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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the South Carolina Workers' Compensation Commission

RECEIVED

JUL 23 2012

Derrick L. Williams, Commissioner
G. Bryan Lyndon, Commissioner
Andrea C. Roche, Commissioner

SC Court of Appeals

W.C.C. File No. 1016367

Marshall C. Johnson,..... Respondent,

v.

Kohler Company, Employer, Self-Insured, ... Appellant.

RECORD ON APPEAL

Patrick E. Knie
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Fax: (864) 282-1177
Attorneys for Appellant
Kohler Company

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South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



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

Claimant's Name: Marshall Johnson SSN: 250-47-5612 Employer's Name: Kohler
Address: 1527 Old Anderson Mill Road Address: 4000 S. Pine Street
City: Spartanburg State: SC Zip: 29369 City: Spartanburg State: SC Zip: 29302
Home Phone: (864) 2375612 Work Phone: () - Insurance Carrier: South Carolina Individual Self Insured
Preparer's Name: Patrick E. Knie Law Firm: Patrick E. Knie, P.A. Preparer's Phone #: (864) 582 - 5118

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

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

Date of Injury or Illness: 10/25/10

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to back (Part(s) of Body Injured) on 10/25/10 (Month/Day/Year) in Spartanburg county, state of SC.
1b. Body part(s) affected are: back
Briefly describe how the accident occurred. Claimant was reaching around a commode on which he was working and felt a sharp pain in the back.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 10/25/10 (Month/Day/Year) in the following manner:
Verbally told supervisor on 10/25/10

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

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: Back and right upper extremity

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Beginning 11/9/10 to present and continuing

☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ (3) Wage Loss ☐ Partial ☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$180, and demands accounting of days worked and wages earned as provided by law.

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

11a. Further grounds or unusual aspects of claim:

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Mark Miles, Family Physicians of Spartanburg PC, 3021 Reidville Rd., Sptbg., SC 29301; InMed Diagnostic Services of S.D., LLC, 1704 E. Main St., Duncan, SC 29334; Steadman Hawkins of the Carolinas, 111 Doctors Dr., Greenville, SC 29605

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

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

14. Estimated time needed for hearing: 30 minutes

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

Patrick E. Knie
Preparer's Signature

Attorney at Law
Title

pknie@knielaw.com
Email

November 23, 2010
Date

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

WCC Form # 50
Revised 9/07

50

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



Claimant's Name: Marshall Johnson SSN: 248-66-4680 Employer's Name: Kohler Company
Address: 1527 Old Anderson Mill Road Address: 4000 S. Pine Street
City: Spartanburg State: SC Zip: 29369 City: Spartanburg State: SC Zip: 29302
Home Phone: (864) 237-5612 Work Phone: _____ Insurance Carrier: Self-Insured
Date of Injury: 10/25/10 Preparer's Name: Russell T. Infinger Law Firm: Nexsen Pruet, LLC Preparer's Phone #: (864) 282-1122

Date of Injury or Illness: 10/25/10

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:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
It is generally denied claimant sustained an injury on 10/25/10 per §42-1-160. Defendants reserve the right to amend pending further investigation.
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1
4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
See No. 1
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:
See No. 1
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
See No. 1
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
See No. 1
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 705.74 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: _____

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

Name: Patrick Knie, Esquire

Address: 250 Magnolia Street, Spartanburg, SC 29306

on the 6th day of January, 2011, 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.

Russell T. Infinger Attorney rinfinger@nexsenpruet.com January 6, 2011
Preparer's Signature Title Email Date

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

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



WCC File #: 1016367
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Marshall Johnson SSN: 250 - 47 - 9595 Employer's Name: Kohler Company
Address: 1527 Old Anderson Mill Road Address: 4000 S. Pine Street
City: Spartanburg State: SC Zip: 29369 City: Spartanburg State: SC Zip: 29302
Home Phone: () - Work Phone: () - Insurance Carrier: _____
Preparer's Name: Russell T. Infinger Law Firm: Nexsen Pruet Preparer's Phone #: (864) 282 - 1122

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of Injury: 10/25/10 (m/d/yyyy)

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

See attached Rider

(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 Patrick E. Knie, Esquire
Name

P.O. Box 5159, Spartanburg, SC 29304-5159

Address
on the 17th day of May, 2011 by ☒ first class mail ☐ personal service ☐ certified mail.

Russell T. Infinger Attorney Title May 17, 2011 Date
Preparer's Signature

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.

RIDER TO FORM 30
MARSHALL JOHNSON

v.

KOHLER COMPANY
WCC FILE NO. 1016367

1. Did the Single Commissioner err in finding that the supervisor violated company policy when there is no evidence to substantiate such a finding and that even if so it is irrelevant to any findings of issues before the Commission at the hearing in this claim?

2. Did the Single Commissioner err in finding the requirements of the claimant's job duties in that the weight of the evidence from the hearing does not support this finding?

3. Did the Single Commissioner err in finding that the claimant sustained a compensable injury to his back and legs on the date alleged when the weight of the lay and medical evidence does not support a finding of compensability in this claim?

4. Did the Single Commissioner err in finding that the claimant's supervisor refused to address the claimant's complaints in that the weight of the evidence does not support such a finding?

5. Did the Single Commissioner err in finding that the supervisor confirmed the testimony of the claimant when the testimony of the supervisor did not confirm a compensable accident in this claim?

6. Did the Single Commissioner err in finding that the claimant contested the details of the accident report when the weight of the testimony showed that the controversy of the accident report did not involve the mechanics of the alleged injury?

7. Did the Single Commissioner err in finding that Mr. Tollison's testimony was not credible in that the weight of the evidence confirmed the facts as testified to by Mr. Tollison were accurate concerning the events that occurred on the date of the alleged accident?

8. Did the Single Commissioner err in finding as fact questions posed to Mr. Tollison that were objected to at the hearing regarding the Commissioner's questions about the employer's decision on compensability?

9. Did the Single Commissioner err in asking and using as his decision in the matter questions that were asked of the employer regarding speculative compensability questions when the same were irrelevant and improper for a hearing proceeding?

10. Did the Single Commissioner err in ordering benefits to the claimant when the evidence submitted at the hearing was such that the claim for benefits should have been denied by the Commission?

11. Did the Single Commissioner err in concluding that the claimant would continue to receive temporary total disability as long as his authorized physician writes him out of work

when, assuming in argument only the claim is compensable, there are issues that would stop temporary compensation other than the doctor's work excuse?

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1016367

Marshall Corbin Johnson,)
)
 Claimant,)
)
 vs.)
)
 Kohler Company,)
)
 Employer,)
)
 and)
)
 Kohler Company,)
)
 Carriers,)
 Defendant.)
 _____)

DECISION AND ORDER

HEARING HELD: Greenville, South Carolina

DATE: February 24, 2011

COMMISSIONER: The Honorable Avery Wilkerson

COUNSEL FOR THE CLAIMANT: Patrick E. Knie, Esquire

COUNSEL FOR THE DEFENDANTS: Russell Infinger, Esquire

PURPOSE OF HEARING: To determine the issues set forth in the Forms 50 and 51

FILED: May 3, 2011

STIPULATIONS

1. The Claimant and Defendants are subject to and bound by the terms and conditions of the South Carolina Workers' Compensation Act.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The South Carolina Workers' Compensation Commission has jurisdiction over this matter and the proper venue is Spartanburg County.
4. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an injury by accident on October 25, 2010.
5. The Claimant's average weekly wage on October 25, 2010 was \$730.71 and the compensation rate was \$487.16.

CLAIMANT'S AND DEFENDANTS' APA SUBMISSIONS

CLAIMANT'S SUBMISSIONS

<u>PHYSICIAN/MOTHER</u>	<u>PROVIDER</u>	<u>DATE OF REPORT</u>	<u>PAGE NUMBERS</u>
1. Dr. Salvatore Bianco,	E/R Spartanburg Regional Medical Center	10/27/10	1-82
2. Dr. Mark Miles	Family Physicians of Spartanburg	10/28/10 - 11/11/10	9-16
3. InMed	Diagnostic Services of SC, LLC	11/9/10	17-19
4. Dr. Timothy McHenry	Southeastern Neurosurgical and Spine Institute	11/17/10 - 01/25/11	30-32
5. Dr. Thomas W. Jarecky	University Medical Group Procedural Pain Management	11/19/10 - 12/10/10	33-38
6. Letter of Patrick E. Knie to	Russell T. Infinger	02/04/11	39
7. Greenville Memorial Hospital To Be Submitted - There has been a delay in obtaining these records.			

DEFENDANTS' SUBMISSIONS

<u>PHYSICIAN/OTHER</u>	<u>PROVIDER</u>	<u>DATE OF</u> <u>REPORT</u>	<u>PAGE</u> <u>NUMBERS</u>
8. Family Physicians of Spartanburg		10/02/02-01/28/11	40-65
9. Southeastern Neurosurgical & Spine		12/14/10	66
10. Additional medical records to be submitted upon receipt.			

STATEMENT OF THE CASE

It is contended by the Claimant that he suffered a work-related injury to his back, and both legs on October 25, 2010 which during his course of employment with the Defendant. The Claimant claimed that during the course of his duties as a caster he was in the process of scraping around the bull reaching with his right hand and standing on one foot. As he replanted both feet he contends that he felt a sharp pain in his back. The claimant contends that he reported the injury by describing it in that manner to his supervisor, Sam Barnwell on that same date. He contends that he later advised both Mr. Barnwell again and Mike Tollison on October 29, 2010. The claimant further contends that he missed work due to his injury from November 10, 2010 through the date of the hearing. He underwent surgery to his back on December 30, 2010. The claimant contends that he continues to suffer from the effects of the injury and the

surgery. The claimant contends that he is entitled to temporary total benefits for the time which he was out of work and his medical expenses as well as continuing medical care.

The Defendant contends that the injury by accident was not reported in the manner described by the claimant and what was allegedly reported was not a compensable injury. The parties agreed that the sole issue before the commission is credibility.

EVIDENCE OF THE CASE

The claimant testified that he was an eleven (11) year employee of Kohler (Pg.9, L15.) His job title was a caster (Pg.9, L-17). His duties involved casting molds to form toilets, punching rim holes, cutting jet holes, and requires heavy lifting (Pg.9, L19-22). Ultimately, he undergoes a procedure where he trims down a bowl and removes all defects (Pg. 12, L12-14). The claimant testified that on October 25, 2010, he was reaching around from the back side of this bowl, leaning on one foot and using a tool called a metal pallet, bending it with his fingers and coming around to the front of the commode while twisting and turning to make sure that it is smooth with the rest of the bowl. The claimant further testified that during this procedure he had one foot off the ground and when he came around to set his foot back down he felt something pinching in his back and then some two (2) seconds after that felt a "real bad burn, stinging, sensation." (Pg 13, L6-22)

Within ten (10) minutes thereafter the claimant testified that his supervisor, Sam Barnwell, walked by the area where the claimant was working (Pg 15, L2-5). The claimant reported his injury to his supervisor. He then stated that his supervisor simply walked off. (Pg 15, L16-20) The claimant completed his shift and went home. (Pg 16,

L7-8) The next morning the claimant had a hard time getting out of bed and his wife had to help him put his shoes on (Pg16, L23-25). Claimant testified that when he got to work he located his supervisor (Sam Barnwell) who instructed him to at least cast one (1) bowl which he did (Pg 17, L5-21). The claimant testified that he needed assistance from coworkers on that date with some of the physical aspects of his job.(Pg 18, L2-5) The claimant testified that he also went to the nurses station and received muscle rub and some pills for inflammation (Pg 18, L16-21)

The claimant further testified that he was later approached two (2) days after the accident by Sam Barnwell and Mike Tollison where a discussion occurred concerning why Kohler did not believe this was a work related injury since the claimant was not lifting anything heavy at the time. (Pg 19, L7-18) Mike Tollison is the Senior Project Safety Specialist. (Pg 70, L17-19) The claimant disagreed with their assessment (Pg 19, L19-20) after which Mr. Tollison and Barnwell, as well as the claimant, went to look up Mr. Barnwell's computer and how the incident report was filled out. (Pg 20, L12-20) The claimant testified that on the way to the computer he stopped and demonstrated to Mr. Barnwell and Tollison how his injury took place. (Pg 20, L2-5) When the three (3) of them reviewed the incident report on the computer and the description of how the injury took place, the claimant disagreed with the accuracy of the description of his injury (Pg 21, L12-20) Mr. Barnwell and Tollison informed the claimant that the description could be changed. (Pg 20, L21-23) The claimant believed from that conversation that the description would be changed however, when he reviewed the incident report recently, he discovered that it had not been changed. (Pg 20, L24 - pg 21, L9)

The claimant testified that he went to the emergency room on October 27, 2010, where they provided him with pain medication and referred him to his family physician. (pg 21, L10-24) Claimant testified that he saw his family physician, Dr. Mark Miles and then returned to his regular duties at work. (pg 22, L22 to Pg 23, L2) The claimant testified that on his third (3) visit to Dr. Miles, an MRI was ordered and as a result the claimant was referred to Dr. McHenry an orthopedic surgeon. (Pg 23, L3-7) The claimant was then referred to Dr. Gheorghiu for injections but his condition worsened. (Pg 23, L9-16) Ultimately the claimant underwent surgery to his back and remains out of work at the time of the hearing recovering from the back surgery. (Pg 23, L17-20) The claimant offered no other witnesses.

The supervisor Samuel K Barnwell next testified that he was making his rounds prior to lunch and that the claimant advised him that he felt a twinge or small pain in his lower back when he "got to the end of his floor scrapping his molds". (Pg 43, L15-20) Mr. Barnwell further testified that the claimant told him "he had got to the end and said he turned to go back up and do the other side, and when he turned he felt a twinge or a small pain in his lower back". (Pg 44, L8-10) Mr. Barnwell acknowledged that he did not complete an accident report at that time. (Pg 45, L 6-7) Mr. Barnwell claimed that the reason he did not fill out an accident report was that he considered it "near miss". (Pg 45, L9-12) Mr Barnwell did acknowledge that the claimant was using a pallet when questioned by the commissioner. (Pg 58, L7-9) Mr. Barnwell further testified that the bowls are four (4) to four and half (4 ½) feet off the ground. (Pg 61, L17-22) On cross examination Mr. Barnwell further acknowledged that the claimant demonstrated to both he and Mr. Tollison how he had done the palleting and how he got hurt. (Pg 64, L16-Pg

65, L5) Mr. Barnwell further acknowledged that the incident report under "action plan" recommended that the claimant receive instructions about slowing down during his procedures and being more careful when turning and lifting. (Pg 66, L17-20) The Senior Project Safety Specialists, Mike Tollison, next testified that one of his duties is to investigate any on the job injuries that someone may contend they received at Kohler. (Pg 70, L19- Pg 71, L1) Mr. Tollison testified that Sam Barnwell did get in some trouble for not reporting the injury on the same day that it occurred. (Pg 72, L1-3) Mr. Tollison testified that the claimant told him and Mr. Barnwell that he was only turning around to complete the next process of his job when he was injured. (Pg 73, L15-17) Mr. Tollison testified in response to the commissioner's examination, that if the claimant was doing what he had testified to on the date of the hearing, that such an injury would have been compensable. (Pg 76, L7 to Pg 78, L10)

When the claimant went to the emergency room records indicate "patient reports low back pain related to injury at work on Monday". (APA 1, Pg 8) On October 28, 2010, during his first visit to his family physician, Dr. Mark Miles, he stated "he hurt his back the other night at work while pulling and twisting pallets". (APA 2, Pg 9) . In addition to back pain on his second and third visits to Dr. Miles, the claimant complained of shooting leg pain. (APA 3, Pg 3&5) Later when he first saw his orthopedic surgeon, Dr. McHenry noted he "leaned over and did a twisting motion at work". (APA 4, Pg 20)

FINDINGS OF FACT

1. I find the Claimant to be a credible witness. This finding is based my observation of the Claimant at the hearing and the Claimant's testimony.
2. I further find that the Claimant has an eleven (11) year work history with his employer and appeared to testify truthfully as to the events of this claim.
3. I further find from the Claimant made a report of his injury on October 25, 2010, by informing his supervisor Sam Barnwell.
4. I further find that Sam Barnwell, the supervisor, violated company policy when he did not follow the reporting policy of workers' compensation claims.
5. I further find that the employees job requires him to reach at a height some four (4) to four in half (4 ½) feet from the floor in somewhat an awkward position standing on one foot and pulling a device known as a paletters across the base of the commode on which he is working.
6. I further find that the Claimant suffered an injury by accident to his back and legs on October 25, 2010, when performing the function as described above.
7. I further find that Mr. Barnwell refused to address claimant's complaints and efforts to report the injury on the date of the accident or after the accident.
8. I further find that Mr. Barnwell appeared to be very nervous during his testimony and on cross examination conceded that the Claimant attempted to demonstrate the manner in which he was injured in a manner consistent with his testimony at the hearing, however, that description was not recorded on the report of injury.
9. I further find that the Claimant, when permitted to view the report of injury, contested the manner in which it was described.

10. I further find that Mr. Tollison the Senior Project Safety Specialists, stated in his testimony that if the Claimant had described his accident to him in the same manner as he did at the hearing it would have been a compensable accident under the South Carolina Workers' Compensation Act. Mr. Tollison testified that the description gave him at the hearing was different than that originally described to him. Mr. Tollison conceded that he never asked the Claimant if he twisted. Based on the greater weight of the evidence I find that the claimant's version of the events to be most credible and therefore, I find the accident to be compensable.
11. I further find that all casually related medical are to be paid.
12. I further find that the Claimant is entitled to be paid temporary total disability benefits for the period time that he is written out of work by the authorized treating physician.

CONCLUSIONS OF LAW

The undersigned Commissioner finds the following conclusions of law to be applicable:

1. Injury and injury by accident are governed by South Carolina Code of Laws § 42-1-160.
2. Temporary total disability is governed by South Carolina Code of Laws § 42-9-10.
3. Medical benefits are governed by South Carolina Code of Laws § 42-15-60. This code section provides that an injured worker is entitled to

hospital and other treatment including medical and surgical supplies as may be reasonably required.

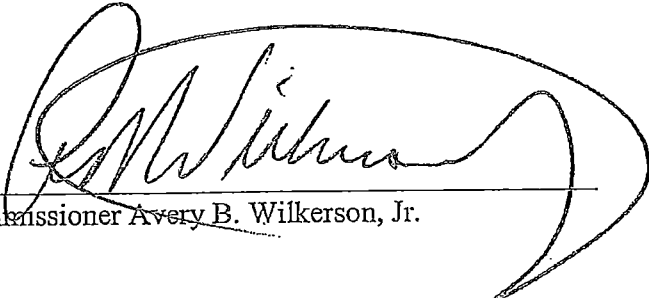
4. Under § 42-1-40, the Claimant's average weekly wage is \$730.71 and his compensation rate was \$487.16.
5. Under § 42-1-160, the Claimant did sustain injury by accident to his back, and both legs on October 25, 2010.
6. Under § 42-15-60, the Claimant is entitled to reimbursement for the causally related medical treatment which he received to his back, and both legs injuries.
7. Under § 42-9-10, the Claimant is shall continue to receive continued temporary total disability benefits so long as his authorized treating physician writes him out of work.

ORDER

IT IS THEREFORE ORDERED that the Claimant sustained a compensable injury to the back, and both legs. As a result, the Claimant shall receive temporary total disability benefits from the date that he was first written out of work and continuing until his authorized treating physician finds that he is able to return to work. The Claimant is further entitled to his casually related medical treatment and expenses.

No hearing costs are assessed at this time.

**IT IS SO ORDERED
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties

or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

May 3, 2011

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

**Appellate Panel
of the
South Carolina Workers' Compensation Commission**

ORDER

WCC # 1016367

**Marshall Corbin Johnson, Employee, Claimant,
v.
Kohler Company, Self Insured, Carrier/Defendants.**

Full Affirmation

Appellate Panel Review held in Columbia, South Carolina, on September 20, 2011, per notices timely and properly served.

**Claimant/respondent represented by Patrick E. Knie
Defendants/appellants represented by Russell Infinger**

Order filed: _____

Statement of Case

This case is before the Workers' Compensation Commission Appellate Panel upon a request for Commission Review filed by the Defendants on May 17, 2011. The parties were heard by Commissioner Avery Wilkerson on February 24, 2011, in Greenville, South Carolina. The Defendants appealed from the Findings and Order of the Hearing Commissioner of March 10, 2011. On March 10, 2011, The Hearing Commissioner issued the following order:

1. The Claimant sustained a compensable injury to the back and both legs.
2. The Claimant shall receive temporary total benefits from the date that he was first written out of work and continuing until his authorized treating physician finds he is able to return to work.
3. The Claimant is entitled to his casually related medical treatment and expenses.

Within the statutory period, counsel for the defendants filed an application for review, setting forth the grounds for appeal, copies of which were furnished to all interested parties prior to oral argument. The Defendants allege that the Hearing

Commissioner erred by finding that Claimant sustained a compensable injury that is alleged in his claim.

Based on a review of all of the evidence contained in the record, the Appellate Panel, makes the following findings of fact.

FINDINGS OF FACT:

1. The Claimant and the defendant are subject to and bound by the terms and conditions of the South Carolina Workers' Compensation Act.
2. Notice of the hearing was timely and properly served on all parties of interest.
3. South Carolina Workers' Compensation Commission has jurisdiction over this matter and the proper venue in Spartanburg County.
4. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based on an injury by accident on October 25, 2010. The Claimant's average weekly wage on October 25, 2010, was \$730.71 and the compensation rate was \$487.16.
5. The Claimant was employed by the defendant Kohler Company for eleven (11) years prior to his alleged injury.
6. On October 25, 2010, the Claimant made a report of his injury by informing his supervisor, Sam Barnwell.
7. Sam Barnwell, the supervisor, violated company policy when he did not follow the reporting of Workers' Compensation Claims.
8. The Claimant's job required him to reach at a height of some four (4) to four and half (4 ½) feet from the floor in somewhat of an awkward position standing on one (1) foot and pulling a device known as a pallater across the base of the commodes which he was forming.
9. The Claimant suffered an injury by accident to his back and legs on October 25, 2010 when performing the function as described above.
10. Mr. Barnwell refused to address the Claimant's complaints and efforts to report the injury on the date of the accident or after the accident. Mr. Barnwell's appearance when testifying was noted as being "very nervous" and on cross examination he conceded that the Claimant had attempted to demonstrate the manner in which he was injured, in a manner consistent with Claimant's testimony at the hearing, however, that description was not recorded on the report of injury.
11. Claimant when later permitted to view the report of injury contested the manner in which it was described.
12. Mr. Tollison, the Senior Project Safety Specialist, stated in his testimony that if the Claimant had described his accident to him in the same manner as he did at the hearing it would of been a compensable accident under the

South Carolina Workers' Compensation Act. Mr. Tollison testified that the description given to him at the hearing was different than originally described to him. Mr. Tollison conceded that he never asked the Claimant if he had twisted.

