalen's and did not have a Tinel's. He has constant numbness in any position. He has good strength of opponens pollicis and abductor pollicis brevis. Once he has completed EMGs and nerve conduction studies and MRI scan, we will decide whether surgical intervention would be the next course of action.

BNB/vhi

Comments: None

Attachments: None

Alexander Frampton -> #92085 Transcription
Patient #: 21973 • DOB: 5/27/1965 • Provider: None

Patient: Alexander Frampton
Document #: 92085
Status: Preliminary
Appointment: None
Subject: None
Template: Office Notes
Body:

Type: Transcription
Document By: Geraldine San Jaun
Document Date: 4/6/2011

4/6/2011: This is a 45-year-old gentleman who is status post on 3/21/2011 anterior cervical discectomy and fusion. He reports that he has had no further pain. No radicular pain. He has occasional numbness and tingling, but these are fairly transient and less prominent than before. He states that he has been doing well with swallowing. He has had little use for analgesics.

Exam: He has a well-healed right anterior cervical incision. He has good strength which appears to be improved particularly in his right grip.

Overall Impression: I think he is doing well. I think a followup x-ray will be helpful. We will probably allow him to return to work in 2 weeks, but we will await his progress at that point and direct him accordingly.

BNB/vhl

Comments: None

Attachments: None

Alexander Frampton -> #95785 Transcription
Patient #: 21973 • DOB: 5/27/1965 • Provider: None

Patient: Alexander Frampton
Document #: 95785
Status: Preliminary
Appointment: None
Subject: None
Template: Office Notes
Body:

Type: Transcription
Document By: Geraldine San Jaun
Document Date: 5/17/2011

5/17/2011: This young man returned for followup. He reports he has been doing fairly well. He has some periodic aching of his cervical spine, but no residual radiculopathy.

Exam: Examination finds no interval change. No neurologic changes.

Radiology: X-rays were reviewed. These demonstrate well-positioned instrumentation and no change in the alignment or position of the allograft.

Overall Impression: I think he is doing well. I think that if gradual advancement of his activity would be warranted, we will place him on light duty for an additional 4 weeks. He will be able to return to full duty within 90 days.

BNB/vhi

Comments: None

Attachments: None



Alexander Frampton -> #99914 Transcription
Patient #: 21973 • DOB: 5/27/1965 • Provider: None

Patient: Alexander Frampton
Document #: 99914
Status: Preliminary
Appointment: None
Subject: None
Template: Office Notes
Body:

Type: Transcription
Document By: Geraldine San Jaun
Document Date: 7/1/2011

7/1/2011: Mr. Frampton returns today for followup. He reports that he is involved in a motor vehicle accident in which the vehicle was totalled. It was a diagonal frontal end collision resulting in immediate onset of neck pain. He describes continued neck pain with decreased range of motion with significant pain particularly with left rotation. No paresthesias or weakness in his extremities. No return of cervical radicular symptoms that he previously suffered.

Exam: Examination finds him to have reasonable range of motion in the cervical spine. There is pain on motion particularly on rotation. He has good strength to include deltoids, supraspinatus, infraspinatus, biceps, triceps, wrist extensor, finger extensor, interossei, and grip. He has no interval change on sensory exam.

Overall Impression: It appears that he has probably developed a cervical strain as a result of this motor vehicle accident and frontal collision. We will start him on conservative treatment to include a nonsteroidal antiinflammatory medication, an analgesic, and a muscle relaxant. Additionally, we will restrict his activity to light duty and complete x-rays of his cervical spine. If there is any change in his x-rays, then we will modify his treatment accordingly. Otherwise, we will have him return in 3 weeks for followup.

BNB/vhl

Comments: None

Attachments: None

Created by Geraldine San Jaun on 7/5/2011 6:22:38 AM

**Alexander Frampton -> #104630 Transcription****Patient #: 21973 • DOB: 5/27/1965 • Provider: None**

Patient: Alexander Frampton
Document #: 104630
Status: Preliminary
Appointment: None
Subject: None
Template: Office Notes
Body:

Type: Transcription
Document By: Geraldine San Jaun
Document Date: 8/23/2011

8/23/2011: This is a 46-year-old gentleman who is status post anterior cervical discectomy and fusion. He has, during the interval, been involved in a motor vehicle accident which has caused exacerbation of neck pain. At this point, he is scheduling physical therapy. He does not have any ongoing neurologic complaints. He does have particularly decreased range of motion of his cervical spine with some pain on motion. He also has some nocturnal pain of his cervical spine but no Lhermitte's.

Exam: He has good strength. No focal motor deficits are noted.

Overall Impression: I think he is doing reasonably well. Initiation of physical therapy would be appropriate. We will see how he responds. If he responds well, we will have him return in 3 months with a followup x-ray.

BNB/vhl

Comments: None

Attachments: None

Created by Geraldine San Jaun on 8/24/2011 10:40:04 AM

**Alexander Frampton -> #113774 Transcription****Patient #: 21973 • DOB: 5/27/1965 • Provider: None**

Patient: Alexander Frampton
Document #: 113774
Status: Preliminary
Appointment: None
Subject: None
Template: Office Notes
Body:

Type: Transcription
Document By: Geraldine San Jaun
Document Date: 11/22/2011

11/22/2011: CHIEF COMPLAINT: Neck pain.

HPI: The patient is a 46-year-old gentleman who is 8 months postop from an anterior cervical discectomy with fusion. At his last visit, he had neck pain exacerbated by a recent motor vehicle accident. This has mostly subsided. It only bothers him now when he sits for prolonged periods with his neck flexed.

EXAM: Unchanged.

RADIOLOGY: X-rays are reviewed. They show intact instrumentation and good bony fusion.

ASSESSMENT: Neck pain.

PLAN: We will see him back in 6 months with a repeat lateral cervical spine x-ray. In the interim, he is counseled on physical activity.

RT/vhi

Comments: None

Attachments: None

Created by Geraldine San Jaun on 11/23/2011 10:39:37 AM



FRAMPTON, ALEXANDER C

47 Y old Male, DOB: [REDACTED]/1965

[REDACTED] JOHNS ISLAND, SC-

Home: [REDACTED]

Guarantor: FRAMPTON, ALEXANDER C Insurance: BCBS

STATE HEALTH PLAN Payer ID: PAPER

PCP: JOHN P DAVIS, MD

Appointment Facility: Chas Neurosurgical Associates NC

08/29/2012

BYRON N BAILEY, MD

Current Medications

Celexa 20 MG Tablet 1 tablet Once a day
Quinapril HCl 20 MG Tablet 1 tablet Once a day
Medrol (Pak) 4 MG Tablet as directed as directed, stop date 08/29/2012

Past Medical History

Hypertension
Hyperplastic colon polyp
Anxiety
gastroesophageal reflux disease (GERD)

Surgical History

cholecystectomy
hemorrhoidectomy
ACDF by dr bailey 2011
tonsillectomy

Family History

significant for: melanoma.

Social HistoryTobacco Use:

Tobacco Use/Smoking

Are you a nonsmoker

Drugs/Alcohol:Drugs

Have you used drugs other than those for medical reasons in the past 12 months? No
Alcohol Screen

Did you have a drink containing alcohol in the past year? Yes

How often did you have a drink containing alcohol in the past year? 2 to 3 times a week (3 points)

How many drinks did you have on a typical day when you were drinking in the past year? 1 or 2 drinks (0 point)

How often did you have 6 or more drinks on one occasion in the past year? Never (0 point)

Points 3

Interpretation Negative

Allergies

N.K.D.A.

Reason for Appointment

1. Neck soreness

History of Present IllnessSymptom(s):

Patient returns today for followup. He has symptoms of neck pain that have progressed to include, paraspinal spasms on the right. He states that this is amenable to massage therapy. He is not on any specific medications at this point.

ExaminationGeneral Examination:

Examination finds reasonable range of motion he does have pain with thick neck extension and some limitation of rotation, right equal to left. Good strength in his extremities. No focal motor weakness.

Assessments

1. Cervical Spondylosis - 721.0 (Primary)

X-rays demonstrate a solid fusion without instrumentation changes. He does have some degenerative changes at C4-5 both anterior and posterior at that level.

Treatment**1. Cervical Spondylosis**

Overall impression patient has symptomatic cervical spondylosis. We will institute conservative measures to include nonsteroidal anti-inflammatory medication and evaluation by physical therapy. We will also encourage him to complete a program of home exercises. We'll have him return in 6 months for followup.

Referral To:

Reason:

Follow Up

6 Months

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED]/1965 Progress Note: BYRON N BAILEY, MD 08/29/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

**Hospitalization/Major
Diagnostic Procedure**
Denies Past Hospitalization



Electronically signed by BYRON BAILEY MD, MD on
08/29/2012 at 05:40 PM EDT

Sign off status: Completed

Chas Neurosurgical Associates NC
9275 B MEDICAL PLAZA DR
NORTH CHARLESTON, SC 29406-9140
Tel: 843-723-8823
Fax: 843-606-8059

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED] 1965 Progress Note: BYRON N BAILEY,
MD 08/29/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

FRAMPTON, ALEXANDER C, M. 1965

Chas Neurosurgical Associates WA
2145 HENRY TECKLENBURG DR SUITE 220, CHARLESTON, SC
29414-5894
843-723-8823

843-870-5554 MRN: HNE34946055

Accession Id: 0003139036C30380

Order Date: 08/29/2012

Procedure: 08/29/2012 12:04:00

Transcribed: 08/29/2012 12:04:00

Requesting Physician: TRAGESER, ROSE S Ordering Physician: TRAGESER, ROSE

XR SPINE SINGLE VIEW

REPORT

Exam:

14512

14512

CERVICAL SPINE- 08/29/12

COMPARISON- 17 May 2011

INDICATION- NECK PAIN

TECHNIQUE- Single lateral view

FINDINGS- Prior ACDF has been performed C5-C6-C7 with anatomic alignment. Bone plugs at this level are unchanged in their position. They are a bit more lucent in their margins consistent with some slight interim osseous resorption (typical). No definite evidence for solid bony union at this time. No hardware failure or fracture is evident.

IMPRESSION- No evidence of hardware failure or fracture. No adverse change.

sdw

Transcriptionist- JAY B ROBARDS-MD

Reading Radiologist- JAY B ROBARDS-MD

Releasing Radiologist- JAY B ROBARDS-MD

Released Date Time- 08/30/12 1723

14512

FRAMPTON, ALEXANDER C, M. 1965

Accession ID: 0003139036C30380



PHYSICIAN PARTNERS

PCP: JOHN P DAVIS, MD

FRAMPTON, ALEXANDER C

47 Y old Male, DOB: [REDACTED] 1965

Account Number: 00001009216

JOHNS ISLAND, SC

Home: [REDACTED]

Guarantor: FRAMPTON, ALEXANDER C Insurance: BCBS
STATE HEALTH PLAN Payer ID: PAPER

Appointment Facility: Chas Neurosurgical Associates NC

04/17/2013

Progress Notes: BYRON N BAILEY, MD

Current Medications

Lorazepam 1 MG Tablet 1 tablet prn Twice a day
 Quinapril HCl 20 MG Tablet 1 tablet Once a day
 Celexa 20 MG Tablet 1 tablet Once a day

Past Medical History

Hypertension
 Hyperplastic colon polyp
 Anxiety
 gastroesophageal reflux disease (GERD)
 colonoscopy Dr. Ravenel - 2006

Surgical History

cholecystectomy
 hemorrhoidectomy
 ACDF C5-6 and C6-7 by dr bailey 03/21/2011
 tonsillectomy

Family History

Father: alive
 Mother: alive melanoma
 Brother(s): alive
 Sister(s): alive
 1 brother(s), 1 sister(s), 1 son(s)
 Non-Contributory
 significant for: melanoma.

Social HistoryTobacco Use:

Tobacco Use/Smoking Are you a:
 nonsmoker.

Drugs/Alcohol:

Drugs Have you used drugs other than those
 for medical reasons in the past 12 months?
 No.

Alcohol Screen Did you have a drink
 containing alcohol in the past year?: Yes, How
 often did you have a drink containing alcohol
 in the past year?: 2 to 3 times a week (3
 points), How many drinks did you have on a
 typical day when you were drinking in the
 past year?: 1 or 2 drinks (0 point), How often
 did you have 6 or more drinks on one
 occasion in the past year?: Never (0 point),

Reason for Appointment

1. OV- neck soreness on and off (due to stress)
2. While lying down not able to turn certain positions
3. had PT (helped some)

History of Present IllnessSymptom(s):

Patient returns for followup. He reports he has occasional neck
 pain, particularly with certain activities and movement. He does not
 have return of radicular symptoms and new myelopathic symptoms.

Vital Signs

Ht 72 in, Wt 232 lb 4 oz, Wt Change 3.25 lb, BMI 31.50.

ExaminationGeneral Examination:

Stable exam with normal strength, well-healed-surgical-incision,
 reasonable range of motion of the cervical spine.

Assessments

1. Cervical Spondylosis - 721.0 (Primary)

X-rays demonstrate solid-appearing fusion with some transitional
 changes above with osteophyte formation. No instrumentation changes
 at C5-6 and C6-7.

Treatment**1. Cervical Spondylosis**

Diagnostic Imaging: XR CERVICAL SPINE 3 OR LESS VIEWS

Overall impression: Patient has a stable appearing x-ray and clinical
 exam. he has reached maximal medical improvement at this point,
 however he will continue to have cervical symptoms that we will
 restrict his activity. he will need continued followup with annual x-rays
 and periodic MRI scans. . He is at risk for transitional changes,
 particularly at the C4-5 level. . I would estimate that his impairment
 rating for his cervical spine to be 20%.

Follow Up

1 Year

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED] 1965 Progress Note: BYRON N BAILEY,
 MD 04/17/2013

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Points: 3, Interpretation: Negative.

Allergies

N.K.D.A.

Hospitalization/Major Diagnostic Procedure

cholecystectomy
hemorrhoidectomy
ACDF C5-6 and C6-7 by dr bailey 03/21/2011
tonsillectomy

Review of Systems

General/Constitutional:

Night sweats No. Fever No.
Headache No. Weight loss No. Current or
Recent Antibiotics No.

Allergy/Immunology:

Allergies No.

Ophthalmologic:

Change in vision Yes.

ENT:

ENT:
Hoarseness No. Dry mouth No. Hearing
loss No. Nasal drainage No. Nasal
Congestion No.

Endocrine:

Take insulin? No. Diabetes No.
Medication for Diabetes (not including insulin) No.

Respiratory:

Shortness of breath No. Asthma No.
Cough No.

Cardiovascular:

Chest Pain No. Diagnosed with a
Murmurs or rheumatic fever No. High blood
pressure Yes. Palpitations No.

Gastrointestinal:

Abdominal pain No. Diarrhea No.
Nausea No. Liver problems No.

Hematology:

Bleeding problems No. Easy bruising No.

Musculoskeletal:

Swollen joints No. Joint stiffness No.
Painful joints No.

Extremities:

Swelling of Feet No.

Skin:

III.
Rash No.

Genitourinary:

Kidney problems No.

Psychiatric:

Psychiatric Condition No.

Electronically signed by BYRON BAILEY MD, MD on
04/17/2013 at 04:30 PM EDT

Sign off status: Completed

Chas Neurosurgical Associates NC
9275 B MEDICAL PLAZA DR
NORTH CHARLESTON, SC 29406-9140
Tel: 843-723-8823
Fax: 843-606-8059

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED]/1965 Progress Note: BYRON N BAILEY,
MD 04/17/2013

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

FRAMPTON, ALEXANDER C, M, [REDACTED]/1965

Chas Neurosurgical Associates WA
2145 HENRY TECKLENBURG DR SUITE 220, CHARLESTON, SC
29414-5894
843-723-8823

843-870-5554 MRN: HNE34946055

Accession Id: 0003311368C30290

Order Date: 04/02/2013

Procedure: 04/17/2013 09:33:00

Transcribed: 04/17/2013 09:33:00

Requesting Physician: BAILEY, BYRON N

Ordering Physician: BAILEY, BYRON

XR CERVICAL SPINE 3 OR LESS VIEWS

REPORT

Exam:PERFORMED AT BON SECOURS SAINT FRANCIS
2095 HENRY TECKLENBURG DR
CHARLESTON SC

28443

28443

Cervical spine AP, lateral- 04/17/13

COMPARISON- November 22, 2011

INDICATION- 721.0- CERVICAL SPONDYLOSIS,

FINDINGS-

The patient is status post ACDF C5-C6-C7 as noted previously. No change in anatomic alignment. Maturity of the intervertebral body bone plugs noted. No evidence for hardware loosening. Nonoperative levels maintain proper alignment. Prevertebral soft tissues normal in thickness.

IMPRESSION-

Stable satisfactory postoperative alignment status post ACDF C5-C6-C7.

Transcriptionist- JOHNNY P CAMPBELL-MD

Reading Radiologist- JOHNNY P CAMPBELL-MD

Releasing Radiologist- JOHNNY P CAMPBELL-MD

Released Date Time- 04/17/13 0948

28443

FRAMPTON, ALEXANDER C, M, [REDACTED] 1965

Accession ID: 0003311368C30290

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Alexander Frampton
Physician's Name: Byron N Bailey
Practice/Clinic: Chas Neurosurgical Associates
Preparer's Name: _____
Phone: _____

Employer's Name: DEPT OF NATURAL RESOURCES
Insurance Carrier: State Accident Fund
SCWCC File No: 1012533

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 09/04/2010

Date of first office visit: 3-15-2011 Date of last visit: 4-17-2013
Diagnosis or nature of injury or illness: 721.0 Cervical Spondylosis
Body part(s) Injured: Cervical spine Body part(s) affected: Cervical spine
Date of Maximum Medical Improvement: 4-17-2013
Based on the AMA Guidelines, the claimant has sustained a 20 % medical impairment to Cervical spine injured body part(s) and a _____ % medical impairment to _____ other affected body part(s).

_____ The claimant is able to return to work without restriction.

_____ The claimant is able to return to work with the following restrictions:

☒ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

_____ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☒ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Annual Xrays along with periodic MRI scans of his cervical spine.

