

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM South Carolina
Workers Compensation Commission

Full Commission Order Dated April 28, 2017 Affirming Commissioner Melody L. James orders
dated January 04, 2013 And September 30, 2013

Case No.: 2017-001217

John McDaniel, Employee, Claimant,Appellant,

v.

Career Employment Professional d/b/a Snelling Staffing, Employer and United Wisconsin
Insurance Co., Carrier,Respondents.

RECORD ON APPEAL
VOLUME I OF III
1-513

John C. McDaniel
4537 Ilium Lane
Grand Rapids, Mi 49534

Allison Cauthen Nussbaum
Helen F. Hiser
R. Mark Davis
McAngus Goudeock & Courie, LLC
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Mount Pleasant, SC 29465

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SC Court of Appeals

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DECISION AND ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1116275

John McDaniel, EMPLOYEE/CLAIMANT,

vs

Career Employment Professional d/b/a Snelling Staffing, EMPLOYER, and
United Wisconsin Insurance Company, CARRIER, DEFENDANTS.

Hearing: Held in Summerville, South Carolina,
on November 28, 2012

Appearances: Claimant represented by Thomas M. White, Esquire
of The Steinberg Law Firm

Defendants represented by Allison Nussbaum,
Esquire of McAngus Goudelock & Courie Law Firm

Purpose of Hearing: To determine the issues as set forth on Forms 50 and
51, and Form 21 to determine if the Employer/Carrier
may stop payment and, if so, to determine if Claimant
is entitled to any further benefits.

Decision and Order: By Melody L. James, Commissioner

Filed: January 4, 2013

STIPULATIONS

At the call of the case, the attorneys representing their respective parties, stipulated as follows:

1. That the Claimant and the Defendants were subject to and bound by the terms and conditions of the South Carolina Workers' Compensation Act.
2. Jurisdiction and sufficiency of the notice of the Hearing were admitted.
3. Venue for this hearing was properly had in Dorchester County, South Carolina pursuant to stipulations by the parties.

MEDICAL EVIDENCE/RATINGS - APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

CLAIMANT'S APA SUBMISSIONS

1.	Roper Hospital	Records, 11/21/11	Pages 1-15
2.	Rehab Centers of Charleston	Records, 2/20/12-6/1/12	Pages 16-20
3. Blake Ohlson, MD	Orthopaedic Specialists of Chas.	Records, 11/28/11-8/13/12	Pages 21-55
4. Charles Gudas, MD	Associated Foot Specialists	Records, 4/27/12	Pages 56-58
5. Howard Brilliant, MD	Parkwood Orthopaedics	Records, 10/11/12	Pages 59-60
6. EXHIBIT		Pay Stubs	Pages 61-90
7. EXHIBIT		TTD Pay Stubs	Pages 91-109
8. EXHIBIT		Subpoenas/letters re: like employee wages	Pages 110-119
9. EXHIBIT		Wage Records of Like Employees	Pages 120-122
10. Edward Tavel, MD	Pain Specialists of Charleston	Records, 10/30/12	Pages 123-125

DEFENDANT'S APA SUBMISSIONS

EXHIBIT	DESCRIPTION	DATES	PAGES
A.	Claimant's Wage Records		13 pages
B.	Correspondence to Claimant's Attorney	10/19/12	1 page

CLAIMANT'S BIOGRAPHICAL

NAME: John McDaniel

AGE: 30 years old

SEX: Male

MARITAL STATUS: Single

EDUCATION: High school graduate, no other education except currently attending Trident Technical College.

WORK HISTORY: ~~Sales, waiter, construction, bar auditor, caddy, and car salesman, temporary staffing.~~

STATEMENT OF THE CASE

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accident at work on November 21, 2011. Claimant injured his left foot/leg and toes on that date and agrees that the treating physician says he is at maximum medical improvement. Claimant contends that his loss of use and disability greatly exceed the rating from the treating physician.

The Claimant further contends that the average weekly wage and compensation rate on the Form 20 are incorrect as it has not been properly calculated on its face. Further, since the Claimant had worked for Employer for less than one year, his average weekly wage should reflect the earnings he was making at the time of his injury. It was Claimant's position that his average

weekly wage and compensation rate should be based on Jerrod Lampkin's earnings, who was his replacement at Alside Revere. Claimant further contends he should receive underpayment for the past due checks and any award should be made in a lump sum based upon the above compensation rate.

The Claimant further contends he is entitled to future medical care as recommended by Dr. Ohlson with his authorized treating physician being Dr. Ohlson. The Claimant also contends that the Defendants are not entitled to any sort of credit for payment of benefits after the date of maximum medical improvement because Claimant has been actively seeking employment and the Employer has failed to provide him with any sort of work. Claimant has done everything he could do, including returning to school to try to find work.

The Defendants contend that the Claimant has an admitted injury to his foot and that he is at maximum medical improvement. They contend his compensation rate should be based upon an average weekly wage of \$492.85 resulting in a compensation rate of \$328.58. The Defendants contend that the Form 20 figures are correct and benefits should be based on the Form 20. The Defendants also argue that the loss of use and disability to the Claimant should be in line with the rating from the authorized treating physician.

EVIDENCE OF THE CASE

The Claimant testified in his own behalf. The Claimant is 30 years of age, having been born on March 5, 1982. He graduated from High School in the year 2000. He has no other degrees or diplomas. He has had one year of college at Trident Technical College and is in his third semester of Civil

Engineering studies. Claimant also had a commercial driver's license that he received in 2006.

Claimant worked initially in a sports store in sales where he was required to stand for his entire shift of 12 hours. He worked as a waiter for 5 years where he routinely lifted 60 to 70 pounds and had to stand for the entire shift. Claimant did construction work as a laborer and routinely lifted 60 to 70 pounds and spent all day on his feet. Claimant worked as an auditor auditing alcohol inventory for bars where he would have to lift kegs and cases and could lift up to 200 pounds. Claimant worked as a caddy on Kiawah Island where he had to lift 1 to 2 bags which could weigh up to 70 pounds each and had to walk the course. Claimant sold cars unsuccessfully for a couple of months where he had to stand all day. Finally, Claimant worked for Snelling Staffing and had been looking for work, earning \$11.50 per hour or more. His first job was with Ben Arnold where he worked as a route delivery driver and routinely lifted 40 to 50 pounds. He then went to work with Alside Revere where he was moving 75 to 100 pound boxes in a warehouse.

The above jobs are all the work the Claimant has done since High School and under his current restrictions, he cannot do any of the work he has ever done before.

The Claimant had a previous Workers' Compensation injury where he cut his finger at work but received no benefits other than medical care. He has had no Workers' Compensation claims. The Claimant was involved in an

auto wreck in 2005 and saw a chiropractor. That case settled for approximately \$5,000.00. He also had a motorcycle wreck in 2001 but had no broken bones.

The Claimant has had no previous injuries to his left leg or foot and was not physically limited in any way at work.

His first job through Snelling Staffing was at Ben Arnold. He worked there as a route delivery driver but could not continue that job because he had a scheduling conflict with school as he could not work after 3:00 pm on Wednesday.

His next job was with Alside Revere. He took this job after being out of work for approximately 6 weeks. The pay was \$13.00 per hour and he was told by Angela Baldwin of Snelling, who was an administrator, that he would work 9 hours per day and would be getting 45 hours or more per week. The Claimant started on November 11, 2011 and the first day he worked, he earned 9 hours. The next week he worked, he worked 45.5 hours and earned a total of \$627.25.

The deposition of the Claimant's supervisor, Dan Cobb, was taken in lieu of live testimony. Mr. Cobb testified on page 10 of his deposition that the Claimant was brought on for full time work. He was to get at least 40 hours per week. (Depo. Tr. P10). When the Claimant was injured, another worker from Snelling came to work at Alside Revere and, after the mandatory waiting period, became a permanent employee who now gets overtime every week from a couple of hours to 10 hours per week. (Depo. Tr. P13). He testified that there is consistent overtime. (Depo. Tr. P13). The Claimant was a very good employee.

and had it worked out, he would have been permanent. (Depo. Tr. P14). Dan Cobb told Snelling that the Claimant was working out and it was a permanent position. (Depo. Tr. P15). Dan Cobb testified that the Claimant would transition from Snelling to Alside Revere after 3 months. The Claimant's plan was to make this a full time job and he planned to stay. Alside Revere called and wanted him to come drive for them after the injury until healed.

The Claimant was replaced after his injury by Jerrod Lampkin, who still works there and became a full time employee and took the permanent position with Alside Revere.

On November 21, 2011, the Claimant injured his left foot when it was run over by a forklift. He was transported by EMS to Reper Hospital where he was seen in the Emergency Room and was diagnosed with multiple fractures. He was referred to Dr. Ohlson, who treated him from November 28, 2011 through August 13, 2012.

The Claimant had multiple problems, to include an open wound on his foot. It was prescribed he go to a wound facility, which was never approved. He was referred by Dr. Ohlson to chronic pain management on May 14, 2012 and was not seen by anyone for chronic pain until October 30, 2012 and the Defendants refused to authorize the doctor that was being recommended by the Claimant's treating physician.

In addition to Dr. Ohlson, the Claimant also saw Dr. Gudas and Dr. Brilliant for Independent Medical Evaluations. The Claimant was eventually referred to Dr. Lembo for pain management. The carrier refused to authorize Dr.

Lembo but did authorize Dr. Tavel. The Claimant had last seen Dr. Ohlson on August 13, 2012 and is currently seeing Dr. Tavel for pain management.

The Claimant's foot is chronically swollen secondary to the crush injury. There is a malunited fracture. He has orthotics and is in need of custom shoes, which the carrier never authorized. The Claimant needs custom shoes because he cannot fit in normal shoes due to the fact that his left foot is 4 sizes wider than the right and an oversized toe box is needed.

The Claimant has pain in his foot and leg which runs down from his knee. His ability to be on his feet is very limited. His pain level is constant and is at a base level of about 3 to 4 out of 10. His foot tingles, stays numb, and burns. If he is on his foot or has to be up, his pain level elevates. His pain level will begin elevating after approximately 10 to 15 minutes of being up. After about 45 minutes, it will go to a 6 or 7 out of 10.

The Claimant continues to use medication, to include Celebrex, Gralise, Tylenol, and a topical cream. He also ices his foot regularly.

The Claimant stated that his standing was limited to about 15 to 20 minutes. Walking was about 30 minutes. Claimant walked with a noticeable limp. Out of an 8 hour day, he believes he could probably stand or walk for up to about 2 hours if he were to total his intermittent standing and walking throughout an 8 hour day.

The Claimant cannot run, climb, squat, jump and had a very difficult time with any sort of inclines. He also had problems with balance and has fallen several times.

Since his injury, the Claimant has done an internship for Snelling for a Law Firm. He has been available for work but they have provided no other work other than that at the Law Firm, which was working on a computer, and he completed that internship. The whole time, he has been in contact with Snelling for work but they have had none available. He routinely contacted Jim Pascutti, but there was no work available. He looked for other work but could not find any. He estimated he applied for 35 to 40 jobs but here had been no response.

The Claimant had not been able to find a job and no one would hire him. His hope was to finish school in 3½ years and be able to find a job compatible with his limitations in Civil Engineering.

~~The Claimant wants to continue seeing his authorized physicians,~~
Dr. Ohlson and Dr. Tavel. He uses orthotics and custom shoes and plans to have surgery if his condition worsens.

Also submitted in the Claimant's APA's were the earnings of workers who had worked before and after him at the same job at Alside Revere through Snelling. All earned overtime and Claimant argues that this should be evidence that his average weekly wage and compensation rate should be based upon his expected earnings at his new job where he was earning more money and getting more hours than he had been getting at his previous job at Ben Arnold. The Claimant would have continued working and the worker that replaced him had an average weekly wage over the earnings submitted by Snelling of \$656.50 per week. This was the exact same job the Claimant was working when he was injured and this was his replacement. This would support

an average weekly wage of \$656.50 and a compensation rate of \$437.69. The Claimant argues this is further grounds to support that his average weekly wage and compensation rate should be based upon the earnings he was told he would be making at Alside Revere. Claimant argues weekly wages of other employees is miscalculated because it does not take into account partial weeks and partial weeks were calculated as full weeks.

The medical records reflect the Claimant was injured when his foot was run over by a forklift with multiple fractures. The second through fifth metatarsals were fractured and he was immediately referred to Dr. Ohlson who treated him for his injuries. According to Dr. Ohlson's notes, there were delays in getting his wound treatment which delayed recovery. The Claimant was also referred on May 14, 2012 to a chronic pain doctor. Dr. Ohlson also noted that the Claimant would need surgery at some point for the removal of the malunited fragment. On July 2, 2012, he ordered orthotics and custom shoes. On August 13, 2012, he noted the Claimant was at maximum medical improvement and referred him to Dr. Lembo for chronic pain management. He noted the Claimant could walk for less than one hour. His lifting was no more than 10 pounds. He could not climb ladders. He could do no roof work. He could not do prolonged standing. He noted the fifth toe was malunited and surgery could be required and more than likely, he would need that surgery. He noted the Claimant would need extra wide shoes, should continue on Celebrex, and gave him a 17% impairment to the leg, for decrease in sensation and dysesthesias in the

distribution of the superficial peroneal nerve. He gives 15% to the leg and 2% added for ankylosis of the 5th toe.

Dr. Howard Brilliant saw the Claimant for an Independent Medical Evaluation and felt he had a 50% impairment to the foot.

FINDINGS OF FACT

Based on the stipulations of the parties, testimony and evidence received and produced at the Hearing, the undersigned Commissioner finds the following facts based on a preponderance of the evidence:

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.

2. The Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere. (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with the goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with the three other employee wages provided. The Claimant - \$492.85; Atkins - \$506.88; Lampkin - \$618.50; and Clark - \$533.41.

3. On November 21, 2011, the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.

4. The Claimant has a disability to the left leg of 34%.

5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to Curiel.

6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery ~~that will more likely than not be required on the maligned and ankylosis position~~ of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

RULINGS OF LAW

Accordingly, as provided by §42-17-40 S.C. Code Ann., it is the determination and finding of this Commissioner:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.

2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.

3. Pursuant to §42-1-40, average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.

4. Pursuant to §42-15-60, the Defendants are responsible for payment to medical providers of the medical expenses incurred by the Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.

5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.

6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

ORDER

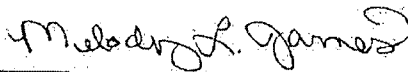
Based upon the above Findings of Fact and Conclusions of Law, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Claimant has a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the left leg of 34% (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

AND IT IS SO ORDERED!



Commissioner Melody L. James

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.
January 4, 2013

By: Tamara Morris, Administrative Assistant to Commissioner James

APR 03 2013

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116275

JOHN MCDANIEL, Employee,

Claimant,

vs.

CAREER EMPLOYMENT
PROFESSIONAL D/B/A SNELLING
STAFFING, Employer, and

UNITED WISCONSIN INSURANCE,
Carrier,

Defendants.

ORDER RELIEVING COUNSEL

The Claimant, John McDaniel, has requested that Thomas White no longer represent him in his Workers' Compensation case that is pending before the Full Commission.

NOW, THEREFORE, based upon the above, it is hereby

ORDERED, ADJUDGED AND DECREED that Thomas M. White, Esquire, is relieved as the attorney of record for the Claimant, John McDaniel.

AND IT IS SO ORDERED!

COMMISSIONER
S.C. Workers' Compensation Commission

I SO MOVE.

Thomas M. White

I CONSENT:

John McDaniel 3/29/13

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

John McDaniel v Career Employment Professional d/b/a Snelling
SCWCC: 1116275
Commissioner: James

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

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

Dismissed as Interlocutory. Set for Oral Argument.

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

Granted. Denied. Dismissed Set for Hearing.

Set for Appellate Hearing on All Issues

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

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

Remand to Panel as indicated below.

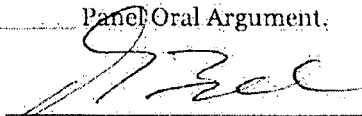
<input type="checkbox"/> Barden	<input type="checkbox"/> James	<input type="checkbox"/> Williams
<input type="checkbox"/> Beck	<input type="checkbox"/> Roche	<input type="checkbox"/> Wilkerson
	<input type="checkbox"/> McCaskill	

Remand for Order consistent with the Order of the Court.

Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



T. Scott Beck, Chair

Columbia, South Carolina

4/15 2013

CONCURRING:

Commissioner Susan S. Barden
 Commissioner Melody James
 Commissioner Aisha Taylor
 Commissioner Avery Wilkerson
 Commissioner Andrea C. Roche
 Commissioner Gene McCaskill

NOT PARTICIPATING:

 X

DISSENTING:

CERTIFICATE OF SERVICE

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

This 15 day of April, 2013. John McDaniel Req: cert
 By: Valerio D Deller R. Mark Davis
 SCWCC Judicial Department

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**John McDaniel v Career Employment Professional d/b/a Snelling
SCWCC: 1116275
Commissioner: James**

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

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

Dismissed as Interlocutory. Set for Oral Argument.

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

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

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

Remand to Panel as indicated below.

<input type="checkbox"/> Barden	<input type="checkbox"/> James	<input type="checkbox"/> Williams
<input type="checkbox"/> Beck	<input type="checkbox"/> Roche	<input type="checkbox"/> Wilkerson
	<input type="checkbox"/> McCaskill	

Remand for Order consistent with the Order of the Court.

Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.

Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


I. Scott Beck, Chair

Columbia, South Carolina

5/20/13 2013

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

This 20 day of May, 2013.
By: Valerie D Deller
SCWCC Judicial Department

John McDaniel (Request)
R. Mark Davis

SCWCC
JUN 18 2013
JUDICIAL

South Carolina Workers' Compensation Commission

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



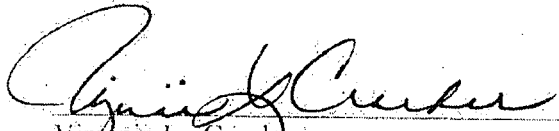
WCC File #: 1116275

Date of Injury: 11/21/2011

ADMINISTRATIVE ORDER

JOHN MCDANIEL v. CAREER EMPLOYMENT PROFESSIONAL
WCC File No: 1116275

The Form 32(s) in this matter for the Motion for Additional Evidence dated 5/6/13 and Motion for Additional Evidence dated 5/10/13 have been denied per the Chairman Commissioner. You will need to file two separate filing fees of twenty-five dollars (\$25) for each Motion within ten (10) days if you wish to proceed with these Motions.


Virginia L. Crocker
Judicial Director

Date: June 3, 2013

CERTIFICATE OF SERVICE

I hereby certify on June 3, 2013, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

CAREER EMPLOYMENT PROFESSIONAL
702 MALL BLVD
SAVANNAH, GA 31406

R. Mark Davis
McAngus Goudelock & Courie LLC
PO Box 650007
Mount Pleasant, SC 29465

By: Valerie D. Deller, Judicial Department

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commissioner: James**

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

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

Dismissed as Interlocutory.

Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending Motion for Additional Evidence Dated May 6, 2013 be, and hereby is;

Granted.

Denied.

Dismissed

Set for Hearing.

BEFORE THE;

Hearing Comm.

Jurisdictional Comm.

Full Commission.

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

Remand to Panel as indicated below.

Barden

James

Taylor

Beck

Roche

Wilkerson

McCaskill

Remand for Order consistent with the Order of the Court.

Remand to the Hearing Commissioner.

Remand to the Jurisdictional Commissioner.

Other: _____

Remand:

Panel Oral Argument.

En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

6/17 2013

CONCURRING:

Commissioner Susan S. Barden

Commissioner Melody James

Commissioner Aisha Taylor

Commissioner Avery Wilkerson

Commissioner Andrea C. Roche

Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

This 17 day of June, 2013.

By: Valerie D. Allen
SCWCC Judicial Department

John McDaniel (Reg & cert)
R. Mark Davis

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commissioner: James**

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

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

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending Motion for Additional Evidence Dated May 10, 2013 be, and hereby is;

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

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

Remand to Panel as indicated below.

<input type="checkbox"/> Barden	<input type="checkbox"/> James	<input type="checkbox"/> Taylor
<input type="checkbox"/> Beck	<input type="checkbox"/> Roche	<input type="checkbox"/> Wilkerson
	<input type="checkbox"/> McCaskill	

Remand for Order consistent with the Order of the Court.

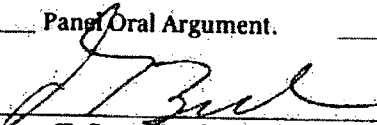
Remand to the Hearing Commissioner.

Remand to the Jurisdictional Commissioner.

Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

4/17 2013

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

This 17 day of June, 2013.

By: Valerie D. Deller
SCWCC Judicial Department

John McDaniel (Reg: cert)
R Mark Davis

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commissioner: James**

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

MOTION FOR PENALTIES AND SANCTIONS
IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is:
 Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

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

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Roche Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.

Columbia, South Carolina

8/12 2013


T. Scott Beck, Chair

CONCURRING:
Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

This 12 day of August, 2013.
By: Valence D. Deller
SCWCC Judicial Department

John C McDaniel (Reg & cert)
R. Mark Davis
Mason Nussbaum

DECISION AND ORDER
OF
COMMISSIONER MELODY L. JAMES
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1116275

John McDaniel,

Claimant

v.

Career Employment Professional,

Employer, and

United Wisconsin Insurance Company,

Carrier, Defendants.

Hearing held in North Charleston, South Carolina on July 8th, 2013
Per notice timely and properly served upon all Parties of Interest.

Appearances: Mr. John McDaniel, Claimant-Pro Se
Allison Nussbaum, Attorney at Law, for Defendants

Filed: September 30, 2013

STIPULATIONS

Prior to the Hearing, the parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction of this claim; and
2. Venue, set in Charleston County, South Carolina, is proper.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, the following exhibits were received into evidence:

Exhibit # 1: Payroll records of Jared Lampkin.

STATEMENT OF THE CASE

This matter was remanded to the undersigned by Order of the Appellate Panel to consider the impact of the pay records of Jared Lampkin on the calculation of Claimant's average weekly wage.

FINDINGS OF FACT

1. This matter was remanded by the Full Commission to consider the newly discovered evidence of the pay records of Jarod Lampkin at Alside Revere, along with the previously submitted evidence at the initial hearing. The parties participated in a hearing on July 8th, 2013 to argue the effect of the pay records of Jarod Lampkin from Alside Revere after his permanent placement. The new and previously submitted evidence, as well as the transcript of the previous hearing were reviewed.
2. The Claimant was 30 years old at the time of the initial hearing. He had approximately six (6) jobs after high school before seeking a position through this Employer, Career Employment Professionals, d/b/a Snelling Staffing Services. Snelling is a placement company that provides assignments for employees with other employers. Claimant had taken two different assignments with Snelling. The first was with Ben Arnold from May 2011 until September 30, 2011. He

made \$11.50 an hour in that position. That assignment ended; the testimony at the initial hearing was that the position ended as part of the problem was trying to work around Claimant's skill set and his school schedule. (Trial 46) On November 11, 2011 he was given an assignment with Alside Revere. He was making \$13.00 an hour. On November 21, 2011 he was injured at work.

3. As indicated in the previous order, the Claimant's wage history of 20 weeks with Snelling was insufficient to base his average wages. The parties provided the Employer's (Snelling) wages of three other employees who worked the same assignment at Alside Revere. (The wages are reflected in the initial order.) The newly submitted evidence is the new wage information for one of these employees, Jared Lampkin, with Alside Revere, after his subsequent, permanent hiring from the Snelling assignment. Mr. Lampkin was hired from Snelling to work with Alside at the rate of \$13.25 an hour.
4. As indicated in the previous order, whether the Claimant would have been permanently hired by Alside Revere, is unknown. The Claimant had only worked on the assignment for ten (10) days at the time of the accident. Dan Cobb, the representative of Alside Revere, testified via deposition that it was too early to tell, and that ten (10) days was not enough time to determine if there would have been a permanent offer. (Depo. 14 and 17) As had happened previously, the Claimant may have ended up with another assignment. Therefore, the permanent placement wages of any one employee with a subsequent company are not used or averaged.
5. The best method to most nearly approximate the Claimant's wages under Section 42-1-40 would be to average the Claimant's wages with the three "like employees" that were earning wages with the Employer, Snelling. It was represented by the Parties that the other three individuals worked in the same position as the Claimant. (Trial 8). To use one employee's wages would not be representative of the earnings, especially with the nature of the assignments. The average of the Claimant's wages and the three like employees would result in an average weekly wage of \$537.91, and a resulting compensation rate of \$358.62.

RULINGS OF LAW

1. "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred. . . divided by fifty-two or by the actual number of weeks paid. . . When for exceptional reasons the foregoing would be unfair, either to the employer or

employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.” § 42-1-40.

2. Given that Claimant was working for a temporary staffing service, it is unknown whether Claimant would have been permanently hired by Alside Revere, and the shortness of the duration of Claimant’s work at the assignment on which he was injured, Claimant has shown exceptional reasons why the methods for calculating his average weekly wage provided for in the first paragraph of § 42-1-40 would be unfair.
3. The method which would most nearly approximate his average weekly wage at the time of his injury is to average Claimant’s wages with the three “like employees” that were earning wages with the Employer, Snelling.

ORDER

IT IS THEREFORE ORDERED that Claimant’s average weekly wage shall be \$537.91, with a corresponding compensation rate of \$358.62.

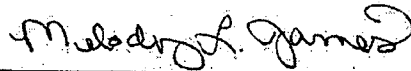
IT IS FURTHERMORE ORDERED that Claimant is entitled to a lump-sum payment by the Employer/ Carrier of back-owed temporary total and temporary partial disability in the amount of the difference between the amount that the Claimant was actually paid and the amount the Claimant should have been entitled using the average weekly wage and corresponding compensation rate as contained in this Order. Payment must be made within 30 days of the date of this Order.

IT IS FURTHERMORE ORDERED that the Motions to Quash the Subpoenas of Nicole Service, Angela Baldwin, and Jim Pascutti are GRANTED, as the sole issue to be decided at this time is the impact of the pay records of Jared Lampkin on the determination of Claimant’s average weekly wage, and there is no testimony that could be elicited from these individuals that is relevant to the Alside pay records of Jared Lampkin.

IT IS FURTHERMORE ORDERED that any and all issues regarding additional discovery and motions were not before the undersigned at the Hearing on July 12th, 2012, as the sole issue to be decided was the impact of the pay records of Jared Lampkin on the determination of Claimant's average weekly wage.

All other issues are held in abeyance.

AND SO IT IS ORDERED!



Commissioner Melody L. James

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.
September 30, 2013

By: Tamara Morris, Administrative Assistant to Commissioner James

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1116275

JOHN McDANIEL, EMPLOYEE,

CLAIMANT/APPELLANT.

-v-

CAREER EMPLOYMENT PROFESSIONAL
D BA SNELLING STAFFING, EMPLOYER

And

UNITED WISCONSIN INSURANCE CO., CARRIER

DEFENDANTS/RESPONDENT.

AFFIRM

Appellate Panel Review held in Columbia, South Carolina
on October 14, 2013, per notices timely and properly served
on all parties of interest.

Appellate Panel Decision and Order
Filed: 12-19, 2013

APPEARANCES:

Claimant/Appellant:
John McDaniel, appearing pro-se,
of Charleston, South Carolina

Defendants/Respondent:
Represented by Allison C. Nussbaum, Esquire
of McAngus, Goudelock, & Courie, LLC
of Mt. Pleasant, South Carolina

STATEMENT OF THE CASE

Initially, a hearing was held before the Honorable Melody L. James on November 28, 2012, in Summerville, South Carolina. On January 4, 2013, Commissioner James issued the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with a three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011 the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.
4. The Claimant has a disability to the left leg of 3.4%.

5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to *Curtel v. Environmental Management Services*, 376 S.C. 23, 635 S.E. 2d 482 (2007).
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more likely than not be required on the maligned and ankylosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

CONCLUSIONS OF LAW

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.
3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.63.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.

5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.
6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, Commissioner James issued the following Order:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Claimant has a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the leg of 34% (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

IT IS SO ORDERED!