13. The Claimant's version of the events appears to be the most credible and therefore, it is agreed by the Appellate Panel that the accident is compensable.
14. All causally related medical should be paid.
15. The Claimant is entitled to be paid all the temporary total benefits for the time period that he is written out of work by the authorizing treating physician.

CONCLUSIONS OF LAW:

Accordingly, as provided by the South Carolina Code of Laws, 1976, as amended, Section 42-17-50, it is the determination of this panel:

1. Injury and injury by accident are governed by South Carolina Code of Laws § 42-1-160.
2. Temporary total disability is governed by South Carolina Code of Laws § 42-9-10.
3. Medical benefits are governed by South Carolina Code of Laws § 42-15-60. This code section provides that an injured worker is entitled to hospital and other treatment including medical and surgical supplies as may be reasonably be required and which would tend to lessen the period of disability.
4. Under § 42-1-40, the Claimant's average weekly wage is \$ 730.31 and his compensation rate is \$ 487.16.
5. Under § 42-1-160, the Claimant did sustain injury by accident to his back and both legs on October 25, 2010.
6. Under § 42-15-60, the Claimant is entitled to reimbursement for all casually related medical treatment which he received to his back and both legs.
7. Under § 42-9-10, the Claimant is entitled to be paid temporary total benefits to date and for those benefits to continue so long as his authorize treating physician writes him out of work.

ORDER:

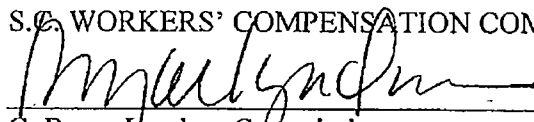
IT IS THEREFORE ORDERED that Claimant sustained a compensable injury by accident to his low back and both legs from this accident. As a result he is entitled to his temporary total disability benefits from the date he was first written out of work and continuing until his authorized treating physician find he is able to return to work. The Claimant is further entitled to his casually related

medical treatment as well as reimbursement for his any medical expenses to this date. All other issues are to be held in abeyance.

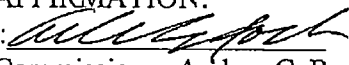
The order of the Hearing Commissioner is hereby **FULLY AFFIRMED**. All Findings of Fact Conclusions of Law are incorporated to become the final Decision and Order of the South Carolina Workers' Compensation Commission.

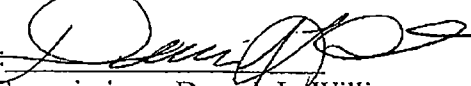
IT IS SO ORDERED

S.C. WORKERS' COMPENSATION COMMISSION


G. Bryan Lyndon, Commissioner
for the Appellate Panel

FULL AFFIRMATION:

Concur: 
Commissioner Andrea C. Roche

Concur: 
Commissioner Derrick L. Williams

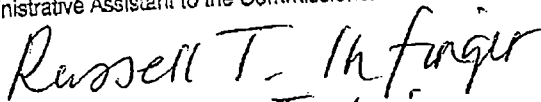
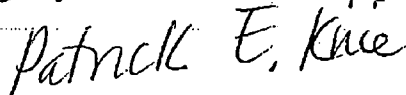
Columbia, South Carolina
11-16, 2011

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 16 day of November, 2011
By Valerie D. Bell

Administrative Assistant to the Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1016367

MARSHALL C. JOHNSON)	
CLAIMANT,)	
VS.)	SC WORKERS' COMPENSATION COMMISSION
KOHLER COMPANY)	HEARING OF
EMPLOYER,)	MARSHALL C. JOHNSON
AND)	VS
SELF-INSURED)	KOHLER COMPANY
CARRIER.)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Marshall C. Johnson versus Kohler Company, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:41 A.M., Thursday, February 24, 2011, at Greenville County Square, 301 University Ridge, Suite 5100, Greenville, South Carolina.

COPY**REPORTED****BY****GLORIA DAVIS**

PALMETTO COURT REPORTING
321 Mac Circle Lexington, SC 29073

APPEARANCES

FOR THE CLAIMANT:
Patrick E. Knie, Esquire
250 Magnolia Street
P.O. Box 5159
Spartanburg, SC 29304

FOR THE EMPLOYER/CARRIER:
Russell T. Infinger, Esquire
Nexsen Pruet Jacobs Pollard & Robinson, LLC
55 East Camperdown Way, Suite 400
P.O. Drawer 10648
Greenville, SC 29603

ALSO PRESENT:

Mrs. Alisha Johnson

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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I N D E X

WITNESSES

All Witnesses:	Page
Mr. Johnson for Claimant	
Direct Examination by Mr. Knie	8:10
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Mr. Barnwell for Defense	
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Cross-Examination by Mr. Knie	29:11
Redirect Examination by Mr. Infinger	93:8
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STIPULATIONS

1
2 Commissioner Wilkerson: Today's date is February
3 the 24th, 2011. We're here in reference to
4 Workers' Comp file number 1016367. The Claimant
5 is Marshall C. Johnson and his Attorney is Patrick
6 Knie.

7 Mr. Knie: Correct.

8 Commissioner Wilkerson: Is it Knie; is that
9 correct?

10 Mr. Knie: Yes, sir.

11 Commissioner Wilkerson: The employer is Kohler
12 Company, their carrier -- they're obviously
13 self-insured and the Attorney is Russell Infinger.
14 The date of accident on this case is 10/25/2010.
15 The average weekly wage is seven thirty,
16 seventy-one (\$730.71) and the comp rate is four
17 eighty-seven, sixteen (\$487.16). Is there a
18 dispute on that? I saw on one --

19 Mr. Knie: No, sir.

20 Commissioner Wilkerson: -- okay. We're here
21 today to determine issues that's set forth on the
22 form 50/52 and by operation of 67-603. This is a
23 denied case. Are there any objections to APA's,
24 jurisdiction, venue or any other items from the
25 Claimant's perspective?

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Mr. Knie: None from the Claimant.

Commissioner Wilkerson: From -- from the Defense's perspective?

Mr. Infinger: None.

Commissioner Wilkerson: Okay. Without objection the Commission's file becomes part of the record with the exception of self-serving declarations and unstipulated medical reports. At this time I'll ask the moving party to go ahead and put their position on the record and then I'll likewise ask the Defense to do the same. Mr. Knie?

Mr. Knie: The Claimant contends that on October 25th of last year he was injured while he was working forming and cleaning off commodes, which are casted at Kohler. His testimony will simply be that he was in a stretching, twisting, motion reaching around a commode when he felt a pain in his back and that within ten (10) minutes thereafter he reported it in exactly that manner to Sam Barnwell, who is his supervisor. Of note, he will testify that Mr. Barnwell just kept walking like he didn't want to hear it and so, my client a second time said, I'm reporting it the way I'm supposed to; is that correct? There --

1 there will be testimony that there was a
2 conversation on the next day, the 26th, by and
3 among my client, Mr. Tolleson and Mr. Barnwell
4 about the incident and how it occurred and that
5 they viewed an incident report together at which
6 time my client says that's not how it happened and
7 they -- he was advised that, in fact, the incident
8 report -- not to worry the incident report could
9 be changed but it never was. My client first
10 sought the services of a physician on the 27th
11 when he went to the ER. He had seen the Nurse on
12 the 26th. He was referred to his family physician
13 who later did an MRI, showed a herniated disc and
14 ultimately referred to a Dr. Mc Henry for surgery
15 and he is recovering from surgery at this time.

16 Commissioner Wilkerson: Okay. Thank you. Mr.
17 Infinger?

18 Mr. Infinger: Thank you. Commissioner, it's the
19 position of the Defendants that the incident that
20 the Claimant advised both his supervisor and the
21 Safety Manager of, at work on the date alleged, is
22 not a compensable accident as defined by our
23 statute because the activity that he described to
24 them at the time that he felt a twinge in his back
25 was not something that would arise out of or occur

1 during the course and scope of his employment.
2 And as a result of the fact that his -- this
3 incident is not defined as compensable under our
4 Act we're denying any benefits both from a
5 temporary total or a medical position. We will
6 bring to the Commission's attention today both the
7 testimony of his supervisor, Mr. Sam Barnwell, who
8 has been talked about earlier and Mike Tolleson,
9 who is the Safety Manger that had direct
10 communication with the Claimant and he actually
11 demonstrated, physically, his -- the incident that
12 he said that caused him to have a twinge in his
13 back.

14 Commissioner Wilkerson: Okay. Thank you. We'll
15 have you raise your right hand and we're going to
16 swear you in to begin with.

17 Mr. Johnson: Yes, sir.

18 Commissioner Wilkerson: I've got to have the
19 Court Reporter swear you in --

20 Mr. Johnson: Okay.

21 Commissioner Wilkerson: -- Mr. Johnson, thank
22 you.

23 Whereupon;

24 MARSHALL CORBIN JOHNSON, being duly sworn and cautioned
25 to speak the truth, the whole truth and nothing but the

1 truth, testified as follows:

2 Court Reporter: Please state your full name for
3 the record.

4 witness: Marshall Corbin Johnson.

5 Court Reporter: Thank you, sir.

6 Commissioner Wilkerson: Thank you, Mr. Johnson.
7 Mr. Knie?

8 Mr. Knie: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 By Mr. Knie:

11 Q. Mr. Johnson, give us the benefit of your residential
12 address; where do you live?

13 A. 1527 Old Ansonville Road --

14 Q. And how long --

15 A. -- that would be in Moore.

16 Q. -- how long have you lived there?

17 A. Approximately, going on three (3) months.

18 Q. Okay. Are you married?

19 A. Yes, sir.

20 Q. Do you have children?

21 A. I have two (2) -- two (2) boys.

22 Q. How old are they?

23 A. Seventeen (17) and ten (10).

24 Q. Okay. How far did you go in school?

25 A. Ninth (9th) grade.

1 Q. And after the ninth (9th) grade did you go to work?

2 A. Yes, sir. I went to work at McDonald's beverage area,
3 then I ended up working at Craft -- Craft Master's
4 Construction.

5 Q. And how long did you work for Craft Master's
6 Construction?

7 A. Approximately six (6) years.

8 Q. All right. And ultimately did Craft Master's
9 Construction basically go bankrupt and out of business?

10 A. Yes, sir.

11 Q. And when they went bankrupt and went out of business
12 where did you go to work?

13 A. I seeked employment at Kohler.

14 Q. And how long have you consecutively worked for Kohler?

15 A. Eleven (11) years.

16 Q. What is your job with Kohler?

17 A. I'm a Caster.

18 Q. And tell us what a Caster does.

19 A. A Caster forms -- pours a slip in the molds and forms
20 the toilets. You have to take and work them down. It
21 requires, you know, heavy lifting, punching rim holes,
22 cutting jet holes, putting in buttons, you know, basic
23 standards procedures as, you know, making the pot.

24 Q. Yes, sir. And during the eleven (11) years that you've
25 been at Kohler working as a Caster have you ever filed

- 1 a Workers' Comp claim before now?
- 2 A. No, sir.
- 3 Q. Do you like your work at Kohler?
- 4 A. Yes, sir.
- 5 Q. And after you recover from your injury are you eager to
- 6 go back to Kohler?
- 7 A. Definitely.
- 8 Q. Let's talk a little bit about the date of your injury.
- 9 what was that date?
- 10 A. The 25th of October.
- 11 Q. And on that date how many -- are these commodes we're
- 12 talking about?
- 13 A. Yes, sir.
- 14 Q. How many commodes were you going to cast and -- and
- 15 make that day?
- 16 A. If I'm correct I think it was twenty-eight (28).
- 17 Q. All right. And what time did you get to work on that
- 18 morning?
- 19 A. 5:30.
- 20 Q. What time did you actually begin your shift?
- 21 A. I'd say approximately 5:30.
- 22 Q. Okay.
- 23 A. That's when, you know, you clock in and you have to
- 24 stretch out.
- 25 Q. And what do you have to do by way of stretch out?

1 A. You have to do hamstring stretch, overhead arm lifts;
2 you know, you have to do about a good ten (10) minute
3 routine through a tape, you know, to loosen yourself up
4 before you go to work --

5 Q. And did --

6 A. -- it's required.

7 Q. -- did you do that?

8 A. Yes, sir.

9 Q. And what do you understand is the reason for doing
10 those types of exercise?

11 A. It's supposed to help prevent the injuries.

12 Q. All right, sir. The -- and did you do -- you said you
13 did them that day?

14 A. Yes, sir.

15 Q. All right. And when you started work -- just take us
16 through, quickly, the process of what you had to do
17 that day.

18 A. Okay. The first thing you go in, like I say, you
19 stretch out. The second thing you do after the tape is
20 over with, everybody goes to their own floor. Okay,
21 then you go and reach above your head and turn the slip
22 line on. Then you've got these hoses, like, they might
23 be every four (4), six (6) foot apart. You take those
24 and you put a funnel in your molds and you fill them up
25 almost to the top and you cut it off.

1 Q. Okay.

2 A. And you basically let it sit an hour fifteen (15) on
3 the rims and maybe an hour on the bodies and then you
4 have -- you have to pull the pins underneath to drain
5 them or pull the pin on the rim to drain it.
6 Basically, do that procedure. You open them up, cut
7 jet holes, trap buttons, stuff like that. Then you top
8 them off, roll them over, pull the foot core. You have
9 so many minutes to wait. You have to check them with a
10 gauge to make sure they're a certain hardness before
11 you can turn them out because if you don't they'll
12 collapse, you know, it's still wet. All right, after
13 you do that procedure you trim them down, pallet down,
14 like I was doing, and you wash down. And, basically,
15 after that you just load up and clean the floor and
16 that's the end of the day.

17 Q. And when you load up where do you have to load up to?

18 A. You pull a rack in front of your floor --

19 Q. Okay.

20 A. -- it has three (3) sections and you can load the
21 middle by yourself but you have to have your partner
22 that you work with to load the bottom and the top with
23 you.

24 Q. All right. Now, on August 25th, 2010, is that what you
25 were in the process of doing?

1 Commissioner Wilkerson: October.

2 Mr. Knie: October, thank you.

3 Commissioner Wilkerson: That's okay.

4 Mr. Knie: Thank you.

5 A. Yes, sir.

6 Q. October 25th, is that what you were in the process of
7 doing?

8 A. Yes, sir.

9 Q. At some point did you suffer an injury on that date?

10 A. Yes, sir, I did, approximately at 11:30.

11 Q. All right. Describe exactly for the Commissioner what
12 you were doing when you suffered your injury.

13 A. I was reaching around from the back side of my bowl,
14 leaning on one (1) foot, and was taking a metal pallet,
15 bending it with my fingers and coming around to the
16 front, you know, twisting and turning to make sure it's
17 smooth with the rest of the bowl. And I had this --
18 this foot (indicating) wasn't even on the ground and
19 when I come around the front I set it down and that's
20 when I felt something like a pinching -- a pinching
21 feeling and then two (2) seconds after that it was a
22 real bad burn, stinging, sensation.

23 Q. Okay.

24 Commissioner Wilkerson: And would you say that
25 the foot that was off the ground was your left.

1 foot?

2 A. Yeah, my left foot. Yes, sir.

3 Commissioner Wilkerson: So, you were reaching
4 around with --

5 A. Yeah, reaching --

6 Commissioner Wilkerson: -- your right side?

7 A. -- yeah, on the right side.

8 Commissioner Wilkerson: Okay. All right.

9 Q. Now, you said, I believe, that you were going to make
10 or cast twenty-eight (28) commodes that day?

11 A. Yes, sir.

12 Q. What number commode were you working on at the time
13 that this happened?

14 A. I was third one from the end; it had been twenty-five
15 (25).

16 Q. All right. When you would get to the end then what
17 process would you have to undertake on the commodes
18 down the other side?

19 A. You would have to stand up and do the left side just
20 like you did the right side.

21 Q. Okay. You just -- I've got you. But my understanding
22 is your testimony is you had not gotten to the end --

23 A. No, sir.

24 Q. -- before you got hurt? All right. After you suffered
25 the injury that you just described, how long was it

1 before you were able to report it?

2 A. It was in -- within the next ten (10) minutes. Sam
3 Barnwell had walked by the floor like he always does;
4 he walks by every -- by everyone's floors right before
5 he goes to lunch.

6 Q. Okay.

7 A. You know, hey, do you need this, do you need that? See
8 if you need any tools or something, you know, is
9 everybody okay, you know, I'm -- that's basically what
10 he does every day, you know.

11 Q. All right. So, did he come along in about ten (10)
12 minutes later --

13 A. Yes, sir.

14 Q. -- and were you kind of expecting him to?

15 A. Yes, sir.

16 Q. Okay. When he came what -- what did you say to him?

17 A. I told him, I said, Sam, I believe I have something
18 wrong with my back. I said, it's hurting real bad.

19 Q. All right.

20 A. And he -- he looked at me funny and kind of walked off.

21 Q. Did you say anything as he was walking off?

22 A. Yes, sir, I did.

23 Q. What did you say?

24 A. I said, Sam, I said, I'm reporting it like I'm supposed
25 to do; that's what I'm supposed to do, right?

- 1 Q. Okay.
- 2 A. And he just looked at me and walked off again.
- 3 Q. All right.
- 4 A. And I said, I'm just letting you know.
- 5 Q. Now, that was on the 25th?
- 6 A. Yes, sir.
- 7 Q. Did you finish up your job duties on the 25th?
- 8 A. Yes, sir, I did.
- 9 Q. Were you actually pretty close to being done at that
- 10 point anyway?
- 11 A. Yes, sir, I was.
- 12 Q. About when did you wrap up what you were supposed to do
- 13 on that day?
- 14 A. I'd say -- I'd say around, approximately, two o'clock
- 15 because that's about, basically, what time you get
- 16 done, I mean, 1:30.
- 17 Q. Did you -- did you go on straight home?
- 18 A. Yes, sir, I did.
- 19 Q. And what did you do when you got home?
- 20 A. I was hurting so I took a shower, didn't eat much, and
- 21 went to bed.
- 22 Q. How did you feel the next morning?
- 23 A. The next morning I tried to get up out the bed, I
- 24 couldn't even bend over and I woke my wife up, Alicia
- 25 Johnson, to help me put my shoes on.

1 Q. All right. Did you go on to work?

2 A. Yes, sir, I did. And I was late.

3 Q. And when you got to work did you approach anybody to
4 tell them about your condition?

5 A. Yes, sir. I found Sam a couple of floors down from
6 where we normally stretch out in the mornings and I had
7 told him, I said, my back is hurting. I don't think
8 I'm going to be able to cast today; I can't bend over.

9 Q. Okay. Then what -- what did he say to you?

10 A. Oh, he had made the comment, I figured you would say
11 that, me and a couple of the guys was talking about
12 that this morning; you would come in here and probably
13 say something like that.

14 Q. Okay. What did he tell you to do?

15 A. At first he had told me to go sit at a desk and wait
16 till the Nurse comes in. So, I started to walk off and
17 he hollered, hey, hold on. And I said, yes, sir. And
18 he said, you're going to have to go cast one (1) bowl;
19 so, that's what I did.

20 Q. Okay. Just one (1) commode bowl?

21 A. Yes, sir.

22 Q. All right. Even though it was just one (1) bowl is
23 there a lot of downtime in waiting for it to harden up
24 and all of that?

25 A. Yes, sir, because if you rush to finish it will damage

1 it.

2 Q. On that date did you need any assistance from any
3 co-workers in -- in some of the physical aspects of
4 your job?

5 A. Yes, sir, I did.

6 Q. And what -- what did you need help with?

7 A. Pretty much every bit of the heavy lifting had to be
8 done by someone else because Sam had come over there
9 after I went to cast that one (1) bowl he said he would
10 get someone over there for me. Come time to do my
11 procedures I looked for the guy in front of me and the
12 other guy behind me because I couldn't lift it.

13 Q. Okay.

14 A. I was hurting and I had those guys to help me the rest
15 of the day.

16 Q. Did you go to the Nurse's station that day?

17 A. Yes, sir.

18 Q. Did they -- did the Nurse provide you with any
19 medication or anything to help?

20 A. Yes, sir. She gave me some muscle rub and some pills
21 for, like, inflammation.

22 Q. All right. Did you report to work again on the next
23 day, which would be Wednesday the 27th?

24 A. Yes, sir.

25 Q. And on Wednesday the 27th, what were your job duties?

- 1 A. The 27th, was basically come in, the same thing, you
2 had to stretch out and because I was injured Sam had
3 requested that I stretch out twice instead of once.
- 4 Q. All right. Let's back up. On the 26th, the day after
5 the accident --
- 6 A. Yes, sir.
- 7 Q. -- were you approached by Sam and anybody else to
8 discuss the -- the events surrounding your injury?
- 9 A. Yes, sir. I was approached by Mike Tolleson --
- 10 Q. All right.
- 11 A. -- and Sam at the same time.
- 12 Q. And just tell us about that discussion.
- 13 A. Mike and Sam had come up to my floor, I was wrapping it
14 up, you know, just tightening my clamps down. They had
15 come over and basically stated that him and Sam had
16 talked and what they had talked about was not
17 considering it a work related injury because I was not
18 lifting anything at the time, heavy.
- 19 Q. Okay. And did you disagree with them?
- 20 A. Yes, sir, I did, after he had -- Mike had explained
21 what was -- they had talked about.
- 22 Q. And did you start to go somewhere with them?
- 23 A. Yes, sir. Mike had asked that we go check and look on
24 the computer what -- what -- what was turned in --
- 25 Q. All right.

1 A. -- the incident report.

2 Q. And as you walked toward where ever the computer was to
3 look at the incident report did you stop and
4 demonstrate anything to them?