Treating Physician: [Signature]

Date: 9-20-2013

Physician's Statement



FRAMPTON, ALEXANDER C

49 Y old Male, DOB: [REDACTED] 1965

Account Number: 00001009216

JOHNS ISLAND, SC [REDACTED]

Home: [REDACTED]

Guarantor: FRAMPTON, ALEXANDER C Insurance: BCBS
STATE HEALTH PLAN Payer ID: PAPER
PCP: JOHN P DAVIS, MD

Appointment Facility: Chas Neurosurgical Associates WA

08/29/2014

BYRON N BAILEY, MD

Current Medications

Taking Lorazepam 1 MG Tablet 1 tablet prn
Twice a day as needed
Taking Protonix 40 MG Tablet Delayed
Release 1 tablet Once a day
Taking Toprol XL 50 MG Tablet Extended
Release 24 Hour 1 tablet Once a day
Discontinued Celexa 20 MG Tablet 1 tablet
Once a day
Discontinued Quinapril HCl 20 MG Tablet
take one tablet by mouth every day
Medication List reviewed and reconciled with
the patient

Past Medical History

Hypertension
Hyperplastic colon polyp
Anxiety
gastroesophageal reflux disease (GERD)
colonoscopy Dr. Ravenel - 2006
HSV 2

Surgical History

cholecystectomy
hemorrhoidectomy
ACDF C5-6 and C6-7 - DR. BYRON BAILEY
03/21/2011
tonsillectomy

Family History

Father: alive
Mother: alive, melanoma
Brother(s): alive
Sister(s): alive
1 brother(s), 1 sister(s), 1 son(s)
significant for: melanoma.

Allergies

N.K.D.A.

Hospitalization/Major

Diagnostic Procedure

cholecystectomy
hemorrhoidectomy
ACDF C5-6 and C6-7 - DR. BYRON BAILEY
03/21/2011

Reason for Appointment

1. C SPINE XRAY PACS
2. NECK PAIN - INTERMITTENT

History of Present Illness

Symptom(s):

Patient returns for followup. He continues to complain of neck pain with decreased range of motion. He has most difficulty with neck extension and right rotation. This is present during the course of the day with normal daily activity. No radicular symptoms that are consistent. He has had intermittent numbness and tingling involving his upper extremities, no focal weakness was described.

Examination

General Examination:

Good strength and normal supraspinatus, infraspinatus, biceps, triceps, wrist extensors finger extensors, interossei and grip. He has impaired range of motion of his cervical spine most prominently and neck extension and right rotation. No increased tone. No change in gait.

Assessments

1. Cervical Spondylosis - 721.0 (Primary)

X-rays demonstrate stable, Richard fusion at C6, 5, 6 and C6-7, no transitional changes apparent on x-ray.

Treatment

1. Cervical Spondylosis

Notes: Overall impression: I think a course of therapy and instructions on a home exercise program for range of motion of the cervical spine would be helpful. He will require periodic x-rays and MRI scans as well as medical treatment, evaluation for therapy and efforts by the anesthesiologist for pain management. It is likely he will develop transitional stenosis and require additional surgery in the future.

Follow Up

6 Months

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED] 1965 Progress Note: BYRON N BAILEY,
MD 08/29/2014

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

tonsillectomy



Electronically signed by BYRON BAILEY MD on 08/29/2014
at 12:09 PM EDT

Sign off status: Completed

Chas Neurosurgical Associates WA
2145 HENRY TECKLENBURG
CHARLESTON, SC 29414-5894
Tel: 843-723-8823
Fax: 843-606-8059

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED] 1965 Progress Note: BYRON N BAILEY,
MD 08/29/2014

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

FRAMPTON, ALEXANDER C, M, [REDACTED] 1965

Chas Neurosurgical Associates WA
2145 HENRY TECKLENBURG DR SUITE 220, CHARLESTON, SC
29414-5894
843-723-8823

843-870-5554 MRN: HNE34946055

Accession Id: RSFH7243473

Order Date: 08/28/2014

Procedure: 08/28/2014 13:56:00

Transcribed: 08/28/2014 13:56:00

Requesting Physician: BAILEY, BYRON N

Ordering Physician: BAILEY, BYRON

XR CERVICAL SPINE 2 or 3 VIEWS

REPORT

Exam:

PERFORMED AT BON SECOURS SAINT FRANCIS
2095 HENRY TECKLENBURG DR
CHARLESTON SC

30790

30790

CERVICAL SPINE SERIES

DATE- 08/28/14

INDICATION-721.0- CERVICAL SPONDYLOSIS

COMPARISON- 4/17/2013

FINDINGS-

Cervical vertebral body heights are maintained. There is no evidence of aggressive osseous lesion.

C2-C3- Disc height is reasonably well-maintained.

C3-C4- Disc height is reasonably well-maintained.

C4-C5- Minimal loss of disc height.

C5-C6- Remote ACDF, features suggesting osseous fusion across the disc space.

C6-C7- Remote ACDF, features suggesting osseous union across the disc space.

FRAMPTON, ALEXANDER C, M, [REDACTED] 1965

Accession ID: RSFH7243473

REPORT

C7-T1- Detail is essentially precluded by overlap from the patient's shoulders. The swimmer's view suggests there may be grade 1 anterolisthesis, however.

IMPRESSION-

1. Prior ACDF at C5-C6 and C6-C7, features suggesting osseous fusion across the disc spaces.
2. At C7-T1, detail is mostly precluded by overlap from the patient's shoulders, although there is probably grade 1 anterolisthesis.

Transcriptionist- ANDREW K ANDERSON-MD
Reading Radiologist- ANDREW K ANDERSON-MD
Releasing Radiologist- ANDREW K ANDERSON-MD
Released Date Time- 08/28/14 1603

30790

FRAMPTON, ALEXANDER C. M. 1965

Accession ID: RSFH7243473

From: 8437242000 Page: 2/2 Date: 02/12/2013 2:35:29 PM

BF 2010-3478

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1713
Columbia, South Carolina 29202-1713
(803) 277-1277
www.wcc.sc.gov



Physician's Statement

Claimant's Name: Alexander Hampton Employer's Name: DEPT OF NATURAL RESOURCES
Physician's Name: Bryan H Bailey Insurance Carrier: State Accident Fund
Practice Location: Ches Med/Surgical Associates Service File No: 6012533
Provider's Name: _____
Phone: _____

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-1-10.

Date of Injury or Illness: 12/14/2010

Date of first office visit: 3-15-2011 Date of last visit: 4-17-2013

Diagnosis or nature of injury or illness: 721.0 Cervical Spondylosis

Body part(s) injured: Cervical spine Body part(s) affected: Cervical spine

Date of Maximum Medical Improvement: 4-17-2013

Based on the AMA Guidelines, the claimant has sustained a 26% medical impairment to Cervical spine and a 0% medical impairment to other affected body part(s).

☐ The claimant is able to return to work without restriction.
☐ The claimant is able to return to work with the following restrictions:

☒ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion, the claimant:
☐ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☒ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Annual X-rays along with periodic MRI scans of his cervical spine. Medications as prescribed. He may require further surgery in future if he were to develop hardware failure or adjacent level disc

Treating Physician: Bryan H Bailey Date: 9-20-2013

3) Did you intend to assign Mr. Frampton a different impairment rating?

Yes ☒

No ☐

If the answer to Number 3 above is yes, please provide both a regional cervical rating and a whole person rating below:

Regional cervical rating

75%

Whole person rating

26%

I, Byron Bailey, M.D., hereby certify that my responses to the above questions represent my opinions, to a reasonable degree of medical certainty, as to each issue.



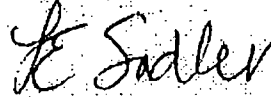
Byron Bailey, M.D.

9/2/14

Date

Thank you very much for your consideration in this matter.

Sincerely,



Lindsay Sadler

Claims Adjuster

State Accident Fund

(803) 896-5924

(803) 612-2724 fx

lsadler@saf.sc.gov

Enclosures

CC: Alexander C. Frampton, with enclosures



FRAMPTON, ALEXANDER C

49 Y old Male, DOB: [REDACTED] 1965

Account Number: 00001009216

JOHNS ISLAND, SC

Home: [REDACTED]

Guarantor: FRAMPTON, ALEXANDER C Insurance: BCBS

STATE HEALTH PLAN Payer ID: PAPER

PCP: JOHN P DAVIS, MD

Appointment Facility: Chas Neurosurgical Associates WA

05/13/2015

BYRON N BAILEY, MD

Current Medications**Taking**

- Lorazepam 1 MG Tablet 1 tablet prn Twice a day as needed
- Quinapril HCl 10 MG Tablet 1 tablet Once a day
- Celebra 20 MG Tablet 1 tablet Once a day
- Medication List reviewed and reconciled with the patient

Past Medical History

Hypertension

Hyperplastic colon polyp

Anxiety

gastroesophageal reflux disease (GERD)

colonoscopy Dr. Ravenel - 2006

HSV 2

Surgical History

cholecystectomy

hemorrhoidectomy

ACDF C5-6 and C6-7 - DR. BYRON BAILEY

03/21/2011

tonsillectomy

Family History

Father: alive

Mother: alive, melanoma

Brother(s): alive

Sister(s): alive

1 brother(s), 1 sister(s), 1 son(s).

significant for: melanoma.

Social History**General:**

no Mold exposure?

Alcohol consumption per week?: Occasional.

Married, no tobacco or significant ethanol usage, coronal for department of natural resources.

Allergies

N.K.D.A.

Reason for Appointment

1. C SPINE XRAY PACS
2. NECK PAIN - INTERMITTENT
3. BILATERAL HAND TINGLING - INTERMITTENT
4. LIMITED ROM

History of Present Illness**Symptom(s):**

Patient is evaluated for symptoms of increasing neck pain. Patient describes increasing symptoms of neck pain with movement and associated crepitus. he describes restricted range of motion. Additionally complains of numbness and tingling affecting his hands bilaterally this is more common upon awakening in the morning. Pain is described as located in the posterior cervical musculature at the base of the skull. he is not on anti-inflammatory medications but he does do a program of home exercises.

Examination**General Examination:**

Normal strength to include deltoid supraspinatus infraspinatus biceps triceps wrist extensors finger extensors interossei and grip. he has normal reflexes. no paresthesias suggestive of a median nerve distribution. he does have a positive Phalen sign. No Lhermitte's, no Spurling's.

Assessments

1. Cervical Spondylosis - 721.0 (Primary)

X-rays demonstrate a solid fusion at C5-6 and C6-7, minimal degenerative changes cephalad.

Treatment

1. Cervical Spondylosis

IMAGING: MR SPINE CERVICAL W/O CTRST MRI

Follow Up

after MRI

Hospitalization/Major

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED] 1965 Progress Note: BYRON N BAILEY,
MD 05/13/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Diagnostic Procedure

cholecystectomy
hemorrhoidectomy
ACDF C5-6 and C6-7 - DR. BYRON BAILEY
03/21/2011
tonsillectomy



Electronically signed by BYRON BAILEY MD on 05/28/2015
at 10:41 AM EDT

Sign off status: Completed

Chas Neurosurgical Associates WA
2145 HENRY TECKLENBURG
CHARLESTON, SC 29414-5894
Tel: 843-723-8823
Fax: 843-606-8059

Patient: FRAMPTON, ALEXANDER C DOB: [REDACTED] 1965 Progress Note: BYRON N BAILEY,
MD 05/13/2015

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

LAND, PARKER & WELCH, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 138
MANNING, SOUTH CAROLINA 29102

JOHN C. LAND, III
NELSON R. PARKER
J. CALHOUN LAND, IV
RICCI LAND WELCH
WILLIAM CETH LAND

29 SOUTH MILL STREET
TELEPHONE: 803-435-8894
FACSIMILE: 803-435-8362
E-MAIL: pat@lpwlawfirm.com

November 28, 2016

Dr. Byron Bailey
Charleston Neurosurgical Associates
9275B Medical Plaza Drive
N. Charleston, SC 29406

Via Fax: 843-606-8059

Re: Alexander C. Frampton
DOB: [REDACTED] 65

Dear Dr. Bailey:

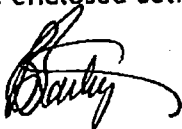
I have the cervical MRI that you ordered on the 25th day of May 2016, with the procedure being performed on the 16th day of September 2016, with the impression "At C6-C7, prior ACDF. Residual osteophytes cause severe left and moderate right neural foraminal stenosis." Mr. Frampton tells me that as a result of the MRI you have prescribed physical therapy, which is being done at Roper St. Francis PT.

Mr. Frampton also tells me that you have suggested nerve conduction studies to address the pain and tingling in his arm or arms going into his fingers.

I would greatly appreciate you answering the following questions:

1. Based on a reasonable degree of medical certainty, is the reason that you prescribed a cervical MRI and then physical therapy because Chisholm Frampton's condition has most probably worsened? YES ☒ NO ☐
2. Also, is it still your recommendation that Chisholm Frampton undergo nerve conduction studies to address the pain and tingling in his arm or arms going into his fingers? YES ☒ NO ☐

Please answer these questions at your earliest convenience and return this letter in the enclosed self-addressed envelope.



12.5.16

TriCounty Radiology Associates

(843) 529-8600
North Charleston
Summerville
West Ashley

PATIENT: Frampton, Alexander
DOB: [REDACTED] 1965
MRN: 689097
PATIENT PHONE: [REDACTED]
PHYSICIAN: Byron Bailey, MD
DATE: 3/15/2011

EXAM: CERVICAL SPINE MRI WITHOUT CONTRAST

HISTORY: Cervical radiculopathy, C6/7 on the right.

COMPARISON: Plain film cervical spine 3/15/2011.

TECHNIQUE: Multiplanar multisequence images cervical spine without contrast.

FINDINGS: *Alignment and bony structures:* Midcervical straightening. C6/7 left-sided type I Modic change. Remaining marrow preserved. C5/6 mild degenerative retrolisthesis. *Spinal cord:* Normal signal and caliber. *Cranio cervical junction:* Unremarkable central elements and junction as visualized. *Findings by level:*

C2/3: Normal.

C3/4: Mild right uncovertebral hypertrophy. Mild right exit narrowing. Mild anterior cord flattening.

C4/5: Mild central disc bulge. Mild anterior cord flattening. No stenosis.

C5/6: Disc bulge has superimposed shallow central inferior extrusion extending about 4 mm below the endplate. Mild uncovertebral and facet hypertrophy. Mild exit and central narrowing. Mild anterior cord flattening. There may be effect on exiting C6s.

C6/7: Disc osteophyte complex extends biforaminally and is slightly more prominent left paracentrally. Uncovertebral and facet hypertrophy. Moderate bilateral exit stenosis with contact, deflection, and flattening of exiting C7s suggested, more prominent on the right. Right exit stenosis borders on severe. Central inferior extrusion component extends about 5 mm below the endplate. Moderate central stenosis. Mild left hemicord flattening.

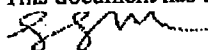
C7/T1: Normal.

IMPRESSION: Cervical spondylosis most impressive at C5/6 and C6/7. Correlation for bilateral C6 and right greater than left C7 radiculopathies might be helpful. The C6/7 right foraminal stenosis borders on severe.

Troy Marlow, M.D.
TM/sl

DD: 3/15/2011 / DT: 3/15/2011
JOB: 12455015

This document has been electronically reviewed and signed.



Page 1 of 1

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Frampton, Alexander
DOB: 1965
MRN: 689097
PATIENT PHONE:
PHYSICIAN: Byron Balley, MD
DATE: 3/15/2011

EXAM: X-RAY CERVICAL SPINE FIVE VIEWS

HISTORY: Cervical radiculopathy. No known trauma.

TECHNIQUE: Five views of the cervical spine including flexion and extension views.

COMPARISON: No prior studies available for direct comparison.

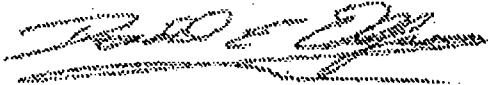
FINDINGS: Multilevel mild intervertebral joint space narrowing most pronounced C5-6 and C6-7. Mild facet arthropathy and mild straightening of the normal cervical lordosis. No acute fracture line seen. A few nuchal ossifications are noted. Mild uncovertebral joint hypertrophic changes throughout. The prevertebral soft tissues are unremarkable. Flexion and extension views were performed. No instability on the flexion and extension views.

IMPRESSION: Mild degenerative disc disease and facet arthropathy most pronounced C5-6 and C6-7. No instability on the flexion and extension views.

Donald E. Olofson, DO
DO / ng

DD: 3/15/2011 / DT: 3/15/2011
JOB: 12452482

This document has been reviewed and electronically signed by



Page 1 of 1

 **Charleston Neurosurgical
Associates**
ROPER ST. FRANCIS PHYSICIANS

Rehabilitation Services

2145 HENRY TECKLENBURG DR. SUITE 101
CHARLESTON, SC 29414
(843) 723-8823

Test Date: 3/16/2011

Patient:	Alexander Frampton	DOB:	1965	Physician:	J. Reilly Keffer, D.O.
Sex:	Male	Height:	' 0"	Ref Phys:	Dr. Bailey
ID#:		Weight:	lbs.		

Patient Complaints:

Patient is a 45 year-old RH male who presents with neck pain and pain and numbness and tingling right upper extremity with onset of his RUE symptoms beginning about 2 months ago. Insidious onset. Patient describes sx from right side of neck, into arm, forearm, and right thumb, index, and middle finger. No LUE sx. He does describe significant proximal RUE symptoms.

ROS: reviewed with patient. See chart.

Medications

Medications reviewed on patient intake form/chart.

Patient History / Exam:

AxOx3, NAD Manual motor testing is 5/5 throughout bilaterally. Reflexes are +2 including biceps, brachioradialis, and triceps. Sensation is normal to pin prick in the bilateral upper extremities except reports some diminished pp right index finger. Intact distal pulses. No obvious atrophy.

Patient has no allergy to medications.

Surgical history is significant for tonsillectomy, hemorrhoid surgery, and cholecystectomy.

Past medical history is significant for hypertension and anxiety.

Family/ Social/Work Hx reviewed on chart.

EMG & NCV Findings:

Evaluation of the Right ulnar motor nerve showed decreased conduction velocity (A Elbow-B Elbow, 46 m/s) possibly artifactual but not clinically of any significance. All remaining nerves (as indicated in the following tables) were within normal limits.

All examined muscles (as indicated in the following table) showed no evidence of electrical instability.

Impression:

1. This is a normal electrodiagnostic study of the right upper extremity. There is no electrodiagnostic evidence of a right cervical radiculopathy, plexopathy, myopathy, or other peripheral neuropathy. There is no electrodiagnostic evidence of median mononeuropathy (ie. carpal tunnel syndrome) at the wrist.