Within the statutory period, prior Counsel for the Claimant, Thomas White, filed WCC Form No. 30, Request for Commission Review, setting forth six grounds for review as follows:

1. The Hearing Commissioner erred in Finding of Fact #2 and Conclusion of Law #3 in finding the Claimant had a compensation rate of \$358.62 based upon an average weekly wage of \$537.91; the error being the Single Commissioner should have found the Claimant was entitled to an average weekly wage and compensation rate in an amount not less than \$627.75 with a compensation rate of \$418.91.
2. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that a fair and just method was to calculate the wages of the Claimant was to take an average of his wages along with the three other employee wages provided; the error being that it was not fair and just to the Claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings of the employee with the ultimate objective of reflecting fairly the Claimant's probable future earning loss.
3. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that the wages of the Claimant, Atkins, Lampkin, and Clark were, respectively, \$492.85, \$506.88, \$618.50, and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated Form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and were not correctly calculated under the Definition of Average Weekly Wage.
4. The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in finding the Claimant has a disability to the Left Leg of 34%; the error being that the Single Commissioner should have found that the Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is.
5. The Hearing Commissioner erred in Finding as a Fact and a Ruling as a Matter of Law in Finding of Fact #5 that the Defendants should receive a credit for all weekly benefits paid after the date of maximum medical improvement and Ruling of Law #5; the error being the Single Commissioner should have found the Defendants were not entitled to a credit as the Claimant had not been able to return to work and no work had been offered although the Claimant was ready and available to attempt to try to come back to work with his employer if they offered work within his restrictions and Claimant had been actively seeking other employment.
6. The Hearing Commissioner erred in failing to find as a fact and ruling as a matter of law that the Defendants should be subject to fines and penalties for the late payments of temporary total disability benefits because those payments were made 14 days after they were due and Defendants failed to make timely payment on multiple occasions.

Additionally, on March 8, 2013, prior Counsel for the Claimant filed a Motion to Admit Additional and Newly Discovered Evidence to include pay records from Jerrod Lampkin, the Claimant's replacement at Alside Revere. By Judicial Conference Decision and Order dated April 15, 2013, the Claimant's Motion to Admit Additional Evidence, dated March 8, 2013 was granted.

The testimony in the record, together with documentary evidence (including the additional pay records of Jerrod Lampkin, admitted through Judicial Conference Order dated April 15, 2013), has been provided to the members of the Appellate Panel, and has been under careful study, review, and consideration. In addition, Briefs and oral arguments were received from both parties.

Upon Request for Review, the Appellate Panel shall review the Order and Award, weigh the evidence presented at the initial Hearing, and if good cause be shown, make its own Findings of Fact and reach its own Conclusions of Law pursuant to S.C. Code Ann. § 42-17-50. After careful review of the evidence presented and after considering the arguments presented by the parties, the Appellate Panel, by unanimous vote, affirmed the Hearing Commissioner's Order of January 4, 2013. In reaching this Decision, the Appellate Panel did not consider any documents outside the record because the Claimant's Amended Form 30 was not timely served; therefore, any records submitted with the Amended Form 30 were not considered by the Panel.

EVIDENCE SUMMARY

At the original hearing on November 28, 2012, the Claimant sought benefits under the South Carolina Workers' Compensation Act based upon an accident at work on November 21, 2011. The Claimant alleged that he injured his left foot/left leg and left toes on that date and agreed he was at maximum medical improvement per the opinion of his treating physician, Dr.

Ohlson on August 13, 2012. At the hearing, the Claimant argued his disability greatly exceeded the rating to his left lower extremity issued by Dr. Ohlson.

Further, the Claimant argued that the average weekly wage and compensation rate reflected on the Form 20 were incorrect. The Claimant alleged he worked for Snelling Staffing for less than one year; therefore, his average weekly wage does not reflect the earnings he was making at the time of his injury. In particular, the Claimant argued his average weekly wage and compensation rate should be based on Jerrod Lampkin's earnings, his replacement at Alside Revere. Claimant requested payment of the alleged underpayment for past due checks and his award in a lump-sum based on the alleged compensation rate.

Also, at the hearing, Claimant requested future medical care as recommended by Dr. Ohlson, his authorized treating physician. The Claimant requested Defendants be denied any type of temporary total disability credit even though the Claimant agreed with maximum medical improvement being reached on August 13, 2012. Claimant argued the credit should be reduced or negated based on his continued attempts to find work.

At the hearing, Defendants agreed Claimant sustained an admitted injury to his left foot and he is at maximum medical improvement per Dr. Ohlson's August 13, 2012 opinion. Defendants argued Claimant's compensation rate on the Form 20 is correct with an average weekly wage of \$492.85, resulting in a compensation rate of \$328.58. Defendants requested the award be based on the average weekly wage and compensation rate reflected on the Form 20. Furthermore, Defendants alleged the loss of use and disability to the Claimant's left lower extremity should be consistent with the 34% rating assigned by Dr. Ohlson, the authorized treating physician.

Following the pre-hearing conference, the Claimant testified on his own behalf. He testified he is 30-years old with a birthdate of March 5, 1982. Claimant graduated from high school in 2000 and has no other degrees or diplomas. At the time of the hearing, Claimant testified he was enrolled at Trident Technical College in his third semester in civil engineering studies. Additionally, Claimant maintains a commercial driver's license that he received in 2006.

Prior to working for Snelling Staffing, Claimant worked in a sports store, performed construction work, worked as an auditor, served as a caddy on Kiawah Island, and sold cars.

When the Claimant was originally hired for Snelling Staffing, he was earning \$11.50 per hour. His first assignment was at Ben Arnold where he worked as a route delivery driver and routinely lifted 40-50 pounds. When his assignment at Ben Arnold ended as a result of his school schedule, he was placed at Alside Revere where he was moving 75-100 boxes in a warehouse.

Claimant testified he had a previous Workers' Compensation injury when he cut his finger at work but received no benefits other than medical care. Claimant denied any additional Workers' Compensation claims. Claimant admitted to a motor vehicle accident in 2005 wherein he followed up with a chiropractor thereafter. Claimant settled his case for approximately \$5,000.00. Also, Claimant admitted to a motorcycle accident in 2001 but denied any broken bones. Claimant specifically denied any prior injuries to his left leg/left foot and any physical inhibitions in his ability to perform his work duties.

Before the Claimant received his second assignment at Alside Revere, he was out of work for approximately six weeks. His assignment at Ben Arnold ended as a result of conflicts with his school schedule. When he began working at Alside Revere, he received \$13.00 per hour

and alleged he would receive nine hours per day and upwards of 45 hours or more per week. Claimant began his employment at Alside Revere on November 11, 2011 and worked nine hours that day. The following week, he worked 45.5 hours and earned a total of \$627.25.

Prior to the hearing, the deposition of the Claimant's supervisor, Day Cobb was taken in lieu of live testimony. Mr. Cobb testified that the Claimant was brought on for full-time work through Spelling Staffing, and he would be paid for at least 40 hours per week. Mr. Cobb testified there was a mandatory waiting period before Claimant would be hired as a permanent employee of Alside Revere. Following Claimant's accident, another employee was hired to replace him and receives overtime pay. Mr. Cobb testified he would not be able to hire the Claimant permanently until three months passed.

Claimant was involved in an admitted accident on November 21, 2011 wherein he injured his left foot when it was run over by a forklift. He was seen in the Emergency Room at Roper Hospital and diagnosed with multiple fractures. Thereafter, he was referred to Dr. Ohlson who provided treatment from November 28, 2011 through August 13, 2012. During his treatment with Dr. Ohlson, the Claimant experienced multiple problems with wound healing and was ultimately referred to a wound facility.

In addition, Claimant received evaluations by Dr. Gudas and Dr. Brilliant for independent medical evaluations. Additionally, Claimant was referred for pain management and Defendants authorized treatment with Dr. Tavel. At the time of the hearing, the Claimant was under Dr. Tavel's care for pain management.

Claimant testified his foot was chronically swollen secondary to the injury and an alleged malunited fracture. Claimant explained he had orthotics and was in need of custom shoes. Claimant states he is unable to fit his left foot into a normal shoe because his left foot is four

sizes wider than the right and an oversized toe box is needed. Claimant described pain in his foot and leg which runs down his knee. Claimant stated his ability to be on his feet is very limited. Furthermore, Claimant said his pain level is constant and his base level is a 3 to 4 out of 10. He experiences symptoms including foot tingling, numbness and burning. If the Claimant is required to be on his feet for any period of time, his pain level elevates. After approximately 10 to 15 minutes, he experiences an elevation in his pain level. After about 45 minutes, his pain level spikes to a 6 or 7 out of 10. Claimant continues to use medication to include Celebrex, Orajel, Tylenol and a topical cream. Also, Claimant testified that he ices his foot regularly.

Claimant testified his standing limitation was 15 to 20 minutes, walking was 30 minutes, and stated he walks with a noticeable limp. Out of an eight hour day, Claimant estimates he could probably stand or walk for up to two hours if he were able to intermittently change positions to standing and walking. Claimant cannot run, climb, squat, jump, and has a very difficult time with any sort of inclines. Also, Claimant has problems with balance and states he has fallen several times.

Claimant submitted earnings from several additional workers in his pre-hearing brief and asked the Hearing Commissioner to consider these wages.

FINDINGS OF FACT

After careful review of the evidence presented in the instant case and after considering the arguments presented by the parties, the Appellate Panel of the South Carolina Workers' Compensation Commission, unanimously affirms the Hearing Commissioner's January 4, 2013 Decision and Order. We find substantial evidence in the record supports the Hearing Commissioner's Findings of Fact and adopt the following Findings of Fact as our own:

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with a three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011, the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment, to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement, as of August 13, 2012.
4. The Claimant has a disability to the left leg of 34%.
5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to *Curiel v. Environmental Management Services*, 376 S.C. 23, 653 S.E.2d 482 (2007).
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more

likely than not be required on the maligned and anklylosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

CONCLUSIONS OF LAW

In view of these Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.
3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.
5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.

6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, we unanimously adopt the Hearing Commissioner's Order as follows.

IT IS THEREFORE, HEREBY ORDERED that the Claimant had a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012 and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the left leg of 34 percent (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

IT IS SO ORDERED.

FULL AFFIRMATION

Gene McCaskill

Commissioner Gene McCaskill

Andrea C. Roche

Commissioner Andrea C. Roche

Susan S. Barden

Commissioner Susan S. Barden

UNITED STATES SERVICE
FEDERAL BUREAU OF INVESTIGATION

19 December 13
Valerie D. Decker

John McDaniel
Allison C. Nassbaum

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1116275

JOHN McDANIEL, EMPLOYEE,

CLAIMANT/APPELLANT,

-v-

CAREER EMPLOYMENT PROFESSIONAL
D/B/A SNELLING STAFFING, EMPLOYER

And

UNITED WISCONSIN INSURANCE CO., CARRIER

DEFENDANTS/RESPONDENT.

AFFIRM

Appellate Panel Review held in Columbia, South Carolina
on March 21, 2017, per notices timely and properly served
on all parties of interest.

Appellate Panel Decision and Order

Filed: April 25, 2017

APPEARANCES:

Claimant/Appellant:

John McDaniel, appearing pro-se,
of Wyoming, Michigan

Defendants/Respondent:

Represented by Helen F. Hiser, Esquire
and Allison C. Nussbaum, Esquire
of McAngus, Goudelock, & Courie, LLC
of Mt. Pleasant, South Carolina

STATEMENT OF THE CASE

Initially, a hearing was held before the Honorable Melody L. James on November 28, 2012, in Summerville, South Carolina. On January 4, 2013, Commissioner James issued the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with the three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011 the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.
4. The Claimant has a disability to the left leg of 34%.

5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007).
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more likely than not be required on the maligned and anklyosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

CONCLUSIONS OF LAW

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.
3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.

5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.
6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, Commissioner James issued the following Order:

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Claimant has a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the leg of 34% (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

IT IS SO ORDERED!

Within the statutory period, prior Counsel for the Claimant, Thomas White, filed WCC Form No. 30, Request for Commission Review, setting forth six grounds for review as follows:

1. The Hearing Commissioner erred in Finding of Fact #2 and Conclusion of Law #3 in finding the Claimant had a compensation rate of \$358.62 based upon an average weekly wage of \$537.91; the error being the Single Commissioner should have found the Claimant was entitled to an average weekly wage and compensation rate in an amount not less than \$627.75 with a compensation rate of \$418.91.
2. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that a fair and just method was to calculate the wages of the Claimant was to take an average of his wages along with the three other employee wages provided; the error being that it was not fair and just to the Claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings of the employee with the ultimate objective of reflecting fairly the Claimant's probable future earning loss.
3. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that the wages of the Claimant, Atkins, Lampkin, and Clark were, respectively, \$492.85, \$506.88, \$618.50, and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated Form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and were not correctly calculated under the Definition of Average Weekly Wage.
4. The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in finding the Claimant has a disability to the Left Leg of 34%; the error being that the Single Commissioner should have found that the Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is.
5. The Hearing Commissioner erred in Finding as a Fact and a Ruling as a Matter of Law in Finding of Fact #5 that the Defendants should receive a credit for all weekly benefits paid after the date of maximum medical improvement and Ruling of Law #5; the error being the Single Commissioner should have found the Defendants were not entitled to a credit as the Claimant had not been able to return to work and no work had been offered although the Claimant was ready and available to attempt to try to come back to work with his employer if they offered work within his restrictions and Claimant had been actively seeking other employment.
6. The Hearing Commissioner erred in failing to find as a fact and ruling as a matter of law that the Defendants should be subject to fines and penalties for the late payments of temporary total disability benefits because those payments were made 14 days after they were due and Defendants failed to make timely payment on multiple occasions.

Additionally, on March 8, 2013, prior Counsel for the Claimant filed a Motion to Admit Additional and Newly Discovered Evidence to include pay records from Jerrod Lampkin, the Claimant's replacement at Alside Revere. By Judicial Conference Decision and Order dated April 15, 2013, the Claimant's Motion to Admit Additional Evidence, dated March 8, 2013 was granted.

This matter was first heard by an Appellate Panel of the Full Commission on October 14, 2013. On December 19, 2013, the Appellate Panel issued a Decision and Order affirming the Hearing Commissioner's January 4, 2013 Decision and Order. The Claimant timely appealed that Decision and Order to the South Carolina Court of Appeals which, based on insufficient notice of the October 14, 2013 Appellate Panel hearing, reversed and remanded to the Commission to provide the Claimant with the statutorily mandated 30-days' notice of the appeal hearing. All parties were provided the required 30-day notice of the Appellate Panel remand hearing, which was held on March 21, 2017.

The testimony in the record, together with documentary evidence (including the additional pay records of Jerrod Lampkin, admitted through Judicial Conference Order dated April 15, 2013), has been provided to the members of the Appellate Panel, and has been under careful study, review, and consideration. In addition, Briefs and oral arguments were received from both parties.

Upon Request for Review, the Appellate Panel shall review the Order and Award, weigh the evidence presented at the initial Hearing and, if good cause be shown, make its own Findings of Fact and reach its own Conclusions of Law pursuant to S.C. Code Ann. § 42-17-50. After careful review of the evidence presented and after considering the arguments presented by the parties, the Appellate Panel, by unanimous vote, affirmed the Hearing Commissioner's Order of

January 4, 2013. In reaching this Decision, the Appellate Panel did not consider any documents outside the record because the Claimant's Amended Form 30 was not properly before this Panel; therefore, any records submitted with the Amended Form 30 were not considered by the Panel.

EVIDENCE SUMMARY

At the original hearing on November 28, 2012, the Claimant sought benefits under the South Carolina Workers' Compensation Act based upon an accident at work on November 21, 2011. The Claimant alleged that he injured his left foot/left leg and left toes on that date and agreed he was at maximum medical improvement per the opinion of his treating physician, Dr. Ohlson on August 13, 2012. At the hearing, the Claimant argued his disability greatly exceeded the rating to his left lower extremity issued by Dr. Ohlson.

Further, the Claimant argued that the average weekly wage and compensation rate reflected on the Form 20 were incorrect. The Claimant alleged he worked for Snelling Staffing for less than one year; therefore, his average weekly wage does not reflect the earnings he was making at the time of his injury. In particular, the Claimant argued his average weekly wage and compensation rate should be based on Jerrod Lampkin's earnings, his replacement at Alside Revere. Claimant requested payment of the alleged underpayment for past due checks and his award in a lump sum based on the alleged compensation rate.

Also, at the hearing, Claimant requested future medical care as recommended by Dr. Ohlson, his authorized treating physician. The Claimant requested Defendants be denied any type of temporary total disability credit even though the Claimant agreed with maximum medical improvement being reached on August 13, 2012. Claimant argued the credit should be reduced or negated based on his continued attempts to find work.

At the hearing, Defendants agreed Claimant sustained an admitted injury to his left foot and he is at maximum medical improvement per Dr. Ohlson's August 13, 2012 opinion. Defendants argued Claimant's compensation rate on the Form 20 is correct with an average weekly wage of \$492.85, resulting in a compensation rate of \$328.58. Defendants requested the award be based on the average weekly wage and compensation rate reflected on the Form 20. Furthermore, Defendants alleged the loss of use and disability to the Claimant's left lower extremity should be consistent with the 17% rating assigned by Dr. Ohlson, the authorized treating physician.

Following the pre-hearing conference, the Claimant testified on his own behalf. He testified he is 30 years old with a birthdate of March 5, 1982. Claimant graduated from high school in 2000 and has no other degrees or diplomas. At the time of the hearing, Claimant testified he was enrolled at Trident Technical College in his third semester in civil engineering studies. Additionally, Claimant maintains a commercial driver's license that he received in 2006.

Prior to working for Snelling Staffing, Claimant worked in a sports store, performed construction work, worked as an auditor, served as a caddy on Kiawah Island, and sold cars.

When the Claimant was originally hired for Snelling Staffing, he was earning \$11.50 per hour. His first assignment was at Ben Arnold where he worked as a route delivery driver and routinely lifted 40-50 pounds. When his assignment at Ben Arnold ended as a result of his school schedule, he was placed at Alside Revere where he was moving 75-100 boxes in a warehouse.

Claimant testified he had a previous Workers' Compensation injury when he cut his finger at work but received no benefits other than medical care. Claimant denied any additional

Workers' Compensation claims. Claimant admitted to a motor vehicle accident in 2005 wherein he followed up with a chiropractor thereafter. Claimant settled his case for approximately \$5,000.00. Also, Claimant admitted to a motorcycle accident in 2001 but denied any broken bones. Claimant specifically denied any prior injuries to his left leg/left foot and any physical inhibitions in his ability to perform his work duties.

Before the Claimant received his second assignment at Alside Revere, he was out of work for approximately six weeks. His assignment at Ben Arnold ended as a result of conflicts with his school schedule. When he began working at Alside Revere, he received \$13.00 per hour and alleged he would receive nine hours per day and upwards of 45 hours or more per week. Claimant began his employment at Alside Revere on November 11, 2011 and worked nine hours that day. The following week, he worked 45.5 hours and earned a total of \$627.25.

Prior to the hearing, the deposition of the Claimant's supervisor, Dan Cobb was taken in lieu of live testimony. Mr. Cobb testified that the Claimant was brought on for full time work through Snelling Staffing, and he would be paid for at least 40 hours per week. Mr. Cobb testified there was a mandatory waiting period before Claimant would be hired as a permanent employee of Alside Revere. Following Claimant's accident, another employee was hired to replace him and receives overtime pay. Mr. Cobb testified he would not be able to hire the Claimant permanently until three months passed.

Claimant was involved in an admitted accident on November 21, 2011 wherein he injured his left foot when it was run over by a forklift. He was seen in the Emergency Room at Roper Hospital and diagnosed with multiple fractures. Thereafter, he was referred to Dr. Ohlson who provided treatment from November 28, 2011 through August 13, 2012. During his

treatment with Dr. Ohlson, the Claimant experienced multiple problems with wound healing and was ultimately referred to a wound facility.

In addition, Claimant received evaluations by Dr. Gudas and Dr. Brilliant for independent medical evaluations. Additionally, Claimant was referred for pain management and Defendants authorized treatment with Dr. Tavel. At the time of the hearing, the Claimant was under Dr. Tavel's care for pain management.

Claimant testified his foot was chronically swollen secondary to the injury and an alleged malunited fracture. Claimant explained he had orthotics and was in need of custom shoes. Claimant stated he is unable to fit his left foot into a normal shoe because his left foot is four sizes wider than the right and an oversized toe box is needed. Claimant described pain in his foot and leg which runs down his knee. Claimant stated his ability to be on his feet is very limited. Furthermore, Claimant said his pain level is constant and his base level is a 3 to 4 out of 10. He experiences symptoms including foot tingling, numbness and burning. If the Claimant is required to be on his feet for any period of time, his pain level elevates. After approximately 10 to 15 minutes, he experiences an elevation in his pain level. After about 45 minutes, his pain level spikes to a 6 or 7 out of 10. Claimant continues to use medication to include Celebrex, Gralise, Tylenol and a topical cream. Also, Claimant testified that he ices his foot regularly.

Claimant testified his standing limitation was 15 to 20 minutes, walking was 30 minutes and stated he walks with a noticeable limp. Out of an eight hour day, Claimant estimates he could probably stand or walk for up to two hours if he were able to intermittently change positions to standing and walking. Claimant cannot run, climb, squat, jump, and has a very difficult time with any sort of inclines. Also, Claimant has problems with balance and states he has fallen several times.

Claimant submitted earnings from several additional workers in his pre-hearing brief and asked the Hearing Commissioner to consider these wages.

FINDINGS OF FACT

After careful review of the evidence presented in the instant case and after considering the arguments presented by the parties, the Appellate Panel of the South Carolina Workers' Compensation Commission, unanimously affirms the Hearing Commissioner's January 4, 2013 Decision and Order. We find substantial evidence in the record supports the Hearing Commissioner's Findings of Fact and adopt the following Findings of Fact as our own:

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with the three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011 the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot

and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.

4. The Claimant has a disability to the left leg of 34%.
5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to *Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007).*
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more likely than not be required on the maligned and anklyosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

CONCLUSIONS OF LAW

In view of these Findings of Fact, and as provided in the South Carolina Code of Laws,

WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.

3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.
5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.
6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, we unanimously adopt the Hearing Commissioner's Order as follows.


IT IS THEREFORE, HEREBY ORDERED that the Claimant had a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the left leg of 34 percent (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and


IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

IT IS SO ORDERED.

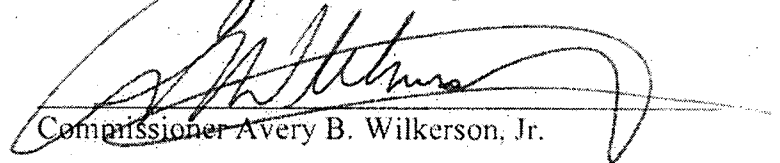
FULL AFFIRMATION



Commissioner T. Scott Beck, Chair for the Appellate Panel



Commissioner Michael Campbell



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on April 28, 2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

John McDaniel, Employee, Appellant,

v.

Career Employment Professional D/B/A Snelling
Staffing, Employer, and United Wisconsin Insurance Co.,
Carrier, Respondents.

Appellate Case No. 2014-000186

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2016-UP-327
Submitted May 1, 2016 – Filed June 22, 2016

REVERSED AND REMANDED

John McDaniel, of Charleston, pro se.

R. Mark Davis, Helen Faith Hiser, and Allison Cauthen
Nussbaum, all of McAngus Goudelock & Courie, LLC,
of Mount Pleasant, for Respondents.

PER CURIAM: John McDaniel—an employee at Career Employment Professional d/b/a Snelling Staffing (Snelling Staffing), a temporary staffing agency—injured his left foot while working at his work placement site, Alside Revere. He filed a workers' compensation claim against Snelling Staffing and

United Wisconsin Insurance Company (collectively, Respondents). McDaniel appeals the Appellate Panel of the South Carolina Workers' Compensation Commission's (Appellate Panel) order. We reverse and remand.¹

We find McDaniel's due process rights were violated because he was not afforded the minimum thirty days' notice before the Appellate Panel review hearing as is mandated in regulation 67-704 of the South Carolina Code of Regulations (2012). See *Jones v. S.C. Dep't of Health & Env'tl. Control*, 384 S.C. 295, 316, 682 S.E.2d 282, 294 (Ct. App. 2009) ("Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." (quoting *Olson v. S.C. Dep't of Health & Env'tl. Control*, 379 S.C. 57, 69, 663 S.E.2d 497, 504 (Ct. App. 2008))); S.C. Code Ann. Regs. 67-704(A) (instructing the Appellate Panel to serve the parties "a Form 31, Notice of Review, at least thirty days before the date of review hearing" and include on the notice: "the date, place, time, purpose of the review hearing, and the filing date for the appellant's brief" (emphasis added)). McDaniel was first notified on March 29, 2013, of the review hearing set for April 16, 2013. This Appellate Panel review hearing was stayed while the single commissioner held a remand hearing. On October 1, 2013, after the single commissioner issued an order after the remand hearing, the workers' compensation commission sent notice of the Appellate Panel review hearing set for October 14, 2013. McDaniel thus received only fourteen days' notice. Because McDaniel was not afforded the minimum thirty days' notice, the Appellate Panel's December 19, 2013 order is reversed. This case is remanded to the Appellate Panel for McDaniel to be provided with the required thirty days' notice and his review hearing.²

REVERSED AND REMANDED.

HUFF, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² Because reversing and remanding this issue is dispositive of the case, we need not reach McDaniel's remaining issues. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when the determination of a prior issue is dispositive of the appeal).

South Carolina Workers' Compensation Commission

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



WCC File #: 1116275
Carrier File #: 041100021048
November 14, 2012

NOTICE OF HEARING
RESET

JOHN MCDANIEL v. CAREER EMPLOYMENT PROFESSIONAL

Subject: To determine issues as set forth on Forms 50/51 and Form 21 to determine if the employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits.

Date: November 28, 2012 at 03:00 PM

Location: County Services Bldg., 500 N. Main St., Council Chambers
SUMMERVILLE, SC 29483

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

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

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

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

By: Tamara Morris, SC Workers' Compensation, November 14, 2012

Party

Employee: JOHN MCDANIEL

Attorney

Thomas M. White
twhite@steinberglawfirm.com
843-572-0700

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

R. Mark Davis
mdavis@mgclaw.com
843-576-2782

South Carolina Workers' Compensation Commission

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



WCC File #: 1116275
Carrier File #: 041100021048
March 28, 2014

NOTICE OF HEARING RESET

JOHN MCDANIEL v. CAREER EMPLOYMENT PROFESSIONAL

Subject: To determine issues as set forth on Forms 50 and 51.
Date: April 7, 2014 at 11:00 AM
Location: North Charleston City Hall, 2500 City Hall Lane, Council Chambers, 3rd Floor
Charleston, SC 29406

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

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

Commissioner Susan S. Barden
803-737-5660, klove@wcc.sc.gov

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

By: Kristi L. Love, SC Workers' Compensation, March 28, 2014

Party

Employee: JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

Attorney

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

R. Mark Davis
mdavis@mgclaw.com
843-576-2782

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

Allison C Nussbaum
allison.nussbaum@mgclaw.com
843-576-2925

South Carolina Workers' Compensation Commission

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



WCC File #: 1116275
Carrier File #: 041100021048
October 1, 2013

NOTICE OF APPELLATE HEARING

JOHN MCDANIEL v CAREER EMPLOYMENT PROFESSIONAL

Subject: Set on Review.
Date: 10/14/13 at 01:30 PM
Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

South Carolina Regulations 67-701 through 67-711 govern appeals before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Briefs are due according to prior notice and are governed by Regulation 67-705. For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739 or appeals@wcc.sc.gov.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel B

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

By: Eugenia Hollmon, SC Workers' Compensation, October 1, 2013

Party

Attorney

Employee: JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

R. Mark Davis
mdavis@mgclaw.com
843-576-2782

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

Allison C Nussbaum
allison.nussbaum@mgclaw.com
843-576-2925

South Carolina Workers' Compensation Commission

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



WCC File #: 1116275
Carrier File #: 041100021048
June 19, 2013

NOTICE OF HEARING

JOHN MCDANIEL v. CAREER EMPLOYMENT PROFESSIONAL

Subject: Remand on issues as set forth by Full Commission Order.
Date: July 8, 2013 at 09:30 AM
Location: North Charleston City Hall, 2500 City Hall Lane, Council Chambers, 3rd Floor
Charleston, SC 29406

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

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

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

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

By: Tamara Morris, SC Workers' Compensation, June 19, 2013

Party

Employee: JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

Attorney

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

R. Mark Davis
mdavis@mgclaw.com
843-576-2782

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC # 1116275

DATE/PLACE of HEARING: 11/28/2012, Charleston, SC

CLAIMANT: John McDaniel

EMPLOYER: Career Employment Professional

CARRIER: United Wisconsin Insurance Company

CLAIMANT'S ATTY: Tom White

DEFENDANT'S ATTY: Mark Davis

DIRECTIVES

1. AWW -- Claimant's 20 weeks is insufficient to base his average weekly wage. Especially, as his assignment and his wages were changed. However, there was no guarantee that he would continue with the assignment at Revere. (Testimony of Daniel Cobb by way of deposition) The Employer provides temporary assignments with a goal of permanent placement. The three employee wages provided are not for 52 weeks, and they were employed only by Revere. A fair and just method is to calculate the wages of the Claimant would be to take an average of his wages along with the three other employee wages provided. Claimant - 492.85 Atkins - 506.88 Lampkin - 618.50 Clark - 533.41 The average of the four is 537.91 with a corresponding compensation rate of 358.62.
2. MMI as of August 13, 2012.
3. Disability to left leg in the amount of Thirty-four (34%) percent.
4. Credit from date of MMI pursuant to Curiel.
5. Future medical treatment as indicated by Dr. Ohlson in his report of 8/13/12. (APA 52 and 53)

INSTRUCTIONS: Tom White, attorney to prepare proposed Order. Drafting attorney may add facts and conclusions consistent with the above directives. Proposed Order shall include Findings of Fact attached hereto. Any other Findings of Fact not inconsistent with those attached hereto may also be proposed. Proposed Order shall be submitted by January 11, 2013. If you need a transcript order it *immediately* from court reporter Jan Whitworth *in writing* at Post Office Box 551, Roebuck, SC 29376 (864) 494-2705. Provide a copy of the proposed order to opposing counsel or *pro se* claimant ten days prior to one being submitted to the Commission.