5 A. Yes, sir, I did.

6 Q. Tell us what you did.

7 A. I -- we walked off from my floor approximately ten (10)
8 feet and there's a rack that sits there that had some
9 on my ware on it and I had hollered, Mike, I said, you
10 do understand how I got hurt? And I had demonstrated
11 exactly how I got hurt.

12 Q. Okay. Then did you go on to the computer?

13 A. Yes, sir, we did.

14 Q. And did you read what was on the computer?

15 A. Yes, sir.

16 Q. And was it an accurate description of how you were
17 injured?

18 A. No, sir.

19 Q. Did you tell them that?

20 A. Yes, sir.

21 Q. And what did they inform you about what was on the
22 computer and what they could do about it?

23 A. They informed me that they could change it.

24 Q. Okay. From the statement that was made by them or
25 which ever one said that, did -- did you assume that it

1 would be changed?

2 A. Yes, sir, I did.

3 Q. All right. And was it only after your deposition some
4 week or two (2) ago that you actually for the first
5 time saw a printed version of -- of the final version
6 of the incident report?

7 A. Yes, sir.

8 Q. And had it been changed?

9 A. No, sir.

10 Q. Okay. Now, let's talk a little bit about -- about your
11 medical. On the 27th, two (2) days after the injury,
12 did you go on to the emergency room?

13 A. Yes, sir, I did. That Wednesday would be the 27th --

14 Q. And was that based --

15 A. -- that night.

16 Q. -- based on the fact that they said that it was not --
17 it was going to be denied and they weren't going to
18 send you anywhere?

19 A. Yes, sir.

20 Q. Okay. What -- what did they do for you at the
21 emergency room?

22 A. They basically took and gave me some pain medicine and
23 sent me home and told me to refer to my family
24 physician.

25 Q. All right. And did you continue to work for the next

1 few days doing one (1) bowl a day?

2 A. Yes, sir.

3 Q. And ultimately -- who is your family physician?

4 A. Dr. Mark -- Mark Miles.

5 Q. Did you see him?

6 A. Yes, sir.

7 Q. How many times all together did you see him?

8 A. I seen him three (3) times.

9 Q. Okay. On the -- was there an occasion, and I can't
10 remember which time, that he said, look, why don't you
11 go ahead and try to do your regular duties again?

12 Mr. Infinger: Objection. Are you talking about
13 the doctor?

14 Mr. Knie: Yes.

15 Mr. Infinger: Okay. Then I object to your --

16 Mr. Knie: Okay.

17 Mr. Infinger: -- testifying about the doctor.

18 Q. As a result --

19 Commissioner Wilkerson: Yes, go ahead, I'm sorry,
20 just rephrase.

21 Mr. Knie: -- yes.

22 Q. As a result of seeing Dr. Miles on one (1) of the three
23 (3) occasions that -- that you saw him did you then
24 return to your regular duties?

25 A. Yes, sir.

- 1 Q. And did you have trouble doing those regular duties?
- 2 A. Yes, sir, I did.
- 3 Q. On your third (3rd) visit to Dr. Miles did he order
- 4 some kind of test for you to have done?
- 5 A. Yes, sir, he did. He ordered an MRI.
- 6 Q. As a result of the MRI were you referred to a Dr. Mc
- 7 Henry, a Surgeon?
- 8 A. Yes, sir.
- 9 Q. Did Dr. Mc Henry refer you yet to another doctor?
- 10 A. He referred me to Dr. Gheorghiu to have the spinal
- 11 injections.
- 12 Q. Did you have those?
- 13 A. Yes, sir. I had two (2) of them.
- 14 Q. After the second one was your condition better or
- 15 worse?
- 16 A. It got worse.
- 17 Q. And ultimately did you undergo surgery?
- 18 A. Yes, sir, I did.
- 19 Q. And are you now recovering from that surgery?
- 20 A. Yes, sir, I am.
- 21 Q. Are you eager to get back to work?
- 22 A. Yes, sir, I am.
- 23 Q. And without any question, being under oath today, did
- 24 the injury happen exactly as you told this
- 25 Commissioner?

1 A. Yes, sir, it did.

2 Q. Okay.

3 Mr. Knie: I believe that's it.

4 Commissioner Wilkerson: Mr. Infinger?

5 Mr. Infinger: Thank you.

6 CROSS-EXAMINATION

7 By Mr. Infinger:

8 Q. Mr. Johnson --

9 A. Yes, sir.

10 Q. -- on the day the accident occurred you've testified
11 that within ten (10) minutes you told Sam Barnwell,
12 your supervisor, that your back was hurting and you
13 were reporting it to him?

14 A. Yes, sir.

15 Q. Okay. Now, that was near the end of your shift and the
16 -- the comment that you made to Mr. Barnwell regarding
17 that injury is what you've spoken here to your lawyer
18 in testimony here this morning?

19 A. Yes, sir.

20 Q. What -- that's what you told him?

21 A. Yes, sir.

22 Q. Okay. Now, the following day you said he asked you to
23 do -- cast one (1) bowl and you did that?

24 A. Yes, sir.

25 Q. And as I understand it the process of doing one (1)

1 bowl takes all day but there's a lot of sitting around
2 waiting on it to get hardened --

3 A. Yes, sir.

4 Q. -- up and waiting for this process and that process to
5 occur?

6 A. Yes, sir.

7 Q. And even though you casted one (1) bowl it wasn't like
8 you were doing it rapidly, it was just waiting for that
9 process to occur; is that right?

10 A. Yes, sir.

11 Q. Okay. Now, the following day is whenever you had a
12 conversation with both Sam Barnwell and Mike Tolleson?

13 A. Yes, sir. That was the end of the day.

14 Q. Okay. And you had done just the one (1) bowl before
15 you had that conversation with them?

16 A. Say that again, please.

17 Q. Before you had a conversation with them on the
18 following day you had only worked one (1) bowl; you
19 hadn't done anything else that day?

20 A. Just one (1) bowl, that's it.

21 Q. You didn't help anybody else do their work or do any
22 other work around the facility besides the one (1) bowl
23 that you were asked to cast?

24 A. In between the times of the bowl sitting up I walked to
25 other people's floor, you know, just to talk, killing

1 time, like the Nurse had stated for me to do was not
2 sit down long periods of time or I'll get stiff, walk
3 around loosen up and that's basically what I did.

4 Q. So, you didn't actually do any other work; you just
5 were walking around talking to the other people waiting
6 for your bowl to get to the point where you could do
7 the next process?

8 A. I trimmed some of my friend's bowls down in the front
9 --

10 Q. Okay. So, you did --

11 A. -- with a wire trimmer.

12 Q. -- you did do some -- do the wire trimming bowls with
13 other employee's casting activities?

14 A. Yes, sir. Because at the point of time when I'm doing
15 my bowl they're turned out the same time I do and
16 everybody basically stays together and does the same
17 procedure.

18 Q. Okay. All right, and after -- after assisting some of
19 your employees do theirs and doing the one (1) bowl
20 that your supervisor asked you if you could do, you
21 then had a conversation that afternoon with Sam and
22 Mike?

23 A. Yes, sir.

24 Q. All right. And you testified earlier about the
25 conversation you had with Sam and Mike concerning your

1 report; is that what you told them, what you said
2 earlier in your testimony?

3 A. Yes, sir.

4 Q. Okay. Now, when you spoke with Mike Tolleson and Sam
5 and they asked you to demonstrate what happened, is the
6 demonstration you gave them the same thing you've told
7 the Commissioner today about one (1) foot was up and
8 one (1) arm was out and then when you put your foot on
9 the floor that's when you felt a pain in your back?

10 A. No, sir.

11 Q. Is that what you --

12 A. No, sir.

13 Q. -- is that what you demonstrated to them?

14 A. Yes, sir. I demonstrated to them on my own knowledge;
15 they didn't ask me to demonstrate.

16 Q. Okay. Well, I'm just asking you did you demonstrate
17 it?

18 A. Yes. Yes, sir. Yes, sir, I did.

19 Q. And your testimony here today is you demonstrated to
20 those two (2) gentlemen this activity of having one (1)
21 leg up and putting the other leg down and when the
22 other leg was standing on the floor --

23 A. Yes, sir.

24 Q. -- you felt your back hurt?

25 A. Yes, sir.

1 Q. okay. And -- and if I'm understanding it correctly
2 that's when your back was hurt was when you simply put
3 your foot down on the floor; is that right?

4 A. My back started hurting when the process of both
5 things, me twisting and the foot going down at the same
6 time.

7 Q. Now, you were not touching the bowl or doing any
8 activity with the bowl when that occurred?

9 A. Yes, sir, I was.

10 Q. What were you doing?

11 A. I was palleting the right side down.

12 Commissioner Wilkerson: You were -- I'm sorry,
13 you were?

14 A. I was palleting --

15 Commissioner Wilkerson: Palleting?

16 A. -- yes, sir.

17 Commissioner Wilkerson: Okay. All right.

18 Q. And palleting, is that the device that you say is --

19 A. Yes, sir. It's a metal --

20 Q. -- about an ounce --

21 A. -- it's a metal oval pallet that's probably,
22 approximately, five (5) or six (6) inches long, it's
23 straight on one (1) end and curved on the back; you
24 just bend it and take off defects off of the bowl.

25 Q. -- okay. But it's not a heavy thing?

1 A. No, sir.

2 Q. Okay. And that's just something that makes the -- the
3 bowl -- whatever that -- the porcelain or whatever,
4 it's just like making it nice and smooth; is that
5 right?

6 A. Yes, sir.

7 Q. Okay. So, it wasn't -- you weren't actually engaged in
8 the -- the weight of the bowl when you were doing that;
9 it was just getting the little defects or the extra --

10 A. Yes, sir. Just getting --

11 Q. -- little pieces?

12 A. -- just getting the defects off and pulling -- pulling
13 it to the front.

14 Q. Okay. And I think that -- so, you did -- I think --
15 was there twenty-eight (28) or thirty-one (31), how
16 many did you do that day?

17 A. Twenty-eight (28).

18 Q. Okay. All right. Now, this accident wasn't witnessed
19 by anyone was it?

20 A. No, sir.

21 Q. And the person that -- the two (2) people that you told
22 about what happened would have been your supervisor,
23 Sam and the Safety Manager, Mike, correct?

24 A. Yes, sir. That was the first ones I told. I told Sam
25 Barnwell and that would have been that Monday; he

1 walked off and I told a couple of employees around me.

2 And then that Tuesday afternoon, that's when Mike and

3 Sam both come to me.

4 Q. Okay. But the only person you told about what actually
5 happened would have been Sam Barnwell --

6 A. Would have been Sam --

7 Q. -- and Mike Tolleson, right?

8 A. -- within ten (10) minutes, yeah, after it happened.

9 Q. Okay. Now, after the incident occurred and you came
10 back to work the next day, I think you testified -- you
11 told me in your deposition that for about two (2) weeks
12 you only did one (1) bowl a day; is that right?

13 A. Yes, sir. You asked me the first week if I only did
14 one (1) bowl and I said yes, sir and basically the
15 second week was come in and basically do the same
16 thing. I'm pretty sure Mike and Sam has it on the
17 computer. When you do your ware you use a scanner to
18 clock in your ware. I would say the second week, that
19 Monday, I ran one (1) piece. Tuesday, Sam had asked me
20 how many bowls are you going to run today? I told him
21 I could try four (4) to try to loosen up some because
22 I'm still not doing no heavy lifting. I could move
23 around a little bit more and the employees around me
24 was helping me.

25 Q. But you only did one (1) -- or tell me if this is

1 correct, you only did one (1) bowl per day until you
2 came in that Monday and said, I think I can do nineteen
3 (19) because the doctor has given me a -- an excuse to
4 return back to work; is that right?

5 A. Basically, pretty much.

6 Q. Is that correct?

7 A. I --

8 Q. The first time you did nineteen (19) was that --

9 A. -- that -- that Monday.

10 Q. -- the last day that you worked --

11 A. That Monday, yes, sir.

12 Q. -- before you then didn't work the next day, correct?

13 A. And I'm thinking it was that Friday before that.

14 Q. All right. But that's the -- that -- that's the last
15 time you did that?

16 A. Yes, sir.

17 Q. And up until that time you were just doing one (1) a
18 day?

19 A. One (1) a day and the second week, like I stated, it
20 was maybe four (4) --

21 Q. Okay.

22 A. -- five (5). They have it on record. I can't remember
23 at the time.

24 Q. All right. Did you do -- was it like a week that you
25 were able to do up to nineteen (19) each day or was it

1 just that one (1) day?

2 A. Can you restate that?

3 Q. Was there a whole week that you were doing nineteen
4 (19) a day --

5 A. No, sir, there was not.

6 Q. -- or was there just one (1) day?

7 A. Just that one (1) day.

8 Q. Okay. But their scanner would show what you actually
9 did --

10 A. Yes, sir, it will.

11 Q. -- is that right? Okay.

12 A. Because that's how you get paid.

13 Q. Now, the -- the thing about the accident report I think
14 that you were -- had questions about was, he said
15 something about you were finishing your overcast but
16 you said you were actually palleting it; is that the
17 difference between what they said and what you said?

18 A. Yes, sir. There's a big difference. The time that I
19 got injured was approximately 11:30; that's when my
20 bowls are completely finished casting or turned out on
21 top of a board. Okay, the overcast, that happened --
22 you take that -- you do that procedure at seven o'clock
23 in the morning.

24 Q. Okay. So, that was the discrepancy; they said overcast
25 and you said palleting; is that right?

1 A. Yes, sir. I was doing a totally different procedure.

2 Q. Okay.

3 Mr. Infinger: Hold on one (1) second. Okay. I
4 don't have any other questions.

5 Mr. Knie: Just briefly in follow up.

6 Mr. Infinger: Well, let me -- let me -- I'm
7 sorry.

8 Mr. Knie: Okay.

9 Mr. Infinger: I do have a couple of more
10 questions. I forgot I had these medical over
11 here.

12 Q. You went to the emergency room the day after the
13 accident occurred?

14 A. No, sir, I did not.

15 Q. Was it two (2) days --

16 A. I went to the emergency room two (2) days after --

17 Q. -- two (2) days?

18 A. -- which would have been on -- which would have been on
19 Wednesday.

20 Q. Okay.

21 A. That would have been the 27th.

22 Q. Did you --

23 Mr. Infinger: -- let's go off the record. Can we
24 go off the record for a second?

25 Commissioner Wilkerson: Off the record.

(Off The Record)

Mr. Infinger: Okay. Back on the record.

Court Reporter: Thank you.

Q. Now, when you went to the emergency room and they asked you what happened, did you give them the same history or incident of what occurred as you have spoken here and testified here to the Commissioner about?

A. Yes, sir, I did.

Q. Okay. Because when I look at this report it says, how did it happen, and they've just circled the word, turning. Is that what you told them that you were turning?

A. No, I basically told them the whole procedure of how it happened and what they write down when -- the emergency room, they don't write a lot of stuff down; I don't know how they interpret stuff. I basically told them how it happened.

Q. Okay. Because I --

A. And so, what they put down I have no knowledge of.

Q. -- all right. So -- so, you told them that you were standing on one (1) foot and reaching around and twisting over and when you came back down you felt a twinge as you were coming down; you told them that whole episode?

A. Yes, sir. I told them the whole procedure.

1 Q. Okay.

2 A. The same story.

3 Q. So, the fact that they just wrote down turning, you
4 don't know why they just put that?

5 A. No, sir, I don't.

6 Q. Okay. Now, then on -- when you went and saw your
7 doctor on the 28th, did you go through with him the
8 whole scenario of standing up and reaching around and
9 coming back down and falling the -- feeling the twinge
10 that you --

11 A. Yes, sir, I did.

12 Q. -- or feeling the pain that you've described here
13 today?

14 A. Yes, sir, I did.

15 Q. Okay. Because I noticed in his report it says that it
16 was -- that you were injured when you were pulling and
17 twisting toilets; is that what you told him?

18 A. No, sir. I told him I was pulling and twisting my
19 pallet towards the front to make it smooth. So, I
20 don't -- I have no idea why he would write that down;
21 so. I mean, that might be his interpretation.

22 Q. All right. But you didn't put anything on that one
23 about -- the other one said you were turning and now
24 this one is talking about pulling and twisting?

25 A. Well, twisting and turning is the same thing to me, I

1 mean.

2 Q. Now, then when you got to the -- to the Neurosurgeon's
3 office, that would have been on the 17th of November,
4 did you give them the same testimony or the same
5 history that you had told the ER about and this other
6 doctor about --

7 A. Yes, sir.

8 Q. -- in your testimony here today? Because on this one
9 it says that you were lifting a toilet but -- but did
10 you tell the doctor you were lifting a toilet?

11 A. No, sir, I did not.

12 Commissioner Wilkerson: It also says he did a
13 twisting motion at work.

14 Mr. Knie: Yes, sir.

15 Mr. Infinger: I understand that but he said
16 lifting; so, I just wanted to know if he had told
17 the doctor that he was lifting.

18 Commissioner Wilkerson: Okay. Did we take any
19 doctor's depositions on this?

20 Mr. Knie: No, sir.

21 Commissioner Wilkerson: Neither side?

22 Mr. Knie: Neither side.

23 Mr. Infinger: We didn't get Dr. Mc Henry's
24 reports until about a day ago or a week ago.

25 Q. Now, I think you told me that you have had some strains

1 and pain in your back before, correct?

2 A. Yes, sir, I did.

3 Q. All right. And I -- you -- I think your lawyer sent me
4 a -- a follow up report from your deposition that you
5 had found some additional evidence -- records regarding
6 --

7 A. Yes, sir, I did. When I left the -- you know, in
8 between that deposition that I couldn't sit and, you
9 know, remember how many times I've been to the
10 emergency room; so, I took it upon myself to go get
11 medical records and driving records.

12 Q. -- okay.

13 A. And I brung it to his attention to bring it to your
14 attention.

15 Q. All right. But otherwise everything you told me in
16 your deposition you think is accurate, besides those
17 things that you asked him to amend for you; is that
18 right?

19 A. Yes, sir, pretty much.

20 Q. Okay.

21 Mr. Infinger: That's all the questions I have
22 right now.

23 Mr. Knie: Just by way of follow up.

24 REDIRECT EXAMINATION

25 By Mr. Knie:

- 1 Q. And I believe when you did that investigation at the
2 emergency room did you discover that you were lifting a
3 lawn mower in 2007 --
- 4 A. Yes, sir, I --
- 5 Q. -- and you had a back injury?
- 6 A. -- yes, sir. When I seen it I -- you know, I
7 remembered it --
- 8 Q. Okay.
- 9 A. -- so.
- 10 Q. Did you have any -- any follow up treatment to that,
11 any problems after the emergency room visit?
- 12 A. No, sir.
- 13 Q. All right.
- 14 A. He gave me pills and --
- 15 Q. Okay.
- 16 A. -- within a week it -- it was better.
- 17 Q. Now, Mr. Infinger asked you about an emergency room
18 report where apparently the word turning was circled as
19 a description of what you were doing when you were
20 injured.
- 21 A. Yes, sir.
- 22 Q. Now, assuming that the emergency room report only had
23 four (4) choices, and I'm going to give them to you,
24 you tell me what you think would be the best choice,
25 okay?

1 A. All right.

2 Q. Lifting, turning, bending or near fall; of those
3 choices which would you pick?

4 A. Turning.

5 Q. Okay. And I believe you're thirty-six (36) years old;
6 is that right?

7 A. Yes, sir.

8 Q. Is there long term disability available at the plant?

9 Mr. Infinger: I'm going to object to that being
10 irrelevant.

11 Mr. Knie: Well, no.

12 Commissioner Wilkerson: Well, I was going to ask
13 that before we finished, is he on long term
14 disability or short term disability.

15 Mr. Knie: He -- he's not.

16 Witness: No, sir, I'm not.

17 Mr. Knie: There's -- there's a -- there's a point
18 to -- to why he's not that's relevant, Your Honor.

19 Commissioner Wilkerson: All right. I'll -- I
20 will allow it.

21 Mr. Knie: Okay.

22 Commissioner Wilkerson: Because I was going to
23 ask that question.

24 Mr. Knie: Okay.

25 Commissioner Wilkerson: Because I -- I didn't

1 know whether it was going to be offset; we get
2 into that sometimes and then we come back six (6)
3 months later because the insurance carriers are
4 fighting. I told them I don't have any dispute
5 with the insurance carriers. I'll allow it.

6 Q. Why did you not apply for that benefit whether -- I
7 don't know if it is short or long but term disability;
8 why did you not apply for that?

9 A. I didn't apply for that because Mr. Sid Duvall had told
10 me I could apply for long term disability or workman's
11 Comp, that I had to go through the system --

12 Q. Okay.

13 A. -- and was told to go home. And so, at that point I
14 had decided to do workman's Comp because the long term
15 disability, I mean, it happened at work and I don't see
16 that it was my doctor's reasoning and having to do all
17 these tests and stuff when it happened there.

18 Q. Did you understand that to apply for long term
19 disability you would have to say it was not work
20 related?

21 Mr. Infinger: Object to the form.

22 A. No, sir. I did not know --

23 Commissioner Wilkerson: Hold on, don't answer it.
24 He objects to it.

25 Mr. Infinger: I mean, if he's -- that's leading.

1 Mr. Knie: Okay.
2 Commissioner Wilkerson: It is. It's leading.
3 Mr. Knie: All right. I'll withdraw the question.
4 Commissioner Wilkerson: Okay.
5 Mr. Knie: That's fine. That's all.
6 Mr. Infinger: Okay.
7 Commissioner Wilkerson: Anything else?
8 Mr. Infinger: Not from this witness.
9 Commissioner Wilkerson: Okay. Any other
10 witnesses for the Plaintiff?
11 Mr. Knie: No, thank you.
12 Mr. Infinger: I'll bring the supervisor in.
13 Commissioner Wilkerson: Okay. I was going to ask
14 you to bring the supervisor.
15 Mr. Infinger: Now, the supervisor is coming in.
16 Gigi, do you want him here?
17 Mr. Knie: Or there?
18 Court Reporter: Actually, I'd rather have him
19 here; I thought he was going to testify.
20 Mr. Infinger: Well, he is but I'm going to let
21 the other guy go first.
22 Court Reporter: Okay.
23 Mr. Infinger: You can just scoot over, Mike.
24 Court Reporter: What is your name, sir?
25 Mr. Tolleson: Mike Tolleson, T-O-L-L-E-S-O-N.