Recommendations:

1. Follow up with Dr. Bailey.
2. Consider a trial of a Prednisone taper.
3. Despite the negative EMG, I still suspect a right C6/C7 radiculitis causing his symptoms in the RUE. He describes neck pain and symptoms radiating all the way down the RUE into the right thumb, index and middle finger. He does seem to be significantly symptomatic with his current symptoms.



J. Reilly Keffer, D.O.
Physical Medicine and Rehabilitation

Cc: Dr. Bailey

Nerve Conduction Studies

Anti Sensory Summary Table

Site	Stim	Latency (ms)	Normal Latency (ms)	Amplitude (mV)	Normal Amplitude (mV)	Site	Site	Delta-P (ms)	Delta-P (ms)	Normal Delta-P (ms)
Right Median Anti Sensory (2nd Digit)										
Wrist	3.1	<3.5		47.6	>20					
Right Ulnar Anti Sensory (5th Digit)										
Wrist	3.6	<3.7		24.4	>17.0					

Motor Summary Table

Site	Stim	Latency (ms)	Normal Latency (ms)	Amplitude (mV)	Normal Amplitude (mV)	Site	Site	Delta-P (ms)	Delta-P (ms)	Normal Delta-P (ms)
Right Median Motor (Abd Polli Brev)										
Wrist	4.0	<4.2		12.7	>4	Elbow	Wrist	3.7	20.5	55
Elbow	7.7			12.1						>50
Right Ulnar Motor (Abd Dig Minlml)										
Wrist	3.4	<4.0		14.2	>5	B Elbow	Wrist	3.5	20.5	59
B Elbow	6.9			11.1		A Elbow	B Elbow	2.5	11.5	46
A Elbow	9.4			10.5						>49

Comparison Summary Table

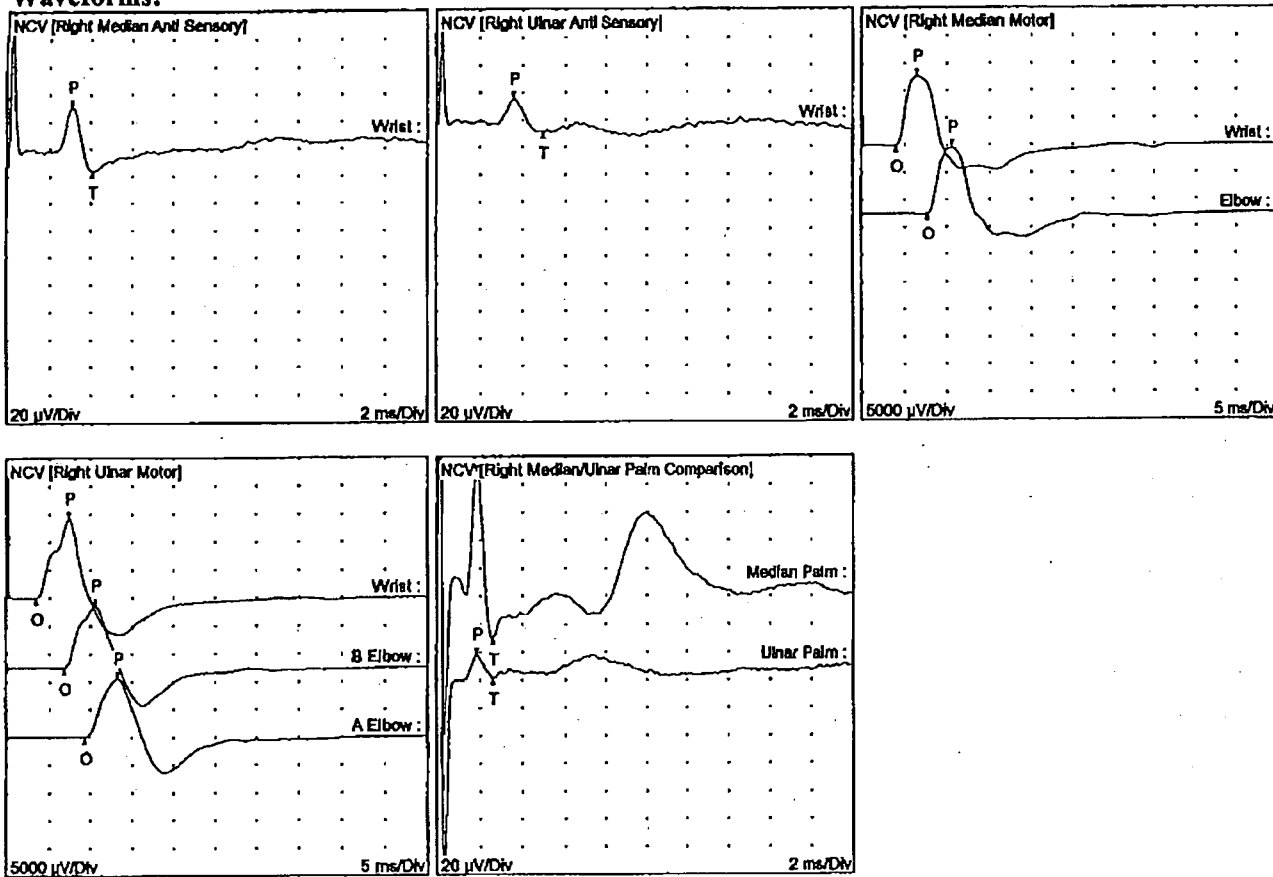
Site	Stim	Latency (ms)	Normal Latency (ms)	Amplitude (mV)	Site	Site	Delta-P (ms)	Normal Delta-P (ms)
Right Median/Ulnar Palm Comparison (Wrist - 8cm)								
Median Palm	1.8	<2.5		118.8	Median Palm	Ulnar Palm	0.0	<0.4
Ulnar Palm	1.8	<2.5		16.8				

EMG

Site	Muscle	Nerve	Roots	Int Act	EMG	SPV	Amplitude	Delta-P	Recr	Comments
Right	Deltoid	Axillary	C5-6	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	Biceps	Musculocut	C5-6	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	Triceps	Radial	C6-7-8	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	Pronator Teres	Median	C6-7	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	FlexCarRad	Median	C6-7	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	IstDorInt	Ulnar	C8-T1	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	Cervical Parasp Mid	Rami	C4-6	Nml	Nml	Nml				
Right	Cervical Parasp Low	Rami	C7-8	Nml	Nml	Nml				
Right	ExtCarRadLong	Radial	C6-7	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	BrachioRad	Radial	C5-6	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	ExtDigCom	Radial (Post Int)	C7-8	Nml	Nml	Nml	Nml	0	Nml	Nml
Right	Infraspinatus	SupraScap	C5-6	Nml	Nml	Nml	Nml	0	Nml	Nml



Waveforms:



Bon Secours St. Francis
HISTORY AND PHYSICAL REPORT
03/21/2011

FRAMPTON, ALEXANDER C, SR
000655963
Byron N. Bailey, MD
Page 1

Patient date of birth: [REDACTED] 1965

This is a 45-year-old gentleman who we have followed for degenerative disk disease of his cervical spine. Over the last 72 hours, he has had increasing symptoms, been unable to sleep, and unable to perform daily activities without significant neck and left arm pain. He has been refractory to all measures of conservative management and now presents for rather acute symptoms that need surgical decompression.

PAST MEDICAL HISTORY: Past medical history is significant of history of hypertension.

MEDICATIONS: He takes two medications for control.

ALLERGIES: No known allergies.

PAST SURGICAL HISTORY: He has had a previous surgical intervention for hemorrhoids and cholecystectomy.

SOCIAL HISTORY: He does not smoke, drinks alcohol occasionally. He is married. He has one child. He works for the Department of Natural Resources in law enforcement.

FAMILY HISTORY: Family history is positive for hypertension.

REVIEW OF SYSTEMS: Review of systems is otherwise noncontributory.

PHYSICAL EXAMINATION: On examination, this a well-developed, well-nourished male in moderate distress due to his neck and left arm pain. He has decreased range of motion of his cervical spine, particularly in extension. He does not have Lhermitte's and no Spurling's. He had decreased strength in his right hand to include his intrinsic hand muscles, wrist extensors and triceps. Remaining motor groups appear to be fairly normal. His reflexes demonstrated a hypoactive right triceps reflex, remaining appeared to be 2/4 and symmetric. There was no Hoffman. No Babinski. No increased tone in the lower extremities. His lower extremity strength was otherwise normal. He had normal sensation to pinprick, light-touch, and proprioception, right equal to left. Heart was regular rate and rhythm. Lungs were clear. MRI scan was reviewed. This demonstrates marked degenerative changes at C5-6 and C6-7; more prominent at C6-7 with osteophyte formation and foraminal stenosis.

OVERALL IMPRESSION: As a result of the progression of symptoms despite conservative measures and the known motor weakness, we are electing to proceed with anterior cervical discectomy and fusion.

MR#: 000655963 DOB: [REDACTED]/66
FRAMPTON, ALEXANDER
St Francis IPC
PHYS: BAILEY-MD, BYRON N
ACCT#: 11080-00605 03/21/11

Bon Secours St. Francis
HISTORY AND PHYSICAL REPORT
03/21/2011

FRAMPTON, ALEXANDER C, SR
000855963
Byron N. Bailey, MD
Page 2

Risks, benefits, indications, and possible complications were explained to him. He understands and wishes to proceed.

Byron N. Bailey, MD

TR: on DD: 03/21/2011 8:15 A TO: 03/21/2011 8:32 A JOB#: 001559821 DOC#: 1885046

cc: Byron N. Bailey, MD

MR#: 000855963 DOB: [REDACTED] 86
FRAMPTON, ALEXANDER
St Francis IPC
PHYS: BAILEY-MD, BYRON N
ACCT#: 11080-00606 03/21/11

Patient date of birth: [REDACTED]/1965

This is a 45-year-old gentleman who we have followed for degenerative disk disease of his cervical spine. Over the last 72 hours, he has had increasing symptoms, been unable to sleep, and unable to perform daily activities without significant neck and left arm pain. He has been refractory to all measures of conservative management and now presents for rather acute symptoms that need surgical decompression.

PAST MEDICAL HISTORY: Past medical history is significant of history of hypertension.

MEDICATIONS: He takes two medications for control.

ALLERGIES: No known allergies.

PAST SURGICAL HISTORY: He has had a previous surgical intervention for hemorrhoids and cholecystectomy.

SOCIAL HISTORY: He does not smoke, drinks alcohol occasionally. He is married. He has one child. He works for the Department of Natural Resources in law enforcement.

FAMILY HISTORY: Family history is positive for hypertension.

REVIEW OF SYSTEMS: Review of systems is otherwise noncontributory.

PHYSICAL EXAMINATION: On examination, this a well-developed, well-nourished male in moderate distress due to his neck and left arm pain. He has decreased range of motion of his cervical spine, particularly in extension. He does not have Lhermitte's and no Spurling's. He had decreased strength in his right hand to include his intrinsic hand muscles, wrist extensors and triceps. Remaining motor groups appear to be fairly normal. His reflexes demonstrated a hypoactive right triceps reflex, remaining appeared to be 2/4 and symmetric. There was no Hoffman. No Babinski. No increased tone in the lower extremities. His lower extremity strength was otherwise normal. He had normal sensation to pinprick, light-touch, and proprioception, right equal to left. Heart was regular rate and rhythm. Lungs were clear. MRI scan was reviewed. This

Bon Secours St. Francis
HISTORY AND PHYSICAL REPORT
03/21/2011

FRAMPTON, ALEXANDER C, SR
000655963
Byron N. Bailey, MD
Page 2

demonstrates marked degenerative changes at C5-6 and C6-7; more prominent at C6-7 with osteophyte formation and foraminal stenosis.

OVERALL IMPRESSION: As a result of the progression of symptoms despite conservative measures and the known motor weakness, we are electing to proceed with anterior cervical discectomy and fusion.

Risks, benefits, indications, and possible complications were explained to him. He understands and wishes to proceed.

Byron N. Bailey, MD

TR: dm DD: 03/21/2011 9:15 A TD: 03/21/2011 9:32 A JOB#: 00155992
DOC#: 1885046

cc: Byron N. Bailey, MD

Authenticated by BYRON N BAILEY MD On 03/23/2011 09:13:47 AM

Bon Secours St. Francis
OPERATIVE REPORT
03/21/2011

FRAMPTON, ALEXANDER C, SR
000655963
Byron N. Bailey, MD
Page 1

SURGEON: Byron N. Bailey, MD.

PROCEDURE(S) PERFORMED: Anterior cervical diskectomy and fusion C5-6 and C6-7.

PREOPERATIVE DIAGNOSIS(ES): Cervical spondylosis with associated radiculopathy.

POSTOPERATIVE DIAGNOSIS(ES): Cervical spondylosis with associated radiculopathy.

INDICATIONS: This is a 44-year-old gentleman with a history of progressive cervical radiculopathy currently associated with weakness in right arm triceps, wrist extensors, finger extensors and grip. He had radicular pain at C6 and C7 on the right. He has failed conservative measures and has had progressive symptoms despite these efforts. The risks, benefits, indications, and possible complications of surgical intervention were explained to him. He understands and wishes to proceed.

DESCRIPTION OF PROCEDURE: After general anesthesia was obtained, he was positioned supine on the operating room table. His cervical spine was prepped and draped a sterile fashion. He was positioned in a horseshoe headholder with five pounds of neutral halter tract. A transverse crease was identified overlying the body of C6. The incision was then opened with a 10 blade scalpel. Hemostasis of the skin edge was obtained with monopolar cautery. The subcutaneous tissues were transversed using cutting cautery allowing for exposing of the platysma. This was dissected free of the skin and then its fibers divided right to left. Anterior border of the sternocleidomastoid was identified and followed to the carotid artery. The carotid artery and sternocleidomastoid was separated from the esophagus and trachea allowing for exposure of the longus colli muscle in the prevertebral region. The longus colli was then elevated on either side of the spine on top of the C6 vertebral body. Self-retaining retractors were placed under the edge of the muscle both right to left and cephalad and caudal. Once this was completed, fluoroscopy was used to confirm the vertebral levels. The vertebral levels were then incised using 11 blade scalpel and emptied using the pituitary, Kerrison rongeur, and bone curet. Anterior osteophytes were removed and saved for autograft.

Bon Secours St. Francis
OPERATIVE REPORT
03/21/2011

FRAMPTON, ALEXANDER C, SR
000655963
Byron N. Bailey, MD
Page 2

Next the microscope was brought into the field. The remaining portion of the disk removed with 5 mm bur. The disk space was emptied back to the posterior osteophytes which were larger on the left at C6-7 and fairly symmetric at C5-6. The ligament was thickened at C6-7 and subsequently it was gradually opened with 11 blade scalpel and then removed using the 2 and 3 mm Kerrison. Angled curets were then used to remove the posterior lip of the compression. The axilla of the nerve roots could be seen bilaterally and the foramen were probed with a right angle instrument. Once this was completed, the process was repeated at C5-6. At this level we found thickened ligament with several fragments of ruptured disk mostly in the midline and some over towards the right but not in the axilla of the nerve root. The foramen were probed and felt to be open and free. The wound was then irrigated with copious amounts of saline. A 7 mm and 8 mm graft was then fashioned and placed in the intervening space. The bone grafts were packed with the removed portion of the anterior osteophytes. ABC system was then used to place a plate across the interspace with bicortical screws measuring 16, 17, and 18 mm in depth. Locking mechanism was engaged at the levels. The wound was again irrigated. The platysma was then closed with 3-0 Vicryl; the skin was approximated with 3-0 Vicryl and Steri-Strips. Sterile gauze dressing was applied. He was placed in a Philadelphia collar. There were no apparent complications.

Condition on completion of the procedure was good. Complications were none. Blood loss was less than 200 cc. There were no specimens. Surgeon was Dr. Bailey and Sherry Graves, nurse practitioner.

Byron N. Bailey, MD

TR: ras DD: 03/22/2011 7:06 A TD: 03/23/2011 2:51 P JOB#: 00156051
DOC#: 1886172

cc: Byron N. Bailey, MD

Authenticated by BYRON N BAILEY MD On 04/07/2011 09:12:07 AM

Bon Secours St. Francis Hospital Imaging Services

Name: FRAMPTON, ALEXANDER C
Exam Date: 03/21/11 1356
Ord. Phy.: BAILEY-MD, BYRON N

MR#: C000655963
DOB: [REDACTED]/65
Pt. Phone#: [REDACTED]
Ord. Phy.#: (843) 723-8823
Phy. Fax #: 8437228124

BAILEY-MD, BYRON N
2145 HENRY TECKLENBURG
SUITE 220
CHARLESTON SC 29414

Acct_Nbr : C1108000605
Pat_Type : IPC

Chk-in #	Order	Exam
2750408	0001	30130 XR C ARM (FLUORO MORE THAN 1 HR) Ord Diag: SURGERY

There is no dictation for this examination. Fluoro only.