The Commission now requires all Orders to be submitted via-email in word-format to tmorris@wcc.sc.gov.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact – numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award

Commissioner Melody L. James
Melody L. James, Commissioner
South Carolina Workers' Compensation Commission
December 3, 2012

cc: Allison Nussbaum, Esquire
Mark Davis, Esquire

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

**John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commission Panel: Roche, McCaskill, Barden; Chair
Order Assigned to Commissioner: McCaskill
Court Reporter – Jill Vickers – 803-252-3445**

John McDaniel
Allison Nussbaum

Pro Se/Appellant
Defendants/Respondents

NOTE NEW SERVICE REQUIREMENTS

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order. Please add statement that "Amended Form 30 was not timely served. So, no documents outside the record were considered."

Ms. Nussbaum please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at vcrocker@wcc.sc.gov or call at 803.737.5739.

**Virginia L. Crocker
Judicial Director**

Transmitted via email and regular mail this 31 October 2013

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

**John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commission Panel: Roche, McCaskill, Barden; Chair
Order Assigned to Commissioner: McCaskill
Court Reporter – Jill Vickers – 803-252-3445**

John McDaniel
Allison Nussbaum

Pro Se/Appellant
Defendants/Respondents

NOTE NEW SERVICE REQUIREMENTS

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order. Please add statement that "Amended Form 30 was not timely served. So, no documents outside the record were considered."

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The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at vcrocker@wcc.sc.gov or call at 803.737.5739.

**Virginia L. Crocker
Judicial Director**

Transmitted via email and regular mail this 31 October 2013



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

Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Snelling Staffing Services
 Address: 700 Ellis Dr, APT 5104 Address: 2090 Executive Hall Rd Ste 140
 City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: 29407
 Home Phone: [REDACTED] Work Phone: (843) 277-6900 Insurance Carrier: United Heartland
 Preparer's Name: Jim Pasutti Preparer's Phone #: (843) 277-6900

Date of Injury: _____
 month day year

A. Total Wages Paid

- Check Applicable Method:
 - Report of earnings of injured employee based on four completed quarters.
 - Report of earnings of injured employee who did not complete four quarters based on actual time worked.
 - Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire date: _____
 - Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just (attach documentation to show how average weekly wage and compensation rate were calculated).
- List total wages paid as reported to the Employment Security Commission on the Employer Quarterly Contribution and Age Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	—	\$ —
2nd	<u>6-30-11</u>	<u>\$ 2,958.37</u>
3rd	<u>9-30-11</u>	<u>\$ 6,898.59</u>
4th	—	\$ —
Total Paid		2. <u>\$0.00 9,856.96</u>

- List total value of other allowances of any character made in lieu of wages during four quarters above. 3. \$
- Add lines 2 and 3. **TOTAL WAGES PAID:** 4. \$0.00 9,856.96
- List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred. 5. 20

B. Average Weekly Wage

- To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5). **AVERAGE WEEKLY WAGE:** 6. \$ 492.85

C. Compensation Rate

- The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part 8 below to determine the actual compensation rate. 7. \$0.00 328.58

- The compensation rate is as follows (choose one):
 - When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
 - When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
 - When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
 - Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8. _____
 - The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: 8. \$ 328.58

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

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



WCC File #: 1116275
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professional dba Snelling Staffing
 Address: 700 Daniel Ellis Dr. Address: Ashley River Rd.
 City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: _____
 Home Phone: _____ Work Phone: _____ Insurance Carrier: United Wisconsin Insurance Company
 Preparer's Name: Thomas M. White, Esquire Law Firm: The Steinberg Law Firm Preparer's Phone #: (843) 572-0700

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: November 21, 2011

- Injury Illness Repetitive Trauma
- 1a. The claimant sustained an injury to left foot (Part(s) of Body Injured) on November 21, 2011 (Month/Day/Year) in Charleston County, State of South Carolina.
 - 1b. Body part(s) affected are: left foot
 Briefly describe how the accident occurred. Claimant's foot was run over by a forklift.
 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 November 21, 2011 (Month/Day/Year) in the following manner:
Employer was aware of the injury
 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: left foot
 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
11/21/11 to date 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 Partial
 (3) Wage Loss Partial
 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of: None at this time.
 - 10a. At the time of the injury, the claimant was paid weekly wages of \$627.25, 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: Claimant has not been able to return to work.
 - 11a. Further grounds or unusual aspects of claim: All allowable. Claimant had just received an increase in pay and a change in position and was told he would be averaging about 45.5 hours per week at his new job. His Workers' Compensation rate should be based upon his projected future earnings, which would be the hourly rate and projected hours at the time of his injury.
 - 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. Ohlson, Roper ER
 - 11c. To the best of your knowledge, did you have any prior permanent disability? No.
 If yes, describe: _____
 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
 - 13a. I am filing a claim. I am not requesting a hearing at this time.
 - 13b. I am requesting a hearing. A \$25 fee is required.
 14. Estimated time needed for hearing: 1 hour

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

Preparer's Signature: [Signature] Attorney for Claimant: twhite@steinberglawfirm.com Date: May 18, 2012
 Title: _____ Email: _____
 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

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



WCC File #: 1116275

Carrier File #: 041100021048

Carrier Code #: _____

Employer FEIN #: _____

John McDaniel
Claimant's Name SSN
700 Daniel Ellis Drive
Charleston, South Carolina 29412
Address City State Zip
Home Phone # Work Phone #
R. Mark Davis McAngus Goudelock & Courie
Preparer's Name Law Firm

Snelling Staffing Services
Employer's Name
702 Mall Boulevard
Savannah, Georgia 31406
Address City State Zip
United Wisconsin Insurance Company c/o United Heartland
Insurance Carrier
(843) 576-2782
Phone Number

Date of Accident: 11/21/11

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

1. It is admitted that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Defendants admit the Claimant was involved in an accident on or about November 21, 2011, involving his left foot. Defendants deny the nature and extent of injury and any resulting disability.
2. It is admitted that 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 above.
3. It is admitted that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 1 above.
4. It is admitted that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are: See No. 1 above.
5. It is admitted that notice of injury was given to the employer. The reasons for denial are: See No. 1 above.
6. It is denied that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: Based upon information and belief, the Claimant has received any and all causally related medical treatment.
7. It is denied that the employee is entitled to temporary total disability for the period(s) of: Based upon information and belief, the Claimant has received any and all appropriate temporary total and temporary partial benefits.
8. It is denied that the employee is permanently disabled. The reasons for denial are: No evidence of permanent disability as he is currently working.
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$492.85 applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: S.C. Code §42-1-160; §42-15-60; §42-9-35; Pre-existing condition; Natural progression of a pre-existing condition; Average weekly wage calculation; Temporary benefits calculation; The Defendant reserves the right to supplement this responsive pleading and assert any applicable defenses supported by evidence during discovery.
12. Estimated time needed for hearing: 30 minutes.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

Thomas M. White, Esquire
The Steinberg Law Firm, L.L.P.
Post Office Box 1028
Goose Creek, South Carolina 29445

South Carolina Worker's Compensation Commission
PO Box 1715
Columbia, South Carolina 29202

on the 15th day of June, 2012 by first class mail; personal service; certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Attorney for Employer/Carrier mdavis@mqdaw.com June 15, 2012
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.

SC Workers' Compensation Commission

1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715



WCC File #: 1116275

Carrier File #: 041100021048

Carrier Code #: _____

Employer FEIN #: _____

John McDaniel
Claimant's Name SSN
700 Daniel Ellis Drive
Charleston, South Carolina 29412
Address City State Zip

Home Phone # _____ Work Phone # _____
R. Mark Davis McAngus Goudelock & Courie
Preparer's Name Law Firm

Snelling Staffing Services
Employer's Name
702 Mall Boulevard
Savannah, Georgia 31406
Address City State Zip

United Wisconsin Insurance Company c/o United Heartland
Insurance Carrier
(843) 576-2782
Phone Number

The date of injury reported on the Form 12A is: 11/21/2011

Check applicable section(s). The employer's representative requests a hearing to:

I. **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing request pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 8/13/2012 (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of 9/3/2012 and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.
A Form 17 was offered and refused on 9/14/2012.

II. **Address suspension, termination, or reduction of temporary disability payment for any cause.**

- a. At any time pursuant to § 42-9-260(E).
- b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

III. **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

The Claimant reached maximum medical improvement per Dr. Blake L. Ohlson on August 13, 2012.
Claimant reached maximum medical improvement on 8/13/2012 (m/d/yyyy) (copy of medical report must be attached).

IV. **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

V. **Determine amount of compensation for claims involving a fatality.** (Dependency Investigation must be attached).

- a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
 - b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.
- A hearing requested pursuant to this section will be set on an expedited basis.

- A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.
- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

Thomas M. White, Esquire
The Steinberg Law Firm, L.L.P.
Post Office Box 1028
Goose Creek, South Carolina 29445

South Carolina Worker's Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

on the 17th day of September, 2012 by first class mail; personal service; certified mail.

Preparer's Signature

Attorney for Employer/Carrier
Title

September 17, 2012
Date

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.

WCC Form # 21

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1116275
Carrier File #: 041100021048
Carrier Code #: 1001
Employer FEIN #: 58-1292180

Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professional DBA Sn
Address: c/o Thomas White, Post Office Box 1028 Address: 702 Mall Blvd
City: Goose Creek State: SC Zip: 29445 City: Savannah State: GA Zip: 31406
Home Phone: [REDACTED] Work Phone: _____ Insurance Carrier: United Wisconsin Insurance Company
Preparer's Name: Sue Scheele Law Firm: _____ Preparer's Phone #: 262-787-7700

1. Date of Injury: 11/21/2011 2. Total Weeks Compensation Paid: 41
(m/d/yyyy)

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: <u>TT</u>	From: <u>11/22/2011</u>	To: <u>04/04/2012</u>
	(m/d/yyyy)	(m/d/yyyy)
Type: <u>TP</u>	From: <u>04/05/2012</u>	To: <u>06/25/2012</u>
Type: <u>TT</u>	From: <u>06/26/2012</u>	To: <u>09/03/2012</u>

4. Date of First Payment: 12/02/2011
(m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$11,281.45
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$5,229.70

6. Informal Conference is Requested: Yes No (check one)

Use these lines to send a memo to the Commission:

Sue Scheele 262-787-7700 09/06/2012
Employer's Representative Phone Date

Type or print all information. File this form six months after the alleged injury date and each six months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after Number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

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



WCC File #: 1116275 - Page 2
Carrier File #: 041100021048
Carrier Code #: 1001
Employer FEIN #: 58-1292180

Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professional DBA Snelling Sta
Address: c/o Thomas White, POB 1028 Address: 702 Mall Blvd.
City: Goose Creek State: SC Zip: 29445 City: Savannah State: GA Zip: 31406
Home Phone: [REDACTED] Work Phone: _____ Insurance Carrier: United Wisconsin Insurance Company
Preparer's Name: Sue Scheele Law Firm: _____ Preparer's Phone #: 262-787-7700

Date of injury: 11/21/2011
(m/d/yyyy)

Supplemental Report of Varying Temporary Partial Payments

From 6/9/12 through 6/15/12 Claimant was paid \$ 150.72 per week as temporary partial compensation. The weekly wage before the Injury was \$ 492.85 The weekly wage for this period was \$ 266.78

From 6/16/12 through 6/25/12 Claimant was paid \$ 126.85 per week as temporary partial compensation. The weekly wage before the Injury was \$ 704.07 The weekly wage for this period was \$ 613.80

From _____ through _____, Claimant was paid \$ _____ per week as temporary partial compensation. The weekly wage before the Injury was \$ _____. The weekly wage for this period was \$ _____.

From _____ through _____, Claimant was paid \$ _____ per week as temporary partial compensation. The weekly wage before the Injury was \$ _____. The weekly wage for this period was \$ _____.

From _____ through _____, Claimant was paid \$ _____ per week as temporary partial compensation. The weekly wage before the injury was \$ _____. The weekly wage for this period was \$ _____.

From _____ through _____, Claimant was paid \$ _____ per week as temporary partial compensation. The weekly wage before the Injury was \$ _____. The weekly wage for this period was \$ _____.

From _____ through _____, Claimant was paid \$ _____ per week as temporary partial compensation. The weekly wage before the Injury was \$ _____. The weekly wage for this period was \$ _____.

From _____ through _____, Claimant was paid \$ _____ per week as temporary partial compensation. The weekly wage before the Injury was \$ _____. The weekly wage for this period was \$ _____.

From _____ through _____, Claimant was paid \$ _____ per week as temporary partial compensation. The weekly wage before the Injury was \$ _____. The weekly wage for this period was \$ _____.

In an ongoing period of temporary partial, when the compensation rate varies from week to week, the employer's representative shall report the first payment on a Form 15 according to R.67-503. Supplemental payments shall be reported on a Form 15S, to be filed with the document stopping that period of temporary partial compensation or with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. R.67-503.

WCC Form # 15S
Rev. 3/97

15S

Supplemental Report of Varying
Temporary Partial Payments

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



WCC File #: 1116275 - Page 1
Carrier File #: 041100021048
Carrier Code #: 1001
Employer FEIN #: 58-1292180

Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professional DBA Snelling Sta
Address: C/o Thomas White, POB 1028 Address: 702 Mall Blvd.
City: Goose Creek State: SC Zip: 29445 City: Savannah State: GA Zip: 31406
Home Phone: [REDACTED] Work Phone: Insurance Carrier: United Wisconsin Insurance Company
Preparer's Name: Sue Scheele Law Firm: Preparer's Phone #: 262-787-7700

Date of Injury: 11/21/2011
(m/d/yyyy)

Supplemental Report of Varying Temporary Partial Payments

From 4/7/12 through 4/13/12 Claimant was paid \$ 146.55 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 273.00

From 4/14/12 through 4/20/12 Claimant was paid \$ 0.00 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 492.85

From 4/21/12 through 4/27/12 Claimant was paid \$ 220.85 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 161.53

From 4/28/12 through 05/4/12 Claimant was paid \$ 128.37 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 300.20

From 5/5/12 through 5/11/12 Claimant was paid \$ 204.21 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 186.55

From 5/12/12 through 5/18/12 Claimant was paid \$ 114.72 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 320.78

From 5/19/12 through 5/25/12 Claimant was paid \$ 228.41 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 150.26

From 5/26/12 through 6/1/12 Claimant was paid \$ 173.86 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 232.05

From 6/2/12 through 6/8/12 Claimant was paid \$ 150.72 per week as temporary partial compensation. The weekly wage before the injury was \$ 492.85 The weekly wage for this period was \$ 266.78

In an ongoing period of temporary partial, when the compensation rate varies from week to week, the employer's representative shall report the first payment on a Form 15 according to R.67-503. Supplemental payments shall be reported on a Form 15S, to be filed with the document stopping that period of temporary partial compensation or with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. R.67-503.

WCC Form # 15S
Rev. 3/97

15S

Supplemental Report of Varying
Temporary Partial Payments



MCDANIEL, JOHN

30 Y old Male, DOB: [REDACTED]
 700 DANIEL ELLIS DRIVE, CHARLESTON, SC-29412
 Home: [REDACTED]
 Guarantor: MCDANIEL, JOHN
 Appointment Facility: Orthopaedic Specialists Of Chas

07/02/2012

Blake L Ohlson MD

Current Medications

Celebrex 200 MG Capsule 1 capsule Once a day, stop date 10/12/2012
 Medication List reviewed and reconciled with the patient

Past Medical History

LEFT FOOT INJURY

Surgical History

Double Hernia sx Birth

Family History

SIGNIFICANT FAMILY HISTORY OF BREAST CANCER.

Social History

Tobacco Use:
 Tobacco Use/Smoking
 Are you a *current smoker*
 How often do you smoke cigarettes? *every day*
 How many cigarettes a day do you smoke? *5 or less*
 How soon after you wake up do you smoke your first cigarette? *after 60 minutes*
 Are you interested in quitting? *Ready to quit*
 Tobacco Use/Smokeless: Denies

Allergies

N.K.D.A.

Hospitalization/Major

Diagnostic Procedure

Denies Past Hospitalization

Reason for Appointment

1. OSC BLO Follow Up
2. DOI: 5/15/12
3. LEFT FOOT CRUSH INJURY

History of Present Illness

Symptom(s):

Patient presents for followup for crush injury to left foot. He is limited in the types of shoes he is able to wear. He believes he has plateaued with respect to physical therapy. He continues to have pain. Symptoms are mildly managed with the use of Celebrex. His walking tolerance is limited.

Examination

General Examination:

RADIOGRAPHS _____

Orthopedics FNA:

Orthopedic Follow Up Less swelling, diminished sensation noted in the distribution of the sural nerve as well as intermediate branch of the superficial peroneal nerve. Incision is healed. Ingrown toenail's healed. no evidence of infection. there is also increased hindfoot valgus of approximately 7° compared to the contralateral side. There is also decreased longitudinal arch height on the left side compared to right. bony prominence overlying the fifth toe is nonpainful. There is no callus or ulcer formation.

Assessments

1. Crush injury - foot - 928.20 (Primary)

Treatment

1. Crush injury - foot

Document several options for conservative treatment. A prescription was given for Lyrica to try and help manage neurogenic pain. I also recommended that he be fitted with an orthotic to help offset some of the acquired flatfoot deformity. I would also recommend he be fitted with custom shoes to accommodate chronic swelling in the foot. He will follow up in 6 weeks. He is likely approaching maximum medical improvement from the orthopedic standpoint. However he may need ongoing chronic pain management. we also agree holding any intervention to the fifth toe. He is not having any symptoms in this region. Should this become symptomatic in the future he will require likely resection of the malunited fracture fragment.

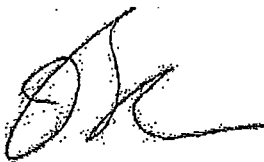
Referral To: Ashley Crossing Charleston Brace Company DME
Reason:

2. Others

Start Lyrica Capsule, 75 MG, 1 capsule, Orally, Twice a day, 30 days,
60, Refills 02

Follow Up

6 Weeks



Electronically signed by BLAKE OHLSON MD, MD on
07/05/2012 at 10:09 PM EDT

Sign off status: Completed

Orthopaedic Specialists Of Chas
2093 HENRY TECKLENBURG DR
CHARLESTON, SC 29414-5742

Tel: 843-958-2500

Fax: 843-606-8038

Patient: MCDANIEL, JOHN DOB: [REDACTED] Progress Note: Blake L. Ohlson MD 07/02/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)



Claimant's Name: John McDaniel	Employer's Name: Snelling Staffing Services
Physician's Name: Blake L. Ohlson, M.D.	Insurance Carrier: United Wisconsin Insurance Company c/o United Heartland
Practice/Clinic: Orthopaedic Specialists of Charleston	SCWCC File No.: 1116275
Preparer's Name:	
Phone:	

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Accident: 11/21/11

Date of first office visit: 11-28-11 Date of last visit: 8-13-12

Diagnosis or nature of injury or illness: Ⓛ foot crush injury

Body part(s) injured: Ⓛ foot Body part(s) affected: Ⓛ foot

Date of Maximum Medical Improvement: 8/13/12

Based on the AMA Guidelines, the claimant has sustained a 17 % medical impairment to LLR injured body part(s) and a _____ % medical impairment to _____ other affected body part(s).

- The claimant is able to return to work without restriction.
- The claimant is able to return to work with the following restrictions:

the walking shoe, 10lb lifting restriction, no climbing, no ladders, no running, no prolonged standing

- The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

- will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).
- will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Ⓛ referral to pain mgmt Ⓛ 5th toe Rosebury connection (no hammer)
Ⓛ extra wide shoes to be inspected / replaced every 6wks as needed

[Signature]
 Treating Physician

7/6/12
 Date

**PREPAYMENT
 NEVER
 RECEIVED**



Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professional d/b/a Snelling Staffing
Address: 1387 Camp Rd., Unit C Address: Ashley River Rd.
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: _____
Home Phone: _____ Work Phone: _____ Insurance Carrier: United Wisconsin Insurance Company
Preparer's Name: Thomas M. White Law Firm: The Steinberg Law Firm Preparer's Phone #: (843) 572-0700

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by claimant employer (check one) Date of injury: November 21, 2011

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

SEE ATTACHED ADDENDUM "GROUNDS FOR REVIEW"

(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 Allison Nussbaum, Esquire,
Name

McAngus Goudelock & Courie LLC, Post Office 650007, Mt. Pleasant, 29465
Address

on the 14 day of Jan 2013 by first class mail personal service certified mail.

Preparer's Signature [Signature] Attorney for the Claimant _____ Title _____ Date January 14, 2013

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.

GROUNDS FOR REVIEW

Claimant: John McDaniel

Employer/Carrier: Career Employment Professional d/b/a Snelling Staffing/

WCC No.: 1116275

- FIRST:** The Hearing Commissioner erred in Finding of Fact #2 and Conclusion of Law #3 in finding the Claimant had a compensation rate of \$358.62 based upon an average weekly wage of \$537.91; the error being the Single Commissioner should have found the Claimant was entitled to an average weekly wage and compensation rate in an amount not less than \$627.75 with a compensation rate of \$418.91.
- SECOND:** The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that a fair and just method was to calculate the wages of the Claimant was to take an average of his wages along with the three other employee wages provided; the error being that it was not fair and just to the Claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings of the employee with the ultimate objective of reflecting fairly the Claimant's probable future earning loss.
- THIRD:** The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that the wages of the Claimant, Atkins, Lampkin, and Clark were, respectively, \$492.85, \$506.88, \$618.50, and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated Form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and were not correctly calculated under the Definition of Average Weekly Wage.
- FOURTH:** The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in finding the Claimant has a disability to the Left Leg of 34%; the error being that the Single Commissioner should have found that the Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is.
- FIFTH:** The Hearing Commissioner erred in Finding as a Fact and a Ruling as a Matter of Law in Finding of Fact #5 that the Defendants should receive a credit for all weekly benefits paid after the date of

maximum medical improvement and Ruling of Law #5; the error being the Single Commissioner should have found the Defendants were not entitled to a credit as the Claimant had not been able to return to work and no work had been offered although the Claimant was ready and available to attempt to try to come back to work with his employer if they offered work within his restrictions and Claimant had been actively seeking other employment.

SIXTH:

The Hearing Commissioner erred in failing to find as a fact and ruling as a matter of law that the Defendants should be subject to fines and penalties for the late payments of temporary total disability benefits because those payments were made 14 days after they were due and Defendants failed to make timely payment on multiple occasions.

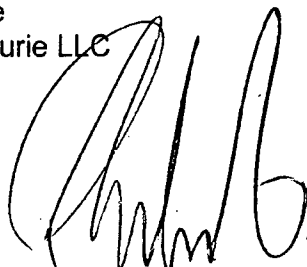
CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2013, I served the Defendant in the foregoing matter with a copy of the attached WCC Form No. 30 (Request for Commission Review) by mailing a copy of same via first class mail, postage pre-paid and addressed as follows:

S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Allison Nussbaum, Esquire
McAngus Goudelock & Courie LLC
Post Office 650007
Mt. Pleasant, SC 29465

By:



Thomas M. White

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.:1116275

JOHN MCDANIEL, Employee,
Claimant,

vs.

CAREER EMPLOYMENT
PROFESSIONAL D/B/A SNELLING
STAFFING, Employer, and

UNITED WISCONSIN INSURANCE
COMPANY, Carrier,

Defendants.

**NOTICE OF MOTION AND MOTION
PURSUANT TO REGULATION 67-707
TO ADD ADDITIONAL AND NEWLY
DISCOVERED EVIDENCE**

SCWCC
MAR 12 2013
JUDICIAL

TO: THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND ALLISON NUSSBAUM, ESQUIRE, UNITED WISCONSIN INSURANCE
COMPANY, CARRIER

YOU WILL PLEASE TAKE NOTICE the Claimant, John McDaniel, through his undersigned attorney, will move under South Carolina Workers' Compensation Regulation 67-707 to add additional and newly discovered evidence which is necessary for the completion of the record on the above pending case which is set for Review by the South Carolina Workers' Compensation Commission. The Claimant requests that the Commission in it's discretion Order the evidence be taken before the Hearing Commissioner.

The Claimant believes that the new evidence is of the same nature and character required for granting a new trial. The evidence is not of a cumulative or impeaching character but would have likely produced a different result had the evidence been procurable at the first Hearing.

The evidence was not known to the moving party at the time of the first Hearing and by reasonable diligence, the evidence could not have been secured and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

The Claimant's Motion is based upon the attached Affidavit setting forth the facts that the Defendants' Employer, Snelling Staffing, had placed the Claimant within a position at Alside Revere. Alside Revere was served with a subpoena to provide all income records on Jarod Lampkin (Claimant's replacement) once he became their employee. Alside Revere failed to comply with the subpoena and did not produce the documents at the Hearing because they had forwarded the request to their Corporate Office. They have just recently complied with the subpoena and produced the earnings.

Testimony was taken of Dan Cobb, who works for Alside Revere, and his testimony was used by the Commissioner in making the decision for the Single Commissioner's Order. Upon receiving the records from Alside Revere, we have learned that the actual earnings exceeded what was testified to by Dann Cobb.

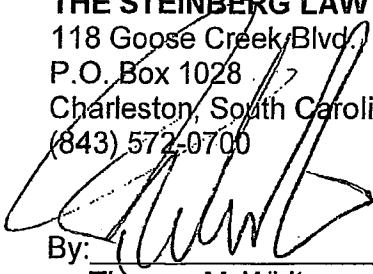
The Claimant requests that the Commission issue an Order before the Review Hearing is held and that the Review Hearing be stayed and this matter be remanded to the original Hearing Commissioner to reconvene the Hearing or admit the additional evidence pursuant to South Carolina Workers' Compensation Regulation 67-707(d).

The Claimant further requests that the Hearing Commissioner issue his/her findings and recommendations in the form of an Order after the additional testimony or a review of the newly discovered evidence.

The Claimant further requests that upon receipt of the Commissioner's Order based upon the new evidence, this matter be reset on the Review Hearing docket.

I SO MOVE:

THE STEINBERG LAW FIRM LLP
118 Goose Creek Blvd. South
P.O. Box 1028
Charleston, South Carolina 29445
(843) 572-0700

By: 

Thomas M. White
Attorney for Claimant

Goose Creek, South Carolina

March 8, 2013

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116275

John McDaniel, Employee,

Claimant,

vs.

Career Employment Professional d/b/a
Snelling Staffing, Employer, and

United Wisconsin Insurance Company,
Carrier,

Defendants.

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, **THOMAS M. WHITE**, who, upon being duly sworn, deposes and says:

1. I am an attorney practicing in Goose Creek, South Carolina and I represent John McDaniel in his claim for benefits under the South Carolina Workers' Compensation Act for an on the job injury that occurred on November 21, 2011.

2. One of the issues in this case was the Claimant's Average Weekly Wage and Compensation Rate pursuant to S.C. Code Ann. §42-1-40.

3. The Claimant had been placed with Alside Revere through a staffing agency and had not been employed for 52 weeks prior to the date of his injury. All wage information was relevant to determine his Average Weekly Wage and Compensation Rate to ultimately achieve the goal of calculating an Average Weekly Wage and Compensation Rate considering the impact on his probable future earnings **Sellers v. Pinedale Residential Center**, 350 S.C. 183, 564 S.E.2d 694 (Ct. App. 2002).

4. The Claimant has exercised due diligence in attempting to get the wage records by serving Alside Revere with Subpoenas to produce the records.

5. The Claimant originally subpoenaed the wage records from Alside Revere prior to the deposition of Dann Cobb, the Alside Revere Representative.

6. No records were produced and the deposition of Dan Cobb went forward wherein he estimated the overtime hours he thought the Claimant's replacement earned following the Claimant's injury.

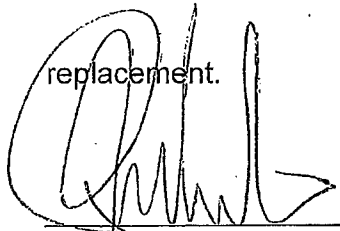
7. The Claimant also served a subpoena on Alside Revere to produce the records and to have the Payroll Clerk at the Hearing that was held before the Single Commissioner on November 28, 2012. This subpoena was personally served.

8. Alside Revere failed to produce the documents and the Hearing went forward as Claimant was at maximum medical improvement. Because the deposition of Dan Cobb, a representative of Alside Revere, had been taken at the time of the Hearing, there was no reason to expect that the testimony given by Dan Cobb would not be accurate.