1 Court Reporter: E-S-O-N?

2 Mr. Tolleson: Yes, ma'am.

3 Court Reporter: I would have spelled it with an
4 I.

5 Mr. Tolleson: With an I, yes.

6 Mr. Infinger: You get to sit in that middle chair
7 over there.

8 Commissioner Wilkerson: Sir, I'm going to get you
9 to raise your right hand and we're going to take
10 your testimony; I'll have the Court Reporter swear
11 you in down this way, so.

12 Mr. Barnwell: Yes.

13 Whereupon;

14 SAMUEL K. BARNWELL, being duly sworn and cautioned to
15 speak the truth, the whole truth and nothing but the truth,
16 testified as follows:

17 Court Reporter: Please state your full name for
18 the record.

19 Witness: Samuel K. Barnwell.

20 Court Reporter: Thank you, sir.

21 DIRECT EXAMINATION

22 By Mr. Infinger:

23 Q. Mr. Barnwell, you're the Forman of Marshall Johnson
24 over at Kohler Company?

25 A. That is correct.

- 1 Q. All right. And as his Foreman that -- you're his
2 immediate boss or supervisor over at the plant in the
3 casting area?
- 4 A. Correct, sir.
- 5 Q. All right. And you were in that position back in
6 October the 25th of 2010, correct?
- 7 A. I was.
- 8 Q. All right. On that day did you have a conversation
9 with Mr. Johnson concerning him telling you about his
10 back was hurting?
- 11 A. Correct, sir.
- 12 Q. Okay. Tell the Commissioner what Mr. Johnson told you
13 on that day.
- 14 A. I had made a round, I was making a round prior to lunch
15 time, somewhere around 11:00, 11:15, somewhere in that
16 area. And I came around, I had twenty-eight (28)
17 castings at the time. Marshall was over there turning
18 out with another Associate and he stated that he had
19 got to the end of his floor scraping his molds and he
20 felt a twinge or a pain in his lower back. And he said
21 from another Associate he had got some Deep Heat or
22 some rub and put on his back.
- 23 Q. Let me stop you there. So, when he said to you his
24 back was hurting, specifically what did he say he was
25 doing at the time his back starting hurting him?

1 A. He was scraping overcast off his -- well, not overcast
2 but he had wire trimmed and then you come up and you
3 kind of take that line off with a pallet off of the
4 bowl with a clay piece.

5 Q. Okay. Did he say anything about he had finished his --
6 whether or not he had finished the job at the time his
7 back was -- started hurting?

8 A. He had got to the end and said he turned to go back up
9 and do the other side and when he turned he felt a
10 twinge or a small pain in his lower back --

11 Q. Was he --

12 A. -- I think he said twinge.

13 Q. -- was he -- was he doing -- did he tell you he was
14 actually doing the overcast job or had he finished the
15 overcast job when he felt the twinge?

16 A. Sir, he stated he had got to the end of his floor and
17 turned to go back up the other side; he was -- he was
18 doing one (1) side and going back down to do the other
19 side.

20 Q. So, when you said he got to the end of his floor, did
21 he tell you he had completed that section of those
22 bowls?

23 A. Correct. One (1) side and when he turned to go back
24 down and do the other side that's when he felt the pain
25 or the twinge in his lower back.

1 Q. And when he said he -- when he said this to you did you
2 do anything in response to that?

3 A. Nothing at the time, sir, you know.

4 Q. Okay. Did he continue to work on his shift that day?

5 A. He did, he finished the shift that day.

6 Q. Did you complete an accident report at that time?

7 A. I did not.

8 Q. Okay. And why didn't you do one at that time?

9 A. Generally you do a near miss but he'd completed his
10 work that day and all. And when he came in the next
11 morning he was still complaining of a -- a sore lower
12 back.

13 Q. All right. Well, when he came in the next morning
14 complaining that his back was sore what conversation
15 did you have with him?

16 A. I asked him could he cast one (1) bowl.

17 Q. Okay.

18 A. Which is standard, you know, if -- I asked him could he
19 cast one (1) bowl, could he turn the facet on, cast one
20 (1) bowl and then I would send him to the Nurse --

21 Q. Okay.

22 A. -- then we'd report it as a near miss at the time.

23 Q. Okay.

24 Commissioner Wilkerson: Report it as a?

25 A. It would be a near miss, sir. Before it's an injury we

1 call it a near miss; if there's -- if it's a minor
2 injury we would call it a near miss, sir.

3 Commissioner Wilkerson: Explain to me what a near
4 miss is. I don't -- it reminds me of being
5 pregnant; either you are or you're not.

6 A. You are or you're not.

7 Commissioner Wilkerson: It either happened or it
8 didn't. So, tell me what a near miss is --

9 A. Before it's actually --

10 Commissioner Wilkerson: -- because I don't
11 understand it.

12 A. -- turned into an OSHA injury, sir, they go to a doctor
13 and --

14 Commissioner Wilkerson: I'm -- I'm not concerned
15 about OSHA.

16 A. -- okay. It's a near miss.

17 Commissioner Wilkerson: I'm not concerned about
18 the technical side of it. Explain to me what your
19 definition is of a near miss.

20 A. An injury that could happen but then -- then you take
21 steps to keep it turning in -- from turning into an
22 injury.

23 Commissioner Wilkerson: I don't understand that.

24 A. Say a guy scraped his finger or cut his finger or
25 something and instead of cut it in -- you would call

1 that a near miss if it didn't require him going to the
2 doctor or something, so.

3 Commissioner Wilkerson: Okay. But -- but he
4 still scraped his finger in that instance?

5 A. Correct, sir.

6 Commissioner Wilkerson: So, it would be an
7 accident if he scraped his finger? I'm not
8 talking about this case.

9 A. Correct.

10 Commissioner Wilkerson: So, it wouldn't -- it
11 could have happened. It did happen in the
12 situation you gave me but it may not be as severe?

13 A. Correct.

14 Commissioner Wilkerson: Okay. That's fine.

15 A. Correct.

16 Commissioner Wilkerson: I just wanted to make
17 sure.

18 Mr. Infinger: If I may?

19 Q. Do you all -- anytime somebody complains about any
20 action or problem with their body you create a document
21 and --

22 A. Correct.

23 Q. -- generally it's called a near miss?

24 A. Correct, sir. To try to prevent it and come up with
25 something to try to prevent it from happening again.

1 Q. So, then in the future whatever you may need to do from
2 a safety standpoint that --

3 A. That is correct.

4 Q. -- issue doesn't occur again, correct?

5 A. That is correct, sir.

6 Q. All right. Is it investigated as if it was -- I mean,
7 even though you call it a near miss, it's investigated
8 based on what the worker tells you happened?

9 A. It is investigated, sir; once the report goes out it's
10 investigated.

11 Q. Okay. And the near miss is just a -- just a term you
12 all use --

13 A. A term, that's correct, sir.

14 Q. -- because that's when it -- that's what you do when it
15 first happens?

16 A. Correct, sir.

17 Q. For any time somebody complains that they're hurting,
18 right?

19 A. That is correct.

20 Q. All right. Now, after Mr. Johnson told you -- I think
21 you said that day he had finished what he was doing, he
22 was turning to go back and when he was turning to go
23 back he had his incident; that was the near miss you
24 reported, correct?

25 A. That is correct, sir.

- 1 Q. Now, the following day he came back to work, correct?
- 2 A. Correct.
- 3 Q. And he said he was still hurting and you asked him to
- 4 cast a bowl?
- 5 A. Correct, sir.
- 6 Q. All right. Did you -- and I don't -- I guess the Nurse
- 7 wasn't there at 5:30 in the morning?
- 8 A. That is correct, sir.
- 9 Q. All right.
- 10 A. She gets there around 8:30.
- 11 Q. All right. Did you let him go see the Nurse after
- 12 that?
- 13 A. Correct, sir.
- 14 Q. All right. When -- and he came back to the floor and
- 15 continued to work on the one (1) bowl that you asked
- 16 him to cast?
- 17 A. Correct.
- 18 Q. Okay. Now, did you see him, I mean, was he -- was he
- 19 -- did you have any observation of him working for the
- 20 remainder of that day following you asking him to do a
- 21 bowl; did he do that activity you asked him?
- 22 A. Yes, sir.
- 23 Q. Okay. Did he do any other work that day that you saw?
- 24 I mean, was he helping any other employees or anything?
- 25 A. He was on -- he was over on one of his -- another

1 Associate's floor, over on one of his buddy's floors
2 helping him finish up that day, yes, sir.

3 Q. Okay. Now, Mr. Johnson testified that later on that
4 day Mike Tolleson, who is in the Safety Department,
5 came in and he had a conversation with Mr. Johnson and
6 you regarding Mr. Johnson's complaint, correct?

7 A. That is standard procedure; yes, sir, when it's
8 reported.

9 Q. All right. So, the three (3) of you had another
10 meeting with Mr. Johnson at that time where Mr.
11 Tolleson was involved, correct?

12 A. Correct, sir.

13 Q. Okay. Now, once -- and I guess Mike Tolleson being the
14 Safety Manager he gets involved when somebody contends
15 that they were hurting and they are on the job when
16 they're hurting, right?

17 A. That is correct.

18 Q. All right. So, does the investigation then turn over
19 to him to --

20 A. Yes, sir, to verify --

21 Q. -- okay.

22 A. -- correct.

23 Q. Mr. Johnson testifies that in the days and weeks
24 following that he continued to work one (1) bowl a day;
25 is that correct?

1 A. He --

2 Q. Did he do that?

3 A. -- he worked one (1) bowl; yes, sir; for three (3)
4 days. That Friday he worked four (4) bowls.

5 Q. Okay. And the week following that did he work other
6 bowls?

7 A. Yes, sir. He went back to nineteen (19) that Monday
8 when he came back, sir.

9 Q. Okay. Now, did he do several days of nineteen (19)?

10 A. He had went -- he went from nineteen (19) and went back
11 up to twenty-five (25), sir.

12 Q. Because he says there are -- he says there are
13 documents that would show what his work production was,
14 if you will, and it -- it appears to me that beginning
15 on November 1st, 2nd and 3rd, he did nineteen (19) and
16 then he did -- he was absent on the 4th and the 5th he
17 did nineteen (19); is that right?

18 A. Correct, sir.

19 Q. All right. And then, his last day of work, I think,
20 was the -- he did -- he worked on -- his last day of
21 work was on the -- November the 9th, that was the day
22 that he was -- he went to the personnel department --

23 A. That's right, sir.

24 Q. -- when he came back. And I think he did nineteen (19)
25 bowls --

1 A. Uh-huh.

2 Q. -- on one (1) -- that -- the 8th --

3 A. Correct.

4 Q. -- which would have been the Monday. So, he had about
5 a week's worth of working nineteen (19) before he last
6 worked but -- and about a week's worth of working one
7 (1) to -- one (1) day he did four (4), correct?

8 A. Correct, sir.

9 Q. All right.

10 Commissioner Wilkerson: What day did he do
11 twenty-five (25)?

12 A. He -- he --

13 Commissioner Wilkerson: I think -- I think he
14 testified he did twenty-five (25) on --

15 A. -- he dropped -- he dropped down to twenty-five (25)
16 prior to his injury. So, from twenty-nine (29) to
17 twenty-five (25) --

18 Commissioner Wilkerson: -- okay.

19 A. -- and then he went down to one (1) after his injury.

20 Commissioner Wilkerson: Okay.

21 A. Yes, sir.

22 Commissioner Wilkerson: So, twenty-five (25) was
23 the day before the injury, day of the injury?

24 A. Correct.

25 Commissioner Wilkerson: Okay. That's fine.

1 A. That was just prior to the injury, sir.

2 Commissioner Wilkerson: Okay.

3 Q. It -- it looks like on the day of the accident that
4 their documents show it was twenty-four (24) and then
5 he was doing -- he did two (2) twenty (20) --

6 Mr. Knie: I'm going to object --

7 Mr. Infinger: -- okay.

8 Mr. Knie: -- to you reading from a document --

9 Mr. Infinger: All right.

10 Commissioner Wilkerson: Yes.

11 Mr. Infinger: All right.

12 Mr. Knie: -- that's not in the record.

13 Commissioner Wilkerson: Yes.

14 Mr. Infinger: All right. I'm sorry.

15 Mr. Knie: Yes.

16 Mr. Infinger: I'm just saying that if he said --

17 Mr. Knie: Okay.

18 Commissioner Wilkerson: Because I've got numbers
19 all over the place.

20 Mr. Infinger: -- okay.

21 A. Yeah.

22 Mr. Infinger: And I can have him testify --

23 Commissioner Wilkerson: Did anybody submit --

24 Mr. Knie: No.

25 Commissioner Wilkerson: -- if it's scanned in it

1 seems to me it would be simple to submit
2 day-by-day what was done.

3 Mr. Infinger: -- well, I can have him testify
4 about that if you -- could you -- if you're
5 concerned -- if your question is about what he did
6 before the accident.

7 Commissioner Wilkerson: I'm not concerned about
8 that. I think you went down the road of asking
9 him how many he did --

10 Mr. Infinger: Yes.

11 Commissioner Wilkerson: -- so, my guess was he
12 knew exactly how many all the people did.

13 Mr. Infinger: And that's correct.

14 Commissioner Wilkerson: Okay. Then I -- and
15 that's why I wanted to clarify the twenty-five
16 (25); that's where I was confused.

17 A. Correct.

18 Commissioner Wilkerson: Because I thought he said
19 he did twenty-five (25) the last day he worked.

20 Mr. Infinger: After he was hurt?

21 Commissioner Wilkerson: Yes. I thought he meant
22 after the accident.

23 A. Oh, no, sir.

24 Commissioner Wilkerson: He corrected it and said
25 it was --

1 A. Correct, sir.

2 Commissioner Wilkerson: -- yes, the day of the
3 accident; so, I'm fine with that.

4 Q. So, it was twenty (20) -- so, he did twenty-five (25)
5 pieces before his incident?

6 A. That's correct, sir.

7 Q. Then he did -- I think he testified he did twenty-four
8 (24) the day that incident the incident occurred and
9 your -- you would agree with that?

10 A. Correct, sir.

11 Q. All right. He then testified he was doing one (1) per
12 day until his last day at work, correct? I mean, he
13 testified he did one (1) per day his last day at work;
14 however, your reports show that that final week after
15 his last day at work after the incident he was doing
16 nineteen (19) a day; is that correct?

17 A. That's correct, sir.

18 Q. Okay.

19 Mr. Johnson: I didn't testify to that.

20 Mr. Knie: I know, that's okay.

21 Commissioner Wilkerson: Shhhh.

22 Mr. Knie: That's okay.

23 Commissioner Wilkerson: Yes.

24 Mr. Infinger: And that -- that --

25 Commissioner Wilkerson: Yes, that's fine.

1 Mr. Infinger: -- okay. All right.

2 Commissioner Wilkerson: That's not the -- that's
3 not the lynch pin that's going to decide what
4 happens.

5 Mr. Infinger: I know. And I just -- it got
6 confusing because we were saying before and after
7 and I --

8 Commissioner Wilkerson: Yes, that's --

9 Mr. Infinger: -- I apologize for that.

10 Commissioner Wilkerson: -- I understand. No,
11 that's --

12 Mr. Infinger: All right.

13 Commissioner Wilkerson: -- that's because I was
14 confused, yes.

15 Q. Now, were you there -- Mr. Johnson testified that he
16 demonstrated what he was doing on the day he felt the
17 pain in his back; were you there when he demonstrated
18 that or was that just in front of Mr. Tolleson?

19 A. That was in front of Mr. Tolleson the next day, sir.

20 Q. Okay. All right. So, what you know about what
21 happened was what he told you on that -- the 25th,
22 correct?

23 A. That's correct, sir.

24 Q. All right. And that was the testimony you gave about
25 him finishing and then turning to go to the other

1 floor, correct?

2 A. Correct, sir.

3 Q. All right. Now, he -- Mr. Johnson testified that --
4 that he told you all that the incident that you all
5 completed was inaccurate and that he said he was using
6 a pallet and you all said he was doing overcast; did
7 you all have that discussion?

8 A. We did --

9 Q. Okay.

10 A. -- once he seen it, yes, sir.

11 Q. All right. And he said he never got a copy of the
12 accident report; did you ever give him a copy of it?

13 A. I printed one (1) out, sir, and forgot -- he didn't
14 come and get it but I did print -- he asked for a copy
15 and we --

16 Q. But you never gave him one (1)?

17 A. -- no, sir, I did not.

18 Q. I mean, you didn't take it to him?

19 A. No.

20 Q. You just had it sitting there and --

21 A. That's correct, sir.

22 Q. -- and -- but you never took it to him?

23 A. That's correct.

24 Q. Okay. There was no secret about getting it; you just
25 had it and he could have come and got it --

1 A. No, there was no secret.

2 Q. -- but you didn't actually take the --

3 A. No, you know --

4 Q. -- trouble of sending it to him?

5 A. -- correct, sir.

6 Q. Okay.

7 Commissioner Wilkerson: Was he using a pallet or
8 was he using an overcast that day?

9 A. He was using a pallet, sir.

10 Commissioner Wilkerson: Okay.

11 Mr. Infinger: All right. That's all my questions
12 for him now.

13 Commissioner Wilkerson: Mr. Knie?

14 CROSS-EXAMINATION

15 By Mr. Knie:

16 Q. All right. Mr. Barnwell, how long have you been with
17 Kohler?

18 A. Twenty-eight (28) years, sir.

19 Q. And you're a supervisor?

20 A. I'm a Foreman.

21 Q. A Foreman?

22 A. Yes, sir.

23 Q. And you're a Foreman over how many employees?

24 A. At the time there was twenty-eight (28) and --

25 Q. All right.

- 1 A. -- twenty-eight (28) employees, sir.
- 2 Q. And you're taught to report accidents when they happen,
- 3 aren't you?
- 4 A. That's correct, sir.
- 5 Q. But you didn't report this accident on the day that it
- 6 happened, did you?
- 7 A. That's correct.
- 8 Q. Do you have any video cameras in the plant?
- 9 A. There's one (1) or two (2) in the major hallways.
- 10 Q. Well, are there any video cameras in the casting area?
- 11 A. No, sir. Not that I'm aware of, sir.
- 12 Q. Okay. Do you know if a tape recorded statement was
- 13 taken of -- of Mr. Johnson to -- of his version?
- 14 A. A tape recording?
- 15 Q. Yes, sir.
- 16 A. Not that I'm aware of.
- 17 Q. Okay. When Mr. Johnson reported this injury to you on
- 18 October 25th --
- 19 A. Correct.
- 20 Q. -- did you stop and make an inspection of actually
- 21 where he was on his process?
- 22 A. Not -- when the accident happened, sir?
- 23 Q. Yes, sir.
- 24 A. Not at the time.
- 25 Q. Okay. Well, did you go back later and make an

1 inspection as to where he was on his process?

2 A. I talked to him on how it happened.

3 Q. Okay.

4 A. But inspection -- because the process is basically the
5 same day-in and day-out on --

6 Q. All right.

7 A. -- what they do.

8 Q. How do you do palleting?

9 A. You -- you --

10 Q. Describe the palleting process.

11 A. -- all right, sir. When you use a trimmer you trim a
12 bowl between -- the bowl and the rim is joined so it
13 leaves a seem there, what we call stick up mud. First
14 he would take a wire trimmer and trim the excess stick
15 up mud off.

16 Q. Okay.

17 A. And then he uses a metal pallet -- a small -- that he
18 would bow a little bit. You stand in front of a bowl
19 and you reach around and you scrape that seem off.

20 Q. Okay. So, you have to reach to the other side of the
21 bowl; is that right?

22 A. All right. The side you're on.

23 Q. Okay.

24 A. You stand in front of the bowl, if the bowl is right
25 here (indicating) --

1 Q. Yes, sir.

2 A. -- now, you've got two (2) ways. A lot of Casters will
3 come around on the right side and left side at the same
4 time.

5 Q. Okay.

6 A. Marshall and some of them, they would do one (1) side
7 and then they'll get up and they'll come down and do
8 the other side.

9 Q. Now, you're demonstrating to the Commission coming
10 around; so, there's some reaching movement around the
11 -- the front edge or the back edge; is that right?

12 A. If I'm standing in front of a bowl --

13 Q. Yes, sir.

14 A. -- you would basically be -- around the bowl would be
15 about right here (indicating) and you just -- you would
16 come around like that (demonstrating).

17 Q. How tall is that bowl off the ground?

18 A. I'm a guessing that where you'd be palleting around
19 four and a half (4 ½) feet --

20 Q. Okay.

21 A. -- something like that, four (4) feet something like
22 that.

23 Q. And do different palleters do it differently?
24 Different -- different employees pallet a little
25 differently; do they have different styles?

- 1 A. As far as some does one (1) side and then the others
2 are coming up the same time --
- 3 Q. Right but --
- 4 A. -- but they finish -- Marshall -- there's a few, only a
5 couple or three (3), that would do one (1) side --
- 6 Q. -- okay.
- 7 A. -- get up and turn around and come back down and do the
8 other side.
- 9 Q. But there's -- even though it's -- it's light work,
10 there's -- there's some reaching, some twisting, some
11 turning involved in doing palleting, isn't there?
- 12 A. There's a little bit of reaching.
- 13 Q. Yes, sir.
- 14 A. A little bit of reaching --
- 15 Q. Okay.
- 16 A. -- but no overstretching. A little bit of reaching.
- 17 Q. All right. Now, what is overcasting?
- 18 A. Overcast?
- 19 Q. Yes, sir.
- 20 A. That's something that the mold leaves on a bowl --
- 21 Q. Okay.
- 22 A. -- you know, it's just excess slip.
- 23 Q. And -- and is the -- is palleting to get rid of the
24 overcast?
- 25 A. Not to get rid of the overcast.