Transcriptionist- DEFAULT DOCTOR
Reading Radiologist- DEFAULT DOCTOR
Releasing Radiologist- DEFAULT DOCTOR
Released Date Time- 03/22/11 1313

FINAL

Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Date: 03/25/11
Name: FRAMPTON, ALEXANDER C
Sex: M
Birth Date: [REDACTED] 65
Age: 45Y

Acct. #: 11080-00605
Financial Class: B - BLUE CROSS
Adm Date: 03/21/11
Dschr Date: 03/22/11
LOS: 1

Attending Physician
BAILEY-MD, BYRON N
Coder: PH

Discharge Status
01 - 01 HOME OR SELF CARE

MDC: 08 DISEASES/DISORDERS OF THE MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
DRG: 473 CERVICAL SPINAL FUSION W/O CC/MCC

OUTLIER STATUS: N/A

DIAGNOSIS DESCRIPTION/POA
1. (P) 721.0 CERVICAL SPONDYLOSIS/Y

DIAGNOSIS DESCRIPTION/POA
2. 401.9 HYPERTENSION NOS/Y

Reason for Visit:

PROCEDURE DESCRIPTION
1. (P) 81.02 OTH CERV FUSION ANT/ANT
2. 80.51 EXCISION INTERVERT DISC
3. 77.79 EXCISE BONE FOR GFT NEC
4. 81.62 FUS/REFUS 2-3 VERTEBRAE

DATE SURGEON NAME
03/21/11 BAILEY-MD, BYRON N
03/21/11 BAILEY-MD, BYRON N
03/21/11 BAILEY-MD, BYRON N
03/21/11 BAILEY-MD, BYRON N

Name: FRAMPTON, ALEXANDER C
Exam Date: 05/17/11 0858
Ord. Phy.: BAILEY-MD, BYRON N

MR#: C000655963
DOB: [REDACTED] 65
Pt. Phone#: [REDACTED]
Ord. Phy. #: (843) 723-8823
Phy. Fax #: 8437228124

BAILEY-MD, BYRON N
2145 HENRY TECKLENBURG
SUITE 220
CHARLESTON SC 29414

Acct Nbr : C1113700677
Pat Type : OPC

Chk-in #	Order	Exam	
2794181	0001	30380	XR SPINE SINGLE VIEW
			Ord Diag: CERVICAL RADICULOPATHY

SINGLE VIEW SPINE: 05/17/2011

FINDINGS:

Patient is status post anterior cervical fusion from C5 through C7. The interbody bone plugs are in satisfactory position. Normal alignment is noted. No complicating features are seen.

law

Transcriptionist- LAUREN A WOODS
Reading Radiologist- ROBERT H SMITH-MD
Releasing Radiologist- ROBERT H SMITH-MD
Released Date Time- 05/17/11 1156

FINAL

Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Date:	Name	Acct. #	Financial Class
05/19/11	FRAMPTON, ALEXANDER C	11137-00677	B - BLUE CROSS
Sex	Birth Date Age	Adm Date	Dsch Date LOS
M	██████/65 45Y	05/17/11	05/17/11 1

Attending Physician
BAILEY-MD, BYRON N
Coder:

Discharge Status
H - H_OUTPT-SENT HOME

MDC: 01 DISEASES/DISORDERS OF THE NERVOUS SYSTEM
DRG: 074 CRANIAL & PERIPHERAL NERVE DISORDERS W/O MCC

OUTLIER STATUS: N/A

DIAGNOSIS	DESCRIPTION/POA	DIAGNOSIS	DESCRIPTION/POA
1. (P) 723.4	BRACHIAL NEURITIS NOS/	2. V45.4	ARTHRODESIS STATUS/

Reason for Visit: 723.4 BRACHIAL NEURITIS NOS

PROCEDURE	DESCRIPTION	DATE	SURGEON NAME
-----------	-------------	------	--------------

HCPCS	DESCRIPTION	MODIFIER(S)	DATE	SURGEON	PRE APC
-------	-------------	-------------	------	---------	---------

Bon Secours St. Francis Hospital Imaging Services

Name: FRAMPTON, ALEXANDER C
Exam Date: 07/01/11 1219
Ord. Phy.: BAILEY-MD, BYRON N

MR#: C000655963
DOB: [REDACTED]/65
Pt. Phone#: [REDACTED]
Ord. Phy.#: (843) 723-8823
Phy. Fax #: 8437228124

BAILEY-MD, BYRON N
2145 HENRY TECKLENBURG
SUITE 220
CHARLESTON SC 29414

Acct Nbr : C1118201235
Pat_Type : OPC

Chk-in #	Order	Exam	
2827848	0001	30288	XR SPINE CERVICAL 4 VIEW MIN
			Ord Diag: S/P MVA PRIOR ACD

CERVICAL SPINE SERIES: 7/1/11

INDICATION: Pain. History of previous MVA and previous cervical fusion.

COMPARISON: Lateral radiographs of the cervical spine from 5/17/11.

FINDINGS:

Again demonstrated is evidence of prior ACDF at C5-C6 and C6-C7. Cervical alignment remains within normal limits. No specific adverse features are noted about the hardware. Remaining disc heights are well maintained. There is no evidence of prevertebral soft tissue swelling.

Flexion and extension views show no evidence of translational instability. Note that the C7-T1 interval is not well demonstrated in the lateral projection due to overlap from the patient's shoulders.

IMPRESSION:

Stable sequela of prior ACDF at C5-C6 and C6-C7, without specific adverse features. No evidence of translational instability.

sr

Transcriptionist- SHIRLEY RODGERS
Reading Radiologist- ANDREW K ANDERSON-MD
Releasing Radiologist- ANDREW K ANDERSON-MD
Released Date Time- 07/01/11 1704

FINAL

Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Date:	Name	Acct. #	Financial Class
07/07/11	FRAMPTON, ALEXANDER C	11182-01235	W - WORKER'S COMPEN
Sex	Birth Date Age	Adm Date	Dsch Date LOS
M	██████/65 46Y	07/01/11	07/01/11 1

Attending Physician
BAILEY-MD, BYRON N
Coder:

Discharge Status
H - H_OUTPT-SENT HOME

MDC: 08 DISEASES/DISORDERS OF THE MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
DRG: 552 MEDICAL BACK PROBLEMS W/O MCC

OUTLIER STATUS: N/A

DIAGNOSIS DESCRIPTION/POA
1. (P) 723.1 CERVICALGIA/

DIAGNOSIS DESCRIPTION/POA
2. V45.4 ARTHRODESIS STATUS/

Reason for Visit: 723.1 CERVICALGIA

PROCEDURE	DESCRIPTION	DATE	SURGEON NAME
-----------	-------------	------	--------------

HCPCS	DESCRIPTION	MODIFIER(S)	DATE	SURGEON	PRE APC
-------	-------------	-------------	------	---------	---------

Bon Secours St. Francis Hospital Imaging Services

Name: FRAMPTON, ALEXANDER C
Exam Date: 11/22/11 1334
Ord. Phy.: BAILEY-MD, BYRON N

MR#: C000655963
DOB: [REDACTED]/65
Pt. Phone#: [REDACTED]
Ord. Phy.#: (843) 723-8823
Phy. Fax #: 8437228124

BAILEY-MD, BYRON N
2145 HENRY TECKLENBURG
SUITE 220
CHARLESTON SC 29414

Acct_Nbr : C1132601225
Pat_Type : OPC

Chk-in #	Order	Exam	
2932851	0001	30290	XR SPINE CERVICAL 2 OR 3 VIEWS
			Ord Diag: CERVICAL SPONDYLOSIS

CERVICAL SPINE: 11/22/11

AP and lateral views of the cervical spine were obtained. Post surgical changes are noted at C5-C6-C7. Anterior plate and screw device is noted. Normal anatomic alignment is seen.

IMPRESSION:

Post surgical changes noted with normal anatomic alignment.

aw

Transcriptionist- MARY A WEST
Reading Radiologist- MICHAEL N BAGG-MD
Releasing Radiologist- MICHAEL N BAGG-MD
Released Date Time- 11/23/11 1354

FINAL

Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Date:	Name	Acct. #	Financial Class
11/23/11	FRAMPTON, ALEXANDER C	11326-01225	W - WORKER'S COMPEN
Sex	Birth Date Age	Adm Date	Dsch Date LOS
M	██████/65 46Y	11/22/11	11/22/11 1

Attending Physician
BAILEY-MD, BYRON N
Coder: WJ

Discharge Status
H - H_OUTPT-SENT HOME

MDC: 08 DISEASES/DISORDERS OF THE MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
DRG: 552 MEDICAL BACK PROBLEMS W/O MCC

OUTLIER STATUS: N/A

DIAGNOSIS DESCRIPTION/POA
1. (P) 721.0 CERVICAL SPONDYLOSIS/

DIAGNOSIS DESCRIPTION/POA
2. V45.4 ARTHRODESIS STATUS/

Reason for Visit:

PROCEDURE DESCRIPTION

DATE

SURGEON NAME

HCPCS DESCRIPTION

MODIFIER(S)

DATE

SURGEON

PRE APC

PRIN: 50-1Y: franwe DATE 11/26/2014
208

Date:	Name	Acct. #	Financial Class
09/03/12	FRAMPTON, ALEXANDER C	12242-01103	W - WORKER'S COMPEN
Sex	Birth Date Age	Adm Date	Dsch Date LOS
M	██████/65 47Y	08/29/12	08/29/12 1
Attending Physician		Discharge Status	
TRAGESER-PA, ROSE S		H - H_OUTPT-SENT HOME	
Coder: MM			

MDC: 08 DISEASES/DISORDERS OF THE MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
DRG: 552 MEDICAL BACK PROBLEMS W/O MCC

OUTLIER STATUS: N/A

DIAGNOSIS DESCRIPTION/POA
1. (P) 723.1 CERVICALGIA/

DIAGNOSIS DESCRIPTION/POA
2. V45.4 ARTHRODESIS STATUS/

Reason for Visit: 723.1 CERVICALGIA

PROCEDURE DESCRIPTION

DATE

SURGEON NAME

HCPCS DESCRIPTION

MODIFIER(S)

DATE

SURGEON

PRE APC

Bon Secours St. Francis Hospital Imaging Services

Name: FRAMPTON, ALEXANDER C
Exam Date: 04/17/13 0924
Ord. Phy.: BAILEY-MD, BYRON N

MR#: C000655963
DOB: [REDACTED] /65
Pt. Phone#: [REDACTED]
Ord. Phy.#: (843) 723-8823
Phy. Fax #: 8436068059

BAILEY-MD, BYRON N
2145 HENRY TECKLENBURG
SUITE 220
CHARLESTON SC 29414

Acct_Nbr : C1310700729
Pat_Type : OPC

Chk-in #	Order	Exam	
3311368	0001	30290	XR SPINE CERVICAL 3 OR LESS VWS
			Ord Diag: 721.0-CERVICAL SPONDYLOSIS

Cervical spine AP, lateral: 04/17/13

COMPARISON: November 22, 2011

INDICATION: 721.0; CERVICAL SPONDYLOSIS,

FINDINGS:

The patient is status post ACDF C5-C6-C7 as noted previously. No change in anatomic alignment. Maturity of the intervertebral body bone plugs noted. No evidence for hardware loosening. Nonoperative levels maintain proper alignment. Prevertebral soft tissues normal in thickness.

IMPRESSION:

Stable satisfactory postoperative alignment status post ACDF C5-C6-C7.

Transcriptionist- JOHNNY P CAMPBELL-MD
Reading Radiologist- JOHNNY P CAMPBELL-MD
Releasing Radiologist- JOHNNY P CAMPBELL-MD
Released Date Time- 04/17/13 0948

FINAL

Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Date:	Name	Acct. #	Financial Class
04/19/13	FRAMPTON, ALEXANDER C	13107-00729	W - WORKER'S COMPEN
Sex	Birth Date Age	Adm Date	Dsch Date LOS
M	██████/65 47Y	04/17/13	04/17/13 1

Attending Physician
BAILEY-MD, BYRON N
Coder: SMB

Discharge Status
H - H_OUTPT-SENT HOME

MDC: 08 DISEASES/DISORDERS OF THE MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
DRG: v30.0 (I9) 552 MEDICAL BACK PROBLEMS W/O MCC

OUTLIER STATUS: N/A

DIAGNOSIS	DESCRIPTION/POA	DIAGNOSIS	DESCRIPTION/POA
1. (P) 721.0	CERVICAL SPONDYLOSIS/	2. V45.4	ARTHRODESIS STATUS/

Reason for Visit: 721.0 CERVICAL SPONDYLOSIS

PROCEDURE	DESCRIPTION	DATE	SURGEON NAME
-----------	-------------	------	--------------

HCPCS	DESCRIPTION	MODIFIER(S)	DATE	SURGEON	PRE APC
-------	-------------	-------------	------	---------	---------

Date:	Name	Acct. #	Financial Class
06/19/14	FRAMPTON, ALEXANDER C	14168-01080	B - BLUE CROSS
Sex	Birth Date Age	Adm Date	Dsch Date LOS
M	██████/65 49Y	06/17/14	06/17/14 1

Attending Physician: DAVIS-MD, JOHN P
Coder: NAC

Discharge Status: H - H_OUTPT-SENT HOME

MDC: 5
DRG: v31.0 (I9) 313 CHEST PAIN

OUTLIER STATUS: N/A

DIAGNOSIS	DESCRIPTION/POA	DIAGNOSIS	DESCRIPTION/POA
1. (P)	786.50 CHEST PAIN NOS/	2. s	518.0 PULMONARY COLLAPSE/

Reason for Visit: 786.50 CHEST PAIN NOS

PROCEDURE	DESCRIPTION	DATE	SURGEON NAME
-----------	-------------	------	--------------

HCPCS	DESCRIPTION	MODIFIER(S)	DATE	SURGEON	PRE APC
-------	-------------	-------------	------	---------	---------

Bon Secours St. Francis Hospital Imaging Services

Name: FRAMPTON, ALEXANDER C
Exam Date: 06/17/14 1327
Ord. Phy.: DAVIS-MD, JOHN P

MR#: C000655963
DOB: [REDACTED] 65
Pt. Phone#: [REDACTED]
Ord. Phy.#: (843) 763-3700
Phy. Fax #: (843) 763-3714

DAVIS-MD, JOHN P
**2270 ASHLEY CROSSING DR
SUITE 170
CHARLESTON SC 29407

Acct Nbr : C1416801080
Pat_Type : OPC

Chk-in #	Order	Exam	
3626576	0001	30146	XR CHEST PA/LAT TWO VIEWS
			Ord Diag: 786.50-CHEST PAIN NOS

CHEST PA AND LATERAL: 06/17/14

COMPARISON: 7/31/2008

INDICATION: 786.50: CHEST PAIN NOS,

FINDINGS: The patient is slightly rotated. The lung volumes are slightly diminished. The cardiac silhouette is not enlarged. The central hilar vasculature is normal. Minor platelike density is demonstrated within the left lung base. No pleural effusions are seen.

IMPRESSION: Minor atelectatic change left lung base. No additional active disease demonstrated.

Transcriptionist- JAMES D WELLS-III
Reading Radiologist- JAMES D WELLS-III
Releasing Radiologist- JAMES D WELLS-III
Released Date Time- 06/17/14 1336

FINAL

Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

PRIN: 55 BY: franwe DATE 11/26/2014
213

Bon Secours St Francis Hospital

ADMISSION RECORD

MED REC #	ADMISSION DATE/TIME		DISCHARGE DATE/TIME		SERVICE	STATION	ROOM NO	PAT TYPE	F.C.	BLIACCT #		
	000655963		08/28/14 1348		N/A		MED	OPC	-	OPC	B	14240-01306
LOCATION(S)	REL		PAT. CLA		PUBVAL	LNG	SEX	RACE	MS	DATE OF BIRTH	AGE	
	RAD		BAP		/	N	K	M	W	M	/65 49Y	
PATIENT	PATIENT NAME AND ADDRESS		SOC SEC NO		PATIENT EMPLOYER				TELEPHONE NO.			
	FRAMPTON, ALEXANDER C [REDACTED]		[REDACTED]		SC DEPT OF NAT RESOU				(843) 953-9307			
GUARANTOR	GUARANTOR NAME AND ADDRESS		SOC SEC NO		GUARANTOR EMPLOYER				TELEPHONE NO.			
	FRAMPTON, ALEXANDER C 2431 ROYAL OAK DR JOHNS ISLAND SC 29455		250-31-2858 TELEPHONE NO. (843) 870-5554 RELATION SELF		SC DEPT OF NAT RESOURCES				(843) 953-9307			
INSURANCE	INSURANCE 1				INSURANCE 2							
	BCBS STATE HEALTH PLAN PO BOX 100605 COLUMBIA SC 29260-0605 ZCS27344721 FRAMPTON, ALEXANDER											
MISC	IN CASE OF EMERGENCY NOTIFY				SPOUSE				OTHER			
	FRAMPTON, LISA HM: (843) 568-9089				WK: (843) 568-9089				HM: WK:			
ADM DXP	PRESENTING COMPLAINT				ARRIVAL MODE				ADM TYPE/SOURCE			
	721.0-CERVICAL SPONDYLOSIS				WALKIN/A				3, 1			
ADMITTING DOCTOR	ATTENDING DOCTOR		REFERRING DOCTOR		PRIMARY CARE DOCTOR							
	BAILEY-MD, BYRON N		BAILEY-MD, BYRON N		BAILEY-MD, BYRON N		DAVIS-MD, JOHN P					
ALERTS	PREVIOUS ADM DATE		OPT	DIR	FND	MKT	PHN	PRIMARY	ALT.	BY		
NO NONE	06/17/14		OUT	No		X	MSG	Yes		IL		
FOR EMERGENCY DEPARTMENT USE ONLY												
ALLERGIES												
LMP# TEMP# RESP# PULSE# B/P# TIME SIGNATURE												
PRINCIPLE DIAGNOSIS												
										DRG		
OTHER DIAGNOSIS(ES)										CODE(S)		
PRINCIPAL OPERATION/PROCEDURE:												
OTHER OPERATION(S)/PROCEDURE(S):												
Outpatient SF												

☐ OPERATIVE SUMMARY
DICTATED

☐ DISCHARGE SUMMARY
DICTATED

PHYSICIAN SIGNATURE: _____

DATE _____

Bon Secours St. Francis Hospital Imaging Services

Name: FRAMPTON, ALEXANDER C
Exam Date: 08/28/14 1353
Ord. Phy.: BAILEY-MD, BYRON N

MR#: C000655963
DOB: [REDACTED] 65
Pt. Phone#: [REDACTED]
Ord. Phy. #: (843) 723-8823
Phy. Fax #: 8436068059

BAILEY-MD, BYRON N
2145 HENRY TECKLENBURG
SUITE 220
CHARLESTON SC 29414

Acct_Nbr : C1424001306
Pat_Type : OPC

Chk-in #	Order	Exam	
3681193	0001	30290	XR SPINE CERVICAL 2-3 VW Ord Diag: 721.0-CERVICAL SPONDYLOSIS

CERVICAL SPINE SERIES

DATE: 08/28/14

INDICATION: 721.0: CERVICAL SPONDYLOSIS

COMPARISON: 4/17/2013

FINDINGS:

Cervical vertebral body heights are maintained. There is no evidence of aggressive osseous lesion.

C2-C3: Disc height is reasonably well-maintained.

C3-C4: Disc height is reasonably well-maintained.

C4-C5: Minimal loss of disc height.

C5-C6: Remote ACDF, features suggesting osseous fusion across the disc space.

C6-C7: Remote ACDF, features suggesting osseous union across the disc space.

C7-T1: Detail is essentially precluded by overlap from the patient's shoulders. The swimmer's view suggests there may be grade 1 anterolisthesis, however.

IMPRESSION:
FINAL

Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Bon Secours St. Francis Hospital Imaging Services

Name: FRAMPTON, ALEXANDER C
Exam Date: 08/28/14 1353
Ord. Phy.: BAILEY-MD, BYRON N

MR#: C000655963
DOB: [REDACTED] 65
Pt. Phone#: [REDACTED]
Ord. Phy.#: (843) 723-8823
Phy. Fax #: 8436068059

BAILEY-MD, BYRON N
2145 HENRY TECKLENBURG
SUITE 220
CHARLESTON SC 29414

Acct Nbr : C1424001306
Pat Type : OPC

Checkin-Exam Code Summary
3681193-30290

1. Prior ACDF at C5-C6 and C6-C7, features suggesting osseous fusion across the disc spaces.
2. At C7-T1, detail is mostly precluded by overlap from the patient's shoulders, although there is probably grade 1 anterolisthesis.