9. The Claimant has recently received a response to their initial subpoena to Alside Revere and within those documents were all the wages of Jarod Lampkin, who replaced the Claimant after the Claimant was injured.

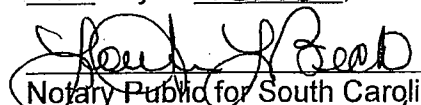
10. Those records reveal that the Claimant's replacement earned an average of 12.48 hours of overtime every week beginning with his first week on the job with Alside Revere (February 25, 2012) through the date of Dann Cobb's testimony.

11. The Claimant believes this information is relevant and would have produced a different result since it shows that the Claimant's probable future earnings would have been higher than expected based upon the amount of overtime being earned by his

replacement.


Thomas M. White

SWORN to before me this
8th day of March, 2013.



Notary Public for South Carolina
My Commission Expires: 9/27/17

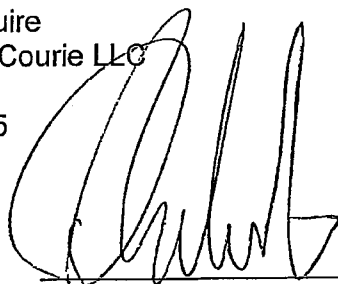
CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2013, I served the Defendant in the foregoing matter with a copy of the attached Notice of Motion and Motion Pursuant to Regulation 67-707 to Add Additional And Newly Discovered Evidence by mailing a copy of same via first class mail, postage pre-paid and addressed as follows:

S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Allison Nussbaum, Esquire
McAngus Goudelock & Courie LLC
Post Office 650007
Mt. Pleasant, SC 29465

By:



Thomas M. White

hear applications for full commission reviews, and handle such other matters as may come before the department for judicial disposition.

Pursuant to Regulation 67-707(A) when additional evidence is necessary for completion of the record in an case on review the Commission may order such evidence taken before a Commissioner.

Upon information and belief former Counsel for the Claimant received a copy of the Claimant complete personnel file from the Defendant's attorney on or around August 10, 2012.

The Claimant was of the understanding that through either his former counsel or the Defendant's counsel a copy of his personnel file had been submitted to the Commission.

The Claimant contends that he had discussion with his former attorney and his office staff regarding the submission of these records. The Claimant contends that he was assured that these records would be introduced to the Commission as part of the record.

The Claimant was unaware that these records were not submitted as part of the record or as part of the APA Submissions.

The Claimant contends that these records show his qualifications and skills and would have resulted in a difference decision by the Commissioner.

The Claimant contends that letters and emails regarding late payments and treatment were exchanged by his former counsel and the Defendant's Counsel.

The Claimant contends that he had discussions with and made it clear to his former attorney that he would like to seek penalties for late payment, under payments, late treatment and non-approval of treatment prescribed by his treating physician.

The Claimant at some point was advised that penalties, at the discretion of the Commission, may go into a worker's compensation fund. The Claimant still expressed the

desire to seek penalties regardless of receipt of monetary compensation resulting from penalties.

The Claimant advised his former attorney that he had numerous emails and applications that he had submitted inquiring about numerous sedentary positions.

The Claimant relied on the advice and expertise of his former counsel regarding the submissions of records and APA submissions.

The Claimant further contends that under the avoidable consequences doctrine the Claimant has a responsibility to attempt to minimizing damages and should make reasonable efforts to mitigate the effects of any breach of contract or possible damages resulting in these records not being submitted into the APA submissions.

Pursuant to *Watson v. Xtra Mile, S.C. Ct.App. Opinion No: 5013*, the SC Rules of Evidence do not apply in proceedings before the Workers Compensation Commission. The Workers Compensation Commission is allowed wide latitude of procedures and is not restricted to the strict rules of evidence applied to judicial courts. Further the Appellant holds the burden of proof and must place in the record a sufficient foundation for his argument.

The Claimant contends that the submission of these records would have resulted in as a different decision of the Single Commissioner.

The Claimant requests the Commission to allow the additional evidence and additional APA Submission and notifies the Commission and Defendants' Counsel of the below additional evidence and APA Submission on behalf of the Claimant:

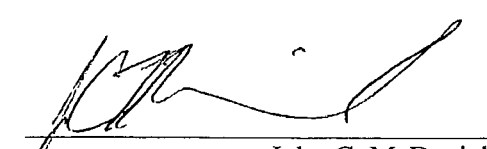
Claimant's Additional Evidence and Additional APA Submission

11.	Claimant's Personnel file	126-164
12.	Letter of Recommendation	165
13.	Job Applications sent for sedentary work; June 29, 2012-August 22, 2012	166-189

14.	Emails to/from John McDaniel/Jim Pascutti (employer) regarding updated resume for sedentary work & possible work available	190-195
15.	Email from John McDaniel re: CDL driving position & Email response from Angela Baldwin, Snelling Staffing dated 5/5/2011 & 5/6/2011	196-198
14.	Letter from Tom White to Richard Romero re: no work received due to restrictions dated 7/5/2012	199
15.	Letter from Tom White to Alison Nussbaum regarding payments due from June dated 7/23/2012.	200
16.	Email from Lori Beck to Tom White regarding TTD benefits dated 7/23/2012	201
17.	Email chain w/ Attachment from Elizabeth Dale to Tom White and Alison Nussbaum re: payment's not yet received and miscalculation on Form 20 dated 7/27/2012	202-204
18.	Email from Allison Nussbaum regarding pain management & work available within restrictions dated 9/13/2012	205
19.	Letter from Tom White to Alison Nussbaum re: pain management dated 10/5/2012	206
20.	Email from Alison Nussbaum dated 10/10/2012 to Tom White re: pain management & orthodox	207
23.	TTC Policy Appeal w/ letter dated 5/31/12 to Dawn Baily re: previous inquires & unpaid benefits.	208-209

Conclusion

For the foregoing reasons, as well as any other Rule, case law, statute or authority as may be applicable; The Claimant moves this Commission to allowed the above additional evidence and additional APA Submissions in order to allow the Claimant to remedy the situation in an attempt to mitigate possible damages and allow the Claimant to submit these additional documents into the record under the Administrative Procedures Act.



 John C. McDaniel
 Appellant/Claimant, Pro Se
 (Former Class A CDL Driver & General Laborer)

South Carolina Workers Compensation Commission

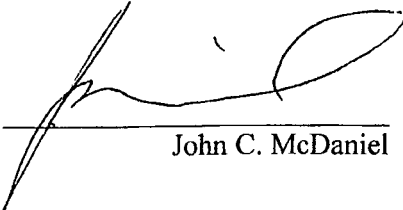
W.C.C. File No: 1116275

John McDaniel	}	
employee	}	
	}	
	Claimant	}
Snelling Staffing Services	}	Certificate of Service
employer	}	
	}	
And	}	
	}	
United Wisconsin Insurance Company c/o United	}	
Heartland	}	
Carrier	}	
	Defendant	}

I hereby certify that I had on May 6, 2013 served a copy of Claimant's Motion for additional evidence and notice of additional evidence and APA submission by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Counsel for the Defendants:
R. Mark Davis
McAngus Goudelock & Courie
PO Box 650007
Mount Pleasant, SC 29465

SC Workers Compensation Commission
PO Box 1715
Columbia, SC 29202-1715



John C. McDaniel

The Claimant contends that the attorney for the Defendant questioned him on various activities initially addressed in the Claimant's deposition testimony to include but not limited to moving since his injury. The Claimant's replied that he had moved from an apartment to a townhouse since his injury and responded to various questions related to activities initially addressed in his deposition.

The Claimant contends that there were a number of questions that the Defendant's attorney asked him regarding household duties and other physical activities, in which the Claimant's response was brief with the assumption that his deposition testimony was part of the records and that the Single Commissioner would review his deposition testimony in its entirety.

The Claimant contends that had the Commissioner had his entire deposition testimony that there would have been further explanations of such activities. The Claimant contends that his former attorney instructed him to be brief with responses to questions. The Claimant further contends that his former attorney should have redirected this line of questioning for further explanation knowing that the Claimant's deposition testimony was not part of the record.

Pursuant to S.C. Code Ann § 1-23-320(E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

Pursuant to SC Code Ann. §42-3-20 (C) The commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements, hear applications for full commission reviews, and handle such other matters as may come before the department for judicial disposition.

Pursuant to Regulation 67-707(A) when additional evidence is necessary for completion of the record in a case on review the Commission may order such evidence taken before a Commissioner.

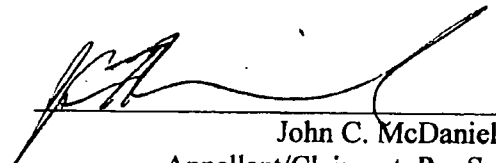
The Claimant further contends that under the avoidable consequences doctrine the Claimant has a responsibility to attempt to minimizing damages and should make reasonable efforts to mitigate the effects of any breach of contract or possible damages resulting in these records not being submitted into the APA submissions.

Pursuant to *Watson v. Xtra Mile, S.C. Ct.App. Opinion No: 5013*, the SC Rules of Evidence do not apply in proceedings before the Workers Compensation Commission. The Workers Compensation Commission is allowed wide latitude of procedures and is not restricted to the strict rules of evidence applied to judicial courts. Further the Appellant holds the burden of proof and must place in the record a sufficient foundation for his argument.

The Claimant requests the Commission to allow the additional evidence and testimony and notifies the Commission and Defendants' Counsel of the below additional evidence and testimony.

Conclusion

For the foregoing reasons, as well as any other Rule, case law, statute or authority as may be applicable; The Claimant moves this Commission to allowed the above additional evidence and the deposition testimony of the Claimant into the records in order to allow the Claimant to remedy the situation in an attempt to mitigate possible damages and allow the Claimant to submit this additional testimony.



John C. McDaniel
Appellant/Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

South Carolina Workers Compensation Commission

W.C.C. File No: 1116275

John McDaniel
employee

Claimant

Snelling Staffing Services
employer

And

United Wisconsin Insurance Company c/o United
Heartland
Carrier

Defendant

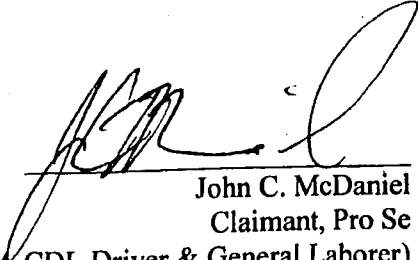
Certificate of Service

I hereby certify that I had on May 10, 2013 served a copy of Appellant's Motion for additional evidence and deposition testimony to complete the record by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Counsel for the Defendants:

R. Mark Davis
McAngus Goudelock & Courie
PO Box 650007
Mount Pleasant, SC 29465

SC Workers Compensation Commission
PO Box 1715
Columbia, SC 29202-1715


John C. McDaniel
Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,

Employee,

Claimant,

vs.

SNELLING STAFFING SERVICES,

Employer,

AND

UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND

Carrier,

Defendants.

**DEFENDANTS' RESPONSE TO
CLAIMANT'S 2nd MOTION TO ADD
ADDITIONAL AND NEWLY
DISCOVERED EVIDENCE AND
NOTICE OF ADDITIONAL APA
SUBMISSIONS**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOHN
McDANIEL, PRO-SE CLAIMANT.

PLEASE TAKE NOTICE that the above-named Defendants hereby respond and object,
pursuant to Regulation 67-215, to Claimant's Motion to Add Additional Evidence and Newly
Discovered Evidence and Notice of Additional APA Submissions as follows:

1. The Claimant initially filed a Form 50, requesting a hearing, on May 18, 2012. In his hearing request, the Claimant requested an increase in his compensation rate based on his alleged projected future earnings.
2. Defendants filed a timely Form 51 on June 15, 2012 denying the Claimant was entitled to a deviation from S.C. Code Ann § 42-1-40.
3. A Form 50/51 hearing was scheduled before the Commission on July 25, 2012.

4. Prior to the July 25, 2012 hearing, the parties requested a hearing postponement to allow for additional discovery. The request was granted, and the hearing was rescheduled to August 24, 2012.

5. Prior to the August 24, 2012 hearing, the parties agreed, by Consent Order, to postpone the hearing and return the file to General Files to allow for additional discovery, including, but not limited to the deposition of the Claimant's supervisor, Dan Cobb.

6. On September 12, 2012, the Claimant re-filed his Form 50, again requesting an increase in his compensation rate.

7. On September 17, 2012, Defendants filed a Form 21, requesting termination of the Claimant's temporary total disability benefits based on his release to maximum medical improvement by the authorized treating physician, Dr. Blake L. Ohlson.

8. On October 5, 2012, Claimant filed an Amended Form 50, requesting additional medical treatment to include a pain management evaluation.

9. A hearing was held on November 28, 2012 on Claimant's Form 50 and Defendants' Form 21.

10. Commissioner James issued her Decision and Order on January 4, 2013, finding the Claimant reached maximum medical improvement as of August 13, 2012 and sustained 34% loss of use of his leg. Also, Commissioner James found the Claimant's applicable compensation rate is \$358.62, based on an average weekly wage of \$537.91.

11. Of note, at the hearing, the Claimant never requested any type of penalties be imposed against Defendants.

12. Thereafter, on January 14, 2013, Claimant filed a Form 30, Request for Commission Review, citing numerous alleged errors of law.

13. On May 6, 2013 the Claimant filed his second Motion to Admit Additional Evidence. The Claimant is requesting the admission of new evidence to include his personnel file, numerous letters, emails, and additional documents which all existed at the time of the November 28, 2012 hearing. (83 pages)

14. In fact, in his attached documents, the Claimant submits a letter from Defendants to prior Claimant's Counsel, dated August 10, 2012, wherein the Claimant's personnel file was mailed to Claimant's Counsel well in advance of the hearing.

15. The Claimant contends he is now entitled to submit these records late because of misunderstandings between himself and his former attorney.

16. Defendants contend the Claimant had all of these records prior to proceeding with the November 28, 2012 hearing; therefore, he is precluded from adding new evidence.

17. Under Regulation 67-610, all submissions were required to be submitted at least 10 days prior to the hearing. None of the Claimant's attached submissions were submitted in advance of the hearing.

18. Furthermore, under Regulation 67-707 (2), the Claimant is required to prove the evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

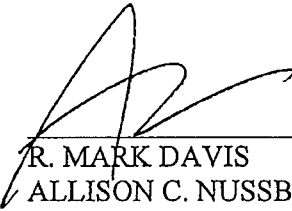
19. Regulation 67-707 (C)(2)(a), requires an affidavit be filed by the moving party as to the discovery of the new evidence. The Claimant's Motion fails to include the requisite affidavit.

20. Furthermore, Defendants contend the Claimant's alleged new evidence fails to satisfy the requirements of Regulation 67-707 (2) because the Claimant had this evidence at the time

of the original hearing and the Claimant was aware of the evidence prior to proceeding with the hearing.

21. Defendants contend the Claimant is causing undue delays in the appellate process and request attorneys fees and costs associated with responding to Claimant's multiple motions and requests for postponement of the review hearing.

WHEREFORE, based on all of the above, Defendants respectfully request that the South Carolina Workers' Compensation Commission issue an Order, denying Claimant's Motion to Add Additional Evidence and Newly Discovered Evidence and thereby placing the case back on the review hearing docket.



R. MARK DAVIS
ALLISON C. NUSSBAUM
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 534-0101
Attorneys for the Employer/Carrier

Charleston, South Carolina
May 16, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,

Employee,

Claimant,

vs.

SNELLING STAFFING SERVICES,

Employer,

AND

UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

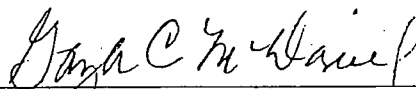
The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Thomas M. White, Esquire
The Steinberg Law Firm, L.L.P.
Post Office Box 1028
Goose Creek, South Carolina 29445

South Carolina Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

DOCUMENT: Defendants' Response to Claimant's 2nd Motion to Add
Additional and Newly Discovered Evidence and Notice of
Additional APA Submissions

DATE OF MAILING: May 16, 2013



Gayle C. McDaniel
Legal Assistant to R. Mark Davis

John C. McDaniel

1387 Camp Road, Unit C, Charleston SC 29412

Phone Number: [REDACTED]

Email: [REDACTED]

May 17, 2013

Via Email & Via U.S. Mail

Virginia Crocker, Judicial Director
S.C. Workers Compensation Commission
Post Office Box 1715
Columbia, SC 29292-1715

RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Ms. Crocker,

Please find enclosed the original and one copy of Claimant's Notice of Additional Evidence in the above-referenced matter. Please return a clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

By copy of this letter I am serving a copy of same to Defendant's counsel.

If you have any questions or concerns, please feel free to call.

Thank you,

s/John C. McDaniel

John C. McDaniel

CC: R. Mark Davis, Esquire

SCWCC
MAY 24 2013
JUDICIAL

South Carolina Workers Compensation Commission

W.C.C. File No: 1116275

John McDaniel
employee

Claimant

Snelling Staffing Services
employer

And

United Wisconsin Insurance Company c/o
United Heartland
Carrier

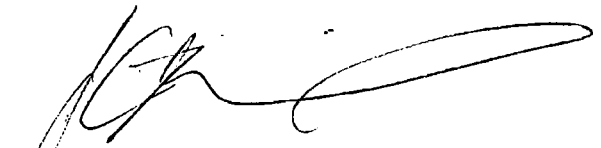
Defendant

NOTICE OF ADDITIONAL EVIDENCE TO
BE INTRODUCED INTO THE RECORD

You are hereby notified that the Appellant, pursuant to the provisions of the South Carolina Workers' Compensation Act, Section 1-23-330 of the South Carolina Code of Laws and pursuant to Rule 67-707, submits the following records into evidence:

APA	Records	Labels
24	Jarod Lampkin Pay Records	210-278

You are further notified that these records have been submitted to the South Carolina Workers Compensation Commission.



John C. McDaniel
Appellant/Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

SERVED FOR PRO-SE
6-14-11
AJ

John C. McDaniel

1387 Camp Road, Unit C, Charleston SC 29412

Phone Number: [REDACTED]

Email: [REDACTED]

June 11, 2013

Via US Mail

Virginia Crocker, Judicial Director
S.C. Workers Compensation Commission
Post Office Box 1715
Columbia, SC 29292-1715

James

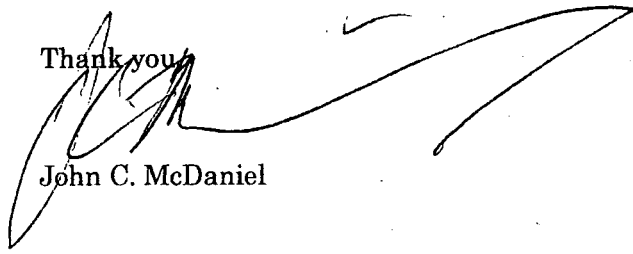
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Ms. Crocker,

Enclosed please find the original and one copy of the Claimant Motion for Penalties and Sanctions for Failure to Provide Treatment and Failure to Provide Treatment in a timely manner for the above referenced claim, along with the \$25.00 filing fee. Please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope provide.

If you have any questions, please do not hesitate to call. Thank you in advance for your assistance in this matter.

Thank you



John C. McDaniel

225206

CC: R. Mark Davis (via US Mail)

SCWCC
JUN 14 2013
JUDICIAL

South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel
employee
Claimant

Snelling Staffing Services
employer

And

United Wisconsin Insurance Company c/o
United Heartland
Carrier

Defendant

}
}
}
}
}
} Claimant's Motion for Penalties and
} Sanctions for Failure to Provide
} Medical Treatment and Failure to
} Provide Medical Treatment in a
} Timely Manner
}

WILL YOU PLEASE TAKE NOTICE that the undersigned hereby moves under SC Code Ann. Title 42 and all other applicable law for the Commission to enforce Penalties and Sanctions and hereby submits this Motion for Penalties and Sanctions pursuant to S.C. Code Ann. and any and all other laws applicable. The Claimant requests and moves for the Commission to enforce penalties and sanctions against the Defendants for the forgoing reasons.

1) Upon information and belief the Defendants and/or counsel for the Defendants are in receipt and have been in receipt of all medical records relevant to this claim and reports issued by the Claimant/Appellant's treating physicians.

2) The Claimant contends that Dr. Olson is and remains the Claimant's treating and authorizing physician since date of injury.

3) The Claimant contends that Dr. Olson initially recommended and prescribed Physical Therapy on 1/9/12 (See attached report 1/9/12)

4) The Claimant contends that Dr. Olson initially recommended and prescribed wound debridement/therapy on 1/27/12. (See attached report dated 1/27/12 & prescription dated 1/27/12)

- 5) On 2/20/12 Dr. Ohlson states that claimant is attempting to facilitate both treatments through Steinberg Law Firm (see attached report 2/20/12)
- 6) The Claimant and his former attorney attempted to facilitate wound treatment and physical therapy in a timely manner. (see attached affidavit)
- 7) The Claimant contacted Snelling Staffing regarding his frustration with United Heartland with regards to approving physical therapy, along with wound treatment this was notated in the Claimant's master dossier. (See attached dossier)
- 8) The Claimant contends that on 2/27/12 physical therapy was received and the Claimant began treatment at Rehabilitation Center of Charleston.
- 9) The Claimant contends that his recovery was hindered due to the gross delay in approving physical therapy. "Potential barriers to patient's ability to reach maximum rehab potential: delayed attendance to PT" (See attached RCC report dated 2/27/12)
- 10) The claimant contends physical therapy was delayed without cause for a second period from 4/10/12 till 5/1/12.
- 11) The claimant contends that this second delay was also detrimental to his recovery and has increased the extent and duration of his disability.
- 12) The claimant contends that if these sessions of physical therapy had been approved timely, treatment could have foreseeably mitigated deformities of hammer toe (2nd-5th toes) and pes planus.
- 13) The Claimant informed Dr. Olson of his continuing attempt to facilitate wound therapy during and prior to the follow up visit 4/2/12. (See attached Report)
- 14) The Claimant contends that wound therapy, as recommended and prescribed by Dr. Olson, was never approved and/or denied by United Heartland.
- 15) The Claimant contends that this denial has led to permanent disfigurement, resulting in an unsightly, scared and discolored left foot.

16) The Claimant discussed the decision to not proceed with surgery with Dr. Olson on 5/14/12.

17) The Claimant contends that Dr. Olson explained that surgery was not feasible if his wound was open. (See attached report dated 5/14/12)

18) Dr. Olson's reported dated 4/2/2012 states that there is no longer need for wound therapy.

19) Rehabilitation Centers of Charleston's, physical therapy notes from 6/26/12 state that the wound is nearly healed. (See attached physical therapy notes)

20) The Claimant contends that due to not receiving wound therapy, the Claimant's wound remained open at least until 6/26/12 resulting in Dr. Olson not proceeding with surgery.

21) The Claimant contends that his permanent disability and recovery were affected by Defendants not authorizing or facilitating wound treatment.

22) The Claimant's contends that not authorizing wound treatment contributed to the Claimant's permanent restrictions, disability and other medical issues.

23) The Claimant contends that not receiving wound therapy has hindered his rehabilitation and amplified his permanent disability due to this injury.

24) Dr. Olson's report dated 5/14/12 recommends and prescribes Chronic Pain Management.

25) The Claimant attempted to facilitate and receive Chronic Pain Management as prescribed by Dr. Olson.

26) The Claimant first received Chronic Pain Management on 10/30/12.

27) Dr. Ohlson first recommended and prescribed orthotics on 7/2/12.

28) United Heartland also delayed this until, on or after, 11/1/12.

29) Pursuant to *Martin v. Rapid Plumbing*, 631 SE 2d 547 "The statute sets the time of the penalty as beginning with the failure to comply with section 42-9-260 and continuing for as long as the benefits are wrongfully withheld."

30) Pursuant to *Cruel v. Environmental* the Claimant can be held liable and penalized for being a hindrance on his rehabilitation affecting the extent and duration of disability.

31) The claimant contends the contrapositive of the above must be applied in this case, therefore, the carrier must be held liable, and penalized, for being a hindrance on the Claimant's recovery. The Claimant contends that equity follows the law and Defendants' shall also be held liable for non-compliance.

32) *Watson v. Xtra Mile* states that equity follows the law; as such, penalties must be applied as the carrier in the instant case has hindered the Claimant's recovery and contributed to the extent and duration of disability.

33) *Brown v. BI-LO* states that treating physicians are compelled to communicate all relevant facts and medical records to the employer.

34) The Claimant contends Dr. Ohlson was not in violation of this. Thus, the Defendants possessed all necessary documents to authorize these treatments.

35) The claimant contends that the record as a whole contains substantial evidence to support the carrier has willfully, and with malice, failed to provide medical care as directed and must be penalized.

36) The claimant contends that penalties are of a punitive nature and must be applied as to discourage this behavior and conduct.

37) The claimant contends that Title 42 & 38 mandate care be provided.

38) A prescription is deemed an order of treatment as the SC Workers Compensation Code provides that employers shall provide medical care associated with the injury.

39) Pursuant to 43-3-175(2), Willful disobedience of an order can be punished by up to \$500 per day fine.

40) These actions affected the claimant significantly.

41) Sanctions imposed in this matter should include compensation to the claimant.

42) These sanctions are not limited in scope by 43-3-175 (A)(1).

43) Pursuant to 42-3-175(A)(2) the Department of Insurance must be notified of an insurer's or an adjustor's failure to authorize and pay benefits for medical treatment.

44) Pursuant to 38-55-570 (A) the office of the Attorney General must be informed of the same actions/inactions via notification to the Fraud Department of the same.

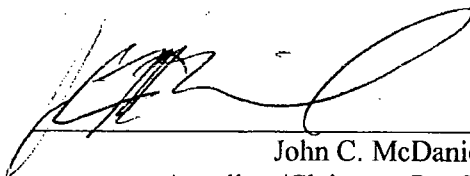
45) The Claimant contends that penalties should be enforced in the below amount for failure to provide medical treatment and failure to provide medical treatment in a timely manner.

46) The Claimant contends that sanctions applied on his behalf should also reflect the below computations.

TREATMENT	PRESCRIBED	RECEIVED/ APPROVED	DAYS	\$500 PER DAY
Physical Therapy	1/9/12	2/27/12	49	\$24,500.00
		5/1/12	21	\$10,500.00
Wound Treatment	1/27/12	Never Received; 4/02/12	65	\$32,500.00
		6/27/12-healed	96	\$48,000.00
Pain Management	5/14/12	10/30/12	169	\$84,500.00
Orthotics	7/02/12	On or after 11/1/12	121	\$60,500.00

Conclusion

For the foregoing reasons, as well as any other Rule, case law, statute or authority as may be applicable, whereas: the commission has authority to access sanctions, and to double all fines and penalties; 1)The Claimant moves this Commission to enforce penalties on Respondents equal to the maximum allowable, and 2) Sanctions paid to the claimant in the equal amount, or in the alternative, an amount seen fit by the commission of not less than 1/10th the maximum per occurrence, per day, and/or 3) hold an evidentiary hearing on the merits of this motion alone, allowing this issue to be adjudicated fairly, and 4) report this failure to provide treatment to the Department of Insurance and the Fraud Division of the Attorney General for further compliance investigation.



John C. McDaniel
Appellant/Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

ORTHOPAEDIC SPECIALISTS OF CHARLESTON

Blake L. Ohlson, MD

Patient Name: MCDANIEL, JOHN

DOB: [REDACTED]

PATIENT #: 30-86-77-4

2093 Henry Tecklenburg Drive

Suite 200 East

Charleston, SC 29414

Telephone (843) 958-2500

Fax (843) 958-2680

Date of Service: 1/9/2012

FOLLOW-UP

This patient is here for followup today for forklift injury, a crush injury to his foot on November 21, 2011. He is doing well. He states still pain in the foot and stiffness, still having difficulty bearing weight on the foot.

Examination today shows a substantial amount of swelling, eschar measuring approximately 3.5 cm in diameter over the dorsolateral border of his foot and some decreased sensation along the sural nerve distribution. He also has diffuse tenderness across the metatarsal region.

X-RAYS: Three views of his foot show some diffuse osteopenia and neck fractures involving the second through fifth metatarsals. The fourth has the most displacement with slight shortening, but the cascade of the metatarsals is still maintained. Also a fracture of the proximal phalanx of the fifth toe.

IMPRESSION: Followup for 2-5 metatarsal fractures with proximal phalanx fracture of the fifth toe.

PLAN: Eschar was debrided on the foot today. We talked about wet-to-dry dressing changes. He may begin progressive weightbearing, transition to a postop shoe. I am going to also begin him in therapy working on range of motion and gait training-type exercises, and see him back in 6 weeks' time for followup. I am going to keep him out of work until the wound is healed.