- 1 Q. Okay. So, when do you get rid of the overcast in the
2 process?
- 3 A. After opening up the molds and all.
- 4 Q. So, that's much earlier; is that right?
- 5 A. That is much earlier.
- 6 Q. Okay. And at first you said, did you not, that he was
7 overcasting?
- 8 A. Correct, sir.
- 9 Q. But he wasn't overcasting; that would have been much
10 earlier in the day?
- 11 A. That was an error on my part --
- 12 Q. Yes, sir.
- 13 A. -- of wording it.
- 14 Q. All right, sir. And just as you erred about the
15 overcasting because those were your words, not his, you
16 could be in error about how he got hurt; could you not?
- 17 A. I went back and restated and asked him and he plainly
18 stated how he got hurt.
- 19 Q. Yes, sir.
- 20 A. The lower portion was exactly what he stated, sir.
- 21 Q. Sir, do you remember you and Mr. Tolleson and -- and
22 Mr. Johnson going to the office together or going
23 somewhere to look at a computer together?
- 24 A. He came to my desk to look at the computer.
- 25 Q. All right. And on the way to look at the computer do

- 1 you remember Mr. Johnson, who was pretty mad, wasn't
2 he?
- 3 A. I don't recall his --
- 4 Q. Okay.
- 5 A. -- I don't his emotions at the time.
- 6 Q. Well, he was disagreeing with you, wasn't he?
- 7 A. I can't say he was, sir.
- 8 Q. Okay.
- 9 A. He may have been.
- 10 Q. All right.
- 11 A. I can't say he was, sir.
- 12 Q. Did he stop on the way and say let me show you how it
13 happened and demonstrated to you?
- 14 A. When Mr. Tolleson came out and we went to his floor --
- 15 Q. Okay.
- 16 A. -- he demonstrated then to Mr. Tolleson, and I was
17 there, how he done the palleting and when he got to the
18 end, yes, sir.
- 19 Q. How he did the palleting?
- 20 A. He didn't do it; he just showed how he done it --
- 21 Q. Okay.
- 22 A. -- stood in front, showed how the palleting process --
- 23 Q. Because he was trying --
- 24 A. -- does.
- 25 Q. -- he was trying to explain how he got hurt, wasn't he?

1 A. In the process of what he reported --

2 Q. Yes, sir.

3 A. -- he was trying to tell.

4 Q. Yes, sir, palleting.

5 A. Palleting.

6 Q. Okay.

7 A. But he had finished one (1) side and got to the end of
8 his floor and turned to go back up when he felt the --

9 Q. Well -- well, tell the Commissioner why he would have
10 to describe to Mr. Tolleson the process of palleting if
11 that's not how he got hurt.

12 A. -- he went through the process. When Mr. Tolleson come
13 out to investigate he goes through the process of what
14 he was doing and where the injury and all occurred at
15 the time.

16 Q. All right. I think I understand, sir.

17 A. Okay.

18 Q. Let me show you this document called Incident Report --

19 A. Yeah.

20 Q. -- see if you recognize it.

21 A. Yes, sir, that's the one. That's the one that I drew
22 up.

23 Q. And is that the one that you all went to the office and
24 looked -- looked at?

25 A. That's the one we came to my computer and looked at,

1 sir.

2 Q. Okay.

3 A. Yes, sir.

4 Q. And under incident description it says, "Associate
5 stated that he was coming down to the end of his floor
6 in front of his molds taking the overcast off the rims
7 using a plastic pallet. When Associate got to the end
8 of his floor, and upon turning around, he felt a little
9 pain in his lower back". Is that right?

10 A. I put pain, I believe he said a twinge or pain --

11 Q. Okay.

12 A. -- but yes, sir.

13 Q. And he disagreed with that when you went down to the
14 office, didn't he?

15 A. He disagreed that he was using a plastic pallet instead
16 of a metal pallet on that.

17 Q. Okay. And then, Action Plan, "Talked with Associate
18 about slowing down while doing his procedures and to be
19 more careful when turning and lifting". Is that what
20 that says?

21 A. It says when turning or -- yes, sir. Because, you
22 know, it was --

23 Q. Okay. Well, why would you tell him to slow down while
24 doing his procedures and be more careful if that's not
25 how he got hurt?

- 1 A. -- it's just a plan of action, sir. We have to come up
2 with a plan of action anytime any near miss or anything
3 is reported.
- 4 Q. Yes, sir.
- 5 A. And, basically, you know, even if you're turning, if
6 you're turning real fast or jerking, we want a person
7 to slow.
- 8 Q. A plan of action from keeping him from getting hurt in
9 the future, right?
- 10 A. That's what a plan of action is for.
- 11 Q. Okay. And so, you want him to slow down while doing
12 his procedures and be more careful. It doesn't have
13 anything to do with how he was walking there does it?
- 14 A. Well, it says he was turning.
- 15 Q. Yes, sir. Okay. Well, would you agree that twisting
16 and turning is kind of the same term?
- 17 A. Yes, sir.
- 18 Q. Okay. And, of course, Kohler, you know they're
19 self-insured?
- 20 A. I don't know that, sir. I mean, I'm not --
- 21 Q. Okay.
- 22 A. -- I don't get into that part as far as whether they're
23 self-insured or not.
- 24 Q. Thank you.
- 25 Mr. Knie: I think that's all.

1 Commissioner Wilkerson: Let me ask you a
2 question.

3 CROSS-EXAMINATION

4 By Commissioner Wilkerson:

5 Q. Is there a pay incentive not to have accidents?

6 A. No, sir.

7 Q. Okay. So, if -- if you don't have an accident for a
8 year everybody doesn't get fifty dollars (\$50.00)?

9 A. Now, sir, there's a -- there's an incentive for my
10 group or any group I would say if you go a month or
11 three (3) months you get a meal or maybe a pizza or
12 something. But your group would still get it; the
13 individual that would have it would not get it.

14 Q. Okay. But nobody is paid additional money --

15 A. No.

16 Q. -- if nobody has an accident for a year?

17 A. Nobody that I'm aware of, sir.

18 Q. Okay.

19 A. Not a particular --

20 Q. No, that's fine. You can only tell me what you know.

21 A. -- yeah, nobody that I'm aware of would get any money
22 or pay that I'm aware of, sir.

23 Q. Okay.

24 A. Not in my position or Associate positions.

25 Q. That's fine.

1 A. Mine are Associate Casters.

2 Q. That's fine.

3 Commissioner Wilkerson: Okay. I don't have any
4 other questions.

5 Mr. Infinger: Okay. Do you want to swap places
6 with Mike Tolleson?

7 Court Reporter: Actually, I'm pretty sure that
8 microphone would have picked him up pretty easy
9 but that's okay.

10 Mr. Infinger: Listen, Gigi, I'm good at
11 instructions and if you say the witnesses goes
12 here; well, dadgum it the witness is going to go
13 there.

14 Court Reporter: Yes, you are and I appreciate it
15 so much.

16 Mr. Infinger: My mama taught me good.

17 Commissioner Wilkerson: Didn't your mama tell you
18 she had the right to change her mind any point in
19 time she wanted to?

20 Court Reporter: That's right.

21 Mr. Infinger: Well, she didn't tell me; she just
22 did it.

23 Commissioner Wilkerson: I understand. I
24 understand. That's what mamas do; I understand.
25 Mine may call any minute.

1 Mr. Infinger: That's why mine is -- that's why
2 mine is on silent.

3 Commissioner Wilkerson: I meant I didn't need you
4 before twelve o'clock. I'm sorry. Sir, I'm going
5 to get you to raise your right hand and we'll
6 swear you in.

7 whereupon;

8 MICHAEL GARY TOLLESON, being duly sworn and cautioned
9 to speak the truth, the whole truth and nothing but the
10 truth, testified as follows:

11 Court Reporter: Please state your full name for
12 the record.

13 Witness: Michael Gary Tolleson.

14 Court Reporter: Thank you, sir.

15 DIRECT EXAMINATION

16 By Mr. Infinger:

17 Q. All right. Mr. Tolleson, you are the -- your position
18 at Kohler is what?

19 A. I am called a Senior Project Safety Specialist.

20 Q. Okay. And you were in that job back in October 25th of
21 2010, when Mr. Marshall Johnson was working there?

22 A. Yes, sir.

23 Q. All right. In that position as the Safety Specialist,
24 is it your -- one (1) of your jobs to investigate any
25 on the job injury that someone may contend that they

1 received at Kohler?

2 A. Yes. We have to investigate anything that happens and
3 I guess I came up with the term near miss and basically
4 what we deem there is that if anybody complains about
5 their job there's three (3) things that we investigate
6 and that is what we call a near miss, a simple
7 happening, a first aid case. We also do property
8 damage and then we also do safety first. Safety first
9 is where a job has been deemed unsafe by the employee
10 and we will basically go out and make a decision
11 whether that employee continues to do that job as is or
12 if we make changes to that process, yes, sir.

13 Commissioner Wilkerson: Property loss would be to
14 the --

15 A. Like dropping of bowls, racks, fork truck damage; any
16 of those things.

17 Commissioner Wilkerson: -- okay.

18 A. Yes, sir. Yes, anything property within the -- the
19 company.

20 Commissioner Wilkerson: Sure.

21 A. Yeah. Yeah.

22 Q. Okay. Did you investigate Mr. Johnson's complaint of
23 any incident or issue that occurred back in October of
24 2010?

25 A. I did and it was a -- a day later. The process really

1 makes these Foreman do it same day. Sam did get in a
2 little bit of trouble for not reporting the same day.
3 But it did come out a day late.

4 Q. Tell the Commissioner about your investigation and,
5 specifically, what Mr. Johnson said to you or
6 demonstrated to you regarding what occurred on the date
7 that he's alleging.

8 A. Basically what we try to do with this document that's
9 been discussed, which was the near miss, we basically
10 have our Foreman take responsibility first, as well as
11 safety teams sometimes, and then once that becomes an
12 issue it's up to me to go out and do a full blown
13 investigation and then I have to report to Corporate or
14 to someone in Corporate what has gone on within the --
15 the plant. So, it was a day after the fact that I went
16 out.

17 Q. Okay. And when you arrived at the -- when you arrived
18 what did you see and what did you do?

19 A. Well, I went out twice. I went out around 10:30 to do
20 the investigation and -- as Sam has mentioned and
21 Marshall has mentioned, he was supposed to complete one
22 (1) process of his job or one (1) full task of his job,
23 which I'll call the one (1) piece. But I went out
24 there and he was actually working on another employee's
25 floor. So, I told Sam, I said, what time does he quit?

1 I said, I'll come out because I want to take him away
2 from his job, I want him to demonstrate to us what
3 happened. So, Sam said, come back about two o'clock.
4 So, I came back out at two o'clock and Marshall was at
5 his dry finish table basically getting prepared to --
6 to go home, getting his personal stuff together. And I
7 asked him to show Sam and me, which I was the one that
8 was really needing the information, where his floor was
9 and how the injury happened. And once I asked he did
10 demonstrate what took place and he had completed all
11 job tasks and he basically showed us that he had
12 circled around, meaning turning around taking a step or
13 two (2), not doing any job task. At that point I did
14 question him. I said, did you trip, slip, fall or were
15 you lifting anything? His statement to me and to Sam
16 was, no, I was only turning around to complete the next
17 process of my job, so.

18 Q. Now, let me ask you this, Mr. Tolleson, did he
19 actually, physically, show you what he was doing when
20 he said his back started hurting?

21 A. The first time he did --

22 Q. All right.

23 A. -- and then the second time I mocked it to make sure
24 that I had the correct understanding, with Sam there
25 present, and when I said, this is what you were doing?

1 He said, yeah. I said, you did not slip, trip or do
2 anything other than that? And he said, no.

3 Q. Can you just show the Commissioner what he showed you
4 or what you mocked for him? Just tell us -- show us
5 just what happened what he showed you.

6 A. Well, basically when I went to his floor and it's an
7 aisle way, there's bowls here (indicating) and bowls
8 here (indicating), there's back-to-back Caster. I
9 asked him to demonstrate what he did. He basically had
10 the pallet in his hand, he showed us the pallet, which
11 was the small piece that we've discussed. And he says
12 that he had completed doing all his pieces. And when
13 you come to a floor they basically stop and you may
14 have extra bench, which is vacant, where they roll over
15 the process. And he said he had completed that and he
16 went to turn and he felt a small pain in his back.

17 Q. Okay. Now, when you asked him specifically if he was
18 doing any activity what was his response?

19 A. It was no.

20 Q. Okay. Now --

21 A. And I also asked did you -- were you carrying anything,
22 did you trip -- because it is a metal frame that --
23 that the molds sit on; so, we do have some trips there.
24 It was a no. I asked him if there was any slip in the
25 floor, which it's a slippery substance; he said, no.

1 And then, we continued on.

2 Q. -- when you were in here when Mr. Johnson was
3 testifying about that he had reached around and had one
4 (1) foot down and then he came -- when he came back
5 with the other foot with doing -- reaching around with
6 the pallet, was that activity or discussion ever given
7 to you when you investigated this incident?

8 A. No, it wasn't. I mean, when I do investigations these
9 are the things that I'm looking for: I'm looking for
10 the employee being active in there job and that was
11 never mentioned to me nor Sam at that time and I
12 questioned him, like I said, at least twice because he
13 demonstrated it the first time and then I went back
14 through it myself asking him if this is correct and he
15 said yes.

16 Commissioner Wilkerson: Let me ask you a
17 question. If -- if he had explained to you
18 exactly what happened that day as you heard him
19 testify to, is that a near miss?

20 A. No. Well, to me it could -- it could be a near miss
21 but it could also turn into a plant injury being that
22 he was active on his job, making sure that -- that
23 he's, you know, was involved, I guess, is -- is the
24 proper answer. But for him just to be walking and
25 making a turn with nothing in his hand, no activity

1 going on; that's basically the constitute of where the
2 case was denied --

3 Commissioner Wilkerson: Okay.

4 A. -- on my part.

5 Commissioner Wilkerson: Sure.

6 A. Yes.

7 Commissioner Wilkerson: Now, if he was doing what
8 he said he was doing --

9 A. It would have been --

10 Commissioner Wilkerson: -- one (1) foot up and
11 turning this way (indicating), would that be
12 considered a workers' Comp accident in your mind,
13 with him -- with him turning and twisting?

14 A. -- turning and twisting with his -- with what? Well, I
15 mean, are you talking about --

16 Commissioner Wilkerson: The way he described it
17 because I think I --

18 A. -- scraping the bowls?

19 Commissioner Wilkerson: -- yes, I think --

20 A. He's saying that he was actually scraping the bowls.
21 He's saying that --

22 Commissioner Wilkerson: -- right. He said he had
23 one (1) foot in the air --

24 A. -- right. Well, my understanding is --

25 Commissioner Wilkerson: -- he was reaching around.

1

--

2

A. -- right.

3

Commissioner Wilkerson: -- turning and twisting
and when he turned and twisted with the pallet he
felt some pain in his back as he put his foot
down. Is that a Workers' Compensation accident?

7

A. Well, let me demonstrate and you tell me --

8

Commissioner Wilkerson: No, no, no --

9

A. -- if this is what --

10

Commissioner Wilkerson: -- no, no, no.

11

A. -- I mean, I --

12

Commissioner Wilkerson: No, I -- no, no, no, no,
no, no.

13

14

A. -- I don't -- I'm not clear of what you're asking, I
mean.

15

16

Commissioner Wilkerson: You heard him testify.

17

A. Right.

18

Commissioner Wilkerson: And then, correct me if
what I said is wrong.

19

20

A. Okay.

21

Commissioner Wilkerson: He said he was --

22

A. Leaning one (1) foot --

23

Commissioner Wilkerson: -- leaning forward, one
(1) foot --

24

25

A. -- right.

1 Commissioner wilkerson: -- left foot was in the
2 air, around the bowl, around the toilet and using
3 a pallet and was pulling the pallet around and as
4 he was twisting and pulling the pallet he felt
5 some pain --

6 A. Yes, sir.

7 Commissioner wilkerson: -- and then his foot hit
8 the ground. Is that a Workers' Compensation
9 Accident?

10 A. I would say, yes, sir.

11 Commissioner wilkerson: All right. Okay. That's
12 just what I wanted to know. Okay.

13 Q. Was that description ever given to you?

14 A. No, sir. And that -- and that was twice, I mean --

15 Q. All right.

16 A. -- I -- like I said, he was upset with Sam; I'm not
17 going to disagree because I heard his lawyer ask. He
18 was upset with Sam and the reason he was upset was two
19 (2) reasons: Sam ignored him, Sam agreed to that. And
20 number two (2), when we -- when we took him over to the
21 -- to the desk to basically read that, it was wrong.
22 Sam had made a mistake on the process but it didn't
23 have anything to do with the explanation of his injury.
24 Q. So, is it your testimony here today that -- when you
25 say he -- he -- when he described it to you he was

1 simply walking on the floor going from point A to point
2 B?

3 A. Exactly.

4 Q. Okay.

5 A. Yes, sir.

6 Mr. Infinger: That's everything.

7 Commissioner Wilkerson: Okay. I'm sorry, I was
8 making notes; I'll get confused here if I don't.

9 Thank you. Mr. Knie?

10 CROSS-EXAMINATION

11 By Mr. Knie:

12 Q. All right. Tell me what your duties encompass as a
13 Senior Project Safety Specialist.

14 A. Number one (1), I'm -- I'm over the safety of the plant
15 for all employees. Number two (2), we've just achieved
16 tier four (4), which is a -- a systematic corporate
17 system; we are the first Kohler facility to -- to get
18 that and, basically, what it is, is where we get people
19 engaged in a lot of what we talked about as far as our
20 near misses have -- have really generated that; so,
21 it's really building a culture within safety. So, a
22 lot of my job is communicating with these guys trying
23 to eliminate situations that are unfavorable or we deem
24 high risk. You know, it's case managing, it's -- it's
25 doing a lot.

- 1 Q. Okay.
- 2 A. I mean, just any scope of safety I'm involved in it,
- 3 yes, sir.
- 4 Q. When worker's Comp claims are filed do you attend
- 5 depositions?
- 6 A. Yeah, I have, not all.
- 7 Q. Well, how many times have you attended a deposition?
- 8 A. Ten (10) to fifteen (15).
- 9 Q. Okay. How many times have you testified in a workers'
- 10 Comp hearing?
- 11 A. Ten (10) to fifteen (15).
- 12 Q. And you investigate injuries and near misses; do you
- 13 not?
- 14 A. I investigate all things --
- 15 Q. Okay.
- 16 A. -- just employee complaints, it may not even be with
- 17 injuries or near misses; it may be just process
- 18 improvements, those kind of things.
- 19 Q. And on the 26th, when you and Mr. Barnwell went to talk
- 20 with Marshall Johnson, I believe you said Marshall was
- 21 upset with Mr. Barnwell?
- 22 A. That was later at two o'clock, yes, sir.
- 23 Q. Okay.
- 24 A. I'm not -- and when I say upset, he had -- he had
- 25 brought it to my attention that Sam had -- he felt had

1 ignored him --

2 Q. Okay.

3 A. -- was -- was the term, I think, that -- that he was --

4 Q. And --

5 A. -- using.

6 Q. -- and Mr. Barnwell was there?

7 A. Yes.

8 Q. Okay. So, Mr. Barnwell should have been able to see
9 that Sam was upset --

10 A. Well, no, I -- I think --

11 Q. I mean, that -- that --

12 A. -- I think he was --

13 Mr. Infinger: I'm -- I'm going to --

14 Q. -- let me finish my question.

15 Mr. Infinger: -- and let me object to this
16 question asking Mr. Tolleson to answer what Mr.
17 Barnwell would have thought.

18 Mr. Knie: Okay.

19 Mr. Infinger: I mean.

20 Mr. Knie: That's fair enough.

21 Commissioner Wilkerson: Yes, I agree. Rephrase.

22 Q. Just let me finish and then you can tell me all you
23 want to tell me, okay?

24 A. Sure. Okay, I'm sorry.

25 Q. All right. You could tell that Marshall was upset;

1 could you not?

2 A. The reason I could tell that Marshall was upset because
3 we were walking behind Sam and he had mentioned to me
4 --

5 Q. Okay.

6 A. -- on the way to the computer that he felt like that
7 Sam had ignored him. Now, whether Sam heard it or not
8 --

9 Q. Okay.

10 A. -- I don't know.

11 Q. And he said that Sam -- what Sam said happened was not
12 correct; is that right?

13 A. What Sam said was correct other than the process.

14 Q. Okay. All right.

15 A. And that was --

16 Q. No, no, no, wait. But he disagreed with what Sam said;
17 isn't that right?

18 A. -- and that's where I was --

19 Q. All right.

20 A. -- and that's where I was going. He said overcast, Sam
21 said overcast, it was not overcast; it was the
22 palleting process.

23 Q. Okay.

24 A. So, that was the disagreement.

25 Q. Do -- do you deny that he actually stopped you on the

1 way to the office to demonstrate what he really was
2 doing?

3 A. I'm not going to say that I recall that. I do recall
4 that he stopped me and said, hey, I -- you know, Sam
5 didn't pay me any attention.

6 Q. Well --

7 A. Now, he demonstrated for us; now, I don't know if
8 that's what he's stating, how he got hurt.

9 Q. -- well, you were here when he testified, weren't you?

10 A. Right, I was.

11 Q. Okay. And --

12 A. But he -- what he said was -- I don't recall that,
13 unless he's stating that it was at the time that I
14 asked him to demonstrate how he got hurt.

15 Q. -- so, you deny that on the way to the office he's
16 having a discussion with you and he stops you and says
17 I just want to show you what I was doing at the time I
18 got hurt?

19 A. I would have to say that I'd have to deny that --

20 Q. Okay.

21 A. -- yes, sir.

22 Q. And you're the Safety Director and you're supposed^d to
23 remember those kinds of things aren't you?

24 A. Well, like I said, I -- I recall going out there --

25 Q. All right.

1 A. -- and I'm not going to --

2 Q. All right. And -- and you heard Mr. Barnwell testify a
3 few minutes ago that Mr. Johnson demonstrated to him
4 that he was doing a palleting motion; do you remember
5 that?

6 A. -- that is correct because he --

7 Q. Okay.

8 A. -- he did tell me at the same time that he had finished
9 completing the palleting of all his bowls, meaning
10 twenty-four (24) of them. Now, he had turned around to
11 go back down the left side that Mr. Barnwell mentioned
12 to do the other bowls. He had nothing to do with
13 palleting at that time.

14 Q. Okay. You've seen the incident report?

15 A. Yes, sir.

16 Q. And you heard where I read where it said, "Action plan,
17 talked with Associate about slowing down while doing
18 procedures". Did you hear that?

19 A. Yes, sir. I'd like to make a statement. He probably
20 didn't even mention that to Mr. Johnson. That is a --
21 an action for management --

22 Q. I understand.

23 A. -- to talk about to try to eliminate things that
24 happen.

25 Q. All right.

1 A. So, this was not discussed with Mr. Johnson in any way.

2 Q. Well, I just want to know from -- from your
3 perspective, though, in this incident report, why you
4 would tell this man when he reports an injury or why
5 you would say that a plan of action should be to talk
6 with Associate about slowing down while doing his
7 procedures?