Transcriptionist- ANDREW K ANDERSON-MD
Reading Radiologist- ANDREW K ANDERSON-MD
Releasing Radiologist- ANDREW K ANDERSON-MD
Released Date Time- 08/28/14 1603

FINAL

Page 2

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Date:	Name	Acct. #	Financial Class
09/02/14	FRAMPTON, ALEXANDER C	14240-01306	B - BLUE CROSS
Sex	Birth Date Age	Adm Date	Disch Date LOS
M	██████/65 49Y	08/28/14	08/28/14 1

Attending Physician Discharge Status
BAILEY-MD, BYRON N H - H_OUTPT-SENT HOME
Coder: MM

MDC: 8
DRG: v31.0 (I9) 552 MEDICAL BACK PROBLEMS W/O MCC

OUTLIER STATUS: N/A

DIAGNOSIS	DESCRIPTION/POA	DIAGNOSIS	DESCRIPTION/POA
1. (P) 721.0	CERVICAL SPONDYLOSIS/	3. V45.4	ARTHRODESIS STATUS/
2. 781.91	LOSS OF HEIGHT/		

Reason for Visit: 721.0 CERVICAL SPONDYLOSIS

PROCEDURE	DESCRIPTION	DATE	SURGEON NAME
-----------	-------------	------	--------------

HCPCS	DESCRIPTION	MODIFIER(S)	DATE	SURGEON	PRE APC
-------	-------------	-------------	------	---------	---------

Received by CorVel Corporation 12/4/2012, 7:15:48 AM Pacific Time, 2069, Page 2 of 6
 12-04-12:10:22AM: adams-devicement

2 / 5

CareIQ

A CORVEL NETWORK

CareIQ Therapy Program
 301 Pennsylvania Parkway, Suite 210
 Indianapolis, IN 46280

Return to Work Questionnaire and Goals

Provider Name: Rehabilitation Centers of Charleston
 Patient's Name: Alexander Frampton
 Body Part: Vertebrae - Spinal Cord
 Service: Physical Therapy

Claim #: 032011001906
 Date of Injury: 06/16/2011
 Today's Date: 11/8/2012

To be completed by patient and therapist on first visit (or as soon as possible, if received after 1st visit).

Completed By Patient: (Subjective Report)

Please circle the number that best represents your current pain level
 No Pain 0.....1.....2.....3.....4.....5.....6.....7.....8.....9.....10 Emergency Room Pain

Job Title:

Previous Work Status:



Full Time



Part time

Last Day worked (if off duty):

Current Work Status:



Full Duty



Off Duty



Modified Duty: Restrictions:

In one hour of FULL duty, how long do you typically do the following activities:

Sit:	☐ 0-15 min	☒ 15-30 min	☐ 30-45 minutes	☐ 45 minutes-1 hour
Kneel:	☒ 0-15 min	☐ 15-30 min	☐ 30-45 minutes	☐ 45 minutes-1 hour
Walk/Stand:	☒ 0-15 min	☒ 15-30 min	☐ 30-45 minutes	☐ 45 minutes-1 hour
Run:	☒ 0-15 min	☐ 15-30 min	☐ 30-45 minutes	☐ 45 minutes-1 hour

How much weight do you push/pull?

Less than 30 lbs

How much weight do you lift?

30 Floor to waist

Waist to Shoulder

Shoulder to Overhead

How many times?

25

How many times?

25

How many times?

25

How many times?

25

How many times do you do the following in one hour of full duty?

Squat: 4 Times

Climb stairs or ladders: 2 Times

Reach: 10 Times

Do you have concerns about physically performing your job?



Yes



No

Are you anticipating returning to your same job position?



Yes



No

Completed By Therapist: Please use this form to assist the patient in returning to work by setting goals to address the above demands as given in the patient's subjective report of his/her job duties. Indicate FUNCTIONAL GOALS only.

To be met in _____ weeks

1. Vertical extension isometric strength to strong resistance to allow for return to PLOF
2. Sitting in proper upright posture for 20 min 2 x/10 pain on VAS.
- 3.

My therapist has reviewed my job functions and return to work goals with me.

[Signature]
 Patient Signature
[Signature]
 Therapist Signature

12/3/12
 Date
 12/3/12
 Date

RCC

Initial Evaluation

Visit Date:	12/3/2012
Name:	Frampton, Alexander
Number:	1000057352
DOB:	1985
Total Visits:	1
Initial Visit Date:	12/3/2012

Problems:

<Problem Site Not Selected>

Referral:

Bailey, Byron

Diagnosis:

PAIN - Neck - Cervical (723.1)

Insurance:

CAREIQ THERAPY PROGRAM/CORVEL

Date of Onset: 8/16/2011**Past Medical History**

Patient is a 47 year-old female who presents to Physical Therapy for evaluation and treatment of: cervical spine spondylosis

Current History/Treatment: Chief complaint is neck pain. Sudden onset. Pt reports the cause to be from whiplash when riding in a truck. He feels the current problem is improving. He describes the pain as sore. The pain is constant. The pain does wake up the pt at night. He rates his current level of functioning at 60% compared to prior level of function.

Past History/Treatment: Pt reports he has not suffered any previous injuries related to this problem.

DOI: approximately 2 years prior

DOS: 1.5 years prior (ACDF)

Please refer to body chart for area and behavior symptoms.

Pain scale (VAS) where 0= no pain and 10= severe pain:

Best: 4

Worst: 7

Now: 4

Aggravation Factors/functional limitations: prolonged sitting

Easing Factors: standing

24 Hour Pattern: the pain is activity related (no difference over a 24 hour period)

Work duties/recreation/hobbies: pt working full-time (law enforcement)

Previous Level of Function: pt able to prolong sit >20 min with proper sitting posture pain-free

Home environment: pt lives with spouse who is willing to support and is able to assist pt; support structure is good

General Health: HTN, excessive body weight; pt rates his general health as good; pt is not a regular exerciser

Meds: Please refer to PMHx for current medications.

Observation

Direct Treatment Time = 53 min

Total Treatment Time = 60 min

Please refer to the following objective findings recorded during the patient's evaluation.

Observation

Patient: Frampton, Alexander (Pats:1000057352) for 12/3/2012 Visit

Page 1

Seated Posture: cervical spine and shoulders protracted
 Alignment of neck: upper cervical spine extension and lower cervical spine flexion
 Painful Motions: cervical spine flexion
 Palpation: tight posterior cervical spine musculature
 Strength: weak cervical spine isometric strength
 Reflexes: to be assessed
 Sensation: Intact to light touch
 Special Tests:
 Spurlings A: B/L negative
 Distraction/Compression: compression negative; distraction to be assessed
 ULTT A: not assessed
 Vertebral Artery: negative

Prescribed pt HEP with explanation, practice, and feedback. HEP includes chin tuck isometric strengthening, cervical spine retraction isometric strengthening, shoulder retraction AROM, and cervical spine retraction AROM. Also prescribed neck release with tennis ball. Pt performed exercises correctly with cueing and prompting without adverse effects.

Objective Finding	Initial	Last Measurement	Goal
Spine - Cervical Vertebral Artery Test	no		
Cervical AROM Extension (%of movement)	75		
Cervical AROM Flexion (%of movement)	50		
Cervical AROM Lt. Rotation (%of movement)	50		
Cervical AROM Rt. Rotation (%of movement)	50		
Cervical Distraction	True		
Postural Deviation - Forward Head	Min		
Postural Deviation - Rounded Shoulders	Min		

Assessment

Patient presents to physical therapy with signs and symptoms consistent with cervical spine spondylosis limiting their ability to perform prolonged sitting. Rehabilitation potential: fair-good
 Potential barriers to patient's ability to reach maximum rehab potential: pt is not a regular exerciser, chronic stage

All short term goals will be met in 2 weeks , by 12/17/12.

All long term goals will be met in 5 weeks , by 1/7/13.

Short-Term Goal(s)

- Patient will demonstrate independence with home exercise program
- Patient will demonstrate proper sitting posture with cervical spine and shoulders retracted to facilitate return to PLOF.

Long-Term Goal(s)

- Patient will demonstrate increased cervical spine retraction isometric strength to strong resistance to allow for return to PLOF.
- Patient will be able to sit for driving, eating, or reading for 20 minutes with 0/10 pain on VAS.

Received by CorVel Corporation 12/4/2012, 7:15:48 AM Pacific Time, 2069, Page 6 of 6

12-04-12:10:22AM: adams-deve cement

5/ 5

Plan

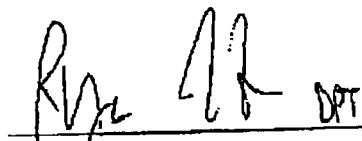
Patient to be seen for 2 times a week for 5 weeks for: cervical spine spondylosis. Focus for next session: cervical spine retraction isometric strengthening and AROM, neck release with tennis ball, postural stretching with foam roll, and may attempt cervical mechanical traction with moist heat

Patient will contact this office if he experiences an exacerbation of symptoms or has any questions concerning the prescribed home program.

Exercise Modality Description	Sets/Reps/ Wk/Duration	Exercise Modality Description	Sets/Reps/ Wk/Duration
C/S Postural Correction	3/20/0/15	C/S ROM Retraction Cervical	3/20/0/15
C/S ROM Retraction Scapular	3/20/0/15	C/S Resisted Scapular Retraction	3/20/0/15
Soft tissue mobilization	0/0/0/15	E-stim Interferential	0/0/0/15

Thank you for your referral. We will keep you up to date of this patient's status.

Sincerely,


Ryan Hine, DPT

Date: 12/3/2012

Patient: Trampton, Alexander (Pat#:1000057352) for 12/3/2012 Visit

Page 3



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Chisholm Frampton

Encounter Date: 6/4/2015

Date of Birth: ■ 1965

Account Number: 842790

Chief Complaint: Mr. Frampton is seen for evaluation of neck and bilateral arm pain.

History of Present Illness: This man is a law enforcement game warden for the South Carolina Department of Natural Resources. Colonel Frampton has pain into his neck, into his shoulders, and into his arms. He was working in a plowed field in September of 2010. He was noted to have bilateral radiculopathy at C6-7. It was particularly significant on the right side. He underwent surgical intervention per Dr. Byron Bailey who is a neurosurgeon at Roper St. Francis Hospital, and this involved anterior discectomy and interbody fusion at the C5-6 and C6-7 levels.

The surgery was technically successful. He has continued to have pain in his neck. It bothers him most when he is riding in a truck. The pain does wake him up at night occasionally; and he has been recommended postoperative for physical therapy, which has been somewhat beneficial. He ultimately was noted to have decreased range of motion in his neck per Dr. Bailey postoperatively. He postoperatively was noted by Dr. Bailey to have developed changes of spondylosis at the C4-5 level, and on 4/17/2013 Dr. Bailey stated that: "Patient has a stable-appearing X-ray and clinical exam. He has reached maximal medical improvement at this time. However, he will continue to have cervical symptoms that we will restrict his activity. He will continue to need follow-up with annual X-rays and periodic MRI scans. He is at risk for transitional changes particularly at the C4-5 level. I would estimate that his impairment rating for his cervical spine to be 20 percent."

Dr. Bailey saw the patient on 8/29/2014. He noted that the patient continued to have neck pain, decreased range of motion, difficulty with neck extension and right-sided rotation with intermittent numbness and tingling into the upper extremities. Dr. Bailey stated that: "It is likely that he will develop transitional stenosis and require additional surgery in the future." On 9/2/2014 he noted that "he had a 26-percent impairment to the whole person and was ascribed a 75-percent impairment to the cervical spine."

Past Medical History: hypertension

Current Medications: quinapril 20 mg tablet Oral, Celexa 10 mg tablet Oral

Drug Allergies: No known allergies

Physical Examination: On physical examination, he has a well-healed scar. He has pain with rotation of his neck. He has some diminution of thumb extension strength bilaterally right greater than left. His biceps and triceps reflexes are diminished bilaterally. He has positive Spurling's test with limited rotation and extension of his neck to the right.

Imaging Findings: MRI report shows evidence of disc disruption at the C5-6 and C6-7 levels with prominent foraminal stenosis at C5-6 and C6-7. He does have on X-rays postoperatively reviewed from 5/11/2015 evidence of what

DIGITALLY SIGNED Steven C. Poletti, MD
6/16/2015

1 of 2

Patient Name: Frampton, Chisholm

Account number: 842790

DOB: [REDACTED] 1965

Encounter Date: 6/4/2015

would appear to be a solid ankylosis at C5-6 and C6-7 with signs of osteophyte formation at C4-5 and interval development of what would appear to be a grade 1 spondylolisthesis at C7-T1.

Diagnosis Codes:

723.1 CERVICALGIA

Impression: Cervical radiculopathy status post cervical fusion with adjacent-segment disc disruption C4-5 and C7-T1

Treatment Plan: I'm in agreement with Dr. Bailey that this man had an appropriate need for surgical intervention and underwent two-level discectomy and interbody fusion. He has changes of degeneration or adjacent-segment problems at C4-5 and evidence of what would appear to be potential instability at C7-T1. I'm in agreement with Dr. Bailey that this man will require future surgery in the form of extension of his fusion. I personally think it might be the C7-T1 level that bothers him first, but it certainly could be the C4-5 level as Dr. Bailey has opined.

With regards to his impairment, he has some measure of impairment as a consequence of segmental instability with radiculopathy. Dr. Bailey has actually given the patient two separate whole-person impairment ratings, one of 20 percent and one of 26 percent. When looking at the American Medical Association Guide for Permanent Impairment, he would correspond to DRE Cervical Category IV. I would put him at the higher end of this impairment or 28 percent to the whole person because this is a two-level spinal fusion. In addition, I would estimate that this man has sensory deficit to the C6 level. Per table 16-3, C6 and C7 have a maximum impairment of 13 percent for persistent sensory deficit or pain. I think 5 percent would be a reasonable impairment that he should have as a consequence of loss of strength and sensation in the C6-7 distribution. This would be additional impairment based on loss of use to the upper extremities as a consequence of injuries sustained and subsequent surgery. I would ascribe his total numerical impairment as 33 percent to the whole person. Again, this is per the AMA Guides.

I'm in agreement with Dr. Bailey that this man requires ongoing follow-up, periodic scanning, and potentially will require surgery in the future. It would involve extension of his fusion as Dr. Bailey has opined.

I think this man has gotten comprehensive care from Dr. Bailey. I believe he did injure his neck while walking through the uneven plowed field as described and would note that he has had an ideal technical result for severe spinal cord compression and nerve injury. I would be glad to see him back at any time.

The patient is instructed to return if pain or symptoms arise.

Steven C. Poletti, MD

SCP/dmp

CC: John C. Land, III, Esquire

DIGITALLY SIGNED Steven C. Poletti, MD

6/16/2015

2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Chisolm Frampton,)

Claimant,)

-vs-)

SC Department of Natural
Resources,)

Employer,)

-and-)

South Carolina State Accident
Fund,)

Carrier,)

Defendants.)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1012533

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE

TO: South Carolina Workers' Compensation Commission and John C. Land, III, Esq.,
attorney of record for Chisolm Frampton

YOU ARE HEREBY NOTIFIED THAT Kirsten L. Barr, pursuant to the provisions
of the South Carolina Workers' Compensation Act, S. C. Code Ann. § 41-1-160, *et seq.*
and the South Carolina Administrative Procedures Act, S. C. Code Ann. § 1-23-330,
herewith submits the following evidence on behalf of the Defendants, to wit:

EXHIBITS # DESCRIPTION DATES PAGES

8	<u>Geathers v. 3V, Inc.,</u> 371 S.C. 570, 641 S.E.2d 29 (2007)	1/29/07	66-72
9	HR Payroll Records	9/28/19—6/12/15	73-75
10	Leave Statements	12/1/2010—6/30/15	76-81

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 purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Col. Alvin A. Taylor

Ms. Terri McGee

Ms. Stephanie Welsh

Other representative of the South Carolina Department of Natural Resources

Dr. Byron Bailey* (via deposition on August 25, 2015)

Kirsten L. Barr

Kirsten L. Barr
Attorney for the Defendants

Date: July 3, 2015

151/81\nnotice

Westlaw

641 S.E.2d 29

Page 1

371 S.C. 570, 641 S.E.2d 29
(Cite as: 371 S.C. 570, 641 S.E.2d 29)

C
Geathers v. 3V, Inc.
S.C., 2007.

Supreme Court of South Carolina.
Martha GEATHERS, Claimant.

v.

3V, INC., Employer,
and EBI Companies and Liberty Mutual Insurance
Company, Carriers/Defendants,
of whom EBI Companies is the Petitioner,
and Liberty Mutual Insurance Company is the
Respondent.
No. 26254.

Heard Dec. 7, 2006.
Decided Jan. 29, 2007.

Background: Workers' compensation claimant filed a claim for benefits for two successive injuries to her back and leg. A single commissioner determined that both injuries were compensable and ordered initial insurer carrier to pay benefits between the date of the first and second accident, and ordered initial insurer and subsequent insurer to share equally in all casually related benefits for the date of the second accident forward. Initial insurer appealed. The Workers' Compensation Commission affirmed. Initial insurer appealed. The Circuit Court, Georgetown County, Benjamin H. Culbertson, J., reversed. The Court of Appeals reversed and reinstated the Commission decision. Initial insurer filed a petition for a writ of certiorari.

Holdings: The Supreme Court, Burnett, J., held that:

(1) the last injurious exposure rule applied to determine which insurer was responsible to pay claimant's benefits, and

(2) the principle espoused in *Gordon v. E.I. Du Pont Nemours and Co.*, which provided that where a

pre-existing non-disabling injury was aggravated with resulting disability, the disability was compensable, applied to claimant's request for benefits.

Reversed.
West Headnotes

[1] Workers' Compensation 413 ⇐ 1910

413 Workers' Compensation
413XVI Proceedings to Secure Compensation
413XVI(T) Review by Court
413XVI(T)12 Scope and Extent of
Review in General
413k1910 k. In General. Most Cited
Cases
Appellate review of workers' compensation decisions is governed by the Administrative Procedures Act.