Blake L. Ohlson, MD

BLO/tg

DD: 1/9/2012 3:18:00 PM

DT: 1/10/2012 10:43:17 AM

16453988

This document was electronically signed by Blake Ohlson, MD

Date and Time: 2/26/2012 10:48:54 PM

ORTHOPAEDIC SPECIALISTS OF CHARLESTON

Kate Eden, PA-C

Patient Name: MCDANIEL, JOHN

DOE [REDACTED]

PATIENT #: 30-86-77-4

2093 Henry Tecklenburg Drive

Suite 200 East

Charleston, SC 29414

Telephone (843) 958-2500

Fax (843) 958-2680

Date of Service: 1/27/2012

FOLLOW-UP

The patient presented for a followup for his left foot. The patient sustained a crush injury involving a forklift while at work on November 21, 2011. He states he has had increased drainage from the area that was debrided at his visit with Dr. Ohlson a few weeks ago. He denies constitutional symptoms such as fevers, chills, or night sweats. He is concerned about the increase in drainage.

On examination today, he does have a substantial amount of residual swelling. The eschar measures approximately 3.5 cm in diameter over the dorsolateral border of the foot with a slight amount of serous drainage present. No evidence of purulence or active infection. There is decreased sensation along the distribution of the sural nerve. Diffuse tenderness about the metatarsal region.

IMPRESSION: The patient presents for a followup for metatarsal fractures 2-5 with proximal phalanx fracture of the fifth toe, date of injury November 21, 2011.

PLAN: The patient is to continue wet-to-dry dressing changes in the area of the eschar wound. He has not been performing wet-to-dry dressing changes. ~~I have recommended that he be evaluated by wound care. I have given him a prescription for this.~~ I have also placed him on a short course of antibiotics due to the fact that he states that there has been a fairly substantial increase in drainage as of recently, Bactrim DS 1 tablet p.o. b.i.d. #10 with 1 refill. He was also given a prescription for Lortab 5/500 mg 1-2 tablets p.o. q.6 h. p.r.n. pain #30 with no refills. He will follow up in approximately 4 weeks. He already has an appointment scheduled with myself or Dr. Ohlson. He was told to call the office with questions or concerns. He will remain out of work until his next followup.

Kate Eden, PA-C

Blake L. Ohlson, MD

KE/tg

DD: 1/29/2012 10:13:00 PM

DT: 1/31/2012 8:41:42 AM

16617675

This document was electronically signed by Blake Ohlson, MD

Date and Time: 2/26/2012 10:46:19 PM

3086774



OCTOPAEIC SPECIALISTS

Receipt
1/27/12

Name: JOHN MCDANIEL Date: 1/27/12
 Address: Refer for contact lens
 Ex. H. R. [unclear] [unclear]
 Eye Center, 11/28/11
 1711 E. [unclear] [unclear] [unclear]
 [unclear] [unclear] [unclear] [unclear]

(City, VA, VA) Eye Eden, P.A.-C
 Physician Assistant
 1911 SW
 641 Lakeview Dr. 29154 2911 Hamrick Rd. Ste 200
 Ab. Pl. on S. 29154 S. Charleston St. 29154
 843-456-2500 410-655-3300 843-456-2500

w/c

17002136285

ORTHOPAEDIC SPECIALISTS OF CHARLESTON

Blake L. Ohlson, MD

Patient Name: MCDANIEL, JOHN

DOB: [REDACTED]

PATIENT #: 30-86-77-4

2093 Henry Tecklenburg Drive
Suite 200 East
Charleston, SC 29414
Telephone (843) 958-2500
Fax (843) 958-2680

Date of Service: 2/20/2012

FOLLOW-UP

The patient is here for followup for metatarsal fractures 2-5, proximal phalanx fracture, fifth toe, delayed wound healing. He states that he works for Snelling. He has been trying to facilitate getting wound care as well as physical therapy. He is still using crutches surprisingly. Although he has retained the Steinberg Law Firm for his worker's comp claim, he has really not been able to simply follow the recommendations that I have stated in the past visit.

Exam today still shows a fair amount of swelling. Stiffness in the MP joints. He is neurovascularly intact. The area measures about 2 cm x 2 cm, extends below the subcutaneous tissue, appears clean in the dorsolateral portion of his foot and some numbness in the distribution of the sural nerve and intermediate branch of the superficial peroneal nerve. No evidence of infection.

X-rays today show some significant disuse osteopenia. However, the fractures show good bridging callus.

IMPRESSION: Followup for a 2-5 metatarsal fracture as well as proximal phalanx fracture.

PLAN: ~~I encouraged him to touch base with the Steinberg Law Firm to help facilitate communication with the work case manager and get him into some wound care, help speed along the recovery of the wound, and also physical therapy,~~ lagging behind as his x-rays suggest. I will see him back in about 6 weeks' time for followup. He really needs to get off the crutches and start weaning into a shoe with continued dressing changes.

Blake L. Ohlson, MD

BLO/cma

DD: 2/20/2012 2:23:00 PM

DT: 2/23/2012 10:51:04 AM

16812779

This document was electronically signed by Blake Ohlson, MD

Date and Time: 2/26/2012 10:44:44 PM

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116275

John McDaniel, Employee,
Claimant,

vs.

Career Employment Professional d/b/a
Snelling Staffing, Employer, and

UNITED WISCONSIN INSURANCE,
Carrier,

Defendants.


AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, LoriAnn L. Beck, who, upon being duly sworn, deposes and says:

1. I currently work for Steinberg Law Firm as a paralegal for Thomas M. White.
2. I was assigned the file for John McDaniel while Mr. White was representing him.
3. We do not keep a log of incoming and/or outgoing phone calls.
4. During the period of December 5, 2011 through May 31, 2012, calls were made to the adjustor at United Wisconsin, Dawn Bailey Bruce, regarding medical treatment for Mr. McDaniel, specifically wound care and Physical Therapy.


LoriAnn L. Beck

SWORN to before me this
5th day of June, 2013.


Notary Public for South Carolina
My Commission Expires: 11-14-14

Employee Master Dossier Report

HISTORY LISTING (CONTINUED)

Actual Date/Time	ID	Event	Employee	Customer/Contact
				called in available
5/19/2012 8:41 AM	0000N43S	Offer Accepted	Mcdaniel, John	Barnwell, Whaley, Patterson, an Carberry, Judy
5/14/2012 4:01 PM	0000N43V	Workers' Compensatio	Mcdaniel, John	
				tt john, went to dr. olson and said appt went well. .lasted long time so he did not report to work;has to go to pt first thing in am and will be to work around 10:30
5/9/2012 7:55 AM	0000N3H3	General Comment	Mcdaniel, John	
				julie called and asked me to call him and tell him to be there at 9
5/8/2012 8:43 AM	0000N43T	Workers' Compensatio	Mcdaniel, John	
				tt john and he mentioned he has been going to gold's gym 3 days/wk
4/13/2012 11:34 AM	0000N0M7	Workers' Compensatio	Mcdaniel, John	
				Jim emailed me yesterday 4/12 - He will finish up the week in our office. He is leaving for a personal trip and will be out of state all next week and the following Monday. 4/24 will be his first day back for any kind of work
4/10/2012 9:23 AM	0000N043	Offer Accepted	Mcdaniel, John	Snelling Personnel
4/4/2012 10:42 AM	0000M2RM	Workers' Compensatio	Mcdaniel, John	
				Got paperwork showing John released for light duty (sedentary work only); have called and offered him position to come in and shred in our office for \$9. 10/hr
2/21/2012 2:47 PM	0000MSNM	Workers' Compensatio	Mcdaniel, John	
				Per Dawn Bailey @ United re: 2-20-12 Dr. Appt. I received the work note but not the actual medical report. There was a request for therapy and that has been authorized. This ortho is not the quickest at having their medical reports transcribed and submitted to us. Jim has forwarded me a light duty job offer that I will submit to his attorney and physician to see if it will be approved.
2/16/2012 3:48 PM	0000MS40	Problem/Trouble Shoo	Mcdaniel, John	
				John called me back and said he was frustrated with insurance. His Dr had written him for physical therapy on his foot as well as debridement of his wound and it has been hung up waiting on approval. I sent message to Dawn bailey to get an update.
2/14/2012 9:02 AM	0000MR28	Follow Up	Mcdaniel, John	
				lm to check on status
2/9/2012 10:54 AM	0000MR0G	Offer Other	Mcdaniel, John	TorqTek (formerly Getrag Precis Thomkins, Anita
				I am making him inactive until the doctor clears him to go back to work.
11/10/2011 4:38 PM	0000MDW8	Offer Accepted	mcdaniel, john	Revere Building Products Cobb, Dan
11/9/2011 1:49 PM	0000MDMF	Offer Other	mcdaniel, john	Revere Building Products Cobb, Dan
				Has an interview on November 10th at 3:00pm. I sent Dan his infonation already.
11/9/2011 1:46 PM	0000MDMB	Offer Other	Mcdaniel, John	ZZ-Snelling-Charleston
				angela is talking to him about a job
11/9/2011 9:53 AM	0000MDJ4	Offer Other	mcdaniel, john	Revere Building Products Cobb, Dan

Lori Beck

From: Samm Creech
Sent: February 23, 2012 10:28 AM
To: twhite@steinberglawfirm.com
Subject: Regarding: McDaniel, John v. Snelling Staffing (File #: 20117192)

The adjuster, Dawn Bailey, called me back and she has authorized 12 PT visits with RCC Therapy. She is going to call them again and make sure they received the authorization.

Samm

884-7880 Booke
mt P for Billing

Daily Note

DATE:	2/27/2012	INSURANCE:	UNITED HEARTLAND
PATIENT:	McDaniel, John	SSN:	<No Resources in Database>
PATIENT #:	1000052400	DATE OF BIRTH:	
DIAGNOSIS:	INJURY - Fracture - Foot - Metatarsal(s) - Closed (825.25)		
PROBLEM SITE:	Foot - Left		
SITE DESCRIPTION:	West		
REFERRAL:	Blake L Ohlson	VISIT DUR:	

Subjective

Patient is a 29 year-old male who presents to Physical Therapy for evaluation and treatment of: L foot metatarsal fractures/crush injury
 Current History/Treatment: Patient reports that his L foot was ran over by a 800 lb fork lift truck. Metatarsals 2-5 were fractured at mid forefoot-per patient. Did not have surgery but has been wearing boot and slow progress with WB.

Past History/Treatment: Previous minor L foot/ankle injuries

DOI: 11/20/11

Symptoms: Patient reports constant dull pain over L foot, aching around ankle. Numbness/tingling at 4-5 toes and lateral foot, hypersensitivity and tingling around 1st toe and ball of foot.

Pain scale (VAS) where 0= no pain and 10= severe pain:

Best: 3/10

Worst: 8/10

Aggravation Factors/Functional limitations: WB L foot, walking, stairs

Easing Factors: pain meds (Vicodin)

24 Hour Pattern: Worse in the morning

Work duties/recreation/hobbies: Previously working for Snelling Staffing as a delivery driver. Plans to return to job.

Previous Level of Function: WNL independent

Home environment: 10 stairs in home

General Health: Good

Meds: NA

Imaging studies/other testing: x-ray

Next MD appt: April 2

Objective

Observation: open wound 2x3 cm that has been dressed at lateral L foot. Patient amb into clinic with foot boot and 1 crutch.

Palpation: Hypersensitivity at plantar surface of L forefoot.

Please refer to the following objective findings recorded during the patient's evaluation.

Patient received skilled therapy in clinic today which included evaluation, education (condition, HEP, POC), demonstration of HEP (flowchart), Ultrasound-100% 1.0 MHz with 2.0 w/cm2 8 min at L foot/ankle for healing, swelling, desensitization, cryoboot L ankle. Patients skin was checked prior to and after administering cold pack with no deficiencies noted.

See Flow Chart for specific treatment administered to this patient.

Direct Treatment Time = 55 min

Total Treatment Time = 55 min

Objective Finding	Initial	Last	Current	Goal
Ankle AROM (L) Dorsiflexion	2		2	WNL
Ankle AROM (L) Eversion	8		8	WNL
Ankle AROM (L) Inversion	20		20	WNL
Ankle AROM (L) Planterflexion	35		35	WNL
Ankle Girth Figure 8 (L)	59 cm		59 cm	WNL
Ankle Girth Figure 8 (R)	57 cm		57 cm	WNL

279

Exercise/Modality Description (sets/reps/weight/duration)	2/27/2012				
Ankle/Foot - Toe Raises - in sitting	3/10/0/15				
Ankle/Foot - Heel Raise - in sitting	3/10/0/15				
Ankle/Foot - Flutters	3/10/0/15				
Ankle/Foot - Heelcord stretch	3/20/0/15				
Ultrasound	8				
Cryocuff	10				
Ankle/Foot - Ankle Pumps	3/10/0/15				

Assessment

Patient presents to physical therapy with signs and symptoms consistent with L foot metatarsal fractures limiting his ability to perform normal walking. Rehabilitation potential: Good

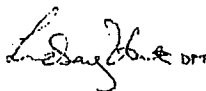
~~Potential barriers to patient's ability to reach maximum rehab potential: Delayed attendance to PT.~~

All short term goals will be met in 3 weeks , by 3/19/12.

All long term goals will be met in 6 weeks , by 4/9/12.

Plan

Patient to be seen for 2-3 times a week for 6 weeks for: strengthening, stretching, manual therapy, gait training, proprioception/balance training, desensitization training, and modalities. Focus for next session: Emphasize desensitization, gait training, and reduction of swelling.



Date: 2/27/2012

Lindsay Hunter PT

Lori Beck

From: Lori Beck
Sent: March 28, 2012 3:53 PM
To: Tom White
Subject: Regarding: McDaniel, John v. Snelling Staffing (File #: 20117192)

I spoke the adjustor about his wound care treatment. She had not gotten a script or a request for it from Dr. Ohlsen's office. She said she has had a very hard time getting records or anything from them. She has placed a call to Dr. Ohlsen's assistant and left a message to see where they want Mr. McDaniel to go.

LoriAnn L. Beck
Paralegal to Thomas M. White
The Steinberg Law Firm
118 Goose Creek Blvd, South
PO Box 1028
Goose Creek, SC 29445
Ph 843-572-0700

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MAY 01 2012



MCDANIEL, JOHN

30 Y old Male, DOB: [REDACTED]

700 DANTEL ELLIS DRIVE, CHARLESTON, SC-29412

Home [REDACTED]

Guarantor: MCDANIEL, JOHN

Appointment Facility: Orthopaedic Specialists Of Chas

04/02/2012

Blake L Ohlson MD

Current Medications

Percoet
 Bactrim DS 800-160 MG Tablet 1 tablet every 12 hrs
 Lortab 5-500 MG Tablet 1 tablet as needed for pain every 6 hrs
 Ultram 50 MG Tablet 1 to 2 tablets every 6 hrs
 Medication List reviewed and reconciled with the patient

Past Medical History

LEFT FOOT INJURY

Surgical History

Double Hernia sx Birth

Family History

SIGNIFICANT FAMILY HISTORY OF BREAST CANCER.

Social History

Tobacco Use:
 Tobacco Use/Smoking
 Are you a *current smoker*
 How often do you smoke cigarettes? *every day*
 How many cigarettes a day do you smoke? *6-10*
 How soon after you wake up do you smoke your first cigarette? *after 60 minutes*
 Are you interested in quitting? *Thinking about quitting*
 Tobacco Use/Smokeless: *Denies .*
Drugs/Alcohol:
 Drugs: *Denies .*
 Alcohol Screen: *Admits*
 Did you have a drink containing alcohol in the past year? *Yes*
 How often did you have a drink containing alcohol in the past year? *2 to 3 times a week (3 points)*
 Points *3*
 Interpretation *Negative*

Allergies

N.K.D.A.

Hospitalization/Major**Reason for Appointment**

1. Left Foot Pain

History of Present Illness**Symptom(s):**

Patient is here followup for her crush injury to his foot with multiple metatarsal fractures in a delayed wound healing states he still was not in the wound healing he has however began physical therapy and states he is showing slow but progressive improvement. He states the Ultram made her feel hot so he's no longer taking that. In fact he never got the prescription filled and states that his girlfriend had some that he took.

Vital Signs

Ht 6 ft 3 in, Wt 250 lbs, BMI 31.24.

Examination**General Examination:**

PERIPHERAL PULSES: 2+ dorsalis pedis.
 NEUROLOGIC: Patient is insensate in the distribution of the sural nerve. Rest the foot is neurologically intact.
 ORTHOPEDIC Wound is nearly healed on the foot measures approximately 1 x 1 cm it is very superficial in nature there is no purulence no evidence of infection swelling is present but diminishing. He still has diffuse tenderness across the metatarsal region. He still has some stiffness in the MTP joints. Ankle also shows some minor stiffness..

Assessments

1. Crush injury - foot - 928.20 (Primary)

Treatment**1. Crush injury - foot**

Start Celebrex Capsule, 200 MG, 1 capsule, Orally, Once a day, 30 day (s), 30, Refills 01
 Patient will continue physical therapy at this time. Working on strength range of motion activities. He is a bit behind his recovery. at This point the wound is nearly healed so wound care specialist will not be necessary. He was instructed on local wound care. Advised him to quit smoking his as this affects the rate of healing. The diminished sensation in the distribution of the sural nerve may be permanent. Because he did not tolerate all tramadol which try him on Celebrex he's


Patient: MCDANIEL, JOHN DOB: [REDACTED] Progress Note: Blake L Ohlson MD 04/02/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Diagnostic Procedure
Denies Past Hospitalization

also tried first-generation anti-inflammatories in the past and this provided incomplete relief of symptoms. We'll see him back in approximate 6 weeks' time for followup. Work should consist of sedentary duty only.

Follow Up
6 Weeks



Electronically signed by BLAKE OHLSON MD, MD on
04/02/2012 at 11:36 PM EDT

Sign off status: Completed

Orthopaedic Specialists Of Chas
2093 HENRY TECKLENBURG DR
CHARLESTON, SC 29414-5742
Tel: 843-958-2500
Fax: 843-606-8059

Patient: MCDANIEL, JOHN DOB: [REDACTED] Progress Note: Blake L Ohlson MD 04/02/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

JUN 04 2012



MCDANIEL, JOHN

30 Y old Male, DOB [REDACTED]

700 DANIEL ELLIS DRIVE, CHARLESTON, SC-29412

Home [REDACTED]

Guarantor: MCDANIEL, JOHN

Appointment Facility: Orthopaedic Specialists Of Chas

05/14/2012

Blake L Ohlson MD

Current Medications

Percocet
 Bactrim DS 800-160 MG Tablet 1 tablet every 12 hrs
 Lortab 5-500 MG Tablet 1 tablet as needed for pain every 6 hrs
 Ultram 50 MG Tablet 1 to 2 tablets every 6 hrs
 Celebrex 200 MG Capsule 1 capsule Once a day, stop date 06/01/2012
 Medication List reviewed and reconciled with the patient

Past Medical History

LEFT FOOT INJURY

Surgical History

Double Hernia sx Birth

Family History

SIGNIFICANT FAMILY HISTORY OF BREAST CANCER.

Allergies

N.K.D.A.

Hospitalization/Major**Diagnostic Procedure**

Denies Past Hospitalization.....

Percocet

Bactrim DS 800-160 MG Tablet 1 tablet every 12 hrs

Lortab

Ultram 50 MG Tablet 1 to 2 tablets every 6 hrs

Celebrex 200 MG Capsule 1 capsule Once a day, stop date 06/01/2012

Medication List reviewed and reconciled with the patient

Percocet

Bactrim DS 800-160 MG Tablet 1 tablet every 12 hrs

Lortab

Ultram 50 MG Tablet 1 to 2 tablets every 6 hrs

Celebrex 200 MG Capsule 1 capsule Once a day, stop date 06/01/2012

Medication List reviewed and reconciled with the patient

Percocet

Bactrim DS 800-160 MG Tablet 1 tablet every 12 hrs

Lortab

Ultram 50 MG Tablet 1 to 2 tablets every 6 hrs

Celebrex 200 MG Capsule 1 capsule Once a day, stop date 06/01/2012

Medication List reviewed and reconciled with the patient

Percocet

Bactrim DS 800-160 MG Tablet 1 tablet every 12 hrs

Lortab

Ultram 50 MG Tablet 1 to 2 tablets every 6 hrs

Celebrex 200 MG Capsule 1 capsule Once a day, stop date 06/01/2012

Medication List reviewed and reconciled with the patient

Reason for Appointment

1. F/u left foot crush injury, multiple metatarsal fractures
2. date of injury: 11/21/2011. OSC BLO Follow Up

History of Present Illness**Symptom(s):**

This patient is here for followup of a crush injury to his left foot. He continues to have complaints of pain. He obtained a second opinion from podiatrist Charles Gudas who suggested he may need surgery on his fifth toe. He continues to have difficulty quitting smoking. He also states that he began to notice ingrown toenail great toe on the left foot. He states a history of ingrown toenails and has had surgery on the right in the past. he has been unable to get back into regular shoes. He is not working. He states persistent numbness on the outside border of his foot. He is not currently using any assistive devices.

Examination**General Examination:**

RADIOGRAPHS _____

Orthopedics FNA:

Orthopedic Follow Up

Examination left foot shows the wound is nearly healed. There is an area that is insensate in the distribution of the sural nerve as well as intermediate branch of the superficial peroneal nerve. In addition there is a small dorsal prominence present on the dorsal lateral aspect of the fifth toe. There is no evidence of ulceration; there is no evidence of callus formation, and there is no evidence of skin breakdown. he has diminished sensation in this area. He ambulates with an exaggerated antalgic gait. there is no hypersensitivity. Tinel's is negative. There is no evidence of active infection. No pain whatsoever with motion of the fifth toe. He has noted pes planus on examination.

Assessments

1. Crush injury - foot - 928.20 (Primary)
2. FX Metatarsal - clsd - 825.25

Treatment

1. Crush injury - foot

Patient: MCDANIEL, JOHN DOB [REDACTED] Progress Note: Blake L Ohlson MD 05/14/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Diagnostic Imaging:XR FOOT 3 VIEWS 3 views left foot weight bearing. There is diffuse osteopenia noted. The fractures appear healed on the second through fifth metatarsal fractures. Fracture of the proximal phalanx of fifth toe appears healed with residual overhang of the fracture fragment

Patient presents followup for crush injury to left foot with fractures of second through fifth metatarsals and proximal phalanx of the fifth toe complicated by delayed wound healing. In addition he presents with an ingrown toenail of the great toe left foot.

With respect to the ingrown toenail he will return to clinic tomorrow to have partial nail resection performed was noted purulence was expelled on exam today however the toe itself appeared benign in appearance. Talked about the risk of the procedure including infection and complication recurrence and incomplete relief of pain.

With respect to his crush injury and has been nearly 6 months since the injury occurred. I am almost certain that he will have permanent problems associated with this injury. Despite healing of the fractures he still has significant soft tissue damage. I recommended he continue physical therapy working on range of motion activities and gait training. ~~It would also be reasonable to consider referral to chronic pain management doctor.~~ At this point his foot is too swollen to wear regular shoes. He had a number of pointed questions today as to the appropriateness of removing a small overhanging fracture fragment on the fifth toe. ~~because it took several months for the wound on his foot to heal it would not have been appropriate to place a surgical incision on an area that is asymptomatic.~~ It would have also placed him at risk for infection. He was told in a second opinion that there may be a risk of ulceration. At this point his exam shows no evidence of ulceration and while he is insensate the toe has shown no signs of skin breakdown. I do believe this to be a concern however and perhaps more importantly the risk factors associated with performing surgery at this time. He has a history of delayed wound healing and severe trauma to the foot just proximal to the fifth toe. Before any surgery was even considered I would recommend that he have a vascular workup especially to document toe pressures in the fifth toe. In addition he has been unable to quit smoking which adds risk for infection and wound complications, and loss of the toe. At some point I suspect he will require removal of the malunited fragment. However there is no rush to this. I've advised him he needs to be paying close attention to the toe on a daily basis. If the toe shows any evidence of being at risk for ulceration then it would be more appropriate to proceed with surgery. He also had questions regarding use of orthotics. I would advise against a use of a medial arch support in this instance. Although he has pes planus, posting the medial arch will inevitably tilt him into placing more pressure on the lateral column of the foot or more specifically the zone of injury that continues to cause him grief. Lastly Mr. McDaniel expressed some interest in considering transfer of care to podiatrist Charles Gudas. If Dr. Gudas has further recommendations he thinks will be beneficial to Mr. McDaniel and Mr. McDaniel agrees and I'll be happy to assist with this in any way possible. I do believe he should be close to maximum medical improvement by the 8-9 month mark status post injury.

Patient: MCDANIEL, JOHN DOB: [REDACTED] Progress Note: Blake L. Ohlson MD 05/14/2012
 Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Procedure Codes

73630 X-RAY EXAM OF FOOT

Follow Up

tomorrow



Electronically signed by BLAKE OHLSON MD, MD on
05/14/2012 at 08:28 PM EDT

Sign off status: Completed

Orthopaedic Specialists Of Chas
2093 HENRY TECKLENBURG DR
CHARLESTON, SC 29414-5742
Tel: 843-958-2500
Fax: 843-606-8058

Patient: MCDANIEL, JOHN DOB: [REDACTED] Progress Note: Blake L Ohlson MD 05/14/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Daily Note

DATE:	6/27/2012	INSURANCE:	UNITED HEARTLAND
PATIENT:	McDaniel, John	SSN:	<No Resources In Database>
PATIENT #:	1000052400	DATE OF BIRTH:	
DIAGNOSIS:	INJURY - Fracture - Foot - Metatarsal(s) - Closed (825.25)		
PROBLEM SITE:	Foot - Left		
SITE DESCRIPTION:	West		
REFERRAL:	Blake L Ohlson	VISIT DUR:	

Subjective

The patient states he has returned to working out at the gym every day due to no longer having a job to attend. He still has the most difficulty placing weight into his forefoot secondary to pain in the 5th toe. The small wound that remains on his foot recently opened which he thought was completely healed as of yesterday.
MD follow up on July 2nd.

Objective

Patient received skilled therapy in clinic today which included Bike, therex (flowchart), cryocuff L ankle. manual techniques for ankle mobility/rom. See Flow Chart for specific treatment administered to this patient.
updated objective measurements for ROM and goals.

DTT: 32 min

TTT: 40 min

Objective Finding	Initial	Last	Current	Goal
Ankle AROM (L) Dorsiflexion	2	10	18	WNL
Ankle AROM (L) Eversion	8	15	15	WNL
Ankle AROM (L) Inversion	20	48	40	WNL
Ankle AROM (L) Planterflexion	35	58	50	WNL
Ankle Girth Figure 8 (L)	59 cm	56	58.5	WNL
Ankle Girth Figure 8 (R)	57 cm	57	56.5	WNL
Ankle MMT (L) Dorsiflexion		+4/5	5/5	
Ankle MMT (L) Eversion		+3/5	4/5	
Ankle MMT (L) Inversion		+4/5	5/5	
Ankle MMT (L) Planterflexion		3/5	4/5	

Exercise/Modality Description (sets/reps/weight/duration)	6/27/2012	6/25/2012	6/20/2012	6/15/2012	6/13/2012
Ankle/Foot - Heelcord stretch	3/20/0/2	3/20/0/2	3/20/0/2	3/20/0/2	3/20/0/2
Cryocuff	10	10	10	10	10
Aerobic- Bike	6	6	6	6	6
Ankle - Theraband Dorsiflexion	3/10/0/2	3/10/0/2			3/10/0/2
Ankle - Theraband Eversion	3/10/0/2	3/10/0/2			3/10/0/2
Ankle - Theraband Inversion	3/10/0/2	3/10/0/2			3/10/0/2
Ankle - Theraband Planterflexion	3/10/0/2	3/10/0/2			3/10/0/2
Ankle/Foot - Ankle Pumps - with resistance band on rocker	1/30/0/2				
Ankle/Foot - Toe Curls w/towel		1/10/0/3			
Knee - Squats - on bosu platform		3/10/0/3	3/10/0/15	3/10/0/15	
Proprioception/Balance Single Leg Stance - on bosu ball		3	3	3	
Knee - Terminal Knee Extension w/ tubing		3/10/0/3	3/10/0/15	3/10/0/15	
Isotonic - hip abd/add				2/20/40/15	
Isotonic - hip flex/ext				2/20/40/15	
Knee - NK Table-Extension				3/20/12.5/3	
Knee - NK Table-Flexion				3/20/12.5/3	

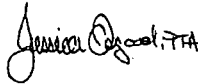
Exercise/Modality Description (sets/reps/weight/duration)	6/27/2012	6/25/2012	6/20/2012	6/15/2012	6/13/2012
Knee - Leg Press - Left					3/10/60/4

Assessment

STG # 1 met, LTG #1 met. Strength has returned to normal but is limited with manual resistance due to pain along the dorsum and lateral aspect of the 5th metatarsal. Able to complete all gym activities if modifications are made to place weight into the heel of the L foot versus into the forefoot. The patient has reached a plateau with therapy at this time and has become independent with his gym activities for functional LE/ankle strengthening.