8 A. It's -- it's both -- a lot of different things and I'm
9 not going to get into the technical stuff because --
10 and Marshall can verify this, the casting process is a
11 very fast paced.

12 Q. Okay.

13 A. We actually have to tell our Casters not to run; it's
14 illegal to run on -- on their floors. So, a lot of the
15 time when we take corrective action you're going to
16 hear -- you're going to hear lifting properly, that's
17 what you're going to see; are our people lifting
18 properly. Are they walking instead of running because
19 as they work their floor there's liquid slip on the
20 floor surface? So, you're going to see a lot of that
21 anytime you have a casting report --

22 Q. Okay.

23 A. -- because it -- comes into play sometimes; it didn't
24 here but it comes -- comes into play sometimes. So,
25 these guys look at all realms of -- of their job that

1 these guys are having to perform to make sure -- these
2 are just questions that they want to address to the
3 Associate, hey, make sure you're taking your time.
4 That means no running; that kind of thing. Make sure
5 that you're, you know, working at a -- a pace that's
6 acceptable because there's lots of things that these
7 guys do with themselves, meaning one (1) person, and
8 there's a lot of this task that he talked about that
9 you do with two (2) people.

10 Q. Okay.

11 A. So, all this casting that he's mentioned, a lot of his
12 process is done by himself but there's a lot of it
13 that's done using two (2) people, too. So, you know,
14 we -- we've got a fifty (50) pound weight limit out
15 there that we try to make these guys follow in order to
16 make sure that people are not lifting over fifty (50)
17 pounds. Fifty (50) pounds is a lot of weight but we
18 have things in process and that's why we have received
19 some of the safety awards that we have because we've
20 tried to -- to break this thing down to make people
21 understand that it's their responsibility as well as
22 ours to -- to eliminate these -- these possibilities
23 that -- that are called risks, that we call them.

24 Q. All right. "Talked with Associate about slowing down
25 while doing his procedures". What was he supposed to

1 slow down doing?

2 A. That goes back to just what I just stated.

3 Q. Just answer what specifically.

4 A. I'm trying to.

5 Mr. Infinger: I -- I'm --

6 Q. Okay.

7 Mr. Infinger: -- he's answering the question,
8 Commissioner.

9 Commissioner Wilkerson: well, he didn't answer it
10 the last time. He -- he gave me the global
11 experience from thirty thousand (30,000) feet
12 about safety awards.

13 A. Okay. Well --

14 Commissioner Wilkerson: what I need to know is --
15 the question as I understand it is, what was the
16 Associate to do in slowing down his procedure,
17 period.

18 A. -- well, you're taking that wrong, I guess. It should
19 have stated, what can the Associate -- is the Associate
20 walking? Is the Associate --

21 Commissioner Wilkerson: It's your report;
22 somebody filled it out.

23 A. -- right. Sam filled it out.

24 Commissioner Wilkerson: Okay.

25 A. I didn't fill it out.

1 Commissioner Wilkerson: So, is what on here -- I
2 guess the question is, is what on that report
3 correct?

4 A. The action plan is for management, okay?

5 Commissioner Wilkerson: I didn't ask you about
6 the action plan.

7 A. Okay.

8 Commissioner Wilkerson: My question -- either
9 answer the question or don't answer the question.

10 A. Okay.

11 Commissioner Wilkerson: And I'm fine if you don't
12 answer it.

13 A. Okay.

14 Commissioner Wilkerson: And if you don't know,
15 you don't know. Is what's on that report correct?

16 A. No. But there's certain things that are right and
17 there's certain things that are wrong, I guess. I mean
18 --

19 Q. Well, then --

20 Commissioner Wilkerson: Then answer his question
21 about what was the Associate supposed to do in
22 slowing down with the procedure due to what
23 happened on 10/25/2010.

24 A. -- well, with his situation I guess it would be making
25 sure he wasn't running.

1 Q. -- well, let me ask you this.

2 A. Okay.

3 Q. If -- if he's running in the performance of his duties
4 and falls is that a work related injury?

5 A. No.

6 Q. It's not?

7 A. No.

8 Q. Well, you --

9 A. Because he's -- he's going to get a warning for
10 running, number one (1).

11 Q. -- okay. But aside from getting a warning if he feels
12 that he has to run to accomplish his tasks, you're
13 saying that's not work related?

14 A. He -- he needs -- he needs --

15 Mr. Infinger: Commissioner, I object to this
16 question because --

17 A. -- he needs to come to me.

18 Commissioner Wilkerson: whoa, whoa, whoa.

19 Mr. Infinger: -- I'm going to object to the
20 question of asking Mr. Tolleson what is and what
21 is not a Workers' Comp accident.

22 A. Right.

23 Mr. Infinger: Mr. Tolleson is the Safety Manager;
24 he is not the Commissioner issuing a decision on
25 what -- on anything that might occur in that plant

1 is or is not an accident.

2 Commissioner Wilkerson: But I think the confusion
3 we've got is, because it's an OSHA violation it's
4 not a Workers' Compensation accident. That's why
5 earlier -- I don't care about OSHA.

6 A. Oh, I don't either, I mean.

7 Commissioner Wilkerson: Because the bottom line
8 is, you can be speeding down the highway and get
9 hit by an adverse party; so, because you were
10 speeding it's not compensable? That's wrong.
11 Because you were running and you hurt yourself;
12 it's still compensable.

13 A. Sure.

14 Commissioner Wilkerson: It doesn't matter if you
15 violate something.

16 Mr. Infinger: I -- I --

17 Commissioner Wilkerson: Now, if you've been
18 warned over and over and over that's a recourse
19 underneath the Act where you might can not make it
20 compensable.

21 Mr. Infinger: -- my -- my objection --

22 Commissioner Wilkerson: And I think the
23 difference --

24 Mr. Infinger: -- my -- okay.

25 Commissioner Wilkerson: -- that we've got here

1 is, we've got two (2) that -- well, actually,
2 we've really got three (3) interpretations of what
3 happened that day, so far.

4 Mr. Infinger: Okay. And all I'm saying is, I
5 think it's irrelevant and beyond the scope of this
6 hearing to ask Mr. Tolleson what is and what is
7 not a Workers' Comp accident for anything that
8 might occur.

9 Commissioner Wilkerson: Well, I asked him.

10 Mr. Infinger: Well, I -- I'm just saying I -- you
11 asked him about what happened as far as what his
12 testimony was.

13 Commissioner Wilkerson: Right.

14 Mr. Infinger: Mr. Knie is now asking him, well,
15 what if this, what if that. And I'm just saying
16 that's irrelevant and beyond the scope of this
17 particular hearing. You know, what if he's
18 running? What if he's -- what if he trips, you
19 know?

20 Commissioner Wilkerson: Oh -- oh, in reference to
21 this. Okay, I'm fine with that. Okay. All
22 right, that's fine.

23 Q. Didn't you tell the plant Nurse you were going to deny
24 the claim?

25 A. Did I --

- 1 Q. Yes.
- 2 A. -- tell the plant Nurse --
- 3 Q. Yes.
- 4 A. -- I was going to deny --
- 5 Q. Yes, you.
- 6 A. -- no, I called, I guess, our third party insurance --
- 7 Q. Okay.
- 8 A. -- Broadspire and they're the ones that denied the
- 9 claim.
- 10 Q. Okay.
- 11 A. I don't deny them.
- 12 Q. Well, they -- they just administer --
- 13 A. I don't deny them.
- 14 Q. -- I mean, you're self-insured aren't you?
- 15 A. I don't deny them.
- 16 Q. Are you self-insured?
- 17 A. I guess we are since I've heard it, yeah.
- 18 Q. You mean you are the Senior Project Safety Specialist
- 19 --
- 20 A. I don't get --
- 21 Q. -- and you don't know?
- 22 A. -- I don't get involved --
- 23 Q. Okay.
- 24 A. -- in that --
- 25 Q. All right.

1 A. -- that stuff; that's not my job. My job is to keep
2 people safe.

3 Mr. Knie: I just beg the Commissioner's
4 indulgence one (1) minute here. Let's see. I
5 believe that's all. Thank you.

6 Commissioner Wilkerson: Any redirect?

7 REDIRECT EXAMINATION

8 By Mr. Infinger:

9 Q. The only redirect I have is I want to make sure that
10 when Mr. Knie was asking you about denying -- whether
11 you denied Mr. Johnson did the activity, I think your
12 testimony was, if I recall, he just -- he demonstrated
13 to you what happened and that's the demonstration you
14 showed the Commissioner --

15 Mr. Knie: Object to the form of the question,
16 leading.

17 Commissioner Wilkerson: Hold on. Hold on. Hold
18 on. Let him finish. I'm sorry.

19 Q. -- he -- Mr. Johnson demonstrated to you what happened
20 and that's what --

21 Mr. Knie: Object to the form.

22 Commissioner Wilkerson: Yes, I understand. Let
23 him finish the question though --

24 Mr. Knie: Okay.

25 Commissioner Wilkerson: -- where I can get the

1 whole question in. And I'm fine, don't answer it.

2 A. Okay. Yes, sir.

3 Commissioner Wilkerson: Go ahead, finish your
4 question. I'm sorry.

5 Q. He demonstrated to you what happened and that's the
6 demonstration you showed to the Commissioner?

7 Mr. Knie: Object to the form.

8 Commissioner Wilkerson: Object to the form of the
9 question. Okay.

10 Mr. Infinger: Okay.

11 Commissioner Wilkerson: Go ahead, rephrase it.

12 Q. Did Mr. Johnson demonstrate to you his -- what occurred
13 on the day of his alleged injury?

14 A. Yes, sir.

15 Q. Okay. Did you show that demonstration to the
16 Commissioner today?

17 A. Yes, sir.

18 Q. Okay.

19 Mr. Infinger: That's all.

20 Mr. Knie: Nothing else, thank you, Your Honor.

21 Commissioner Wilkerson: Okay. All right. Any
22 more witnesses?

23 Mr. Infinger: None from the Defendant.

24 Commissioner Wilkerson: Okay. This concludes the
25 hearing. Let me meet with the Attorneys real

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quick.

(There being no further questions, the hearing concluded at
12:07 P.M.)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Marshall C. Johnson, vs. Kohler Company;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

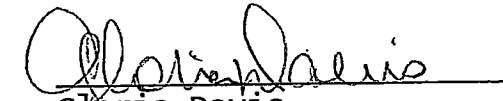
That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 95 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 16th Day of April, 2011.


Gloria Davis
Notary Public for South Carolina
My Commission Expires 1/22/12

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PALMETTO COURT REPORTING
321 Mac Circle Lexington, SC 29073

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1016367

MARSHALL C. JOHNSON,	)	
	)	FULL COMMISSION HEARING
CLAIMANT,	)	PANEL B
vs.	)	
	)	COMMISSIONER WILLIAMS-CHAIR
KOHLER COMPANY,	)	COMMISSIONER LYNDON
	)	COMMISSIONER ROCHE
	)	
EMPLOYER,	)	
	)	
and	)	
	)	
SELF-INSURED,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
	)	

 COPY

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
9:53 A.M., TUESDAY, SEPTEMBER 20, 2011, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

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

APPEARANCES

FOR THE CLAIMANT

PATRICK E. KNIE, ESQUIRE
 PATRICK E. KNIE, P.A.
 POST OFFICE BOX 5159
 SPARTANBURG, SOUTH CAROLINA 29304
 864-582-5118

FOR THE DEFENDANTS

RUSSELL T. INFINGER, ESQUIRE
 NEXSEN, PRUET, LLC
 POST OFFICE DRAWER 10648
 GREENVILLE, SOUTH CAROLINA 29603
 843-282-1122

REPORTED BY

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

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EXHIBITS

(No Exhibits Proffered)

1 COURT REPORTER: Today is September the 20th,
2 2011. This is South Carolina Workers Compensation
3 Case Number 1016367. This is the case of Marshall C.
4 Johnson, Claimant, versus Kohler Company, Employer,
5 and they are self insured.

6 The Appellant is the Defendant represented by
7 Attorney Russell T. Infinger. The Respondent is
8 represented by Attorney Patrick Knie. Each side is
9 allowed ten minutes for oral argument and Appellant
10 three minutes in reply. You are requested to argue
11 the grounds of exception and stay within the record.

12 THE COURT: All right. Mr. Infinger.

13 BY MR. INFINGER: May it please the Commission.

14 Commissioners, this is a case in which the
15 Claimant contended he was injured and suffered a back
16 injury while he was working at the Kohler Plant over
17 in Spartanburg. The Defendant, self insured Kohler
18 Company denied the case based on facts that they
19 obtained during the investigation of the alleged
20 accident.

21 At the hearing before Commissioner Wilkerson
22 these -- both the Claimant along with the supervisor
23 and the safety director were -- all testified before
24 the Commissioner.

25 The Claimant contends that he was working in

1 a facility or in a casting operation where he was
2 standing on one leg, was in an awkward position; had
3 one leg on one side and just was very awkward and when
4 he reached around to do something with the palleting
5 devise to -- which is just a little piece of plastic
6 about, you know, six inches by about three inches.
7 And it was the -- it was the awkward position of this
8 movement he contended that caused him to have his
9 accident. Now, he did go for medical treatment on his
10 own and he did end up having surgery to his back.

11 However, the Defendants contend that the incident
12 that he alleged is not the incident that he reported
13 and the incident that he reported would not be
14 compensable under the Workers' Comp Act. When the
15 Claimant advised the company that he had -- was having
16 problems with his back that day the safety manager
17 there, Mr. Tollison, is the person that takes care of
18 any kind of workers' comp investigation and he's --
19 he's the point person, if you will, any time somebody
20 claims an accident. So Mr. Tollison asked Mr. Johnson
21 to show him exactly what happened and he was trying to
22 conduct a thorough and exhaustive investigation of the
23 claim and/or the incident. And what he testified to
24 Commissioner Wilkerson about was that the Claimant
25 told him he was walking down one section of an aisle

1 which is where they have toilets that are being
2 constructed, if you will. Excuse me. He was walking
3 down one section of this aisle and he simply turned
4 around to go back to the other end and when he did he
5 felt some type of a twinge or pain in his back. Now,
6 it was -- it was the -- the request of this safety
7 manager, Mr. Tollison, to not just have the Claimant
8 tell him what happened, but to show him. Tell me
9 exactly what you were doing? Now, if the Claimant had
10 said to him, I was reaching around here and I -- it
11 was in this awkward position and I'm standing on one
12 foot, you know, we might not be here. But that's not
13 what he said. What he did was he showed him that he
14 was walking down the aisle and turned around and came
15 back. And it's our position that Mr. Tollison's
16 testimony is credible and that the Claimant, on the
17 other hand, if you look at some of the medical records
18 that were submitted at the time -- the concurrent time
19 that he claims it happened, he talked something about
20 turning -- he never gave any medical testimony or any
21 medical history where he says to the medical provider
22 this whole soliloquy of, I'm reaching over, it's
23 awkward, I'm turning around, I'm bending, I'm -- you
24 know, there's nothing like this. There's no
25 indication where he was picking up something heavy.

1 There's no indication that he, you know, was
2 struggling with some item that was difficult to
3 manage. It was just a matter of how he was
4 positioned.

5 Now, this was an interesting hearing because
6 during the course of the testimony Commissioner
7 Wilkerson actually asked the safety manager a -- a lot
8 of "what if" questions. "Well, what if the Claimant
9 had happened -- it happened the way he said it was,
10 would that be compensable?" We objected to that
11 question because that's asking the -- you know, the
12 Employer to rule on compensability of facts that may
13 not be accurate. So it was an unusual hearing, I
14 guess, in the sense that a lot of different questions
15 and then, you know, the single Commissioner also said,
16 "Well, what if the Claimant was running and he" -- a
17 lot of unusual and unrelated factual issues were
18 requested of the -- of the Employer. What if this
19 happened, what if that happened, would that be
20 compensable? Of course we objected to all that and I
21 think what happened in the Commissioner making those
22 -- those questions and asking the Employer all these
23 issues it sort of got off track what exactly what we
24 were doing and really focusing on or what did he tell
25 the doctor happened and what did he tell the Employer?

1 Now, there is -- the testimony from the
2 supervisor was not perfect for us. I mean the
3 supervisor said in his direct examination something
4 about, "Well, the guy showed me about some palleting
5 he was doing." However, there was never any testimony
6 directly from the supervisor that the -- that the
7 Claimant showed him this unusual awkward position
8 which would obviously had to have been very awkward if
9 it resulted in some herniated disc that would then
10 require him to have surgery.

11 But I think the -- the fact of the matter is and
12 the real -- the real issue that I think that when you
13 look at the facts and what the -- the weight of the
14 facts are and why this case should never have been
15 found compensable to begin with or you look at what
16 the Claimant said, the only time that that's ever
17 documented or the only time that's ever in the record
18 is his one time making that comment to the single
19 Commissioner. You look at the medical records that
20 were -- that he -- he -- that were in the APAs that
21 were provided to the -- the Claimant provided to the
22 doctors. Now if you're going in and if you've got
23 this unusual contorted position you're in and you're
24 trying to seek medical treatment for that, certainly
25 you would tell the doctor that so that he could reach

1 -- reach conclusions or make referrals or whatever.
2 None of that's -- none of that's stated. It's very
3 vague, I was turning and I was doing this.

4 And then you -- you -- the final, you know,
5 situation is, the final, I think, blow for whether or
6 not this is compensable and the weight of the evidence
7 is he goes to the super -- I mean he goes to the
8 safety manager, he speaks with the person who is there
9 to discuss his claim or discuss his alleged accident
10 and he gives a statement that is totally opposite than
11 what he tells to the Commissioner at the hearing. So
12 we think that factually the Claimant didn't prove his
13 burden because it was just his testimony against a lot
14 of other evidence that would be inconsistent with
15 that.

16 THE COURT: Mr. Knie?

17 BY MR. KNIE: I respectfully disagree for obvious
18 and solid reasons with what Mr. Infinger's
19 characterization of the testimony was. We -- we've
20 got a long term Employee of Kohler who is a molder.
21 He does heavy work daily. He testified that the
22 commodes that he was working on on that day were some
23 four to four and a half feet off of the floor level
24 and that he was working late in the process, doing
25 something called palleting. Now, palleting is a

1 process where you take either a -- a very thin plastic
2 or metal -- I think it probably looks like a solid
3 comb or something like that, about that size, and it's
4 flexible. And you reach around and you clean any
5 debris off of the base of the commode in an effort to
6 get a smooth shiny finish. And what he said was and
7 what his testimony was that, "I was reaching around
8 and pulling and coming around like this and I was on
9 one foot. And as I came down I felt" -- and let me
10 get the exact language that he used -- "a real bad
11 burn, stinging sensation." Now, that is consistent
12 with the medical records. He goes to the emergency
13 room and he -- his -- his report is low back pain
14 relating to injury at work on Monday. Then two days
15 later he goes to his family doctor who does a little
16 bit better job of tying down the mechanism of injury.
17 His family doctor specifically states, "Patient stated
18 he hurt his back the other night at work while
19 pulling, twisting toilets." So there is a description
20 of pulling, twisting that awkward movement that my
21 client describes.

22 Now, let's talk a little bit about how it was
23 reported. Ten minutes after the injury his supervisor
24 comes by and the Claimant says, "I told them that I
25 had hurt myself on the job." He said that the

1 supervisor simply walked off at that point and didn't
2 even acknowledge what he was saying. A day later he
3 tells the supervisor again at which time the
4 supervisor acknowledges the injury. Then the next day
5 he is approached by both the supervisor and by the
6 senior safety specialist who says, you know, tell us
7 what happened. He said that -- and I -- I've got that
8 wrong. He said, "We want to know again what happened
9 about this injury." And he said, "Well, I've already
10 told y'all and have y'all filed an incident report?"
11 And they say, "Well, yes, there's one down at the
12 office." So he said, "I'd like to see the incident
13 report." The three of them start walking to the
14 office, he stops them at the location where he got
15 hurt and said, "Let me show you again what happened"
16 and he describes this twisting movement with one leg
17 off the floor. They get down to the office, they pull
18 up on the computer the incident report which is,
19 according to my client, not the way he had described
20 it and he said, "You have reported this incident wrong
21 on this incident report." The senior safety man then
22 says, "Don't worry about that, that can be changed."
23 Mr. Tollison, the senior safety man acknowledged that
24 he made that statement. Nonetheless, the incident
25 report was never changed to comport with what my

1 client's version of the events was. In the end, the
2 single Commissioner found my client to be very
3 credible.

4 Now, Mr. Barnwell testified next and to say he
5 didn't go a good job testifying I would say is -- is
6 -- is quite an understatement. He -- he was clearly
7 extremely nervous on the stand. The Commissioner
8 picked up on it and made a note of that. He did --
9 did not hold up well under cross examination. He did
10 not hold up well under examination by the
11 Commissioner. He called this incident a near miss and
12 the Commissioner said, "Well how can you have a near
13 miss? You're either injured or you're not injured."
14 He never could describe what a near miss was. But we
15 learned four things from Mr. Barnwell. He
16 acknowledged, finally, on cross examination that the
17 Claimant was using this pallet at the time that he was
18 hurt. Now, if he's using a pallet he's not walking
19 down to the end of the line and turning around.
20 Secondly; he acknowledged that the Claimant had
21 demonstrated to both Barnwell and Tollison how he had
22 done the palleting and how he got hurt. Thirdly; they
23 filled out a form about, you know, how can this not
24 happen again. It's a -- I can't remember the name of
25 the -- the procedural form, but when they filled this

1 form out what they said was that he needed to be more
2 careful in the future when turning and lifting. And
3 last; we learned from Mr. Barnwell that he got into
4 trouble over this incident because he had failed to
5 timely report the incident. As a result the single
6 Commissioner made a finding and I quote; "I further
7 find that Mr. Barnwell appeared to be very nervous
8 during his testimony and on cross examination conceded
9 that the Claimant attempted to demonstrate the manner
10 in which he was injured in a manner consistent with
11 his testimony at the hearing. However, that
12 description was not reported on the report of injury."
13 Then he went on to find that it was a compensable
14 injury.