[2] Workers' Compensation 413 ⇐ 1704

413 Workers' Compensation
413XVI Proceedings to Secure Compensation
413XVI(P) Hearing or Trial
413XVI(P)3 Questions of Law and Fact
413k1704 k. In General. Most Cited
Cases
The full Workers' Compensation Commission is the ultimate fact finder in workers' compensation cases.

[3] Workers' Compensation 413 ⇐ 1074

413 Workers' Compensation
413XI Insurance and Public Funds
413XI(D) Private Insurance
413k1074 k. Successive Insurers. Most
Cited Cases
The last injurious exposure rule, which placed full liability upon insurer covering the risk at the time of the most recent injury that bore a causal relation to the disability, applied to determine which insurer

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

641 S.E.2d 29

371 S.C. 570, 641 S.E.2d 29
(Cite as: 371 S.C. 570, 641 S.E.2d 29)

Page 2

was responsible to pay workers' compensation claimant's benefits for second injury; statute favored placing sole liability on a single insurer, and regulations instructed the Workers' Compensation Commission to presume that the policy with a later effective date was in force when duplicate or dual coverage existed. Code 1976, § 42-9-430.; S.C. Code of Regulations R. 67-409.

[4] Workers' Compensation 413 ⇐845

413 Workers' Compensation

413IX Amount and Period of Compensation

413IX(B) Compensation for Disability

413IX(B)1 In General

413k845 k. Previously Impaired

Condition. Most Cited Cases

South Carolina has neither statute nor case law authorizing the apportionment of workers' compensation benefits in successive injury cases.

[5] Workers' Compensation 413 ⇐1074

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1074 k. Successive Insurers. Most

Cited Cases

When a worker suffers successive workplace injuries with an intervening change of employers or change of insurance carriers by the same employer, the last injurious exposure rule places full liability upon the carrier covering the risk at the time of the most recent injury that bears a causal relation to the disability.

[6] Workers' Compensation 413 ⇐1074

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1074 k. Successive Insurers. Most

Cited Cases

Consistent with the rule that an employer takes its employee as it finds her, the last injurious exposure rule makes the insurer at risk at the time of the second injury liable even if the second injury would have been much less severe in the absence of the prior condition and even if the prior injury

significantly contributed to the final condition.

[7] Workers' Compensation 413 ⇐1074

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1074 k. Successive Insurers. Most

Cited Cases

When a worker suffers successive workplace injuries with an intervening change of employers or change of insurance carriers by the same employer, if the second injury is merely a recurrence of the first injury, then the insurer on the risk at the time of the original injury remains liable for the second.

[8] Workers' Compensation 413 ⇐564

413 Workers' Compensation

413VIII Injuries for Which Compensation May Be Had

413VIII(A) Nature and Character of Physical Harm

413VIII(A)4 Aggravation of Previously Impaired Condition

413k564 k. Prior Injuries. Most Cited

Cases

The principle espoused in *Gordon v. E.I. Du Pont Nemours and Co.*, which provided that where a pre-existing non-disabling injury was aggravated with resulting disability, the disability was compensable, applied to workers' compensation claimant's request for benefits; claimant suffered a non-disabling back injury during a workplace accident, claimant's disability was caused by a second workplace accident, and the second injury aggravated, accelerated, or activated the pre-existing condition.

***30** Kirsten L. Barr, of Trask & Howell, LLC, of Mt Pleasant, for Petitioner.

Pope D. Johnson, III, of McCutchen, Blanton, Johnson & Barnette, LLP, of Columbia, for Respondent.

Justice BURNETT:

***573** EBI Companies (EBI) argues the Court of Appeals erred in reinstating the decision of the South Carolina Workers' Compensation

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

641 S.E.2d 29

Page 3

371 S.C. 570, 641 S.E.2d 29
(Cite as: 371 S.C. 570, 641 S.E.2d 29)

Commission to apportion liability between EBI and Liberty Mutual Insurance Company (Liberty) for successive injuries to Martha Geathers (Claimant). Op. No. 2004-UP-542 (S.C. Ct.App. filed October 26, 2004). We agree and reverse.

FACTUAL/PROCEDURAL BACKGROUND

In the course of Claimant's employment with 3V, Inc. (Employer), she suffered successive accidental injuries to her back and **31 leg. Her first injury occurred on July 20, 1999. Employer's workers' compensation insurance carrier at the time of this accident was EBI. Claimant returned to work August 24, 1999. She was placed on light duty for two months before she returned to full duty. Claimant testified Dr. Wilkins released her from his care in January 2000, because she reached maximum medical improvement.

Claimant's second injury occurred on May 11, 2000. Employer's workers' compensation insurance carrier at the time of this injury was Liberty. Claimant returned to work on May 23, 2000, and assumed light duty. Employer sent Claimant home two days later because it did not have any more light duty work for her. Claimant has not worked since that time and has not applied for any other jobs.

Claimant filed for workers' compensation benefits for the first injury. Employer and EBI admitted Claimant sustained an injury, but denied benefits because she had reached maximum medical improvement. Claimant then filed a second claim for benefits for the second injury. EBI and Liberty denied benefits, maintaining Claimant's injuries were attributable to her first accident.

At the hearing before the Single Commissioner, EBI argued: (1) Claimant's injuries from the first accident were no longer compensable because she had reached maximum medical improvement; (2) Dr. Wilkins released Claimant from his *574 care in January 2000; and (3) Claimant's injuries from the second accident were not the same as her injuries from the first. Liberty argued Claimant never reached maximum medical improvement and EBI

should share liability with Liberty for Claimant's current injuries.

Dr. Wilkins gave conflicting testimony regarding Claimant's medical condition. Claimant had no appointments with Dr. Wilkins between her January 2000 visit and her May 2000 injury. However, she did contact him to request prescriptions for pain medication. At the time of the second accident, Claimant continued to experience back pain stemming from the first accident. Although Claimant experienced the same symptoms as the first accident, she testified the symptoms were significantly worse following the second accident.

In his deposition testimony, Dr. Wilkins testified Claimant reached maximum medical improvement in January 2000 when he released her from his care with no restriction on her activity. However, Dr. Wilkins' notes did not reflect a finding of maximum medical improvement. He testified he did not see Claimant again until after her second accident when she complained of the same symptoms she experienced after the first accident.

Also in his deposition testimony, Dr. Wilkins was asked which accident he believed caused Claimant's current condition and he responded, "[T]he problem that she had from the first and from the second and today is all the same problem. The, the ideology [sic] and cause of her pain is the same.... I would consider that the second injury, per say [sic], is, was actually just an aggravation of her initial injury." When asked if Claimant's current condition "flow[ed] from the first accident," Dr. Wilkins responded, "I would say yes ... if she hadn't had the original injury ... I would think it'd be reasonable that she probably would not have had the second injury, which is actually aggravation."

When Dr. Wilkins testified before the Single Commissioner, he attributed Claimant's current condition to the second injury. However, he consistently characterized the second accident as an aggravation of the first, and continually noted the symptoms and complaints were the same for both injuries. *575 Dr. Wilkins identified the first accident as the "proximate cause of the entire thing."

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

641 S.E.2d 29

Page 4

371 S.C. 570, 641 S.E.2d 29
(Cite as: 371 S.C. 570, 641 S.E.2d 29)

The Single Commissioner found both of Claimant's injuries compensable and found Dr. Wilkins had not released Claimant from his care or given his opinion as to maximum medical improvement based on Dr. Wilkins' records. The Single Commissioner found: [The second injury] was intervening, but not totally independent of the [first] accidental injury and that the [second] accidental injury aggravated, exacerbated, and worsened Claimant's condition; and the two injuries from the two accidental injuries are intertwined, indistinguishable, and inseparable beginning May 11, 2000 [the date of the second accident] and remain so as of the date of the hearing.

****32** The Single Commissioner ordered EBI to pay Claimant's benefits for the time period between the first and second accidents, and ordered EBI and Liberty to "share equally in all causally related benefits" from the date of the second accident forward. EBI appealed and the Full Commission affirmed.

EBI appealed to the circuit court which reversed, finding the rule in *Gordon v. E.I. Du Pont Nemours & Co.*, 228 S.C. 67, 76, 88 S.E.2d 844, 848 (1955) (where a non-disabling injury is aggravated with resulting disability, such disability is compensable). The circuit court found no evidence to support the Commission's finding that Dr. Wilkins had not released Claimant as having maximum medical improvement. The circuit court also found the second accident was "clearly distinguishable" from the first accident because Claimant's need for benefits after the second accident was necessitated solely by the second accident. Consequently, Liberty was found to be solely liable for Claimant's entire benefits following the second accident.

The Court of Appeals reversed the decision of the circuit court and reinstated the Commission's decision. The Court of Appeals rejected EBI's argument that *Gordon* controlled because it found substantial evidence to support the Commission's finding Claimant's injuries were "intertwined, indistinguishable, and inseparable." Op. No. 2004-UP-542 (S.C. Ct.App.*576 filed October 26, 2004). We granted Petitioner's petition for writ of certiorari to review the Court of Appeals' decision.

ISSUES

I. Does the South Carolina Workers' Compensation Commission have authority to apportion liability between EBI and Liberty for successive injuries to Claimant?

II. Did the Court of Appeals err in failing to apply the *Gordon v. E.I. Du Pont Nemours & Co.*, 228 S.C. 67, 88 S.E.2d 844 (1955), rule to the facts of this case?

STANDARD OF REVIEW

[1][2] Appellate review of workers' compensation decisions is governed by the Administrative Procedures Act. *Shealy v. Aiken County*, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000); see also *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). The Full Commission is the ultimate fact finder. *Id.* at 455, 535 S.E.2d at 442. Under S.C.Code Ann. § 1-23-380(A)(5) (Act. No. 387, 2006 S.C. Acts 387, eff. July 1, 2006), a reviewing court determines whether the circuit court properly determined whether the full commission's findings of fact are supported by substantial evidence in the record and whether the panel's decision is affected by an error of law. *Baxter v. Martin Bros., Inc.*, 368 S.C. 510, 513, 630 S.E.2d 42, 43 (2006). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." *McCraw v. Mary Black Hosp.*, 350 S.C. 229, 235, 565 S.E.2d 286, 289 (2002).

LAW/ANALYSIS

I. Authority to Apportion

[3] EBI argues the Court of Appeals erred in finding the Commission has the authority to apportion liability for Claimant's second injury and to order EBI to pay benefits related to the second

641 S.E.2d 29

Page 5

371 S.C. 570, 641 S.E.2d 29
(Cite as: 371 S.C. 570, 641 S.E.2d 29)

injury when EBI did not provide coverage for Employer on the date of the second injury. We agree.

A "successive-carrier problem" occurs when a worker suffers successive workplace injuries with an intervening change of employers or change of insurance carriers by the same *577 employer. 9 *Larson's Workers' Compensation Law* § 153.01[1] (2005). There are two possible solutions to the successive-carrier problem.

[4] The apportionment solution has been adopted by many jurisdictions. ^{FN1} The leading **33 case establishing apportionment, *Anderson v. Babcock & Wilcox Co.*, 256 N.Y. 146, 175 N.E. 654, 655 (1931), explains the rationale for the approach:

FN1. See *Employers' Cas. Co. v. U.S. Fid. & Guar. Co.*, 214 Ark. 40, 214 S.W.2d 774 (1948); *Argonaut Ins. Co. v. Indus. Acc. Comm'n*, 231 Cal.App.2d 111, 41 Cal.Rptr. 628 (1964); *Sauer Indus. Contracting Inc. v. Ditch*, 547 So.2d 276 (Fla.Dist.Ct.App.1989); *Johnson v. Bath Iron Works Corp.*, 551 A.2d 838 (Me.1988); *Arender v. Nat'l Sales, Inc.*, 193 So.2d 579 (Miss.1966); *Calabro v. Campbell Soup Co.*, 244 N.J.Super. 149, 581 A.2d 1318 (App.Div.1990); *Butts v. Ward La France Trucking Corp.*, 85 A.D.2d 814, 445 N.Y.S.2d 628 (1981); *Wilkerson Chevrolet, Inc. v. Mackey*, 367 P.2d 162 (Okla.1961); *Merton Lumber Co. v. Indus. Comm'n*, 260 Wis. 109, 50 N.W.2d 42 (1951).

Unjust it is that the second insurer should bear the entire liability when the second accident was related in large measure to the first. No less unjust it is that the first insurer should bear the entire liability if it appears that without the second accident an earlier recovery might have been had.

The problem with this approach is that it is complicated by statutes of limitations, out-of-state employers, and the difficulty of determining the proportion of liability attributable to each insurer.

9 *Larson's Workers' Compensation Law* at §

153.01[2]. South Carolina has neither statute nor case law authorizing the apportionment of workers' compensation benefits in successive injury cases. ^{FN2}

FN2. Cf. S.C.Code Ann. § 42-13-50 (1985) (authorizing the Commission to apportion liability between employers in cases where an employee suffers ionizing radiation injury, disability, or death attributable in part to exposure received in previous employment); *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 599 S.E.2d 604 (Ct.App.2004) (apportionment allowed when claimant suffered one injury while simultaneously employed by two employers).

[5][6][7] The second solution to the successive-carrier problem is called the "last injurious exposure rule" and it is the majority rule. ^{FN3} *Id.* at § 153.02[1]. This rule "places full liability*578 upon the carrier covering the risk at the time of the most recent injury that bears a causal relation to the disability." *Id.* Consistent with the rule that an employer takes its employee as it finds her, the last injurious exposure rule makes the insurer at risk at the time of the second injury liable even if the second injury would have been much less severe in the absence of the prior condition and even if the prior injury significantly contributed to the final condition. *Id.* at § 153.02[2]. However, if the second injury is merely a recurrence of the first injury, then the insurer on the risk at the time of the original injury remains liable for the second. *Id.* at § 153.02[4]. The benefit of the last injurious exposure rule is it "provides a reasonably equitable approach to compensation problems in the multi-employer context which is simple, easy to administer, and avoids the difficulties associated with apportionment." 82 *Am.Jur.2d Workers' Compensation* § 200 (2003).

FN3. See *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368 (Iowa 1985); *Carter v. Avondale Shipyards, Inc.*, 415 So.2d 174 (La.1981); *Aseltine v. Leto*

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

641 S.E.2d 29

Page 6

371 S.C. 570, 641 S.E.2d 29
(Cite as: 371 S.C. 570, 641 S.E.2d 29)

Constr. Co., 43 Mich.App. 559, 204 N.W.2d 262 (Mich.Ct.App.1972); *Jensen v. Kronick's Floor Covering Serv.*, 309 Minn. 541, 245 N.W.2d 230 (1976); *Collett Elec. v. Dubovik*, 112 Nev. 193, 911 P.2d 1192 (1996); *Rose City Van & Storage v. McGuire*, 107 Or.App. 404, 811 P.2d 1387 (1991); *Novak v. C.J. Grossenburg & Son*, 89 S.D. 308, 232 N.W.2d 463 (1975); *Bennett v. Howard Johnsons Motor Lodge*, 714 S.W.2d 273 (Tenn.1986); *Duaine Brown Chevrolet Co. v. Indus. Comm'n*, 29 Utah 2d 478, 511 P.2d 743 (1973).

While South Carolina has not expressly adopted the last injurious exposure rule, both statutory and case law favor adopting the rule rather than the apportionment solution. First, S.C.Code Ann. § 42-9-430 (1985) favors placing sole liability on a single insurer. It states:

Whenever a dispute arises between two or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee pursuant to the provisions of this title and there is no genuine issue of material fact as to the employee's employment, his average weekly wage, the occurrence of an injury, the extent of the injury, and the fact that the injury arose out of and in the scope of the employment, the hearing commissioner may, in his discretion, require the disputing parties involved to pay benefits immediately to the employee and to share equally^{*34} in the payment of those benefits until it is determined which party is solely liable, at which time the liable party must ^{*579} reimburse all other parties for the benefits they have paid to the employee....

Second, 25A S.C.Code Ann. Regs. 67-409 (1976) instructs the Commission to presume the policy with the later effective date is in force "when duplicate or dual coverage exists by reason of two different insurance carriers issuing two policies to the same employer securing the same liability." Finally, a number of cases have applied a version of the last injurious exposure rule and declined to follow the apportionment rule when dealing with occupational diseases. See *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13, 112 S.E.2d 711 (1960)

; *Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 335 S.E.2d 91 (Ct.App.1985); *Hargrove*, 360 S.C. 276, 599 S.E.2d 604.

Since South Carolina has adopted neither the apportionment rule nor the last injurious exposure rule, this case presents a novel issue of law. In the absence of authority permitting apportionment and because existing statutory authority expresses a preference for holding a single insurer liable rather than apportioning liability among multiple insurers, we adopt the last injurious exposure rule. Applying this rule, we find the Court of Appeals erred in apportioning liability for Claimant's second injury.^{FN4}

FN4. The Single Commissioner erred in finding apportionment to be a factual finding. Because of the legal analysis required, it is a legal conclusion.

II. The Gordon Rule

[8] EBI argues the Court of Appeals erred in failing to apply the principle espoused in *Gordon*, that aggravation of a pre-existing condition is compensable. In *Gordon*, this Court held: The rule is well established that where a latent or quiescent weakened, but not disabling, condition resulting from disease is by accidental injury in the course and scope of employment aggravated or accelerated or activated, with resulting disability, such disability is compensable. The same principle is equally applicable where the latent, but not disabling, condition has resulted from a prior accidental injury. If the disability is proximately caused by the subsequent^{*580} accidental injury, compensability is referable to that, and not the earlier one.

Id. at 76, 88 S.E.2d at 848 (internal citations omitted). The Court of Appeals declined to follow *Gordon* because of the "factual-driven nature of the *Gordon* decision." On the contrary, the *Gordon* rule is "well established"^{FN5} and the Court of Appeals erred in limiting *Gordon* to its facts.

641 S.E.2d 29

Page 7

371 S.C. 570, 641 S.E.2d 29
(Cite as: 371 S.C. 570, 641 S.E.2d 29)

FN5. The rule is based on five published opinions and American Jurisprudence: *Cole v. State Highway Dep't*, 190 S.C. 142, 2 S.E.2d 490 (1939); *Green v. City of Bennettsville*, 197 S.C. 313, 15 S.E.2d 334 (1941); *Ferguson v. State Highway Dep't*, 197 S.C. 520, 15 S.E.2d 775 (1941); *Cromer v. Newberry Cotton Mills*, 201 S.C. 349, 23 S.E.2d 19 (1942); *Ducker v. Dunnean Mills*, 218 S.C. 465, 63 S.E.2d 314 (1951); 58 Am.Jur. *Workmen's Compensation* § 278 (1948). It has also been cited three times by this Court: *Kearse v. S.C. Wildlife Res. Dep't*, 236 S.C. 540, 115 S.E.2d 183 (1960); *Arnold v. Benjamin Booth Co.*, 257 S.C. 337, 185 S.E.2d 830 (1971); *Wright v. Graniteville Co.*, 266 S.C. 88, 221 S.E.2d 777 (1976).