Plan

Pt to complete 1 more visit of PT prior to following up with his MD to discuss the next phase of treatment. Possible D/C from PT.



Date: 6/27/2012

Jessica Osgood, PTA

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,

Employee,

Claimant,

vs.

SNELLING STAFFING SERVICES,

Employer,

AND

UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND

Carrier,

Defendants.

**DEFENDANTS' RESPONSE TO
CLAIMANT'S MOTION FOR
PENALTIES AND SANCTIONS FOR
FAILURE TO PROVIDE MEDICAL
TREATMENT AND FAILURE TO
PROVIDE MEDICAL TREATMENT
IN A TIMELY MANNER**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOHN
MCDANIEL, *PRO SE* CLAIMANT:

PLEASE TAKE NOTICE that the above-named Defendants hereby respond and object pursuant to Reg. 67-215 to Claimant's Motion for Penalties and Sanctions for Failure to Provide Medical Treatment and Failure to Provide Medical Treatment in a Timely Manner as follows:

1. The Claimant initially filed a Form 50, requesting a hearing, on May 18, 2012. In his hearing request, the Claimant requested an increase in his compensation rate based on his alleged projected future earnings.
2. Defendants filed a timely Form 51 on June 15, 2012, denying the Claimant was entitled to a deviation from S.C. Code Ann. §42-1-40.
3. A Form 50/51 hearing was scheduled for the Commission on July 25, 2012.

4. Prior to the July 25, 2012 hearing, the parties requested a postponement to allow for additional discovery. The request was granted, and the hearing was rescheduled to August 24, 2012.

5. Prior to the August 24, 2012 hearing, the parties agreed by Consent Order to postpone the hearing and return the file to general files to allow for additional discovery, including but not limited to the deposition of the Claimant's supervisor.

6. On September 12, 2012, the Claimant refiled his Form 50, again requesting an increase in his compensation rate.

7. On September 17, 2012, Defendants filed a Form 21, requesting termination of the Claimant's temporary total disability benefits based on his release to maximum medical improvement by the authorized treating physician, Dr. Blake L. Ohlson.

8. On October 5, 2012, Claimant filed an Amended Form 50 requesting additional medical treatment to include a pain management evaluation.

9. A hearing was held on November 28, 2012 on Claimant's Form 50 and Defendant's Form 21 before Commissioner Melody James. Of note, at the hearing the Claimant never requested any type of penalties or sanctions for failure to provide treatment as currently alleged.

10. Commissioner James issued a Decision and Order on January 4, 2013, finding the Claimant reached maximum medical improvement as of August 13, 2012 and sustained 34% loss of use of his leg. Also, Commissioner James found the Claimant's applicable compensation rate is \$358.62, based on average weekly wage of \$537.91. Claimant is now requesting penalties and sanctions pursuant to S.C. Code Ann. §42-3-175.

11. The Claimant alleges his treatment was delayed and has requested sanctions and

penalties to be enforced against the Carrier.

12. Defendants contend the Claimant is not entitled to penalties and/or sanctions as requested pursuant to S.C. §42-3-175.

13. Claimant inaccurately relies on §42-3-175 in his request for penalties and sanctions. This code section specifically states that a Claimant can bring an action before the Commission to enforce an order authorizing medical treatment or payments of benefits.

14. The first and only Decision and Order in this case addressing medical treatment is dated January 4, 2013. Commissioner James directed medical treatment to be provided as recommended by Dr. Ohlson in his report of August 13, 2012.

15. The Claimant has continued to receive medical care and appointments with both Dr. Ohlson and Dr. Tavel since Commissioner James' issuance of her January 4, 2013 Order.

16. Defendants contend there is no evidence of any willful failure to authorize medical treatment and/or paid benefits pursuant to Commissioner James' January 4, 2013 Order.

17. Claimant is requesting sanctions in the amount of \$500 a day for any delay in medical treatment after a treating physician has issued a recommendation.

18. Defendants contend all treatment was provided in an expeditious manner upon receipt of request by the treating physicians. Defendants do not receive medical reports instantaneous with an appointment. Defendants have requested and provided medical treatment pursuant to S.C. Code §42-15-60 when all records have been provided with a properly executed HCFA as required by law.

19. As evidenced in the Claimant's own attachments to his Motion, the adjuster experienced difficulties receiving medical records from Dr. Ohlson's office including prescriptions and referrals. Defendants contend the adjuster and insurance company provided all

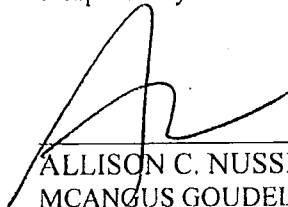
treatment within a reasonable time as required by law.

20. Defendants contend there is no evidence to support the Claimant's contentions and further Defendants assert §42-3-175 does not apply to the period of time the Claimant is requesting sanctions. Claimant is requesting sanctions for treatment provided and prescribed between January 9, 2012 and November 1, 2012. Of note, a hearing was held on November 28, 2012 and the Claimant specifically did not request any penalties or sanctions at that time. Further, the first issuance of an order is January 4, 2013 after the date of the medical treatment stated in the Claimant's order.

21. Again, Defendants contend the Claimant is causing undue delays in the appellate process and request attorneys fees and costs associated with responding to Claimant's multiple motions.

WHEREFORE, based on all of the above, Defendants respectfully request that the South Carolina Workers' Compensation Commission issue an Order, denying Claimant's Motion for Penalties and Sanctions for Failure to Provide Treatment and Failure to Provide Treatment in a timely manner.

Respectfully submitted,



ALLISON C. NUSSBAUM
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 534-0101
Attorneys for the Employer/Carrier

Charleston, South Carolina
June 21, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,

Employee,

Claimant,

vs.

SNELLING STAFFING SERVICES,

Employer,

AND

UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND

Carrier,

Defendants.

**MOTION TO QUASH CLAIMANT'S
JUNE 27, 2013 SUBPOENAS TO
ANGELA BALDWIN, JIM
PASCUTTI, AND NICOLE SERVICE**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOHN
MCDANIEL, *PRO SE* CLAIMANT:

YOU WILL PLEASE TAKE NOTICE the undersigned attorneys hereby move to quash Claimant's three subpoenas, dated June 27, 2013 commanding production of various documents and appearances by Nicole Service, Angela Baldwin, and Jim Pascutti at the July 8, 2013 remand hearing in the above-referenced matter. The grounds for Defendants' Motion are as follows:

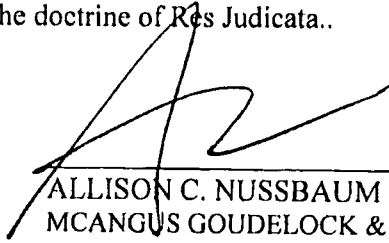
1. The Claimant initially filed a Form 50, requesting a hearing, on May 18, 2012. In his hearing request, the Claimant requested an increase in his compensation rate based on his alleged projected future earnings.
2. Defendants filed a timely Form 51 on June 15, 2012 denying the Claimant was entitled to a deviation from S.C. Code Ann § 42-1-40.

3. A Form 50/51 hearing was scheduled before the Commission on July 25, 2012.
4. Prior to the July 25, 2012 hearing, the parties requested a hearing postponement to allow for additional discovery. The request was granted, and the hearing was rescheduled to August 24, 2012.
5. Prior to the August 24, 2012 hearing, the parties agreed, by Consent Order, to postpone the hearing and return the file to General Files to allow for additional discovery, including, but not limited to the deposition of the Claimant's supervisor, Dan Cobb.
6. On September 12, 2012, the Claimant re-filed his Form 50, again requesting an increase in his compensation rate.
7. On September 17, 2012, Defendants filed a Form 21, requesting termination of the Claimant's temporary total disability benefits based on his release to maximum medical improvement by the authorized treating physician, Dr. Blake L. Ohlson.
8. On October 5, 2012, Claimant filed an Amended Form 50, requesting additional medical treatment to include a pain management evaluation.
9. A hearing was held on November 28, 2012 on Claimant's Form 50 and Defendants' Form 21.
10. Commissioner James issued her Decision and Order on January 4, 2013, finding the Claimant reached maximum medical improvement as of August 13, 2012 and sustained 34% loss of use of his leg. Also, Commissioner James found the Claimant's applicable compensation rate is \$358.62, based on an average weekly wage of \$537.91.
11. Thereafter, on January 14, 2013, Claimant filed a Form 30, Request for Commission Review, citing numerous alleged errors of law.
12. Following his Form 30, the Claimant has filed numerous Motions and Requests for

Requests for Admission of Supplemental APA submissions.

13. With the exception of Claimant Counsel's March 8, 2013 Motion Pursuant to Regulation 67-707 to Admit Additional and Newly Discovered Evidence, all of the Claimant's additional Motions have been denied by the Commission.
 14. At Claimant's request, the Commission scheduled a Remand Hearing before Commissioner James on July 8, 2013 to consider the additional evidence admitted based on the Commission's April 15, 2013 Judicial Conference Decision and Order.
 15. The only issue for the Remand Hearing is whether the additional evidence alters Commissioner James' January 4, 2013 Decision and Order.
 16. On July 1, 2013, Defendants received 3 subpoenas from Claimant, requesting personal appearances by Angela Baldwin, Jim Pascutti, and Nicole Service at the July 8, 2013 Remand Hearing. Additionally, Claimant requested numerous documents which have already been provided to him, minus any privileged documents.
 17. Defendants request the Claimant's subpoena, commanding the appearance of both the claims representative and two employer representatives, be quashed because it requires attendance at a Remand Hearing where the only issue is the admittance of additional payroll records. Requiring their personal appearance would subject them to undue burden and expenses.
 18. Under Rule 45 of the South Carolina Rules of Civil Procedure provides that the Commission, as the court by which a subpoena was issued, "*shall* quash or modify the subpoena if it (iv) subjects a person to undue burden.
- WHEREFORE, Defendants hereby request that Claimant's three subpoenas received on July 1, 2013 commanding the attendance of Angela Baldwin, Jim Pascutti, and Nicole Service at

the July 8, 2013 hearing be quashed because it is unduly burdensome and testimony cannot be taken at the Remand Hearing under the doctrine of Res Judicata..



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Attorneys for the Employer/Carrier

Charleston, South Carolina
July 2, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,
Employee,
Claimant,
vs.
SNELLING STAFFING SERVICES,
Employer,
AND
UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND,
Carrier,
Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: ✓ John McDaniel
1387 Camp Road, Unit C
Charleston, South Carolina 29412

DOCUMENT: Motion to Quash Claimant's June 27, 2013 Subpoenas to Angela Baldwin, Jim Pascutti, and Nicole Service

DATE OF MAILING: July 2, 2013

Susan M. Moten

Susan M. Moten
Legal Assistant to Allison C. Nussbaum

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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JOHN MCDANIEL,
Employee,
Claimant,
vs.
SNELLING STAFFING SERVICES,
Employer,
AND
UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND
Carrier,
Defendants.

MOTION TO QUASH CLAIMANT'S
OCTOBER 14, 2013 SUBPOENAS TO
ANGELA BALDWIN, JIM
PASCUTTI, AND NICOLE SERVICE

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOHN
MCDANIEL, *PRO SE* CLAIMANT:

YOU WILL PLEASE TAKE NOTICE the undersigned attorneys hereby move to quash Claimant's three subpoenas, dated October 4, 2013 commanding production of various documents and appearances by Nicole Service, Angela Baldwin, and Jim Pascutti at the October 14, 2013 Review Hearing in the above-referenced matter. The grounds for Defendants' Motion are as follows:

1. The Claimant initially filed a Form 50, requesting a hearing, on May 18, 2012. In his hearing request, the Claimant requested an increase in his compensation rate based on his alleged projected future earnings.

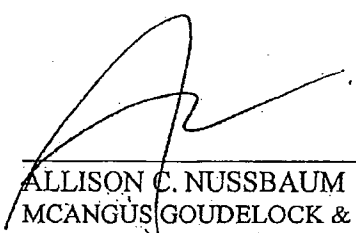
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9. A hearing was held on November 28, 2012 on Claimant's Form 50 and Defendants' Form 21.
10. Commissioner James issued her Decision and Order on January 4, 2013, finding the Claimant reached maximum medical improvement as of August 13, 2012 and sustained 34% loss of use of his leg. Also, Commissioner James found the Claimant's applicable compensation rate is \$358.62, based on an average weekly wage of \$537.91.

11. Thereafter, on January 14, 2013, Claimant filed a Form 30, Request for Commission Review, citing numerous alleged errors of law.
12. Following his Form 30, the Claimant has filed numerous Motions and Requests for Requests for Admission of Supplemental APA submissions.
13. With the exception of Claimant Counsel's March 8, 2013 Motion Pursuant to Regulation 67-707 to Admit Additional and Newly Discovered Evidence, all of the Claimant's additional Motions have been denied by the Commission.
14. At Claimant's request, the Commission scheduled a Remand Hearing before Commissioner James on July 8, 2013 to consider the additional evidence admitted based on the Commission's April 15, 2013 Judicial Conference Decision and Order.
15. The only issue for the Remand Hearing was whether the additional evidence alters Commissioner James' January 4, 2013 Decision and Order.
16. Prior to the July 8, 2013 Remand Hearing, Defendants received 3 subpoenas from Claimant, requesting personal appearances by Angela Baldwin, Jim Pascutti, and Nicole Service at the July 8, 2013 Remand Hearing. Additionally, Claimant requested numerous documents which have already been provided to him, minus any privileged documents.
17. By Motion to Quash filed on July 2, 2013, Defendants requested the Claimant's subpoena, commanding the appearance of both the claims representative and two employer representatives, be quashed because it required attendance at a Remand Hearing where the only issue was the admittance of additional payroll records.
18. Prior to proceeding with the July 8, 2013, Commissioner James granted Defendants' July 2, 2013 Motion to Quash.

19. On September 30, 2013, Commissioner James issued her Decision and Order, finding the Claimant's average weekly wage is \$537.91, resulting in a compensation rate of \$358.62.
20. Additionally, Commissioner James granted Defendants' Motion to Quash in her Order, stating, "the sole issue to be decided at this time is the impact of the pay records of Jared Lampkin on the determination of Claimant's average weekly wage, and there is no testimony that could be elicited from these individuals that is relevant to the Alside pay records of Jared Lampkin."
21. Following the issuance of the September 30, 2013 Decision and Order, Defendants received Notice of the October 14, 2013 Review Hearing.
22. Claimant has objected via email to the Review Hearing proceeding as scheduled.
23. Additionally, on October 4, 2013, Defendants received subpoenas for the personal appearance of Nicole Service, Angela Baldwin, and Jim Pascutti at the Review Hearing, as well as attachments with a request for specific documents including insurance policies and privileged communications between Counsel and the Employer/Carrier.
24. The sole determination at the upcoming Review Hearing are the issues raised in the Claimant's previously filed Form 30.
25. Defendants contend the Claimant cannot submit additional evidence at the Review Hearing in the form of documents or testimony; therefore, his October 4, 2013 subpoenas shall be quashed.
26. Requiring the personal appearance of Nicole Service, Angela Baldwin, and Jim Pascutti would subject them to undue burden and expenses.

27. Under Rule 45 of the South Carolina Rules of Civil Procedure provides that the Commission, as the court by which a subpoena was issued, "shall quash or modify the subpoena if it (iv) subjects a person to undue burden.

WHEREFORE, Defendants hereby request that Claimant's three subpoenas dated October 4, 2013 and received on October 8, 2013 commanding the attendance of Angela Baldwin, Jim Pascutti, and Nicole Service at the October 14, 2013 Review Hearing be quashed because it is unduly burdensome and testimony cannot be taken at the Remand Hearing under the doctrine of Res Judicata..



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Attorneys for the Employer/Carrier

Charleston, South Carolina
October 10, 2013

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



WCC File #: 1116275
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: John C. McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professional d/b/a Snelling Staffing
Address: 1387 Camp Road, Unit C Address: _____
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: _____
Home Phone: [REDACTED] Work Phone: _____ Insurance Carrier: United Wisconsin Insurance Company
Preparer's Name: John C. McDaniel Law Firm: _____ Preparer's Phone #: 843 425 3000

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by claimant employer (check one) Date of injury: 11/21/2011

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

See attached addendum "Grounds for review 1-25"; Index of Exhibits; Attached Exhibits
~~See attached~~ Request for extended oral argument

(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 _____ Name

on the _____ day of _____, _____ by first class mail personal service, certified mail.

Preparer's Signature: [Signature] John C. McDaniel 10/09/2013
Title Date

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

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

WCC Form # 30
Rev. 3/97

* AMENDED 30 *

REQUEST FOR COMMISSION REVIEW

GROUNDS FOR REVIEW

Claimant: John C. McDaniel

Employer/Carrier: Career Employment Professional d/b/a Snelling Staffing

WCC No: 116275

- 1st: **The Hearing Commissioner erred in Finding of Fact # 2 and Conclusion of Law #3 in the order dated January 4, 2013 in finding the Claimant had a compensation rate of 358.62 based upon an average weekly wage of 537.91; the error being the Single Commissioner should have found the Claimant was entitle to an average weekly wage and compensation rate in an amount not less than 627.75 with a compensation rate of \$418.91**
- 2nd: **The Hearing Commissioner erred in Finding of Fact #2 in her order dated January 4th, 2013 and Finding Fact #5 in her order dated September 30th, 2013 that a fair and just method to calculate the wages of the Claimant was to take an average of his wages from a previous job along with the three other employee wages provided; the error being that it was not fair and just to the claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings in the employment at time of injury with the ultimate objective being to fairly reflect the Claimant's probable future earnings.**
- 3rd: **The Hearing Commission erred in finding as fact and in Finding of Fact #2 on her order dated January 4th, 2013 and Finding of Fact #3 on her order dated September 30, 2013 that the wages of the Claimant, Atkins, Lampkin and Clark were respectively \$492.85; \$506.88; \$618.50 and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and are not correctly calculated under the definition of average weekly wage.**
- 4th: **The Hearing Commissioner erred in finding as a fact and in Finding of Fact #2 on her order dated January 4th, 2013 and Finding of Fact #4 on her order dated September 30th, 2013 that the Claimant was not likely to be hired by Allside Revere; the error being that the testimony relied on has been discredited and the Claimant's testimony should hold more weight.**
- 5th: **The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in her Order dated January 4, 2013 in finding the Claimant has a disability to the left leg of 34%; the error being that the Single Commissioner should have found that the**

Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is to the Claimant's physical and earning capacities.

- 6th: The Hearing Commissioner erred in determining the Claimant's Disability under scheduled loss in Ruling of Law #6 in her order dated January 4, 2013; the error being that only when injury is confined to a scheduled member and there is no impairment of any other part of the body is a scheduled loss warranted.
- 7th: The Hearing Commissioner erred in Finding of Fact #5 in her order dated January 4, 2013, that the Claimant reached Maximum Medical Improvement on August 13, 2012; the error being that the record reflects that one treating physician determined that Claimant was at MMI from an orthopedic stand point on August 13, 2013 and referred Claimant to other specialized physicians for further treatment and evaluation, one treating physician had not yet determined MMI and two independent medical evaluations determined that Claimant had not reached MMI.
- 8th: The Hearing Commissioner erred in finding as a fact and a ruling as a matter of law in Finding of Fact #5 and Ruling of Law #5 in her order dated January 4, 2013, that the Defendant's should receive a credit for all weekly benefits paid after the date of MMI; The error being the Single Commissioner should have found the Defendants were not entitle to a credit as the Claimant had not been able to return to work and no work had been offered, although the Claimant was ready and available to work, attempted to come back to the work within his restrictions and Claimant had been actively seeking other employment within his restrictions.
- 9th: The Hearing Commissioner erred in failing to find as a fact and rule as a matter of law that the Defendants should be subject to fines and penalties for late payments of Temporary Total Disability and Temporary Partial Disability Benefits; the error being that the record reflects payments were made at least 14 days after they were due, the records reflects that Defendant's failed to make timely payments on multiple occasions and the fine is mandated by statute and law.
- 10th: The Hearing Commissioner erred in failing to find as a fact and rule as a matter of law that the Defendants should be subject to fines and penalties for not authorizing Claimant's treating physicians' prescribed medical care and not authorizing treating physicians' medical care in a timely manner; the error being that the record reflects the Claimant did not receive all treatment and did not receive all treatment in a timely manner.
- 11th: The Hearing Commissioner erred in finding that the Claimant was not entitled to submit evidence and that the Hearing Commissioner had discretion to decline additional evidence related to the case at the remand hearing dated July 8, 2013; the

error being the Claimant has right to due process and equal protection under the law.

- 12th: The Hearing Commissioner erred in finding that the Claimant was not entitled to submit deposition testimony to impeach Dan Cobb's deposition testimony at the July 8, 2013 hearing; the error being that the Claimant has the right to due process and the right to impeach a deponent's testimony with any other deposition.
- 13th: The Hearing Commissioner erred in granting Defendant's Motion to Quash subpoena and proceeding with the hearing without enforcing Claimant's properly served subpoenas for the remand hearing dated July 8th, 2013; the error being that the Defendant's Motion to Quash was never properly served on the claimant, is without merit and Claimant is entitled to due process to include but not be limited to: the opportunity to subpoena witnesses/parties and question witnesses/parties under oath.
- 14th: The Hearing Commissioner erred in proceeding with the remand hearing with outstanding Motions to be heard; the error being that the Claimant is entitled to due process and procedural due process under the law.
- 15th: The Hearing Commissioner erred in not allowing the Claimant to move to compel treatment and compel compliance with records subpoena at the remand hearing dated July 8, 2013; the error being that the Claimant is entitled to due process under the law.
- 16th: The Hearing Commissioner erred in not ruling on Claimant's properly submitted proposed findings of fact after the hearing dated July 8th, 2013; the error being that the Claimant is entitled to due process and entitled to submitted proposed findings of facts which shall be ruled upon under the law.
- 17th: The Hearing Commissioner and the Commission erred in determining the scope and latitude of their discretion; the error being that the Claimant is entitled to due process and entitled to procedural due process under the law.
- 18th: The Commission and the Hearing Commissioner erred by abusing their discretion with procedural process; the error being that the Worker's Compensation Act must be construed liberally in order to protect the injured worker.
- 19th: The Commission erred in determining that the remand hearing was not governed by 67-601 through 67-615; the error being that the notice of hearing for the remand hearing dated July 8, 2013 outlined regulations applicable and Claimant is entitled to procedural due process under the law.

- 20th:** The Commission erred in properly serving Claimant with Notice of Remand Hearing; the error being that the Claimant is entitled to due process under the law, to include but not be limited to; proper notification of issues to be addressed and proper notification of regulations to govern the hearing and 30 days notice of hearing.
- 21st** The Commission erred in properly serving Claimant with Notice of Review Hearing and/or Notice of Lifting Stay of the Claimant's review hearing, to notify claimant of the resetting of the case on the appellate docket and placement on the appellate docket; the error being that the Claimant is entitled to due process under the law, to include but not be limited to; proper notification of issues to be addressed, proper notification of regulations to govern the hearing and 30 days notice prior to hearing.
- 22nd** The Hearing Commissioner erred in holding all other issues in abeyance, the error being that an order that holds related issues in abeyance cannot be fully dispositive of the issue at hand.
- 23rd** The Hearing commissioner erred in the service of the second order, being that the defendants counsel was notified by electronic mail and U.S. mail and the pro se claimant was served by registered mail only; the error being that all parties must be notified by the same means at the same time.
- 24th** The Hearing Commissioner erred in failing to admit rebuttal evidence; the error being not allowing Claimant to respond to defendants statements with evidence.
- 25th** The Hearing Commissioner erred in not adhering to hearing proceedings obligated by law, the error being that procedural law outlines the sequence of an administrative law court hearing, to include but not be limited to the opportunity to make closing statements, the right to submit substantial evidence into the record and the opportunity to question parties.

Index of Exhibits for Review

Claimant/Appellant: John C. McDaniel

Employer/Carrier: Career Employment Professional d/b/a Snelling Staffing

WCC No: 116275

EXHIBIT	DOCUMENT
A	Excerpts from Dan Cobb's Deposition testimony Pages 13-16
B	Excerpts from Hearing Transcript 11/28/2012 Page 23-24
C	Snellings Industrial Light DOT Form
D	Roper ER Findings 11/21/2011
E	Dr. Tavel MMI 7/22/2013
F	Email with Jim Pascuttii regarding available work 12/27/2012
G	Letter to MCG regarding late payments 7/23/2012
H	Master Dossier Report note regarding treatment 2/16/2012
I	Affidavit I, regarding bifurcation
J	Affidavit III, regarding Proposed findings of fact/Order
K	Affidavit III, regarding Scope of Hearing

Page 13

1 a permanent employee.
 2 Q. So that's about?
 3 A. Three months or so.
 4 Q. About three months?
 5 A. Give or take.
 6 Q. The guy that's there now that came through
 7 Snelling that y'all hired permanently, has he been
 8 working full time since he came?
 9 A. He has been a permanent employee since February.
 10 Q. By permanent, is he getting 40 hours a week?
 11 A. Yes.
 12 Q. Is he getting overtime?
 13 A. Yes.
 14 Q. What do you think he averages in overtime a week?
 15 A. Could range anywhere from a couple of hours maybe
 16 to ten.
 17 Q. Is that at least consistent, like some overtime
 18 every week with a range between two and ten hours?
 19 A. Yes, I would say at this time frame.
 20 Q. I take it that would be at time and a half?
 21 A. Correct.
 22 Q. And I guess, tell me when John came to work for
 23 you, he would be reporting directly to you?
 24 A. Yes.
 25 Q. What type of employee was he?
 SOUTHEASTERN TRANSCRIPT * (843)762-2442

Page 15

1 A. It's all relative when they start in. If they do
 2 well, that's my intention.
 3 Q. Okay.
 4 A. It's all based on performance.
 5 Q. So his performance had been good, so that would
 6 have been a discussion that y'all may have had?
 7 A. It would have been a discussion at the very
 8 beginning.
 9 Q. Would there have been any discussions with the
 10 people at Snelling? I guess, Angela, is that your
 11 contact person there?
 12 A. Yes. That's usually my main contact there.
 13 Q. I guess they wanted feedback as to how the person
 14 is doing, and what would have been your reports to her?
 15 A. That he was working out.
 16 Q. Okay.
 17 A. So far so good.
 18 Q. And the position that the guy now is working,
 19 that was the position that John had, is that a position
 20 that you see as being something that you need ongoing?
 21 A. Yes.
 22 Q. I mean, that's a position that's a permanent
 23 position that you don't anticipate is that --
 24 A. It's a permanent position.
 25 Q. -- being a part time or ending after 90 days or
 SOUTHEASTERN TRANSCRIPT * (843)762-2442

Page 14

1 A. He was a very good employee. He did very well in
 2 the limited time he was there.
 3 Q. Again, I understand the timing was limited
 4 because of the injury, but had y'all had any discussions
 5 about your plans for him or about him being able to
 6 maybe stay on? Did y'all discuss that?
 7 A. Very early discussed it probably in the initial
 8 interview that if he worked out, we would make him a
 9 permanent employee, but basically that was about it.
 10 Q. Okay.
 11 A. I know he had plans on going back to school. So
 12 that would probably -- whether it might have interfered
 13 with that or not I don't know. Again, it was just too
 14 early in it.
 15 Q. Right. Under the contractual arrangements with
 16 Snelling, they have got to work through them for the 500
 17 hours, three months, before they can move over to be
 18 your permanent employee?
 19 A. (Indicating an affirmative response.)
 20 Q. You need to say yes or no.
 21 A. Yes. Sorry about that.
 22 Q. At any point, had y'all had a discussion where
 23 you had told John that you did anticipate moving him
 24 over to a permanent position or taking him on as a
 25 Revere employee?
 SOUTHEASTERN TRANSCRIPT * (843)762-2442

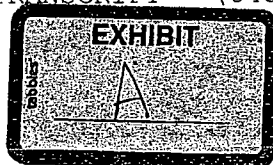
Page 16

1 120 days?
 2 A. No, it's permanent.
 3 Q. I may be finished. It looks like, I guess, the
 4 one week that John got a full week in, I think he had
 5 five hours of overtime. So that sounds like it would be
 6 about average according to what you testified to it
 7 looks like he got?
 8 A. It's possible. I mean, you have slow weeks, you
 9 have busy weeks.
 10 Q. Sure. I understand.
 11 A. There might be weeks in there you have no
 12 overtime.
 13 Q. Got you.
 14 MR. WHITE: Give me one second.
 15 MS. NUSSBAUM: Okay.
 16 (A brief pause transpired.)
 17 MR. WHITE: No other questions from me.
 18 MS. NUSSBAUM: I just have a couple.
 19 EXAMINATION BY MS. NUSSBAUM:
 20 Q. Dan, when you hire temporary employees through
 21 Snelling, do you ever guarantee the employee a certain
 22 number of hours?
 23 A. No.
 24 Q. And the temporary employees that you have used
 25 through Snelling, is there any guarantee they will
 SOUTHEASTERN TRANSCRIPT * (843)762-2442

4 (Pages 13 to 16)

SOUTHEASTERN TRANSCRIPT * (843)762-2442

Electronically signed by Julie Bonomo (001-335-018-0021)
 Electronically signed by Julie Bonomo (001-335-018-0021)



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1 A. DAN COBB SAID THEY LIKED MY WORK AND THAT IF I WAS
2 ON BOARD, THAT HE WOULD LIKE TO EMPLOY ME.