15 I would simply argue that this Panel should give
16 great weight to the single Commissioner.
17 Unfortunately all this Panel has is the cold record in
18 front of it. There's no video of what took place at
19 the hearing and it's very hard to characterize these
20 witnesses and their lack of credibility without being
21 able to, of course, view them firsthand.

22 So we would simply ask that this Panel affirm the
23 single Commissioner.

24 THE COURT: Mr. Infinger?

25 BY MR. INFINGER: Very briefly, just in

1 reply. The Commissioner did make some comment about
2 Mr. Barnwell being nervous. What you've got to
3 realize is Mr. Barnwell is a -- he's a wage earner,
4 he's the foreman of that group and being in a -- a
5 hearing setting with a lot of lawyers and neckties and
6 everything else he was nervous. And I think you've
7 all seen folks nervous.

8 With respect to the "near miss" issue that's just
9 a term of art the coder uses whenever somebody says
10 they were injured but it's determined that there was
11 not a real accident. And the safety manager gave
12 Commissioner Wilkerson a lot of detail about what that
13 is.

14 Mr. Barnwell is just -- he's just not
15 sophisticated enough to really know what that term
16 means; that's just what they call it.

17 Now, surely there's no question but Mr. Barnwell
18 said that he showed him how he did the palleting, but
19 that's a part of his job. I mean he showed him how he
20 does palleting. But the different -- the fact of the
21 matter is not what -- how he does the job but how he
22 was injured. And when you have the safety manager
23 who's there -- there investigating the incident, what
24 happened, tell me what happened, and he tells him,
25 "I'm walking down the aisle and turning around and

1 coming back" and that's what happened, then that is --
2 that is clear testimony. That would have been the
3 Claimant's perfect opportunity to give this whole
4 soliloquy about being on one foot, in an awkward
5 position, trying to reach around here. There's no
6 evidence that that happened other than him, and if you
7 look at all the records I think you will determine
8 that that is not accurate or credible.

9 With respect to that incident report, the safety
10 manager said that -- in his testimony that the real
11 issue that the Claimant had about the safety report
12 was they put in there it was a metal pallet and it was
13 a plastic pallet or vice-versa.

14 With respect to the corrective action he said,
15 you know, we have to put something down, that's our
16 policy. We have to put something down that says how
17 can we make sure this incident doesn't happen again
18 and that's -- that's the terms they used in making
19 that comment.

20 In any event, with -- with the way in which this
21 incident occurred, the manner in which the Claimant
22 says it happened to the Commissioner versus the way he
23 told his Employer about, we think the record is clear
24 and that the -- the Commissioner should have made a
25 decision not finding this compensable because

1 the Claimant didn't meet his burden of proof.

2 THE COURT: That concludes the hearing.

3 (The hearing concluded at 10:10 a.m.)

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10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING WORKERS'
 COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND
 FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 15
 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
 COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
 THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
 AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY
 OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
 ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
 HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 31ST DAY OF
 JANUARY, 2012.

 CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES JANUARY 18, 2015

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
COUNTY OF SPARTANBURG) WORKERS' COMPENSATION COMMISSION
WCC FILE NO.:1016367

Marshall Johnson,)
)
Claimant,)
vs.) NOTICE OF WITNESSES AND WRITTEN
) REPORT(S)/PHYSICIAN OR OTHER
Kohler Company,) EVIDENCE TO BE INTRODUCED ON
) BEHALF OF CLAIMANT, MARSHALL
Employer,) JOHNSON

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AND RUSSELL
T. INFINGER, ESQUIRE, ATTORNEY FOR EMPLOYER/CARRIER

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of the South
Carolina Workers' Compensation Act and S.C. Code Ann. Section 1-23-330 (1985), herewith submits
the following reports/physician or other evidence on behalf of the Claimant, Marshall Johnson, to
wit:

<u>NAME OF REPORT(S)/ PHYSICIAN OR OTHER EVIDENCE</u>	<u>BUSINESS NAME</u>	<u>DATE OF REPORT(S)</u>	<u>PAGE NUMBERS</u>
1. Dr. Salvatore Bianco, E/R	Spartanburg Regional Medical Center	10/27/10	Pages 1-8
2. Dr. Mark Miles	Family Physicians of Spartanburg	10/28/10 to 11/11/10	Pages 9-16
3.	InMed Diagnostic Services of SC, LLC	11/9/10	Pages 17-19
4. Dr. Timothy McHenry	Southeastern Neurosurgical and Spine Institute	11/17/10 to 01/25/11	Pages 20-32
5. Dr. Thomas W. Jarecky	University Medical Group, Procedural Pain Management	11/19/10 to 12/10/10	Pages 33-38
6. Letter of Patrick E. Knie to Russell T. Infinger		02/04/11	Page 39

7..	Greenville Memorial Hospital	To Be Submitted - There has been a delay in obtaining these records.	
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YOU ARE FURTHER HEREBY NOTIFIED you have the right to cross-examination, and, should you desire to exercise that right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, will be submitted at the Hearing before 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: Claimant, Marshall Johnson, and his wife, Alisha Johnson

PATRICK E. KNIE, P.A.



Patrick E. Knie
Attorney for Claimant
P.O. Box 5159
250 Magnolia Street
Spartanburg, South Carolina 29304
Telephone: 864-582-5118
Telefax: 864-585-1615

February 10, 2011

Spartanburg, South Carolina

EmSTAT Report of Home Medications, Medications Given and Medications Prescribed Spartanburg Regional Medical Center 101 E. Wood St. Spartanburg, SC 29303 Emergency Department (864) 560-5400	Name: Johnson, Marshall Sex: M MR #: 000060095 Account #: 1030001634 DOB: 12-Mar-1974 Age: 36 Weight: Chief Complaint: back pain Prim Diagnosis: Pain - back, low, lumbar, lumbosacral ED Physician: Bianco MD, Salvatore PCP: Unassigned
---	---

Allergies:
Amoxicillin

This list of medications has been reviewed by your doctor and is complete and accurate to the best of our knowledge. However, as your care was provided in the Emergency Department, we may not have all of your information, or there may be errors that we could not discover during your emergency visit. Please confirm all medications and doses with your primary care physician.

Home Medications
 Recorded by Salvatore Bianco MD, MD ~ 10/27/2010 21:10

Medication/Dose/Route/Frequency	Last Dose	Disposition	PCP Contacted
*None		Continue/Stop	No
Comments:			

Medications Given in ED

Medication Name/Dose/Route	Time Given	Administered By
Ketorolac Tromethamine 60mg IM Notes: allergies verified; 2 id's used	10/27/2010 22:05	Jennifer Hipp RN, BSN
Methylprednisolone Na 125mg IM Notes: allergies verified; 2 id's used	10/27/2010 22:05	Jennifer Hipp RN, BSN
Flexeril 10mg - PO Notes: allergies verified; 2 id's used	10/27/2010 22:05	Jennifer Hipp RN, BSN

Medications Prescribed by ED Physician

Medication Name/Dose/Route	Time Prescribed	Prescribed By
Lortab 10mg/APAP 500mg 10mg Form: tab Sig: 1tab po every 4 to 6 hrs. prn pain Dispense: #10 (Ten)	10/27/2010 21:09	Salvatore Bianco MD, MD
Cyclohexzaprine 10mg Form: tablet Sig: One po TID prn Dispense: 15	10/27/2010 21:09	Salvatore Bianco MD, MD
Stadolac 400mg Form: capsule Sig: one by mouth every 6-8 hours as needed; for pain Dispense: 30	10/27/2010 21:09	Salvatore Bianco MD, MD

Medications Reconciled by: RESP_PHYS

Feb. 23. 2011 2:39PM

Patrick E. Knie

(FAX)

No. 2922 P. 3 P.003/009

SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report

NAME: JOHNSON, MARSHALL

UNIT #: 000060095

ORDERING PHYSICIAN: BIANCO, SALVATORE

CI#: 2891119

LOC: EUR-EU18-B

DOB: 03/12/74

AN#: S1030001034

Pt. Type: ER

EMERG DEPT

FINAL

Exam

10250 ER SPINE LUMBAR 2 OR 3 VIEWS Date: 10/27/10 2129
72100 Ord Diag: pain

Lumbar spine 3 views dated October 27, 2010

Clinical Information: Injury

Alignment is unremarkable. No fracture, vertebral compression or bony abnormality. Mild disc space narrowing L3-L4 and L4-L5.

Impression: No acute abnormality

Transcriptionist- n/a

Reading Radiologist- MICHAEL ENRIGHT MD

Releasing Radiologist- MICHAEL ENRIGHT MD

Released Date Time- 10/27/10 2152

Page 1

Patrick E. Knie

(FAX)

No. 2922 . P. 4 P.004/009



SPARTANBURG
Regional Healthcare System

☐ SPMC

MD ORDER TIME		#1	#2	#3	Reasons for Plain Films: (1)		(2)							
BLOOD	CBC with Auto Diff men	☐	ETOH	☐	☐ SYMPTOM SPECIFIC PATHWAY USED		CXR:	pa/lat	port	☐				
	BMP	☐	CMP	☐	OTHER ORDERS		Abd:	2 view	KUB	☐				
	Total CPK	☐	Tylenol	☐			C-spine	x-table lateral	☐					
	Lipase / Amylase	☐	Digoxin	☐			portable	5 view	☐					
PT / FTT	☐	Lithium	☐	1.	☐	Neck for soft tissue			☐					
BHCG: quant	☐	Phenobarb	☐	2.	☐	T-spline			☐					
Group RH	☐	Dilantin	☐	3.	☐	L-spline	x-table lateral		☐					
T & S	☐	Depsakote	☐	4.	☐	portable	3 view		☐					
T & C: 1 2 3 4 5	☐	Tegretol	☐	5.	☐	Shoulder	L R		☐					
Culture: 1 2	☐	GC/Chlamydia	☐	6.	☐	Humerus	L R		☐					
LFTs	☐	Wet Prep	☐	7.	☐	Elbow	L R		☐					
D-dimer	☐	EKG	☐	EC URINE DIP		Forearm	L R		☐					
URINE	OK / MB / Troponin 1 2 3	☐	ASG	☐	UA w/c cath		Wrist	L R		☐				
	CHF- BNP	☐	Rapid Strip	☐	G & S		Hand	L R		☐				
	CHEM 8 LYES/CR/BUN	☐	HIN	☐	UCS / EC / LAB		Finger #	L R		☐				
					UDS		Pelvis	portable		☐				
DIAGNOSTICS:														
CT Head			Doppler vn art L R E											
CT Chest for PE			US Abdomen											
CT Abd/Renal for Stones			US Pelvis (Order Quant HCG if pregnant)											
CT Abd with/without contrast			US Gallbladder											
CT Pelvis with/without contrast			Other: _____											
Reason for above diagnostic exam: _____														
NOTE: The above ordered diagnostics cannot be ordered without reason stated.														
☐ Template		Assessment		☐ Dictated		Consultant		1 st		2 nd				
Foradil 60 mg Soma 125 mg Phenel 10 mg 200						1.								
						2 ^{STAFF ALERT:}								
						Meds & Intervention		Nurse/TECH		TIME				
						Time Ordered								
Dx:		Admit MD:		Bed:										
ED Physician:		Resident / NP / PA:		Consultant / PMD:										
ACCOUNT NO.		ADMISSION DATE / TIME		FC	DATE OF BIRTH	AGE	SEX	RACE	MS	SERVICE	ARRIVAL	PAT. TYPE	BY	UNIT NUMBER
S 103001834		10/27/10 1831		VP	03/12/74	36Y	M	1	M	EME		ERC	BM	000-060095
INSURANCE 1:		INSURANCE 2:		INSURANCE 3:		INSURANCE 4:								
ADMITTING DOCTOR		ATTENDING DOCTOR		ACCIDENT/WORK RELATED		ACCIDENT DATE/TIME		ADM. TYPE / SOURCE		CORPORATE ID				
PHYSICIANS, ED		PHYSICIANS, ED		NO				1. 7		00033850				
PATIENT INFORMATION		SOC. SEC. NO.		PATIENT EMPLOYER		SPRINTS/URGENT 60 29104 TELEPHONE NO. (864) 582-3401								
JOHNSON, MARSHALL		250-47-9585		KOHLEH CORPORATION										
259 JOE ARTHUR DRIVE		(864) 247-5612		P O BOX 1387										
HDSBUCK		SO 29376												

REV 09.14.07

PRINTED BY:-

138

DATE: 11/19/201

08 Low Back Pain / Injury

DATE: TIME: 2:00 ROOM: 18 EMS Arrival

HISTORIAN: patient paramedic translator other

AGE 36 M / F

History limited by

HPI

chief complaint / location of injury:
back pain neck pain hx of chronic neck pain / back pain

duration / started: 2d timing:
continues in ED.
better gone now
intermittent worse

recent injury? no yes possibly

how (context)? lifting turning bending fall / near-fall trauma

When? as above

Where occurred? home work school

Other injuries? neck head back other

location of pain:

pain
paresthesias
paresthesias

quality and severity of pain:
burning sharp acute
dull radiating
similar to prior back pain(s)
mild moderate severe
pain level: current 7/10
max 10/10

neurologic symptoms:
bowel dysfunction
bladder dysfunction
radiation to leg
sensory/motor loss

modifying factors:
exacerbated by:
supine
upright position
movement (to right / to left / flexion)
cough / deep breaths

relieved by:
supine
upright position
remaining still
nothing

Similar symptoms previously

Recently seen / treated by doctor: Ryan Miley

Treatment / Rx

ROS

☒ Agree w/ nurse's note for PFSH / ROS

GU

trouble w/ urination
frequent urination
blood in urine

NEURO / PSYCH

headache
depression

EYES / ENT / PULMONARY / CVS

blurred vision
sore throat
cough
trouble breathing
chest pain

OTHER

fever
subjective / to °F
chills

GI

abdominal pain
nausea / vomiting
diarrhea
black / bloody stool

Women LNMP

vaginal bleeding
normal period / abnormal
vaginal discharge
missed / abnormal period(s)
denies pregnancy

SKIN / MS

skin rash
neck pain

PAST HISTORY

☐ Tetanus UTD

prior records reviewed:

prior back injury
prior back pain
episode(s) chronic
Intervertebral disc disease

arthritis

compression fracture(s)

other

peptic ulcer disease
documented? yes no
aortic aneurysm
kidney stone
urinary tract infection
prostatitis
pancreatitis
high blood pressure
diabetes Insulin / oral / diet
heart disease

Surgeries / Procedures

none / noncontributory
back surgery
laminectomy fusion discectomy

cholecystectomy
appendectomy
cardiac bypass
other

Medications

none see list - confirmed
ASA NSAID acetaminophen

Allergies

NKDA
see list - confirmed

SOCIAL HISTORY

smoker drugs
alcohol (recent / heavy / occasional)
lives alone lives in nursing home lives at home
occupation teacher

FAMILY HISTORY

PHYSICAL EXAM☒ Agree w/ vital signs Other _____Pulse Ox. time _____ % RA O₂ L/min _____Interpretation: normal abnormal Dx _____

Exam limited by _____

CONSTITUTIONAL

no acute distress

HEENT

normocephalic

atraumatic

PERRL

nml ENT inspection

NECK

nml inspection

non-tender

RESPIRATORY

no resp. distress

breath sounds nml

CVS

reg. rate & rhythm

heart sounds nml

GI / ABDOMEN

non-tender

no organomegaly

no pulsatile mass

BACK

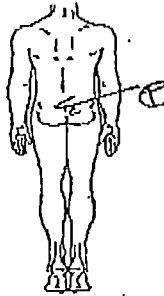
non-tender

nml inspection

RECTAL

non-tender

heme neg stool



T-Tenderness
P-Painful Tenderness
S-Swelling
E-Erythema
L-Laceration
A-Abscess
B-Burn
M-Muscle Spasm
(B-slight to mild
mod-moderate to severe)
T-Tenderness on
palpation (severe)

**STRAIGHT -
LEG RAISING****RIGHT-
LEFT-**

negative

negative

pain at _____ degrees

NEURO

awake and alert

oriented x3

no apparent motor

or sensory deficit

dorsiflexion of great

toes normal bilaterally

reflexes nml

EN's nml as tested

PSYCH

mood / affect nml

SKIN

color nml, no rash

warm dry

MUSCULOSKELETAL / EXTREMITIES

no pedal edema

non-tender, full ROM

Low Back Pain - 118

LABS & X-RAYS:

CBC- WBC= _____ HCT= _____ platelets= _____

UA- normal WBC's _____ RBC's _____ bacteria _____

BHCG / urine preg- POS / NEG

X-RAYS

T-Spine (L-Spine) Lumbar #of views _____

no fracture

nml disc spaces

nml alignment

soft tissues nml

NAD

PRIOR XRAY- unchanged unavail. changed _____

☐ Interpret contemporaneously by me☐ Interpret by Radiologist☐ personally reviewed by me**ED COURSE:**

Time _____ re-examined _____ unchanged _____ improved _____

Cric Care- _____ min (excluding separately billable procedures)

Discussed with Dr. _____ Time _____

patient will be seen in: office / ED / hospital

Counseled patient / family regarding _____

lab results / diagnosis need for follow-up

☐ EMTALA EMC present ☐ EMTALA EMC absent☒ Stable for discharge / out patient follow up**CLINICAL IMPRESSION:** Fall Alleged AssaultAcute Myofascial Strain
thoracic lumbar sacral LS

Low Back Pain

acute chronic

Ruptured Abdominal Aortic
Aneurysm

Acute Sciatica L / R

Acute Herniated Disc at _____

Follow up with Dr. _____

DISPOSITION-

Time _____

CONDITION-

Time _____

ARNP / PA _____

PHYSICIAN- _____

PHYSICIAN- _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Time _____

Spartanburg Regional Medical Center Emergency Center

101 E. Wood St., Spartanburg, SC 29303

(864)560-5400

Prescriptions Received: Lortab 10mg/APAP 500mg 10mg tab, Cyclobenzaprine 10mg tablet, Etodolac 400mg capsule

Discharge Instructions Received: BACK EXERCISES, BACK INJURY PREVENTION, BACK PAIN & INJURY, WORK-RELATED INJURY

Drug Instructions Received:

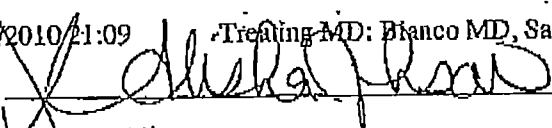
Referral:

Miles MD, Mark - (864) 576-9201 In 1 days - Family Physicians of Sptbg 3021 Reidville Rd, Spartanburg, SC 29303

Important Note: Unless prior arrangements are made, the Referral Doctor does not take walk-in appointments. You are asked to call for an appointment.

I hereby acknowledge receipt of the instructions indicated above. I understand that I have had emergency treatment and that I may be released before all my medical problems are known or treated. I will arrange for follow-up care as instructed above.

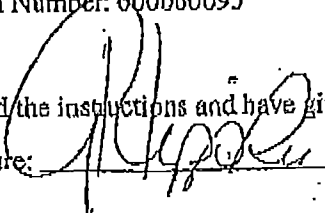
Date/Time: 10/27/2010 21:09 Treating MD: Bianco MD, Salvatore

Patient Signature: 

Account Number: 1030001834

Medical Record Number: 000060095

I have explained the instructions and have given a copy to the patient.

Nurse's Signature: 

Date: 10/27/10

Patient: Johnson, Marshall
21:09

Page 5 of 5

Wednesday - October 27, 2010 -

Spartanburg Regional Medical Center Emergency Center

**Spartanburg Regional
Medical Center**
101 E. Wood St.

Emergency Center
(864)560-5400
Assessment Sheet

MFI # 000060095

Sex: Male

DOB: 03/12/1974

Name: Johnson, Marshall

Phone: (864)237-5612

Address: 259 JOE ARTHUR DRIVE, ROEBUCK, SC 29376

Unit Code: 10104

Account # 1030001834 Age: 36

Complaint: back pain
Arrival Time/Date: 19:19 10/27/2010
Arrived by:
Mobility:
Primary Care: Unassigned,
Accompanied By:

Triage Class: Class 4
Insurance: --None
Amb/Helicopter:
Referring Facility:
Emergency Physician: Blanco MD, Salvatore

Vital Signs

Initials	Time	Temp	Blood Pressure	Pulse	Resp
LG	19:31	98.2 O	134/71	77	16
JH	22:38			78	18

Pain

Time	Scale
22:38	5/10

Pulse Ox.