The Court of Appeals distinguished Claimant's situation because her injuries were not separate and distinct but "intertwined, indistinguishable, and inseparable." *Gordon*, according to the Court of Appeals, did not apply because it dealt with separate and distinct injuries. The Court of Appeals was correct in determining the Commission's finding of inseparability was supported by substantial evidence. However, such a finding does not preclude the application of *Gordon* because *Gordon* is not limited to its particular facts. *Gordon* applies to the instant case because: (1) Claimant suffered a non-disabling back injury during a workplace accident; (2) Claimant's disability was caused by the second accident; and (3) the second injury "aggravated or accelerated or activated" the pre-existing condition.

Not only does the *Gordon* rule apply to this case, but it also reflects the essence of the last injurious exposure rule which is to hold the insurer on the risk at the time of the second injury solely liable when the second injury aggravates the first injury.

****35 CONCLUSION**

For the foregoing reasons, we reverse the Court of Appeals and reinstate the decision of the circuit court finding Liberty *581 solely liable for

Claimant's benefits following her second injury.

REVERSED.

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.
S.C., 2007.
Geathers v. 3V, Inc.
371 S.C. 570, 641 S.E.2d 29

END OF DOCUMENT

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

235



12/01/2010 to 12/31/2010

Personnel Number	10006292	Name	ALEXANDER C FRAMPTON
Position	LAW ENFORCEMENT OFFICER I	Org. Unit	REGION 4 CAPTAIN
Personnel Area	P240-DEPARTMENT OF NAT	Annual Leave Accrual Date	09/17/1993
Avg. Weekly Working Hrs	40.00		

Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs
Annual Leave	24.00	164.00	Personal Sick Leave	0.00	34.00	Family Sick Leave	0.00	8.00
Adoption Leave	0.00	0.00	Comp. Time	0.00	0.00	Holiday Comp Time	0.00	8.00
Administrative Leave	0.00	0.00	Amer. Red Cross	0.00	0.00	Blood Drive	0.00	0.00
Bone Marrow Donor	0.00	0.00	Court Leave	0.00	0.00	Death Immd Family	0.00	0.00
Hazard Weather	0.00	0.00	Military Leave*	0.00	0.00	Organ Donor Leave	0.00	0.00
Volunt. Leave	0.00	0.00	Leave w/o Pay	0.00	0.00	Voluntary Furlough	0.00	0.00
Mandatory Furlough	0.00	0.00						

Description	Monthly Beginning Balance	Monthly Accrual (+)	Monthly Deduction (-)	Paid, Forfeited, Donated, & Transferred (-)	Adjustments (+/-)	Monthly Ending Balance	YTD Hours Used
Annual Leave	395.84	16.67	24.00	0.00	0.00	388.50	164.00
Sick Leave**	1,392.14	10.00	0.00	0.00	0.00	1,402.14	34.00
Holiday Comp.	0.00	0.00	0.00	0.00	0.00	0.00	8.00

*Includes 15 days, 30 days, and Combat.

**Includes Personal Sick Leave, Family Sick Leave, and Adoption Leave.

1. This leave statement reflects leave that has been requested, approved, and posted to your leave accounts. If your manager has not approved your leave request through MySCEmployee, those leave hours will not be reflected in your balances.
 2. This leave statement only allows rounding of the leave balances, accruals, and deductions to two decimal places. (The monthly accrual of sick leave for 37.5 hour per week employee reflects 9.38 instead of 9.375). Therefore, the balances on this leave statement may reflect a .005 difference from the balance showing in MySCEmployee.
 3. The January beginning balances for sick and annual leave reflect the employee's actual remaining balance from the previous year without any adjustment for maximum carryover. Allowing this amount to remain during the month of January allows agencies to resolve any outstanding leave requests or issues for the previous calendar year. SCEIS, however, calculates leave used during the month of January from your appropriate maximum carryover.
- The language used in this document does not create an employment contract between the employee and the State of South Carolina. This document does not create any contractual rights or entitlements. The State of South Carolina reserves the right to revise the content of this document in whole or in part. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this document create any contract of employment.



2/01/2011 to 12/31/2011

Personnel Number	10005292	Name	ALEXANDER C FRAMPTON
Position	LAW ENFORCEMENT OFFICER V	Org. Unit	REGION 3 & 4 MAJOR
Personnel Area	P240-DEPARTMENT OF NAT.	Annual Leave Accrual Date	09/17/1993
Avg. Weekly Working Hrs	40.00		

Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs
Annual Leave	64.00	184.00	Personal Sick Leave	0.00	168.00	Family Sick Leave	0.00	0.00
Adoption Leave	0.00	0.00	Comp. Time	0.00	0.00	Holiday Comp. Time	0.00	0.00
Administrative Leave	0.00	0.00	Amer. Red. Cross	0.00	0.00	Blood Drive	0.00	0.00
Bone Marrow Donor	0.00	0.00	Court Leave	0.00	0.00	Death In Md. Family	0.00	0.00
Hazard Weather	0.00	0.00	Military Leave	0.00	0.00	Organ Donor Leave	0.00	0.00
Voting Leave	0.00	0.00	Leave w/o Pay	0.00	0.00	Voluntary Furlough	0.00	0.00
Mandatory Furlough	0.00	0.00						

Description	Monthly Beginning Balance	Monthly Accrual (+)	Monthly Deduction (-)	Paid/Forfeited/Donated & Transferred (+/-)	Adjustments (+/-)	Monthly Ending Balance	YTD Hours Used
Annual Leave	425.00	17.50	64.00	0.00	0.00	378.50	184.00
Sick Leave**	1,344.14	10.00	0.00	0.00	0.00	1,354.14	168.00

*Includes: 15 days, 30 days and Combat

**Includes Personal Sick Leave, Family Sick Leave and Adoption Leave

1. This leave statement reflects leave that has been requested, approved, and posted to your leave accounts. If your manager has not approved your leave request through MySCEmployee, those leave hours will not be reflected in your balances.
 2. This leave statement only allows rounding of the leave balances, accruals, and deductions to two decimal places (i.e. monthly accrual of sick leave for 37.5 hour per week employee, reflects 0.38 instead of 0.375). Therefore, the balances on this leave statement may reflect a .005 difference from the balance showing in MySCEmployee.
 3. The January beginning balances for sick and annual leave reflect the employee's actual remaining balance from the previous year without any adjustment for maximum carryover. Allowing this amount to remain during the month of January allows agencies to resolve any outstanding leave requests or issues for the previous calendar year. SCEIS, however, calculates leave used during the month of January from your appropriate maximum carryover.
- The language used in this document does not create an employment contract between the employee and the State of South Carolina. This document does not create any contractual rights or entitlements. The State of South Carolina reserves the right to revise the content of this document, in whole or in part. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this document, create any contract of employment.



Leave Statement

12/01/2012 to 12/31/2012

Personal / Organizational Data

Personnel Number	10006292	Name	ALEXANDER C FRAMPTON
Position	DPT/DIR.DIRECTOR-EXEC CO	Org. Unit	COLONEL
Personnel Area	P240-DEPARTMENT OF NAT.	Annual Leave Accrual Date	09/17/1993
Avg. Weekly Working Hrs	40.00		

Monthly and YTD Absence Hours

Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs
Annual Leave	0.00	80.00	Personal Sick Leave	0.00	16.00	Family Sick Leave	0.00	0.00
Adoption Leave	0.00	0.00	Comp. Time	0.00	0.00	Holiday Comp Time	0.00	0.00
Administrative Leave	0.00	0.00	Amer. Red Cross	0.00	0.00	Blood Drive	0.00	0.00
Bone Marrow Donor	0.00	0.00	Court Leave	0.00	0.00	Death Immd Family	0.00	0.00
Hazard Weather	0.00	0.00	Military Leave*	0.00	0.00	Organ Donor Leave	0.00	0.00
Voting Leave	0.00	0.00	Leave W/o Pay	0.00	0.00	Voluntary Furlough	0.00	0.00
Mandatory Furlough	0.00	0.00						

Absence Quotas

Description	Monthly Beginning Balance	Monthly Accrual (+)	Monthly Deduction (-)	YTD Forfeited, Donated, & Transferred (-)	Adjustments (+/-)	Monthly Ending Balance	YTD Hours Used
Annual Leave	474.17	16.33	0.00	132.50	0.00	358.00	358.00
Sick Leave**	1,448.14	10.00	0.00	16.14	0.00	1,442.00	1,442.00

*Includes 15 days, 30 days, and Combat.

**Includes Personal Sick Leave, Family Sick Leave, and Adoption Leave.

1. This leave statement reflects leave that has been requested, approved, and added to your leave accounts. If your manager has not approved your leave request through MySCEmployee, those leave hours will not be reflected in your balances.

2. This leave statement only allows rounding of the leave balances, accruals, and deductions to two decimal places (i.e., monthly accrual of sick leave for 37.5 hours per week employee reflects 9.38 instead of 9.375). Therefore, the balances on this leave statement may reflect a .005 difference from the balance showing in MySCEmployee.

3. The January beginning balances for sick and annual leave reflect the employee's actual remaining balance from the previous year without any adjustment for maximum carryover. Allowing this amount to remain during the month of January allows employees to resolve any outstanding leave requests or issues for the previous calendar year. SCEIS, however, calculates leave used during the month of January from your appropriate maximum carryover.

The language used in this document does not create an employment contract between the employee and the State of South Carolina. This document does not create any contractual rights or entitlements. The State of South Carolina reserves the right to revise the content of this document in whole or in part. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this document, create any contract of employment.



Leave Statement

12/01/2013 to 12/31/2013

Personal / Organizational Data

Personnel Number	10006292	Name	ALEXANDER C FRAMPTON
Position	DFTY/DIV DIRECTOR-EXEC CO	Org. Unit	COLONEL
Personnel Area	P240-DEPARTMENT OF NAT	Annual Leave Accrual Date	09/17/1993
Avg. Weekly Working Hrs	40.00		

Monthly and YTD Absence Hours

Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs
Annual Leave	66.00	168.00	Personal Sick Leave	0.00	0.00	Family Sick Leave	0.00	0.00
Adoption Leave	0.00	0.00	Comp. Time	0.00	0.00	Holiday Comp. Time	0.00	0.00
Administrative Leave	0.00	0.00	Amer. Red Cross	0.00	0.00	Blood Drive	0.00	0.00
Bone Marrow Donor	0.00	0.00	Court Leave	0.00	0.00	Death Inmd Family	0.00	0.00
Hazard Weather	0.00	0.00	Military Leave*	0.00	0.00	Organ Donor Leave	0.00	0.00
Voting Leave	0.00	0.00	Leaves w/o Pay	0.00	0.00	Voluntary Furlough	0.00	0.00
Mandatory Furlough	0.00	0.00						

Absence Quotas

Description	Monthly Beginning Balance	Monthly Accrual (+)	Monthly Deduction (-)	Paid/Forfeited/Donated & Transferred (-)	Adjustments (+/-)	Monthly Ending Balance	YTD Hours Used
Annual Leave	515.34	19.17	66.00	54.50	0.00	360.00	168.00
Sick Leave**	1,650.00	10.00	0.00	120.00	0.00	1,440.00	0.00

*Includes 15 days, 30 days and Combat.

**Includes Personal Sick Leave, Family Sick Leave and Adoption Leave.

1. This leave statement reflects leave that has been requested, approved, and posted to your leave accounts. If your manager has not approved your leave request through MYSCEmployee, those leave hours will not be reflected in your balances.
2. This leave statement only allows rounding of the leave balances, accruals, and deductions to two decimal places (i.e. monthly accrual of sick leave for 37.5 hour per week employee reflects 9.38 instead of 9.375). Therefore, the balance on this leave statement may reflect a .005 difference from the balance showing in MYSCEmployee.
3. The January beginning balances for sick and annual leave reflect the employee's actual remaining balance from the previous year without any adjustment for maximum carryover. Allowing this amount to remain during the month of January allows agencies to resolve any outstanding leave requests or issues for the previous calendar year. SCEIS, however, calculates leave used during the month of January from your appropriate maximum carryover.

The language used in this document does not create an employment contract between the employee and the State of South Carolina. This document does not create any contractual rights or entitlements. The State of South Carolina reserves the right to revise the content of this document in whole or in part. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this document create any contract of employment.



12/01/2014 to 12/31/2014

Personnel Number	10006292	Name	ALEXANDER C FRAMPTON
Position	DPTY/DIV DIRECTOR-EXEC CO	Org. Unit	COLONEL
Personnel Area	P240-DEPARTMENT OF NAT.	Annual Leave Accrual Date	09/17/1993
Avg. Weekly Working Hrs	40.00		

Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs
Annual Leave	88.00	216.00	Personal Sick Leave	0.00	66.00	Family Sick Leave	0.00	24.00
Adoption Leave	0.00	0.00	Comp. Time	0.00	0.00	Holiday Comp Time	0.00	0.00
Administrative Leave	0.00	0.00	Amer. Red Cross	0.00	0.00	Blood Drive	0.00	0.00
Bone Marrow Donor	0.00	0.00	Court Leave	0.00	0.00	Death inmd Family	0.00	0.00
Hazard Weather	0.00	0.00	Military Leave*	0.00	0.00	Organ Donor Leave	0.00	0.00
Voting Leave	0.00	0.00	Leave w/o Pay	0.00	0.00	Voluntary Furlough	0.00	0.00
Mandatory Furlough	0.00	0.00						

Description	Monthly Beginning Balance	Monthly Accrual (+)	Monthly Deduction (-)	Paid/Forfeited/Donated & Transferred (-)	Adjustments (+/-)	Monthly Ending Balance	YTD Hours Used
Annual Leave	444.50	20.00	88.00	16.50	0.00	360.00	216.00
Sick Leave**	1,470.00	40.00	0.00	40.00	0.00	1,440.00	66.00

*Includes: 15 days, 30 days, and Combs.

**Includes: Personal Sick Leave, Family Sick Leave and Adoption Leave.

1. This leave statement reflects leave that has been requested, approved, and posted to your leave accounts. If your manager has not approved your leave request through MYSC employee, those leave hours will not be reflected in your balances.
2. This leave statement only allows rounding of the leave balances, accruals, and deductions to two decimal places (i.e. monthly accrual of sick leave for 37.5 hours per week employee reflects 0.38 instead of 0.375). Therefore, the balances on this leave statement may reflect a .005 difference from the balance showing in MYSC employee.
3. The January beginning balances for sick and annual leave reflect the employee's actual remaining balance from the previous year without any adjustment for maximum carryover. Allowing this amount to remain during the month of January allows agencies to resolve any outstanding leave requests or issues for the previous calendar year. SCEIS, however, calculates leave used during the month of January from your appropriate maximum carryover.

The language used in this document does not create an employment contract between the employee and the State of South Carolina. This document does not create any contractual rights or entitlements. The State of South Carolina reserves the right to revise the content of this document, in whole or in part. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this document create any contract of employment.



Leave Statement

06/01/2015 to 06/30/2015

Personal / Organizational Data

Personnel Number	10905292	Name	ALEXANDER C FRAMPTON
Position	DPT/DIV DIRECTOR-EXEC CO	Org. Unit	COLONEL
Personnel Area	P240-DEPARTMENT OF NAT	Annual Leave Accrual Date	09/17/1993
Avg. Weekly Working Hrs	40.00		

Monthly and YTD Absence Hours

Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs	Absence Type	Monthly Hrs	YTD Hrs
Annual Leave	8.00	48.00	Personal Sick Leave	0.00	56.00	Family Sick Leave	0.00	32.00
Adoption Leave	0.00	0.00	Comp. Time	0.00	0.00	Holiday Comp. Time	0.00	0.00
Administrative Leave	0.00	0.00	Amber Red Cross	0.00	0.00	Blood Drive	0.00	0.00
Bone Marrow Donor	0.00	0.00	Court Leave	0.00	0.00	Death Immd Family	0.00	0.00
Hazard Weather	0.00	0.00	Military Leave	0.00	0.00	Organ Donor Leave	0.00	0.00
Voting Leave	0.00	0.00	Leave w/o Pay	0.00	0.00	Voluntary Furlough	0.00	0.00
Mandatory Furlough	0.00	0.00						

Absence Quotas

Description	Monthly Beginning Balance	Monthly Accrual (H)	Monthly Deduction (H)	Paid, Forfeited, Donated, & Transferred (H)	Adjustments (H)	Monthly Ending Balance	YTD Hours Used
Annual Leave	420.00	20.00	8.00	0.00	0.00	432.00	1,432.00
Sick Leave**	1,402.00	10.00	0.00	0.00	0.00	1,412.00	1,412.00

*Includes 15 days, 30 days and Combat

**Includes Personal Sick Leave, Family Sick Leave and Adoption Leave

1. This leave statement reflects leave that has been requested, approved, and posted to your leave accounts. If your manager has not approved your leave request through MySCEmployed, those leave hours will not be reflected in your balances.
 2. This leave statement only shows rounding of the leave balances, accruals, and deductions to two decimal places (i.e., monthly accrual of sick leave for 37.5 hour per week employee reflects 8.38 instead of 8.375). Therefore, the balances on this leave statement may reflect a .005 difference from the balance showing in MySCEmployed.
 3. The January beginning balances for sick and annual leave reflect the employee's actual remaining balance from the previous year without any adjustment for maximum carryover. Allowing this amount to remain during the month of January allows agencies to resolve any outstanding leave requests or issues for the previous calendar year. SCEIS, however, calculates leave used during the month of January from your appropriate maximum carryover.
- The language used in this document does not create an employment contract between the employee and the State of South Carolina. This document does not create any contractual rights or entitlements. The State of South Carolina reserves the right to revise the content of this document, in whole or in part. No promises or assurances, whether written or oral, which are contrary to or inconsistent with the terms of this document create any contract of employment.

Exhibit A

TriCounty Radiology

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Frampton, Alexander
DOB: [REDACTED]/1965
MRN: 689097
PHYSICIAN: Byron Bailey, MD
DATE: 3/16/2010

EXAM: CERVICAL MRI WITHOUT CONTRAST

COMPARISON STUDIES: None.

HISTORY: Cervical radiculopathy.