3 Q. AND HOW LONG DID IT TAKE YOU TO GO FROM BEING A
4 SNELLING EMPLOYEE TO MOVING OVER TO BE AN ALSIDE
5 REVERE EMPLOYEE?

6 A. FROM WHAT I UNDERSTAND, THE CONTRACT BETWEEN
7 SNELLING AND ALSIDE REVERE IS APPROXIMATELY 550
8 HOURS.

9 Q. AND TELL ME YOUR PLANS ONCE YOU GOT THE JOB AT
10 ALSIDE REVERE AS FAR AS THE FUTURE. WHAT WERE YOU -
11 - AS FAR AS SCHOOL GOES, DID YOU PLAN TO STAY
12 WORKING THERE IF YOU COULD?

13 A. RIGHT, I WAS LOOKING FOR LONG-TERM STABILITY SO I
14 COULD FINISH SCHOOL. THE CADDYING JOB WAS AN
15 EXPERIENCE, BUT IT WASN'T STABLE, AND IT INVOLVED
16 TRAVELING, AND I COULDN'T DO SCHOOLING WITH THAT.
17 SO, I ACTUALLY ENROLLED IN SCHOOL THREE OR FOUR
18 MONTHS BEFORE THE ACCIDENT. SO, I WAS ALREADY
19 WORKING DOWN THAT PATH.

20 Q. AND AFTER YOU WERE INJURED ON NOVEMBER THE 21ST,
21 2011, WHO REPLACED YOU AT ALSIDE REVERE THROUGH
22 SNELLING?

23 A. I BELIEVE MR. LAMPKIN.

24 Q. AND I THINK YOU WERE PRESENT FOR DAN COBB'S
25 DEPOSITION WHERE WE DISCUSSED MR. LAMPKIN?

LIGHT INDUSTRIAL

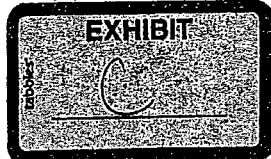
D.O.T. Occupational Titles and Skills Coding

Position Desired #1 Driver

Position Desired #2 open

(Please indicate all areas in which you have prior referenceable experience and feel confident)

Yrs. Exp.	Job Titles	Yrs. Exp.	Job Titles	
Warehousing				
_____	754 Assembler	_____	[Redacted]	
_____	754 General Labor	_____		
_____	1 222 Inventory	_____		
_____	922 Order Puller	_____		
_____	920 Picker/Packer	_____		
_____	929 Shipping & Receiving	_____		
_____	920 Shrink Wrap	_____		
_____	222 Stocker	_____		
Mobile Powered/Manual Lifting Equipment				
[Redacted]				
Food Service/Housekeeping/Maintenance				
_____	5 311 Wait Staff	_____	[Redacted]	
_____	318 Kitchen Worker	_____		
_____	311 Fast Food	_____		
_____	313 Cook	_____		
[Redacted]		_____		
[Redacted]		_____		
_____	406 Lawn Care / Groundskeeper	_____		
Manufacturing				
_____	754 Assembler	_____	[Redacted]	
_____	606 Drill Press Operator	_____		
_____	556 Plastics Assembler	_____		
_____	786 Sewing Machine Operator	_____		
Electronics				
_____	726 Electronic Assembler	_____		
_____	726 Electronic Inspector	_____		
_____	726 Electronic Tester	_____		
Printing				
_____	650 Typesetting	_____		
_____	651 Offset Press	_____		
_____	652 Screen Printing	_____		
_____	653 Bindery Worker	_____		
Light/Clerical Office				
[Redacted]				
SKILLS				
Forklift Types				
_____	6080 Standard	_____	[Redacted]	
_____	6090 Clambo	_____		
_____	6090A Standard	_____		
_____	6090S Standard	_____		
_____	6090T Standard	_____		
_____	6090V Standard	_____		
Tools and Equipment				
_____	C1305 Crimpers	_____	[Redacted]	
_____	C131015 Callipers	_____		
_____	5+ C131020 Tape Measure	_____		
_____	C1325 Pneumatic Tools	_____		
_____	3+ C1330 Screwdrivers	_____		
_____	3+ C1360 Wrenches	_____		
<p>For All Advance Offices - Prior to placing any temporary or temp-to-hire positions in the highlighted areas, contact Risk Management at 1-800-380-RISK.</p>				



Roper Hospital Imaging Services

Name: MCDANIEL, JOHN
Exam Date: 11/21/11 0859
Ord. Phy.: BARNES-MD, FRANK HURST II

MR#: A001841194
DOB: [REDACTED]
Pt. Phone#: [REDACTED]
Ord. Phy.#: (843)724-2010
Phy. Fax #: 8437242005

BARNES-MD, FRANK HURST II
** 316 CALHOUN STREET

CHARLESTON SC 29401

Acct_Nbr : A1132500699
Pat_Type : ERA

Chk-in # Order Exam
2931472 0001 30192 XR FOOT 3 VIEW MIN*L
Ord Diag: Foot Injury

LEFT FOOT THREE VIEWS: 11/21/11

COMPARISON: None

INDICATION: Foot injury, run-over by forklift.

FINDINGS:

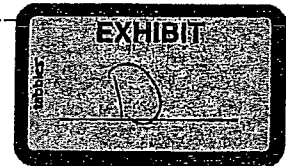
There are transverse fractures of the distal metadiaphysis of the second through fifth metatarsals, the second and third metatarsal fractures are best appreciated on the oblique view and the fourth and fifth fractures are best appreciated on the AP view. There is also fracture of the distal aspect fifth proximal phalanx with articular extension. Congenital fusion of the fifth middle and distal phalanges normal variant. There is sparing of the first ray.

IMPRESSION:

Transverse fractures of the second through fifth metatarsals distally and fracture of the fifth phalanx as above.

scw

Transcriptionist- SANDRA WILDER
Reading Radiologist- MATTHEW J BRADY-MD
Releasing Radiologist- MATTHEW J BRADY-MD
Released Date Time- 11/21/11 1113

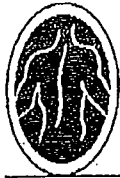


FINAL

Page 1

Roper Hospital Imaging Services
316 Calhoun Street, Charleston S.C. 29401 * (843) 724-2150

PRINTED BY: gallja DATE 12/8/2011 13



**Pain Specialists
of Charleston, P.A.**

MCDANIEL, JOHN C

31 Y old Male, DOB [REDACTED]
1387 CAMP ROAD, UNIT C, CHARLESTON, SC-29412

Home: [REDACTED]
Guarantor: MCDANIEL, JOHN C Insurance: UNITED
HEARTLAND

Referring: EDWARD M TAVEL

Appointment Facility: PAIN SPECIALISTS OF CHARLESTON

07/22/2013

Progress Note: BRITTANY D WHITESIDE, PA

Reason for Appointment

1. Left foot pain

History of Present Illness

Pain Management:

DATE OF INJURY : 07/21/2012

WORK STATUS : NOT WORKING AT THIS TIME

Claim: Open.

Patient is here today for a follow up. Patient has a 14B filled out; patient states that he has never had a FCE. Patient states that the 14B was filled out by an Orthopedist. Patient complains of left foot pain that he rates at a 5/10 on the pain scale. He reports that his current regimen of Celebrex and Neurontin with occasional Tylenol is managing his pain fairly effectively.

Current Medications

Ibuprofen 200 MG Tablet 1 tablet as needed every 6 hrs
Neurontin 300 MG Capsule 1 capsule Three times a day
Celebrex 100 MG Capsule 1 capsule Twice a day
Medication List reviewed and reconciled with the patient

Past Medical History

Heartburn

Surgical History

hernia repair

Family History

Siblings: alive
2 brother(s) - healthy.
Non-Contributory

Social History

Alcohol: yes.

no Children.

no Married.

Smoking Smoking Status:: Current Smoker , How often do you smoke cigarettes?: Every day, How many cigarettes a day do you smoke?: 11-20, How soon after you wake up do you smoke your first cigarette?: within 5 min, Are you interested in quitting?: Thinking about quitting.

Allergies

N.K.D.A.

Hospitalization/Major Diagnostic Procedure

see above

Patient: MCDANIEL, JOHN C DOB: [REDACTED] Progress Note: BRITTANY D WHITESIDE,

PA 07/22/2013

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Review of Systems

Constitutional:

Patient denies fever, loss of appetite, insomnia, weakness/fatigue, weight loss, weight gain, rash.

Gastroenterology:

Patient complaining of nausea/vomiting, diarrhea, constipation alternating.

Neurology:

Patient denies headache, arm weakness, dizziness, blurred vision. Patient complaining of tingling, numbness, poor balance, leg weakness.

Vital Signs

Pain Scale 5/10, Ht 75, Wt 250, BMI 31.24, BP 148/95, HR 90.

Assessments

1. Mononeuritis of unspecified site - 355.9 (Primary)

Treatment

1. Mononeuritis of unspecified site

After talking with patient, he will continue his current medications of Celebrex and Gabapentin at this time, no refills needed. He is satisfied with his current medication regimen. We will see patient back in 4 weeks to re-evaluate for efficacy of the medications, and will be happy to continue managing his medication therapy, although they may be managed by a primary care provider as well. Patient is at Maximum Medical Improvement at this time, but may require future pain management with anti-inflammatory medications and neuropathic pain medications. He will continue his current work restrictions recommended by Dr. Blake Olson of SEDENTARY work level with no lifting greater than 10 pounds, and no more than 1 hour walking per 8 hour day. Total time spent with patient in excess of 15 minutes with 50% of time spent counselling patient regarding treatment options. Electronic records being sent to referring provider. As always, thank you for allowing me the opportunity to work with this patient.

Follow Up

4 Weeks (Reason: Medication Follow Up)

Electronically signed by BRITTANY WHITESIDE , PA-C on 07/29/2013 at 04:03 PM EDT

Sign off status: Pending

PAIN SPECIALISTS OF CHARLESTON
2791 TRICOM ST
NORTH CHARLESTON, SC 294065017
Tel: 843-818-1181
Fax: 843-818-1145

Patient: MCDANIEL, JOHN C DOB: [REDACTED] Progress Note: BRITTANY D WHITESIDE,
PA 07/22/2013

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)



john mcdaniel <[REDACTED]>

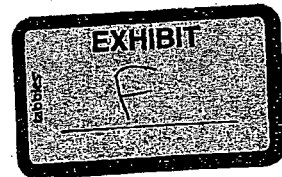
John McDaniel

john mcdaniel <[REDACTED]>

Thu, Dec 27, 2012 at 9:17 AM

To: Jim Pascutti <jimp@snelling-search.com>

Jim, I was wondering if you had found any work for me yet? Are you still looking? If not when did you stop and would that have an effect on applying to barnwell whaley since the 180 day clause? Also, the file I recieved did not have my weekly time sheets or my typing test results, can i come by and get a copy of those or would i have to go through mcangus? Thanks again, happy new year, john mcdaniel



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<https://mail.google.com/mail/u/0/?ui=2&ik=2d2c5c2171&view=pt&q=jim&...> 5/5/2013

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
KEVIN B. SMITH
MICHAEL J. JORDAN
BENJAMIN W. AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)

Reply to: Thomas M. White
twhite@steinberglawfirm.com

THE STEINBERG

LAW FIRM

L.L.P.

118 Goose Creek Blvd., South
P.O. Box 1028
Goose Creek, South Carolina 29445
Telephone (843) 572-0700
Fax (843) 572-1871
www.steinberglawfirm.com

DOWNTOWN OFFICE
61 BROAD STREET
P.O. BOX 9
CHARLESTON, SC 29402-0009
TELEPHONE (843) 720-2800
FAX (843) 722-1190

SUMMERVILLE OFFICE
P.O. BOX 56577
SUMMERVILLE, SC 29485
TELEPHONE (843) 871-6522
FAX (843) 871-8565

COPY

July 23, 2012

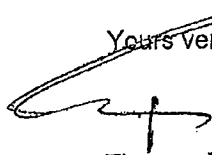
Allison Nussbaum, Esquire
McAngus Goudelock & Courie, PLLC
735 Johnnie Dodds Blvd., Suite 200
P. O. Box 650007
Mt. Pleasant, SC 29465

RE: John McDaniel v. Career Employment Professional d/b/a Snelling Staffing
WCC File No. : 1116275

Dear Allison:

When John McDaniel testified at his deposition he testified he had not been paid any checks since May 25, 2012. This was incorrect. He was paid temporary partial up through early June but is still owed temporary partial for the week ending June 22, 2012. In my letter of July 5, 2012 we noted he is owed \$150.73. Through the end of this week 5 more weeks will have accumulated that he has not been paid for which at the Form 20 comp rate is \$328.58. Currently there is \$1,793.63 owed in past due benefits. For some of these weeks there should be a 10% penalty because they are over 14 days late. He has no money to survive and no way to live without some money coming in. These checks must be brought current immediately. Please let us know the status of where these checks are and when they will be paid.

Yours very truly,



Thomas M. White

TMW/smc

cc: John McDaniel
Roy Maybank, Esquire
Nicole Servis, adjuster



Employee Master Dossier Report

HISTORY LISTING (CONTINUED)

Actual Date/Time	ID	Event	Employee	Customer/Contact
			called in available	
5/15/2012 8:41 AM	0000N43S	Offer Accepted	McDaniel, John	Barnwell, Whalay, Patterson, an Carberry, Judy
5/14/2012 4:01 PM	0000N43V	Workers' Compensatio	McDaniel, John	
			tt john, went to dr. olson and said appt went well. .lasted long time so he did not report to work;has to go to pt first thipg in am and will be to work around 10:30	
5/9/2012 7:55 AM	0000N3H3	General Comment	McDaniel, John	
			julie called and asked me to call him and tell him to be there at 9	
5/8/2012 8:43 AM	0000N43T	Workers' Compensatio	McDaniel, John	
			tt john and he mentioned he has been going to gold's gym 3 days/wk	
4/13/2012 11:34 AM	0000N0M7	Workers' Compensatio	McDaniel, John	
			Jim emailed me yesterday 4/12 - He will finish up the week in our office. He is leaving for a personal trip and will be out of state all next week and the following Monday. 4/24 will be his first day back for any kind of work	
4/10/2012 9:23 AM	0000N043	Offer Accepted	McDaniel, John	Snelling Personnel
4/4/2012 10:42 AM	0000M2NM	Workers' Compensatio	McDaniel, John	
			Got paperwork showing John released for light duty (sedentary work only); have called and offered him position to come in and shred in our office for \$9. 10/hr	
2/21/2012 2:47 PM	0000MSNM	Workers' Compensatio	McDaniel, John	
			Per Dawn Bailey @ United re: 2-20-12 Dr. Appt. I received the work note but not the actual medical report. There was a request for therapy and that has been authorized. This ortho is not the quickest at having their medical reports transcribed and submitted to us. Jim has forwarded me a light duty job offer that I will submit to his attorney and physician to see if it will be approved.	
2/16/2012 3:48 PM	0000MS40	Problem/Trouble Shoo	McDaniel, John	
			John called me back and said he was frustrated with insurances. His Dr had written him for physical therapy on his foot as well as debrudment of his wound and it has been hung up waiting on approval. I sent message to dawn bailey to get an update	
2/14/2012 9:02 AM	0000MRZS	Follow Up	McDaniel, John	
			lm to check on status	
2/9/2012 10:54 AM	0000MR0G	Offer Other	McDaniel, John	TorgTek (foxmerly Getrag Precis Thomkins, Anita
			I am making him inactive until the doctor clears him to go back to work,	
11/10/2011 4:38 PM	0000MDW8	Offer Accepted	mcDaniel, john	Revere Building Products Cobb, Dan
11/9/2011 1:49 PM	0000MDMF	Offer Other	modaniel, john	Revere Building Products Cobb, Dan
			Has an interview on November 10th at 3:00pm. I sent Dan his infomation already.	
11/9/2011 1:46 PM	0000MDMB	Offer Other	McDaniel, John	ZZ-Snelling-Charleston
			angela is talking to him about a job	
11/9/2011 9:53 AM	0000MDJ4	Offer Other	mcDaniel, john	Revere Building Products Cobb, Dan

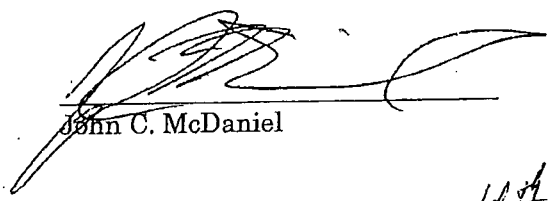
South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel	}	
employee	}	
	Claimant	}
Snelling Staffing Services	}	Affidavit
employer	}	
	}	
And	}	
	}	
United Wisconsin Insurance Company c/o	}	
United Heartland	}	
Carrier	}	
	Defendant	}

1. I, John C. McDaniel am the Claimant in the above SC Workers Compensation Claim. I am claiming benefits under the South Carolina Workers Compensation Act for an on the job injury that occurred on November 21, 2011.
2. On April 15, 2013 I received notice of the SC Workers Compensations granting my Motion pursuant to Regulation 67-707. Please see attached Exhibit A.
3. On April 15, 2013 I objected to the procedural deviations from 67-707. Please see attached Exhibit B.
4. On or about May 20, 2013 I received notice of granting the pending motion before the Hearing Commissioner. Please see attached Exhibit C.
5. On or about June 19, 2013 I received Notice of Hearing for remand on issues scheduled for July 8, 2013. Please see attached Exhibit D.
6. On or about August 6, 2013 I received the attached Directives and Request for Proposed Order. Please see attached Exhibit E.
7. On October 3, 2013 I received Notice of Appellate Hearing Set on Review for October 14, 2013. Please see attached Exhibit F.

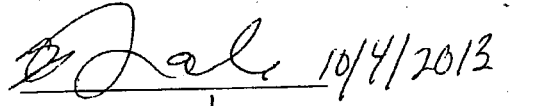
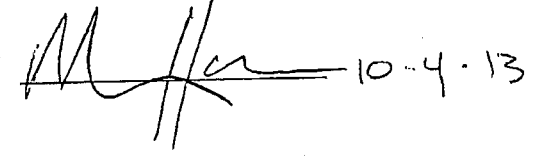
8. On October 3rd and 4th, 2013 I informed Eugenia Hollmon, Virginia Crocker and other SC Workers Compensation employees of my objection to the procedural handling of my claim. Please see attached Exhibit G.

UNDER PENALTY OF PERJURY, I DECLARE THAT THIS STATEMENT IS TRUE AND CORRECT


John C. McDaniel

IN WITNESS WHEREOF, we have hereunto set our hand this 4th day of October, 2013.

IN THE PRESENCE OF:

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**John McDaniel v Career Employment Professional d/b/a Snelling
SCWCC: 1116275
Commissioner: James**

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

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Set for Hearing.
Set for Appellate Hearing on all issues

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

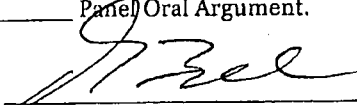
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Williams
 Beck Roche Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


 T. Scott Beck, Chair

Columbia, South Carolina

4/15 2013

CONCURRING:
 Commissioner Susan S. Barden
 Commissioner Melody James
 Commissioner Aisha Taylor
 Commissioner Avery Wilkerson
 Commissioner Andrea C. Roche
 Commissioner Gene McCaskill

NOT PARTICIPATING:

 X

DISSENTING:

Exhibit A

CERTIFICATE OF SERVICE

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

This *15* day of *April*, 2013. *John McDaniel Reg & cert*
 By: *Valerie D Deller* *R. Mark Davis*
 SCWCC Judicial Department

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.:1116275

JOHN MCDANIEL, Employee,
Claimant,

vs.

CAREER EMPLOYMENT
PROFESSIONAL D/B/A SNELLING
STAFFING, Employer, and

UNITED WISCONSIN INSURANCE
COMPANY, Carrier,

Defendants.

**NOTICE OF MOTION AND MOTION
PURSUANT TO REGULATION 67-707
TO ADD ADDITIONAL AND NEWLY
DISCOVERED EVIDENCE**

TO: THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND ALLISON NUSSBAUM, ESQUIRE, UNITED WISCONSIN INSURANCE
COMPANY, CARRIER

YOU WILL PLEASE TAKE NOTICE the Claimant, John McDaniel, through his undersigned attorney, will move under South Carolina Workers' Compensation Regulation 67-707 to add additional and newly discovered evidence which is necessary for the completion of the record on the above pending case which is set for Review by the South Carolina Workers' Compensation Commission. The Claimant requests that the Commission in it's discretion Order the evidence be taken before the Hearing Commissioner.

The Claimant believes that the new evidence is of the same nature and character required for granting a new trial. The evidence is not of a cumulative or impeaching character but would have likely produced a different result had the evidence been procurable at the first Hearing.

The evidence was not known to the moving party at the time of the first Hearing and by reasonable diligence, the evidence could not have been secured and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

The Claimant's Motion is based upon the attached Affidavit setting forth the facts that the Defendants' Employer, Snelling Staffing, had placed the Claimant within a position at Alside Revere. Alside Revere was served with a subpoena to provide all income records on Jarod Lampkin (Claimant's replacement) once he became their employee. Alside Revere failed to comply with the subpoena and did not produce the documents at the Hearing because they had forwarded the request to their Corporate Office. They have just recently complied with the subpoena and produced the earnings.

Testimony was taken of Dan Cobb, who works for Alside Revere, and his testimony was used by the Commissioner in making the decision for the Single Commissioner's Order. Upon receiving the records from Alside Revere, we have learned that the actual earnings exceeded what was testified to by Dann Cobb.

The Claimant requests that the Commission issue an Order before the Review Hearing is held and that the Review Hearing be stayed and this matter be remanded to the original Hearing Commissioner to reconvene the Hearing or admit the additional evidence pursuant to South Carolina Workers' Compensation Regulation 67-707(d).

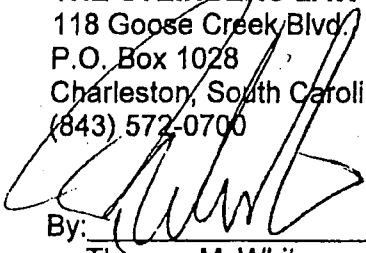
The Claimant further requests that the Hearing Commissioner issue his/her findings and recommendations in the form of an Order after the additional testimony or a review of the newly discovered evidence.

The Claimant further requests that upon receipt of the Commissioner's Order based upon the new evidence, this matter be reset on the Review Hearing docket.

I SO MOVE:

THE STEINBERG LAW FIRM LLP

118 Goose Creek Blvd, South
P.O. Box 1028
Charleston, South Carolina 29445
(843) 572-0700

By: 
Thomas M. White
Attorney for Claimant

Goose Creek, South Carolina

March 8, 2013

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116275

John McDaniel, Employee,

Claimant,

vs.

Career Employment Professional d/b/a
Snelling Staffing, Employer, and

United Wisconsin Insurance Company,
Carrier,

Defendants.

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, **THOMAS M. WHITE**, who, upon being
duly sworn, deposes and says:

1. I am an attorney practicing in Goose Creek, South Carolina and I represent
John McDaniel in his claim for benefits under the South Carolina Workers' Compensation
Act for an on the job injury that occurred on November 21, 2011.

2. One of the issues in this case was the Claimant's Average Weekly Wage and
Compensation Rate pursuant to S.C. Code Ann. §42-1-40.

3. The Claimant had been placed with Alside Revere through a staffing agency
and had not been employed for 52 weeks prior to the date of his injury. All wage
information was relevant to determine his Average Weekly Wage and Compensation Rate
to ultimately achieve the goal of calculating an Average Weekly Wage and Compensation
Rate considering the impact on his probable future earnings *Sellers v. Pinedale
Residential Center*, 350 S.C. 183, 564 S.E.2d 694 (Ct. App. 2002).

4. The Claimant has exercised due diligence in attempting to get the wage records by serving Alside Revere with Subpoenas to produce the records.

5. The Claimant originally subpoenaed the wage records from Alside Revere prior to the deposition of Dann Cobb, the Alside Revere Representative.

6. No records were produced and the deposition of Dan Cobb went forward wherein he estimated the overtime hours he thought the Claimant's replacement earned following the Claimant's injury.

7. The Claimant also served a subpoena on Alside Revere to produce the records and to have the Payroll Clerk at the Hearing that was held before the Single Commissioner on November 28, 2012. This subpoena was personally served.

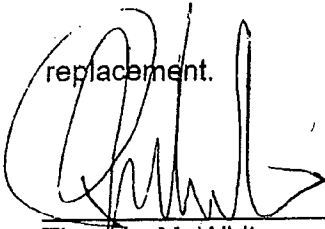
8. Alside Revere failed to produce the documents and the Hearing went forward as Claimant was at maximum medical improvement. Because the deposition of Dan Cobb, a representative of Alside Revere, had been taken at the time of the Hearing, there was no reason to expect that the testimony given by Dan Cobb would not be accurate.

9. The Claimant has recently received a response to their initial subpoena to Alside Revere and within those documents were all the wages of Jarod Lampkin, who replaced the Claimant after the Claimant was injured.

10. Those records reveal that the Claimant's replacement earned an average of 12.48 hours of overtime every week beginning with his first week on the job with Alside Revere (February 25, 2012) through the date of Dann Cobb's testimony.

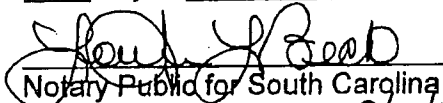
11. The Claimant believes this information is relevant and would have produced a different result since it shows that the Claimant's probable future earnings would have been higher than expected based upon the amount of overtime being earned by his

replacement.



Thomas M. White

SWORN to before me this
8th day of March, 2013.



Notary Public for South Carolina

My Commission Expires: 9/27/17

8/21/13

Gmail - Re: motion for new evidence



Re: motion for new evidence

John mcdaniel [REDACTED]
To: Eugenia Hollmon <ehollmon@wcc.sc.gov>

Mon, Apr 15, 2013 at 3:36 PM

Ms. Hollmon,

We spoke on the phone earlier and this email is to address that conversation.

Today a motion was granted pursuant to 67-707 in Judicial Conference regarding to WCC file # 1116275. The motion explicitly asked for remanding to the original commissioner to reconvene the hearing. My concern is that there was hand writing in the margins which states " Set for Appellate hearing on all issues." I believe this contradicts the rule under which this motion was granted. 67-707 (c)(2)(d) states "If the Commission grants the motion, the review hearing is stayed. The case WILL be remanded to the original hearing commissioner who may, unless otherwise provided, reconvene the hearing or admit the deposition of a witness into the record." Setting this case directly for appellate review also undermines 67-707 (c)(2)(e) which states "The original hearing commissioner will issue his or her findings and recommendations in the form of an order to the commission and the parties" Without compliance with this statute the case cannot be docketed as outlined in 67-707 (c)(2)(f) which states "Upon the receipt of the Commissioner's order, the judicial department will reset the case on the review hearing docket."

In summary I would like to clarify that:
The motion was granted.
The motion asked for remittance.
The law directly outlines the procedure if the motion is granted.
The handwritten notes on the order are contrary to the law.

Respectfully,
John C. McDaniel

Hollmon, Eugenia <EHollmon@wcc.sc.gov>
To: john mcdaniel [REDACTED]

Mon, Apr 15, 2013 at 4:00 PM

Mr. McDaniel,

Based on your concerns expressed on the phone earlier and your summary below, I will have this issue brought before the Full Commission at Judicial Conference again in May. We will forward the below email to opposing counsel so that they are aware of the current status of your case. Until this issue is address there will be no further action taken on your case. If you have any additional questions or concerns, please let me know.

Thank you.

Genia

Exhibit B

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**John McDaniel v Career Employment Professional d/b/a Snelling
SCWCC: 1116275
Commissioner: James**

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

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby; _____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is; Granted. _____ Denied. _____ Dismissed _____ Set for Hearing.