Time	%
19:31	96

Pupils

Time	L(mm)	R(mm)

Glasgow Coma

Time	Score

Presenting Medications

Medication	Dosage	Freq	Medication	Dosage	Freq
*None					

Allergy

Allergy	Allergic Reaction
Amoxicillin	

Triage Nurse: G'feller, RN BSN, Luka

Past Medical Hx:
Tetanus History:
Social History:
Weight:
LMP Date:

Disposition Information

Primary Diagnosis: Pain - back, low, lumbal, lumbosacral

Secondary Diagnosis:

Disposition: Disch - Home

Dispositioned By: Salvatore Bianco MD

Report Called By:

Prescriptions: Lorlab 10mg/APAP 500mg 10mg tab, Cyclobenzaprine 10mg tablet, Ibuprofen 400mg capsule

Discharge Instructions: BACK EXERCISES, BACK INJURY PREVENTION, BACK PAIN & INJURY, WORK-RELATED INJURY

Disability Statement:

Follow-up Care: Miles MD, Mark

Discharge Time: 22:38 10/27/2010

Family Notification:

Report Given To:

Appt Date/Time:

Discharged By: Jennifer Hipp RN, BSN

Initials

Name

Initials

Name

Spartanburg Regional Medical Center 101 E. Wood St. Emergency Center (864)560-5400 Assessment Sheet	MH # 000060095 Sex: Male DOB: 03/12/1974 Name: Johnson, Marshall Phone: (864)237-5612 Address: 259 JOE ARTHUR DRIVE, ROEBUCK, SC 29376 Unit Code: 10104 Account # 1030001834 Age: 36
<u>Triage/Initial Assessment</u> 19:30 10/27/2010 - Initial Triage Info -- Luke G'feller, RN BSN Chief Complaint: back pain Initial Triage Acuity: Class 4 Note: pt reports lower back pain related to injury at work on monday. <u>Disposition</u> 21:10 10/27/2010 - Home Medications -- Salvatore Bianco MD, MD Med: None <u>Assessment</u> 19:20 10/27/2010 - Registration Information -- Stephen Johnson First Name: Marshall Last Name: Johnson Arrival Time: 10/27/2010 19:18 Chief Complaint: Tr Date of Birth: 03/12/1974 Sex: M Social Security Number: 250470595 19:30 10/27/2010 - Initial Triage Info -- Luke G'feller, RN BSN Initial Triage Acuity: Class 4 19:30 10/27/2010 - Registration Information -- REGS Date of Birth: 19740312 Medical Record Number: 000060095 Account Number: 1030001834 Corporate ID: 00033850 Social Security Number: 250-47-8595 Financial Class: VIP Insurance Class: None Ethnicity: White Zip Code: 29376 19:31 10/27/2010 - Oxyngtry -- Luke G'feller, RN BSN Pulse Oximetry %: 98 19:31 10/27/2010 - Change Nurse -- Gina Robertson RN Primary Nurse: Robertson RN, Gina Secondary Nurse: Responsible Nurse: Robertson RN, Gina 19:31 10/27/2010 - Vital Signs -- Luke G'feller, RN BSN Temp: 98.2 Oral BP: 134/71 HR: 77 Resp: 16 19:41 10/27/2010 - Registration Information -- Jason Moss Date of Birth: 03/12/1974 19:42 10/27/2010 - Registration Information -- REGS Date of Birth: 19740312 Financial Class: Managed care 19:42 10/27/2010 - Document call placed -- Jason Moss Person making call: Moss, Jason S 20:54 10/27/2010 - Registration Information -- Salvatore Bianco MD, MD Date of Birth: 03/12/1974 21:09 10/27/2010 - Discharge Diagnosis -- Salvatore Bianco MD, MD Primary: Pain - back, low, lumbar, lumbosacral 21:09 10/27/2010 - Custom Prescriptions -- Salvatore Bianco MD, MD Medication: Lorlab 10mg/APAP 500mg Strength: 10 Unit: mg Form: tab Sig 1: 1tab po every 4 to 6 hrs prn pain Dispense: #10 (Ten) 21:09 10/27/2010 - Ref/App -- Salvatore Bianco MD, MD Appointment with: Miles MD, Mark Phone: (864) 578-9201 Follow up in: 1 days 21:09 10/27/2010 - Custom Prescriptions -- Salvatore Bianco MD, MD Medication: Cyclobenzaprine	Strength: 10 Unit: mg Form: Initial Sig 1: One po TID prn Dispense: 15 21:09 10/27/2010 - Meds Reo Report Printed -- Salvatore Bianco MD, MD Signed: Yes Verified By: Bianco MD, Salvatore 21:09 10/27/2010 - Custom Prescriptions -- Salvatore Bianco MD, MD Medication: Etodolac Strength: 400 Unit: mg Form: capsule Sig 1: one by mouth every 8-8 hours as needed Sig 2: for pain Dispense: 30 21:10 10/27/2010 - Return to work/school -- Salvatore Bianco MD, MD Return Date: 11/01/2010 22:05 10/27/2010 - Medication Administered -- Jennifer Hipp RN, BSN Medication: Ketorolac Tromethamine Dose: 60 Unit: mg Route: IM Note: allergies verified; 2 id's used 22:05 10/27/2010 - Medication Administered -- Jennifer Hipp RN, BSN Medication: Flexeril Dose: 10 Unit: mg Route: PO Note: allergies verified; 2 id's used 22:05 10/27/2010 - Medication Administered -- Jennifer Hipp RN, BSN Medication: Methylprednisolone Na Dose: 125 Unit: mg Route: IM Note: allergies verified; 2 id's used 22:39 10/27/2010 - Discharge Condition -- Jennifer Hipp RN, BSN Acuity: Class 4 Condition: stable Mobility at Discharge: Ambulatory Patient Teaching: Follow-up plan of care reviewed w/ pt, Pt voiced understanding of plan of care, Written dx instructions reviewed w/ pt, FU POC reviewed with person attending, Person attending voiced understanding POC, Reviewed written DQ in pt w person attend Mode of Discharge: Private Vehicle 22:39 10/27/2010 - Pain Assessment -- Jennifer Hipp RN, BSN Severity Score: 5/10 22:39 10/27/2010 - Vital Signs -- Jennifer Hipp RN, BSN HR: 78 Resp: 18 22:39 10/27/2010 - Allergy Information -- Jennifer Hipp RN, BSN Allergy: Amoxicillin <u>Lab Result Summary</u>

Feb. 23, 2011 2:41PM
Jan. 31, 2011 9:32AM

Patrick E. Knie
MD

No. 2922 P. 10
No. 3006 19/27

Page 1 of 2



Johnson, Marshall

36 Y old Male, DOB: 03/12/1974
1627 Old Anderson Mill RD, Moore, SC-29369
Home: 864-237-5613

Guarantor: Johnson, Marshall Insurance: UNITED
HEALTHCARE 2
Referring: Mark L Miles

10/28/2010

Progress Note: Mark Miles, MD

Reason for Appointment

1. Hurt his back went to er/sra
2. Pretated that he hurt his back the other night at work while pulling and twisting toilets, Pt went to ED and x-rays taken revealed lower back vertebra were out align. Requesting x-ray reports from Regional
3. pt was given I-Prin and Back Quell at ED with no relief.
4. Pt c/o LBP with pain up the back with pressure on the left foot.
5. Pt explained in detail that we would not file Workman's Comp and this would be filed under his insurance.

Current Medications

Vicoprofen 75-200 MG 1 tablet as needed every 6 hrs
Valium 10 MG 1 tablet Three times a day

Allergies

Amoxicillin: hives

Review of Systems

CARDIOLOGY:

no Pains in leg while walking. no Palpitations. See HPI for details.

MUSCULOSKELETAL:

Back pain yes.

RESPIRATORY:

no Shortness of breath. no Trouble breathing. no Wheezing.

Vital Signs

BP sitting 139/85, Pulse sitting 81, Wt 176.2, Ht 72.5, SaO2 97, BMI 23.57, Pain scale 6-7.

Examination

General Examination:

GENERAL APPEARANCE: no acute distress, pleasant. HEENT: unremarkable. ORAL CAVITY: moist mucous membranes. NECK: no lymphadenopathy, supple. HEART: no murmurs, regular rate and rhythm. CHEST: no tenderness on chest wall. LUNGS: clear to auscultation bilaterally, no wheezes, rhonchi, rales. ABDOMEN: no hepatosplenomegaly, no masses palpated. NEUROLOGIC EXAM: non-focal exam. SKIN normal, no rash. EXTREMITIES: no clubbing, no edema. BACK: no CVA tenderness. LYMPH NODES: No palpable adenopathy. PSYCH affect normal.

Lumbar Spine/Lower back:

INSPECTION: normal curvature of spine. PALPATION: paraspinal spasm moderate right. STRAIGHT LEG RAISING TEST: negative bilaterally. MOTOR SYSTEM: normal bilateral lower extremities. SENSORY EXAM: normal bilateral LE. REFLEXES: bilaterally symmetrical, babinski negative, GAIT: normal.

Assessments

1. LBP [Low back pain] - 724.2 (Primary), Appears acute, no clinical sciatica, see rx, restrict lifting for the next 3-4 days
2. Spasm of muscle - 728.85

Treatment

1. LBP [Low back pain]

Continue Vicoprofen Tablet, 75-200 MG, 1 tablet as needed, Orally, tid prn, 30, Refills 0
Continue Valium Tablet, 10 MG, 1 tablet, Orally, bid prn, 30, Refills 0

Follow Up

prn

Electronically signed by Mark Miles on 01/28/2011 at 01:09 PM EST

Sign off status: Pending

Family Physicians Of Spartanburg PC
3021 Reidsville Road
Spartanburg, SC 29301
Tel: 864-576-9201
Fax: 864-576-6584

Patient: Johnson, Marshall DOB: 03/12/1974 Progress Note: Mark Miles, MD 10/28/2010

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)



Johnson, Marshall

36 Y old Male, DOB: 03/12/1974
1527 Old Anderson Mill RD, Moore, SC 29369

Home: 864-237-5613

Guarantor: Johnson, Marshall Insurance: UNITED
HEALTHCARE

Referring: Mark L Miles

11/04/2010

Progress Note: Mark Miles, MD

Reason for Appointment

1. Back pain/neck
2. Pain is not any better- unable to take meds and work, taking at night

Current Medications

Vicoprofen 7.5-200 MG 1 tablet as needed tid prn
Valium 10 MG 1 tablet bid prn

Past Medical History

Back pain

Surgical History

repair stomach lining 1974

Social History

Alcohol: socially, Type: daily (beer).
Smoking: yes, PPD: 1 pack every 2 days.

Allergies

Amoxicillin: hives

Hospitalization/Major Diagnostic Procedure

wound infection R leg 2007

Review of Systems

CARDIOLOGY:

no Pains in leg while walking. no Palpitations. See HPI for details.

MUSCULOSKELETAL:

Back pain yes. Pain with movement yes. Sciatica yes. Shooting leg pain yes.

RESPIRATORY:

no Shortness of breath. no Trouble breathing. no Wheezing.

Vital Signs

BP sitting 137/90, Pulse sitting 77, Wt 182.8, Ht 72.5, BMI 24.45, Pain scale 7.

Examination

General Examination:

GENERAL APPEARANCE: no acute distress, pleasant. HEENT: unremarkable. ORAL CAVITY: moist mucous membranes. NECK: no lymphadenopathy, supple. HEART: no murmurs, regular rate and rhythm. CHEST: no tenderness on chest wall. LUNGS: clear to auscultation bilaterally, no wheezes, rhonchi, rales. ABDOMEN: no hepatosplenomegaly, no masses palpated. NEUROLOGIC EXAM: non-focal exam. SKIN normal, no rash. EXTREMITIES: no clubbing, no edema. BACK: no CVA tenderness. LYMPH NODES: No palpable adenopathy. PSYCH affect normal.

Lumbar Spine/Lower back:

Feb. 23. 2011 2:42PM Patrick E. Knie
Jan. 31. 2011 9:35AM IKY

No. 2922 P. 13
No. 3006 r. 22/27

Page 2 of 2

INSPECTION: normal curvature of spine. PALPATION: paraspinal tenderness paraspinal spasm moderate right. STRAIGHT LEG RAISING TEST: unable due to pain the right. MOTOR SYSTEM: normal bilateral lower extremities. SENSORY EXAM: normal bilateral LE. REFLEXES: bilaterally symmetrical, babinski negative. GAIT: normal.

Assessments

1. LBP [Low back pain] - 724.2 (Primary), Cont PT @ home, Vivimo q day, Lidoderm patch prn
2. Sciatica - 724.3

Treatment

1. Sciatica

Diagnostic Imaging: X ray : Spines, lumbar 3 views Gage, Lisa D 11/4/2010 8:27:04 AM > , Some OA changes, normal bone alignment, no fx or lesion Miles, Mark L 11/4/2010 8:38:38 AM > Gage, Lisa D 11/11/2010 3:33:39 PM > DISC WAS MADE FOR THE PATIENT TO PICK UP

Procedure Codes

72100 X-RAY L-S SPINE AP & LAT

Follow Up

prn

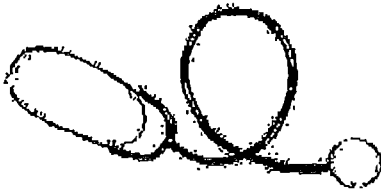
Electronically signed by Mark Miles on 01/28/2011 at 01:10 PM EST

Sign off status: Pending

Family Physicians Of Spartanburg PC
3021 Reidville Road
Spartanburg, SC 29301
Tel: 864-576-9201
Fax: 864-576-6584

Patient: Johnson, Marshall DOB: 03/12/1974 Progress Note: Mark Miles, MD 11/04/2010

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)



Johnson, Marshall

86 Y old Male, DOB: 03/12/1974
1527 Old Anderson Mill RD, Moore, SC-29369
Home: 864-237-8613
Guarantor: Johnson, Marshall Insurance: UNITED
HEALTHCARE 2
Referring: Mark J. Miles

11/09/2010

Progress Note: Mark Miles, MD

Reason for Appointment

1. Back Issue. ELF
2. problems with back x 2 weeks. Pt has been seen here previously. X-rays done here 11/4/10. Pt injured back at work.
3. Pt was at work this morning and was sent home due to severity of discomfort.

Current Medications

Vicoprofen 7.5-200 MG 1 tablet as needed tid prn
Valium 10 MG 1 tablet bid prn
Analpram-HC 1-2.5 % 1 application a thin film to affected area as needed Three times a day

Past Medical History

Back pain

Allergies

Amoxicillin: hives

Review of Systems

CARDIOLOGY:

no Pains in leg while walking. no Palpitations. See HPI for details.

ENT:

Allergies yes.

GASTROENTEROLOGY:

no Abdominal pain. Hemorrhoids yes.

MUSCULOSKELETAL:

no Arthritis. Back pain yes. Pain with movement yes. Sciatica yes. Shooting leg pain yes. Tingling/numbness yes.

RESPIRATORY:

no Shortness of breath. no Trouble breathing. no Wheezing.

Vital Signs

BP sitting 125/84, Pulse sitting 87, Wt 178.2, Ht 72.5, SaO2 97, BMI 23.83, Pain scale 9.

Examination

General Examination:

GENERAL APPEARANCE: no acute distress, pleasant. HEENT: unremarkable. ORAL CAVITY: moist mucous membranes. NECK: no lymphadenopathy, supple. HEART: no murmurs, regular rate and rhythm. CHEST: no tenderness on chest wall. LUNGS: clear to auscultation bilaterally, no wheezes, rhonchi, rales. ABDOMEN: no hepatosplenomegaly, no masses palpated. NEUROLOGIC EXAM: non-focal exam. SKIN normal, no rash. EXTREMITIES: no clubbing, no edema. BACK: no CVA tenderness. LYMPH NODES: No palpable adenopathy. PSYCH affect normal.

Lumbar Spine/Lower back:

INSPECTION: normal curvature of spine. PALPATION: paraspinal tenderness Vertebral spine tenderness severe left. STRAIGHT LEG RAISING TEST: positive at 45 degrees on the left. MOTOR SYSTEM: normal bilateral lower extremities. SENSORY EXAM: normal bilateral LL. REFLEXES: bilaterally symmetrical, babinski negative. GAIT: normal.

Assessments

1. Herniated disc syndrome - 756.12 (Primary), Getting worse, unable to sit/bear weight/unable to work, needs MRI to confirm possible herniated disc. May need Neurosurg eval.
2. Sciatica - 724.3
3. Thrombosed external hemorrhoids - 455.4, See 1x

Treatment

1. Herniated disc syndrome
Continue Analpram-HC Cream, 1-2.5 %, 1 application a thin film to affected area as needed, Rectal, Three times a day, 30.0 GM

Follow Up

prn

Electronically signed by Mark Miles on 01/28/2011 at 01:10 PM EST

Sign off status: Pending

Family Physicians Of Spartanburg PC
3021 Reidville Road
Spartanburg, SC 29301
Tel: 864-576-9201
Fax: 864-576-6584

Patient: Johnson, Marshall DOB: 03/12/1974 Progress Note: Mark Miles, MD 11/09/2010

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Family Physicians Of Spartanburg PC
3021 Reidville Road
Spartanburg SC 29301
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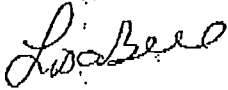
Mark Miles
11/9/2010

To whom it may concern,

Please excuse Marshall Johnson from work between the dates of 11/09/2010 due to his/her illness until results of Mri are back.

Sincerely,

Mark Miles



Family Physicians Of Spartanburg PC
3021 Reidville Road
Spartanburg SC 29301
Phone: 864-576-9201
Fax: 864-576-6584

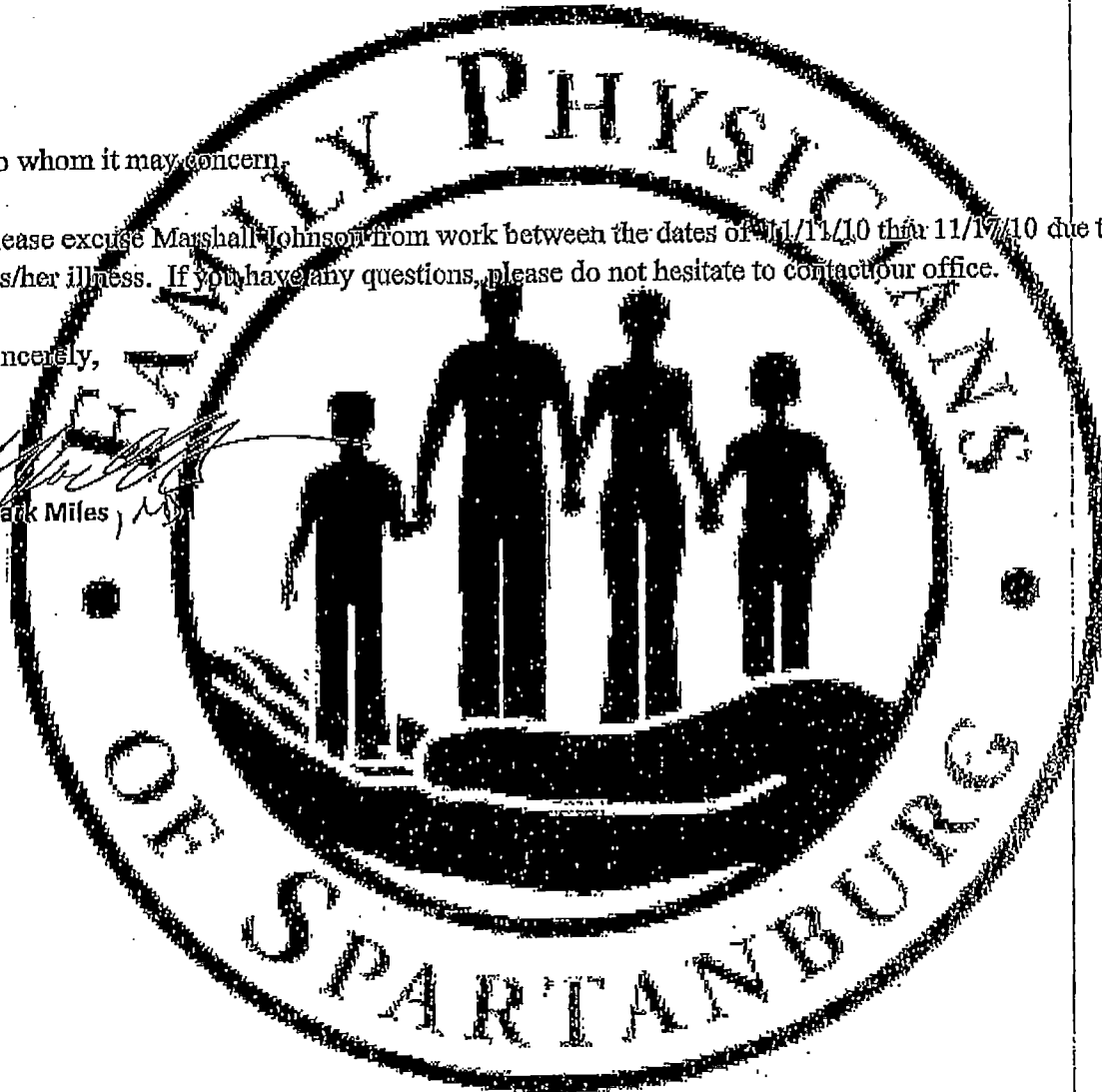
Mark Miles
11/11/2010

To whom it may concern,

Please excuse Marshall Johnson from work between the dates of 11/11/10 thru 11/17/10 due to his/her illness. If you have any questions, please do not hesitate to contact our office.

Sincerely,


Mark Miles



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1016367

Marshall Johnson.....Respondent,

v.

Kohler Company, Employer, Self-Insured.....Appellant.

NOTICE OF APPEAL

Kohler Company appeals the Order of The South Carolina Workers' Compensation Commission dated November 16, 2011. Appellant received a copy of this Order on November 16, 2011.

Russell T. Infinger / rti

Russell T. Infinger
NEXSEN PRUET, LLC
PO Drawer 10648
Greenville, South Carolina 29603
Tel: 864-282-1122

rinfinger@nexsenpruet.com

December 16, 2011

Attorney for Appellant

Other Counsel of Record:

Patrick Knie, Esquire
P. O. Box 5159
Spartanburg, SC 29304-5159

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC FILE NO. 1016367

Marshall Johnson.....Respondent,

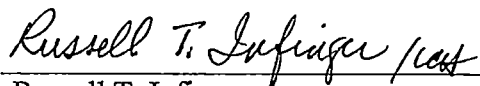
v.

Kohler Company, Employer/Self-Insured, ...Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing Notice of Appeal on Marshall Johnson by depositing a copy of same in the United States Mail, postage prepaid, on December 16, 2011, addressed to his attorney of record, Patrick Knie, P.O. Box 5159, Spartanburg, SC 29304.

December 16, 2011



Russell T. Infinger
NEXSEN PRUET, LLC
PO Drawer 10648
Greenville, South Carolina 29603
Tel: 864-282-1122

rinfinger@nexsenpruet.com

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Derrick L. Williams, Commissioner
G. Bryan Lyndon, Commissioner
Andrea C. Roche, Commissioner

RECEIVED

AUG 27 2012

WCC FILE NO. 1016367

SC Court of Appeals

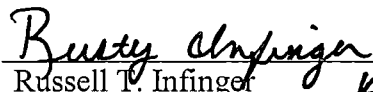
Marshall Johnson.....Respondent,

v.

Kohler Company, Employer/Self-Insured, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.


Russell T. Infinger
Tracey R. Perlman
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rinfinger@nexsenpruet.com
tperlman@nexsenpruet.com

May 7, 2012

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Derrick L. Williams, Commissioner
G. Bryan Lyndon, Commissioner
Andrea C. Roche, Commissioner

WCC FILE NO. 1016367

Case Tracking No. 2011205450

Marshall Johnson.....Respondent,

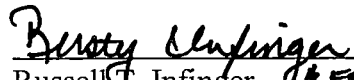
v.

Kohler Company, Employer/Self-Insured, ...Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid, on May 7, 2012, addressed to his attorney of record, Patrick Knie, P.O. Box 5159, Spartanburg, SC 29304.

May 7, 2012


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