TECHNIQUE: Multiplanar multisequence images cervical spine without contrast.

FINDINGS: *Alignment and bony structures:* C6-7 mild type I Modic change. C5-6 and C6-7 mild degenerative retrolistheses. Mid cervical straightening. *Spinal cord:* Normal signal and caliber. *Craniocervical junction:* Unremarkable central elements and junction as visualized. *Findings by level:*

C2-3: Left intraforaminal linear annular tear. No stenosis.

C3-4: Mild disc bulge. Mild right uncovertebral and bilateral facet hypertrophy. Mild right exit and central narrowing. Mild anterior cord flattening.

C4-5: Mild disc bulge. Right uncovertebral hypertrophy, mild. Mild facet hypertrophy. Mild right exit and central narrowing. Mild anterior cord flattening.

C5-6: Disc osteophyte complex extends intraforaminally on both sides. Mild uncovertebral and facet hypertrophy. Mild exit and central narrowing. There may be contact and/or deflection exiting C6s. Shallow central inferior extrusion extends about 3 mm above the endplate. Mild anterior cord flattening.

C6-7: Disc osteophyte complex has left paracentral focal inferior extrusion extending 5 mm below the endplate. The DOC extends intraforaminally on both sides, slightly more prominent on the right where it also extends extraforaminally. Uncovertebral and facet hypertrophy. Moderate right and mild left exit stenosis. Moderate central stenosis. Mild left hemicord flattening. Contact and deflection bilateral exiting C7 suggested, more prominent on the right where exit stenosis borders on severe.

C7-T1: Facet hypertrophy. No stenosis.

IMPRESSION: Spondylosis most impressive at C5-6 and C6-7 as described. Correlation for bilateral C6 and right greater than left C7 radiculopathies might be helpful. The C6-7 right foraminal stenosis borders on severe.

Troy Marlow, M.D.
TM / cm

DD: 3/17/2010 / DT: 3/17/2010
JOB: 10155233

This document has been electronically reviewed and signed.



Exhibit B
Charleston Neurosurgical
March 16, 2010

**Charleston Neurosurgical
Associates**
ROPER ST. FRANCIS PHYSICIANS

3/16/2010

NAME OF PATIENT:
D/O/B:
SS#:
REFERRING PHYSICIAN:

Frampton, Alexander
[REDACTED]/1965
250312858

CONSULTATION

This is a 44-year-old gentleman with a history of numb dysesthesias affecting his right arm. He stated this began approximately 3 weeks ago. There was no prior history of similar symptoms or a precipitated event. He describes numbness and tingling involving the ulnar aspect of his right arm, triceps region in his upper arm, and the index and third digit of his right hand. He does not note significant weakness. He has had no similar symptoms in the left arm. No change in muscle strength or dexterity.

PAST MEDICAL HISTORY:

Medical: He has had a history of hypertension. He takes 2 medications for control of this medical problem, one is called *_____ and the other was not identified.

Allergies: He has no known allergies.

Surgical: He has had hemorrhoidectomy and cholecystectomy.

Social: He does not smoke. He drinks alcohol occasionally. He is married. He has 1 child. He works for the department of natural resources.

Family: Positive for hypertension.

REVIEW OF SYSTEMS: Noncontributory.

On examination, this is a well-developed nourished male in no apparent distress. He has decreased range of motion particularly right rotation of the cervical spine. There is no Lhermitte's. He has good strength to include deltoids, supraspinatus, infraspinatus, biceps, triceps, wrist extensors, finger extensor, interossei, and grip right equal to left. I was not able to discern a sensory deficit. He seems to have good sensation in both right and left arm as well as lower extremities. His reflexes are normal to include Wright sign both radial and triceps reflex at 2/4. He has no Hoffmann's. No Babinski. No increase in tone in the lower extremities. No ankle clonus.

MRI scan was reviewed. This demonstrated degeneration at C6-C7. This appeared affecting both exiting foramen with less prominent changes at C5-C6.

OVERALL IMPRESSION: I think that conservative management would still be

appropriate. We gave him prescription for physical therapy which should include physical modalities and traction. We also gave him prescription for Flexeril and Lortab. I asked that he continue his over-the-counter nonsteroidal antiinflammatory medication. We ask that he return for followup in 6 weeks.

Byron N. Balley, M.D.

BNB/vhi

Created by Geraldine San Jaun on 3/17/2010 11:33:56 AM

Exhibit C
Letter to Harry Gregory, Jr.

Attention: Megan 843-953-9321

South Carolina Department of

Natural Resources



DNR

John E. Frampton
Director

Colonel Alvin A. Taylor
Deputy Director for
Law Enforcement

Director Harry B. Gregory, Jr.
State Accident Fund
P.O. Box 102100
Columbia, SC 29221-5000

Dear Director Gregory:

I respectfully request that you reconsider the decision by your agency to deny my workers compensation case, file number 1012533, because I believe there was some misunderstanding of the work conditions that existed when I was injured while on duty on November 4, 2010.

In the SC Workers Compensation - First Report of Injury or Illness document provided to me by the SC Department of Natural Resources' (the Department) Human Resources Office, it suggests that the terrain in which I was travelling was merely uneven. In fact the terrain was extremely rugged.

On November 4, 2010, while on duty, I met with one of the First Sergeants under my command to enforce the law on one of the Department's Wildlife Management Areas, Canal WMA. We were driving through extremely rough terrain in a law enforcement Dodge Ram 2500, 4X4, equipped with heavy duty suspension. We were covering ground that consisted of deep potholes on the access road and off road up to 10" ruts through a plodded dove field. A plodded field describes the condition that had been recently cultivated and prepared for planting crops. As a Conservation Officer, our duties take us off road the majority of the time we are working. The First Sergeant, who was driving the truck, was trying to catch up with hunters who were leaving the field and needed to be checked. We hit several very deep holes that the truck had difficulty plowing through and at one point we hit a hole so deep that the truck literally stopped in its tracks.

While the First Report of Injury suggests that my injuries were sustained while walking, I would contest that they were likely sustained while riding in the truck during the course of my work. That evening (Thursday), I began to feel discomfort in my neck and by the next morning (Friday) I could barely move. I struggled at work and was in significant pain. On Saturday and I tried to relax, but the pain persisted to the point that if I were to rate it on a pain threshold scale, it was and 11. On Sunday, I reported the incident and went to the Doctor. Although the Doctor released me to on the 17th, it was with the aid of pain medication.

On November 21, 2010, the State Accident Fund denied my claim. I believe now that when I told Compendium that I was injured going through a plodded field, that they probably didn't really understand how rugged terrain is when a field had just been plodded. I was never asked any other questions or asked to provide information regarding terrain and I know that the Department's HR Office was not asked either.

217 Ft. Johnson Rd. • Charleston, SC 29412-9110 • P.O. Box 12559 Charleston, SC 29422

EQUAL OPPORTUNITY AGENCY

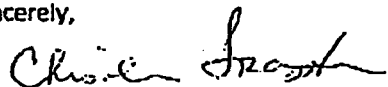
www.dnr.sc.gov

PRINTED ON RECYCLED PAPER ♻️

I ask that you reconsider the original decision to deny my claim because I was in fact at work and on duty when the severe pain began and there is no doubt in my mind that I was injured on November 4, 2010. I did not experience any pain of this magnitude in my neck prior to November 4, 2010.

Thank you for reviewing my case. Should you have any questions, please feel free to contact me on my agency cell phone at 843-870-5554.

Sincerely,



Captain Chisolm Frampton

Cc: Colonel Alvin Taylor, Deputy Director Law Enforcement Division
Terri McGee, Human Resources Director

Exhibit D
Charleston Neurosurgical
March 15, 2011

Alexander Frampton -> #90417 Transcription

Patient #: 21973 • DOB: [REDACTED]/1965 • Provider: None

Patient: Alexander Frampton
Document #: 90417
Status: Preliminary
Appointment: None
Subject: None
Template: Office Notes
Body:

Type: Transcription
Document By: Geraldine San Jaun
Document Date: 3/15/2011

3/15/2011: This is a gentleman who we are following for cervical radiculopathy. He has had progressive symptoms of both neck pain and right arm discomfort. It seems to conform to a C6 distribution on the right-hand side. He describes pain in his right shoulder blade extending into his right upper arm and forearm. He has numbness involving the index, thumb, and third digit of his right hand. He has suboccipital pain and paraspinal pain on the right-hand side. He cannot extend his right arm without precipitating symptoms. These have progressed from the study that was done approximately a year ago.

Exam: Examination finds him to have no interval change in neurologic function, although he does have asymmetry of his right triceps reflex at 1/4. The remaining seemed to be fairly symmetric and normal. He has good strength, although he has less powerful triceps and grip on the right-hand side, and that is his dominant arm.

Overall Impression: We are going to obtain a repeat MRI scan as well as EMG and nerve conduction studies. He does not have evidence of carpal tunnel syndrome, although his numbness seems to be out of proportion to what you would expect for C6, and he does have symptoms in his hand occasionally that seem to predominate. He did not have a Phalen's and did not have a Tinel's. He has constant numbness in any position. He has good strength of opponens pollicis and abductor pollicis brevis. Once he has completed EMGs and nerve conduction studies and MRI scan, we will decide whether surgical intervention would be the next course of action.

BNB/vhi

Comments: None

Attachments: None

Exhibit E
Charleston Neurosurgical
March 16, 2011

 **Charleston Neurosurgical
Associates**
ROPER ST. FRANCIS PHYSICIANS

Rehabilitation Services

2145 HENRY TECKLENBURG DR. SUITE 101
CHARLESTON, SC 29414
(843) 723-8823

Test Date: 3/16/2011

Patient: Alexander Frampton	DOB: [REDACTED]/1965	Physician: J. Reilly Keffer, D.O.
Sex: Male	Height: 0"	Ref Phys: Dr. Bailey
ID#:	Weight: lbs.	

Patient Complaints:

Patient is a 45 year-old RH male who presents with neck pain and pain and numbness and tingling right upper extremity with onset of his RUE symptoms beginning about 2 months ago. Insidious onset. Patient describes sx from right side of neck, into arm, forearm, and right thumb, index, and middle finger. No LUE sx. He does describe significant proximal RUE symptoms.

ROS: reviewed with patient. See chart.

Medications

Medications reviewed on patient intake form/chart.

Patient History / Exam:

AxOx3, NAD Manual motor testing is 5/5 throughout bilaterally. Reflexes are +2 including biceps, brachioradialis, and triceps. Sensation is normal to pin prick in the bilateral upper extremities except reports some diminished pp right index finger. Intact distal pulses. No obvious atrophy.

Patient has no allergy to medications.

Surgical history is significant for tonsillectomy, hemorrhoid surgery, and cholecystectomy.

Past medical history is significant for hypertension and anxiety.

Family/ Social/Work Hx reviewed on chart.

EMG & NCV Findings:

Evaluation of the Right ulnar motor nerve showed decreased conduction velocity (A Elbow-B Elbow, 46 m/s) possibly artifactual but not clinically of any significance. All remaining nerves (as indicated in the following tables) were within normal limits.

All examined muscles (as indicated in the following table) showed no evidence of electrical instability.

Impression:

1. This is a normal electrodiagnostic study of the right upper extremity. There is no electrodiagnostic evidence of a right cervical radiculopathy, plexopathy, myopathy, or other peripheral neuropathy. There is no electrodiagnostic evidence of median mononeuropathy (ie. carpal tunnel syndrome) at the wrist.

Recommendations:

1. Follow up with Dr. Bailey.
2. Consider a trial of a Prednisone taper.
3. Despite the negative EMG, I still suspect a right C6/C7 radiculitis causing his symptoms in the RUE. He describes neck pain and symptoms radiating all the way down the RUE into the right thumb, index and middle finger. He does seem to be significantly symptomatic with his current symptoms.



J. Reilly Keffer, D.O.
Physical Medicine and Rehabilitation

Cc: Dr. Bailey

Nerve Conduction Studies

Anti Sensory Summary Table

Site	NR	Peak (ms)	Norm Peak (ms)	P-T Amp (µV)	Norm P-T Amp	Site1	Site2	Delta-P (ms)	Dist (cm)	Vel (m/s)	Norm Vel (m/s)
Right Median Anti Sensory (2nd Digit)											
Wrist		3.1	<3.5	47.6	>20						
Right Ulnar Anti Sensory (5th Digit)											
Wrist		3.6	<3.7	24.4	>17.0						

Motor Summary Table

Site	NR	Onset (ms)	Norm Onset (ms)	O-P Amp (mV)	Norm O-P Amp	Site1	Site2	Delta-D (ms)	Dist (cm)	Vel (m/s)	Norm Vel (m/s)
Right Median Motor (Abd Poll Brev)											
Wrist		4.0	<4.2	12.7	>4	Elbow	Wrist	3.7	20.5	55	>50
Elbow		7.7		12.1							
Right Ulnar Motor (Abd Dig Minimi)											
Wrist		3.4	<4.0	14.2	>5	B Elbow	Wrist	3.5	20.5	59	>49
B Elbow		6.9		11.1		A Elbow	B Elbow	2.5	11.5	46	>49
A Elbow		9.4		10.5							

Comparison Summary Table

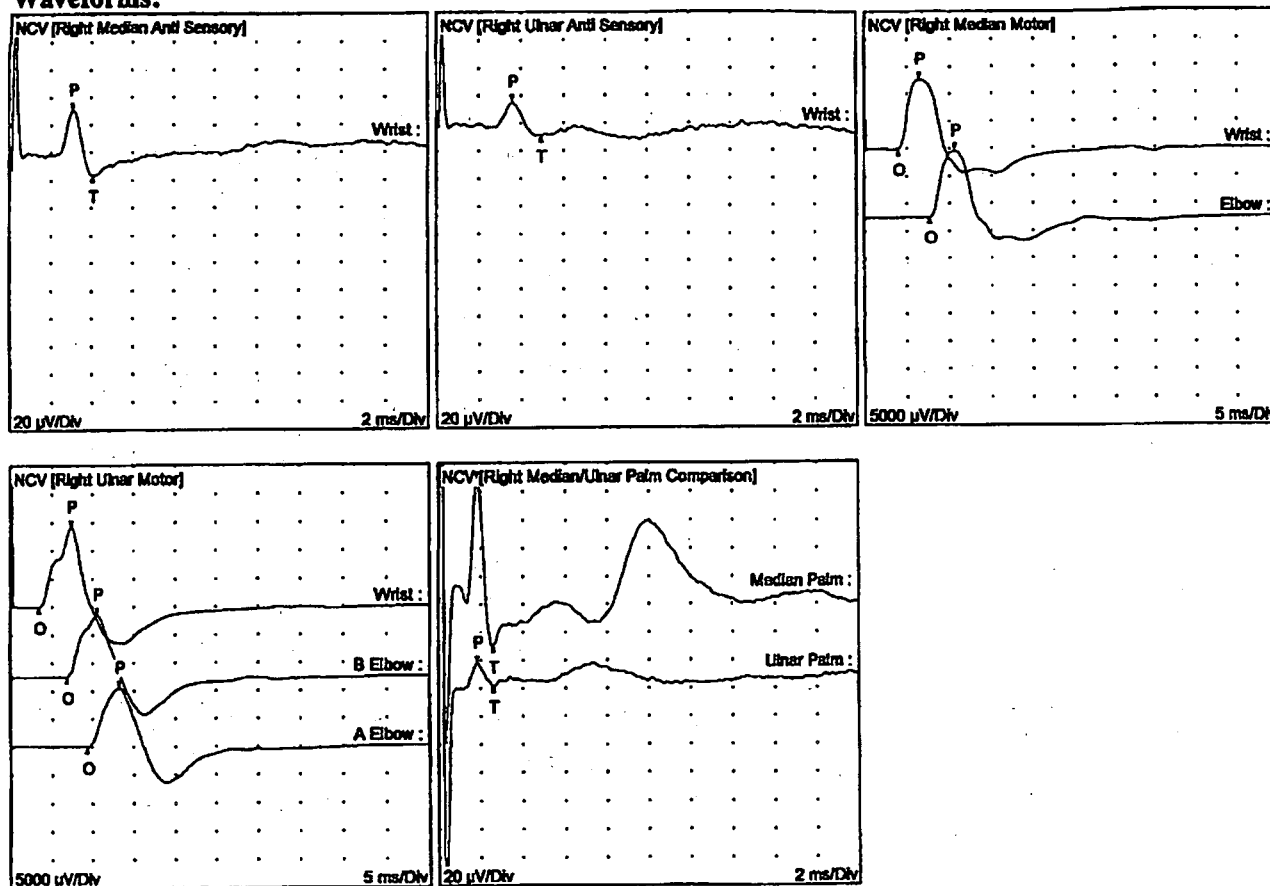
Site	NR	Peak (ms)	Norm Peak (ms)	P-T Amp (µV)	Site1	Site2	Delta-P (ms)	Norm Delta (ms)
Right Median/Ulnar Palm Comparison (Wrist - 8cm)								
Median Palm		1.8	<2.5	118.8	Median Palm	Ulnar Palm	0.0	<0.4
Ulnar Palm		1.8	<2.5	16.8				

EMG

Side	Muscle	Nerve	Root	Ins Act	Fibs	Env	Amp	Dur	Poly	Recrt	Int Pat	Comment
Right	Deltoid	Axillary	C5-6	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Biceps	Musculocut	C5-6	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Triceps	Radial	C6-7-8	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Pronator Teres	Median	C6-7	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Flex Car Rad	Median	C6-7	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	1st Dor Int	Ulnar	C8-T1	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Cervical Parasp Mid	Rami	C4-6	Nml	Nml	Nml						
Right	Cervical Parasp Low	Rami	C7-8	Nml	Nml	Nml						
Right	Ext Car Rad Long	Radial	C6-7	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Brachio Rad	Radial	C5-6	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Ext Dig Com	Radial (Post Int)	C7-8	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	
Right	Infraspinatus	SupraScap	C5-6	Nml	Nml	Nml	Nml	Nml	0	Nml	Nml	



Waveforms:



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1012533
Appellate Case No. 2017-001764

RECEIVED
FEB 05 2018
SC Court of Appeals

Chisolm Frampton, Employee,. Appellant,

v.

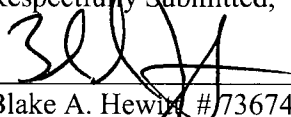
S.C. Department of Natural Resources, Employer,
and S.C. State Accident Fund, Carrier,. Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

January 31, 2018

Respectfully Submitted,



Blake A. Hewitt #73674

BLUESTEIN THOMPSON SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599

Attorney for Appellant