BEFORE THE; Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

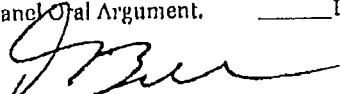
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
 Barden James Williams
 Beck Roche Wilkerson
 McCaskill

_____ Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

5/20/13 2013

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	<input checked="" type="checkbox"/> _____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Andrea C. Roche	_____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

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

This 20 day of May, 2013. John McDaniel (Reg & cert)
 By: Value D Deller R. Mark Davis
 SCWCC Judicial Department

Exhibit C

South Carolina Workers' Compensation Commission

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



WCC File #: 1116275
Carrier File #: 041100021048
June 19, 2013

NOTICE OF HEARING

JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

JOHN MCDANIEL v. CAREER EMPLOYMENT PROFESSIONAL

Subject: Remand on issues as set forth by Full Commission Order.
Date: July 8, 2013 at 09:30 AM
Location: North Charleston City Hall, 2500 City Hall Lane, Council Chambers, 3rd Floor
Charleston, SC 29406

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

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

Commissioner Melody L. James
803-737-5668, tmorris@wcc.sc.gov

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

By: Tamara Morris, SC Workers' Compensation, June 19, 2013

Party

Attorney

Employee: JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

R. Mark Davis
mdavis@mgclaw.com
843-576-2782

Exhibit D

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC # 1116275

DATE/PLACE of HEARING: July 8, 2013, North Charleston, SC

CLAIMANT: John McDaniel

EMPLOYER: Career Employment Professional

CARRIER: United Wisconsin Insurance Company

CLAIMANT'S ATTY: Pro Se

DEFENDANT'S ATTY: Allison Nussbaum

DIRECTIVES

1. This matter was remanded by the Full Commission to consider the newly discovered evidence of the pay records of Jarod Lampkin at Alside Revere, along with the previously submitted evidence at the initial hearing. The parties participated in a hearing on July 12, 2012 to argue the effect of the pay records of Jarod Lampkin from Alside Revere after his permanent placement. The new and previously submitted evidence, as well as the transcript of the previous hearing were reviewed.
2. The Claimant was 30 years old at the time of the initial hearing. He had approximately six (6) jobs after high school before seeking a position through this Employer, Career Employment Professionals, d/b/a Snelling Staffing Services. Snelling is a placement company that provides assignments for employees with other employers. Claimant had taken two different assignments with Snelling. The first was with Ben Arnold from May 2011 until September 30, 2011. He made \$11.50 an hour in that position. That assignment ended; the testimony at the initial hearing was that the position ended as part of the problem was trying to work around Claimant's skill set and his school schedule. (Trial 46) On November 11, 2011 he was given an assignment with Alside Revere. He was making \$13.00 an hour. On November 21, 2011 he was injured at work.
3. As indicated in the previous order, the Claimant's wage history of 20 weeks with Snelling was insufficient to base his average wages. The parties provided the Employer's (Snelling) wages of three other employees who worked the same assignment at Alside Revere. (The wages are reflected in the initial order.) The newly submitted evidence is the new wage information for one of these employees, Lared Lampkin, with Alside Revere, after his subsequent, permanent hiring from the Snelling assignment. Mr. Lampkin was hired from Snelling to work with Alside at the rate of \$13.25 an hour.
4. As indicated in the previous order, whether the Claimant would have been permanently hired by Alside Revere, is unknown. The Claimant had only worked on the assignment for ten (10) days at the time of the accident. Dan Cobb, the representative of Alside Revere, testified via deposition that it was too early to tell, and that ten (10) days was not enough time to determine if there would have been a permanent offer. (Depo. 14 and 17) As had happened previously, the Claimant may have ended up with another assignment. Therefore, the permanent placement wages of any one employee with a subsequent company are not used or averaged.

Exhibit E

Commissioner's Notes for Decision and Ord
Page 1 of 2

5. The best method to most nearly approximate the Claimant's wages under Section 42-1-40 would be to average the Claimant's wages with the three "like employees" that were earning wages with the Employer, Snelling. It was represented by the Parties that the other three individuals worked in the same position as the Claimant. (Trial 8) To use one employee's wages would not be representative of the earnings, especially with the nature of the assignments. The average of the Claimant's wages and the three like employees would result in an average weekly wage of \$537.91, and a resulting compensation rate of \$358.62.
6. Drafting attorney may add discussion, finding of facts, and conclusions of law consistent with the above instructions.

INSTRUCTIONS: Staff Attorney Keith Roberts to prepare proposed Order. Drafting attorney may add facts consistent with the above directives. Any other Findings of Fact not inconsistent with those attached hereto may also be proposed. Proposed Order shall be submitted by September 10th. If you need a transcript order it immediately from court reporter Jan Whitworth in writing at Post Office Box 551, Roebuck, SC 29376 (864) 494-2705. Provide a copy of the proposed order to opposing counsel or pro se claimant ten days prior to one being submitted to the Commission.



The Commission now requires all Orders to be submitted via-mail in word-format to tmorris@wcc.sc.gov.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties; stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact – numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award

Melody L. James

Commissioner Melody L. James
 Melody L. James, Commissioner
 South Carolina Workers' Compensation Commission
 August 6, 2013

cc: Allison Nussbaum, Esquire
 John McDaniel, Claimant

*ke roberts @ wcc.
 SC,
 gov*

South Carolina Workers' Compensation Commission

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



WCC File #: 1116275
Carrier File #: 041100021048
October 1, 2013

NOTICE OF APPELLATE HEARING

JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

*Received
October - 3rd*

JOHN MCDANIEL v CAREER EMPLOYMENT PROFESSIONAL

Subject: Set on Review.
Date: 10/14/13 at 01:30 PM
Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

South Carolina Regulations 67-701 through 67-711 govern appeals before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Briefs are due according to prior notice and are governed by Regulation 67-705. For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739 or appeals@wcc.sc.gov.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel B

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

By: Eugenia Hollmon, SC Workers' Compensation, October 1, 2013

Party

Employee: JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

Attorney

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

R. Mark Davis
mdavis@mgclaw.com
843-576-2782

Employer: CAREER EMPLOYMENT PROFESSIONAL
Carrier: United Wisconsin Insurance Company

Allison C Nussbaum
allison.nussbaum@mgclaw.com
843-576-2925

Exhibit F



john mcdaniel <[REDACTED]>

receipt of order "scwcc # 1116275

john mcdaniel <[REDACTED]>

Fri, Oct 4, 2013 at 1:14 AM

To: Eugenia Hollmon <ehollmon@wcc.sc.gov>, "Cannon, Gary" <gcannon@wcc.sc.gov>, "Deller, Valerie" <VDeller@wcc.sc.gov>, vcrocker@wcc.sc.gov, Allison Nussbaum <allison.nussbaum@mgclaw.com>, appeals@wcc.sc.gov

Ms. Hollmon,

I am in receipt of the notice of appellate hearing set for 10/14/13. This would be premature as i have not received the commissioner's order yet.

Pursuant to 67-707(C)(2)(e) "The original Hearing Commissioner will issue his or her findings and recommendations in the form of an order to the Commission *and* the parties."

I would just restate, I have not received the order from which appeal may be taken. This cannot be docketed without me knowing the subject matter. Being forced to proceed without the most recent order, or a chance to review it, would be highly prejudicial to my case and in violation of the Regulations that govern the commission.

Please contact me as soon as possible via email.

Sincerely, John C McDaniel

Exhibit G

john mcdaniel [REDACTED]

bifurcated? SCWCC # 1116275

john mcdaniel [REDACTED]

Fri, Oct 4, 2013 at 12:22 PM

To: "Crocker, Virginia" <vcrocker@wcc.sc.gov>, "Cannon, Gary" <gcannon@wcc.sc.gov>, Allison Nussbaum <allison.nussbaum@mgclaw.com>

Ms. Crocker,

Our conversation included the comment from you that my case had been bifurcated at my request. This case has not been bifurcated, it was remanded as reflected in a multitude of records.

Page 51 lines 19-22 of the transcript of the July 8, 2013, Read:

"BY COMMISSIONER JAMES:

-----Okay. What I have is a motion for remand, okay, and thats what was scheduled, and that is what is heard today."

Notice of Hearing dated June 19, 2013

"Subject: Remand on issues as set forth by full commission order."

Request for proposed order dated Aug. 6th, 2013

"1. This matter was remanded by the full commission...."

I was further informed by Ms. Hollmon that the commission "assumed" I had recieved The order. This assumption is in violation of your regulations.

I made a claim to you that the hearing notice being issued was premature and in violation of 67-707. You then made a determination that the Commission was NOT in violation of the regulations. You are not authorized to make rulings.

Further, my appeal was stayed, not held in abayance as you commented.

In closing could you please answer the following.

As of now, does the commission have any records to indicate that the order has been served on the pro se claimant?

As of now, does the commission have any records that indicate that my appeal was held in abayance?

As of now, does the commission have any records that indicate the motion for additional evidence and its resulting remand is not governed by 67-707?

Sincerely,

John McDaniel

South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel
employee

Claimant

Snelling Staffing Services
employer

Affidavit III

And

United Wisconsin Insurance Company c/o
United Heartland
Carrier

Defendant

1. I, John C. McDaniel am the Claimant in the above SC Workers Compensation Claim. I am claiming benefits under the South Carolina Workers Compensation Act for an on the job injury that occurred on November 21, 2011.

2. On September 10, 2013 I contacted Tamara Morris from the SC Workers Compensation Commission regarding submission of proposed finding of fact and submitted an amended proposed order to same. Please see attached Exhibit A.

3. On October 4, 2013 I received Commissioner Melody James' signed Order dated September 30, 2013. Please see attached Exhibit B.

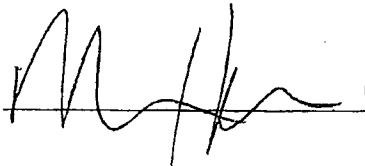
UNDER PENALTY OF PERJURY, I DECLARE THAT THIS STATEMENT IS TRUE AND CORRECT


John C. McDaniel

IN WITNESS WHEREOF, we have hereunto set our hand this 4th day of October, 2013.

IN THE PRESENCE OF:

 10-4-13

 10-4-13
with



john mcdaniel [redacted]

Proposed Findings of Fact RE:SCWCC file #1116275

Morris, Tamara <TMorris@wcc.sc.gov> Mon, Sep 16, 2013 at 11:39 AM
To: john mcdaniel [redacted], Allison Nussbaum <allison.nussbaum@mgclaw.com>, "Cannon, Gary" <gcannon@wcc.sc.gov>
Cc: "Roberts, Keith" <keroberts@wcc.sc.gov>

Thanks Mr. McDaniel I have given this one to Commissioner James for review. Thanks, Tamara

From: john mcdaniel [redacted]
Sent: Tuesday, September 10, 2013 11:07 PM
To: Allison Nussbaum; Cannon, Gary; Morris, Tamara
Cc: Roberts, Keith
Subject: Re: Proposed Findings of Fact RE:SCWCC file #1116275

Ms. Morris,

I believed there may have been some miscommunication between Mr. Roberts and I.

Attached is the order with my proposed findings of fact added which were previously submitted to be included in the decision and order. I received order instructions stating that I may submit purposed finding of facts to be included and for review. Pursuant to 1-23-350 if I submit proposed findings of facts, the decision shall include a ruling on each fact. Please let me know if you have any questions. I will be mailing a hard copy of the attached for your convenience.

Also, Please note, this hearing was held July 8th, 2013, not July 12, 2012as stated in Mrs. James' request for proposed order.

Thanks

John C. McDaniel

On Sat, Aug 31, 2013 at 7:51 PM, john mcdaniel [redacted] wrote:

Mr. Roberts,

I received the attached order instructions, which state, that the staff attorney will be drafting the order and that proposed findings of fact may be submitted. In accordance with 1-23-350 if proposed findings of fact are submitted, the decision "shall include a ruling upon each proposed finding". I have clarified with the executive director, Mr. Gary Cannon, to whom I submit these proposed findings of fact.

Further, I would object to Defendants drafting the order and would request that I be copied on all communications between Commissioner James and Defendants' attorney as I feel there may have been *ex parte* communications regarding this matter.

Please contact me if you have any further questions.

Exhibit A

Thanks

John C. McDaniel

On Fri, Aug 30, 2013 at 9:35 PM, Allison Nussbaum <allison.nussbaum@mgclaw.com> wrote:

Please note Defendants object to Claimant's "Proposed Findings of Fact", as Commissioner James specifically directed Defendants to draft a Proposed Order based on her previously issued findings of fact. The proposed order will be forthcoming.

Thanks,

Allison

From: John mcdaniel [REDACTED]
Sent: Friday, August 30, 2013 4:45 PM
To: keroberts@wcc.sc.gov; Allison Nussbaum
Subject: Proposed Findings of Fact RE:SCWCC file #1116275

Mr. Roberts please find attached proposed findings of fact. Let me know if you have any questions. Thank you John McDaniel

DECISION AND ORDER
OF
COMMISSIONER MELODY L. JAMES
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1116275

John McDaniel,

Claimant

v.

Career Employment Professional,

Employer, and

United Wisconsin Insurance Company,

Carrier, Defendants.

Hearing held in North Charleston, South Carolina on July 8th, 2013

Per notice timely and properly served upon all Parties of Interest.

Appearances: Mr. John McDaniel, Claimant Pro Se

Allison Nussbaum, Attorney at Law, for Defendants

Filed: _____

STIPULATIONS

Prior to the Hearing, the parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction of this claim; and
2. Venue, set in Charleston County, South Carolina, is proper.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, the following exhibits were received into evidence:

Exhibit # 1: Payroll records of Jared Lampkin.

STATEMENT OF THE CASE

The Commissioner upheld her original decision and order and that order still stands.

This matter was remanded to the undersigned by Order of the Appellate Panel to consider the impact of the pay records of Jared Lampkin on the calculation of Claimant's average weekly wage.

The Claimant contends the remand hearing was not limited to one issue.

The Claimant contends that he did not receive proper notice of the issues being set forth at the hearing scheduled for July 8th, 2013.

The Claimant contends that the motion for additional evidence was granted and order stated that it was set for appellant hearing on all issues.

The Claimant contends that he objected to the case not being remanded and the Commission granted his objection and remanded the case to the original hearing Commissioner.

The Claimant contends that the order granting the remand to Commissioner Melody James states "Granted before the hearing Commissioner".

The Claimant contends that he received a hearing notice for the hearing scheduled on July 8, 2013 which stated: "Subject: Remand on issues as set forth by Full Commission Order.... South Carolina Regulations 67-601 through 67-615 govern hearings before SC Workers' Compensation Commission."

The Claimant contends that he inquired about the issues being addressed at the hearing to the SC Workers Compensation Commission and Commissioner Melody James prior to the hearing.

FINDINGS OF FACT

1. This matter was remanded by the Full Commission to consider the newly discovered evidence of the pay records of Jarod Lampkin at Alside Revere, along with the previously submitted evidence at the initial hearing. The parties participated in a hearing on July 8, 2013 to argue the effect of the pay records of Jarod Lampkin from Alside Revere after his permanent placement. The new and previously submitted evidence, as well as the transcript of the previous hearing were reviewed.
2. The Claimant was 30 years old at the time of the initial hearing. He had approximately six (6) jobs after high school before seeking a position through this Employer, Career Employment Professionals, d/b/a Snelling Staffing Services. Snelling is a placement company that provides assignments for employees with other employers. Claimant had taken two different assignments with Snelling. The first was with Ben Arnold from May 2011 until September 30, 2011. He made \$11.50 an hour in that position. That assignment ended; the testimony at the initial hearing was that the position ended as part of the problem was trying to work around Claimant's skill set and his school schedule. (Trial 46) On November 11, 2011 he was given an assignment with Alside Revere. He was making \$13.00 an hour. On November 21, 2011 he was injured at work.
3. As indicated in the previous order, the Claimant's wage history of 20 weeks with Snelling was insufficient to base his average wages. The parties provided the Employer's (Snelling) wages of three other employees who worked the same assignment at Alside Revere. (The wages are reflected in the initial order.) The newly submitted evidence is the new wage information for one of these employees, Jared Lampkin, with Alside Revere, after his subsequent, permanent hiring from the Snelling assignment. Mr. Lampkin was hired from Snelling to work with Alside at the rate of \$13.25 an hour.
4. As indicated in the previous order, whether the Claimant would have been permanently hired by Alside Revere, is unknown. The Claimant had only worked on the assignment for ten (10) days at the time of the accident. Dan Cobb, the representative of Alside Revere, testified via deposition that it was too early to tell, and that ten (10) days was not enough time to determine if there would have been a permanent offer. (Depo. 14 and 17) As had happened previously, the Claimant may have ended up with another assignment. Therefore, the permanent placement wages of any one employee with a subsequent company are not used or averaged.
5. The method used to approximate the Claimant's wages under Section 42-1-40 would be to average the Claimant's wages with the three "like employees" that were earning wages with the Employer, Snelling. It was represented by the Parties that the other three individuals worked in the same position as the Claimant. (Trial 8) To use one employee's wages would not be representative of the earnings, especially with the nature

of the assignments. The average of the Claimant's wages and the three like employees would result in an average weekly wage of \$537.91, and a resulting compensation rate of \$358.62.

6. Claimant properly served a subpoena for Nicole Service to attend the hearing on July 8, 2013, as well as to produce any and all records relating to SCWCC claim #1116275.
7. Claimant properly served a subpoena for Jim Pascutti to attend the hearing on July 8, 2013, relating to SCWCC claim #1116275.
8. Claimant properly served a subpoena for Angela Baldwin to attend the hearing on July 8, 2013, relating to SCWCC claim #1116275.
9. Nicole Service did not attend the hearing.
10. Jim Pascutti did not attend the hearing.
11. Angela Baldwin did not attend the hearing.
12. Dan Cobb's testimony was incorrect in such that average overtime worked by Jarod Lampkin was not between 2 and 10 hours per week (as testified) but rather 5 to 21 hours per week (Lampkin's Pay records).
13. No records reflected in the subpoena were produced at the hearing.
14. There is evidence of late payments of TTD and TPD by the defendants.
15. The first check paid to claimant has a received date stamp on it reflecting it was received 12/27/11, this is over one month after claimant's injury 11/21/11.
16. There is no record of payment of the mandatory increase in compensation of 10% for the period of benefits from 11/22/11 till 12/02/11.
17. Alside Revere's hours of operation are from 7 a.m. till 4 p.m. Monday through Friday (45 hours).
18. \$13 an hour, paid for a 40 hour work week equals \$520.
19. During the 20 weeks reflected on the Form 20 Claimant worked on average 3.086 hours of overtime.

20. 43.086 (hours paid at 11.50 an hour would equal $(40*11.5=460) + (3.086*17.25=53.23)$
= $\$513.23$.
21. Check dated 10/7/11 shows claimant had earned $\$10,450.65$ through the period ending 9/30/11.
22. Claimant's wages of $\$10,450.65$ was paid with 21 checks.
23. 20 of 21 checks reflect an "hourly pay" rate of $\$11.50$ an hour with the exception being check dated 8/5/2011, this reflects an "hourly pay" rate of $\$0.00$ an hour. (APA p.72)
24. The check that reflects an "hourly pay" rate of $\$0.00$ also includes ten hours paid at an "overtime pay" rate of $\$17.25$ an hour. (APA p.72)
25. Two checks reflect a pay date of 8/5/2011. (APA p.72-73)
26. The Two checks dated 8/5/2011 indicate wages for two different periods of time. (APA p.72-73)
27. The wages earned for the week of 7/15/11 through 7/22/11 were distributed in two different checks.(APA p.71-72)
28. Claimant did not work the period of 8/29/11 through 9/02/11. (APA p.118)
29. $\$10450.65$ divided by 21 weeks equals $\$497.65$.
30. $\$10450.65$ divided by 20 weeks equals $\$522.53$.
31. The current Form 20 indicates claimant earned through 9/30/11 $\$9,856.96$ over a 20 week period equaling an average of $\$492.85$.
32. The Form 20 and the pay records do not match.
33. The hearing commissioner determined the Form 20 is applicable and its math is correct.
34. Wages earned at Alside Revere are not included in the determination of Claimants AWW.
35. Claimant was injured at Alside Revere.

36. The "Employee Pay Summary" for Wayne Atkins indicates week ending 4/8/11 the wages paid were for 8 hours.
37. The above referenced check (check # 186808) was calculated as a full week in the determination of Atkins average wage.
38. The "Employee Pay Summary" for Wayne Atkins indicates a pay rate of \$8 an hour the last week of his employment (week ending 7/15/11).
39. During the above referenced week Wayne Atkins worked 45 hours (check # 192500).
40. Wayne Atkins average wage determination in regards to the above week relies on gross earnings and not on hours worked multiplied by his normal wage.
41. The result of the above equate to wages his last week of employment equal to \$344.35 (\$8 an hour x 45 hours) instead of \$606.25 (\$13 an hour x 45 hours).
42. The "Employee Pay Summary" for Wayne Atkins reflects three additional weeks in which hours worked were less than 40 hours.
43. The above weeks are accounted for in the determination of Wayne Atkins average wage as full weeks.
44. Wayne Atkins average wage was determined by dividing his gross pay (\$7,603.24) by paychecks received (15 checks) resulting in an average wage of \$506.88 (which is equal to less than 40 hours a week at \$13 an hour).
45. Over the period Atkins worked for Alside Revere he earned 35.25 hours of overtime.
46. 35.25 hours of overtime over a 15 week period results an average overtime worked of 2.35 hours per week.
47. No partial weeks or wage reductions are accounted for in the determination of Wayne Atkins average wage.
48. Alvin Clarke worked a partial week the week ending 7/29/11 (32 hours worked).
49. Alvin Clark worked a partial week ending 11/11/11 (8 hours worked).
50. Alvin Clark's average wage accounts both of the above weeks as full weeks.

51. Alvin Clark worked less than 40 hours on five other checks (check numbers 195610, 197218, 197725, 199271, 200533).
52. Alvin Clark's average wage was determined by dividing gross pay (\$8,534.51) by number of checks (16) and equates to \$533.41 (which is equal to less than 2 hours of overtime).
53. Alvin Clark worked 50.50 hours of overtime over a 16 week period, this results in an average overtime per week of 3.16 hours.
54. Alvin Clark's wage determination does not take into account any partial weeks.
55. Jarod Lampkin's average wage was determined by dividing gross pay (\$8,040.52) by number of checks received (13) which equates to \$618.50 (which is equal to approx. 5 hours of overtime per week.)
56. Jarod Lampkin worked 78 hours of overtime over 13 weeks resulting in 6 hours of overtime per week on average.
57. Jarod Lampkin worked a partial week the week ending 11/25/11 (32 hours).
58. Jarod Lampkin worked a partial week the week ending 2/17/12 (31 hours).
59. Jarod Lampkin's wage determination does not take into account any partial weeks.
60. The record of payments received by claimant for TTD did not fall on the same day of the week.
61. The record is absent of medical records that have been part of the evidence attempted to be submitted by the Claimant.
62. Claimant was denied ability to move to compel medical treatment at the hearing on July 8, 2013.
63. Claimant's motion for penalties was not addressed at the hearing.
64. There is no evidence that suggests claimant has lied to his physicians.
65. There is no evidence that suggests the claimant is an illegal alien.

66. There is no evidence that suggests claimant is no longer disabled.
67. There is no evidence that suggests claimant has declined work.
68. The Claimant is a credible witness.
69. Claimant attempted to submit records at the hearing on July 8, 2013.
70. Claimant was denied opportunity to present the aforementioned records.
71. Claimant's records that were brought to the hearing on July 8, 2013 were not inspected by the hearing commissioner.
72. Claimant was not offered opportunity to submit an offer of proof for these records.
73. There is no evidence that suggests the jobs provided to claimant, after injury, by Snelling staffing were available to the public.
74. The job provided for the claimant at Snelling's Office was benevolent in nature.
75. The job provided for the claimant at Barnwell, Whaley, Patterson and Helms was benevolent in nature.
76. Twice in the month of November, 2012 defendants delayed the first hearing.
77. Defendants did not file the application to suspend benefits until 9/17/12; this is over one month after Dr. Ohlson's MMI report dated 8/13/12.
78. Dr. Olson initially recommended and prescribed Physical Therapy on 1/9/12.
79. Claimant's first visit to Physical Therapy was on 2/27/13.
80. Dr. Olson initially recommended and prescribed wound debridement/therapy on 1/27/12.
81. The Form 20 used in calculating claimants AWW reflects a wage lower than Lampkin, Clark or Atkins.
82. The Claimant attempted to facilitate wound treatment and physical therapy.

83. The Claimant's recovery was hindered due to the gross delay in approving physical therapy. "Potential barriers to patient's ability to reach maximum rehab potential: delayed attendance to PT" (RCC report dated 2/27/12)
84. Physical therapy was delayed for a second period from 4/10/12 till 5/1/12.
85. The Claimant informed Dr. Olson of his continuing attempt to facilitate wound therapy during and prior to the follow up visit 4/2/12.
86. The wound therapy, as recommended and prescribed by Dr. Olson, was never approved and/or denied by United Heartland.
87. Claimant walks with a severe limp.
88. Claimant's physical work restrictions diminish his employment options.
89. Claimant has a limited skill set.
90. The Claimant discussed the decision to not proceed with surgery with Dr. Olson on 5/14/12.
91. Dr. Olson explained that surgery was not feasible if his wound was open. (See attached report dated 5/14/12)
92. Dr. Olson's reported dated 4/2/2012 states that there is no longer need for wound therapy.
93. Rehabilitation Centers of Charleston's physical therapy notes from 6/26/12 state that the wound is nearly healed.
94. The Claimant's wound remained open at least until 6/26/12 resulting in Dr. Olson not proceeding with surgery as stated in RCC records and Dr. Olson's medical reports.
95. Dr. Olson's report dated 5/14/12 recommends and prescribes Chronic Pain Management.
96. The Claimant attempted to facilitate and receive Chronic Pain Management as prescribed by Dr. Olson.
97. The Claimant first received Chronic Pain Management on 10/30/12.
98. Dr. Ohlson first recommended and prescribed orthotics on 7/2/12, United Heartland

delayed approval of this until, on or after, 11/1/12.

99. The record contains evidence to the carrier has failed to provide medical care as directed.
100. The Department of Insurance has not been notified of the defendants' failure to authorize and pay benefits for medical treatment, specifically wound care treatment prescribed by Dr. Ohlson on 1/27/12.
101. Although accusations of insurance fraud were made by claimant, this has not been reported to the Attorney General's office or the Department of Insurance.

RULINGS OF LAW

1. "Average weekly wage' must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred. . . divided by fifty-two or by the actual number of weeks paid. . . .When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury." § 42-1-40.
2. Given that Claimant was working for a temporary staffing service, it has been determined that it is unknown whether Claimant would have been permanently hired by Alside Revere, and the shortness of the duration of Claimant's work at the assignment on which he was injured, Claimant has shown exceptional reasons why the methods for calculating his average weekly wage provided for in the first paragraph of § 42-1-40 would be unfair.
3. The method which would most nearly approximate his average weekly wage at the time of his injury is to average Claimant's wages with the three "like employees" that were earning wages with the Employer, Snelling.

ORDER

IT IS THEREFORE ORDERED that Claimant's average weekly wage shall be \$537.91, with a corresponding compensation rate of \$358.62.

IT IS FURTHERMORE ORDERED that Claimant is entitled to a lump-sum payment by the Employer/ Carrier of back-owed temporary total and temporary partial disability in the amount of the difference between the amount that the Claimant was actually paid and the amount the Claimant should have been entitled using the average weekly wage and corresponding

compensation rate as contained in this Order. Payment must be made with 30 days of the date of this Order.

IT IS FURTHERMORE ORDERED that the Motions to Quash the Subpoenas of Nicole Service, Angela Baldwin, and Jim Pascutti are GRANTED, as the sole issue to be decided at this time is the impact of the pay records of Jared Lampkin on the determination of Claimant's average weekly wage, and there is no testimony that could be elicited from these individuals that is relevant to the pay records of Jared Lampkin.

IT IS FURTHERMORE ORDERED that any and all issues regarding additional discovery and motions were not before the undersigned at the Hearing on July 12th, 2012, as the sole issue to be decided was the impact of the pay records of Jared Lampkin on the determination of Claimant's average weekly wage.

All issues on appeal are held in abeyance.

AND SO IT IS ORDERED!

Commissioner Melody L. James

Date
Charleston County, South Carolina

DECISION AND ORDER
OF
COMMISSIONER MELODY L. JAMES
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
SCWCC FILE NO.: 1116275

John McDaniel,

Claimant

v.

Career Employment Professional,

Employer, and

United Wisconsin Insurance Company,

Carrier, Defendants.

Hearing held in North Charleston, South Carolina on July 8th, 2013
Per notice timely and properly served upon all Parties of Interest.

Appearances: Mr. John McDaniel, Claimant Pro Se
Allison Nussbaum, Attorney at Law, for Defendants

Filed: September 30, 2013

Exhibit B

STIPULATIONS

Prior to the Hearing, the parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction of this claim; and
2. Venue, set in Charleston County, South Carolina, is proper.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, the following exhibits were received into evidence:

Exhibit # 1: Payroll records of Jared Lampkin.

STATEMENT OF THE CASE

This matter was remanded to the undersigned by Order of the Appellate Panel to consider the impact of the pay records of Jared Lampkin on the calculation of Claimant's average weekly wage.

FINDINGS OF FACT

1. This matter was remanded by the Full Commission to consider the newly discovered evidence of the pay records of Jarod Lampkin at Alside Revere, along with the previously submitted evidence at the initial hearing. The parties participated in a hearing on July 8th, 2013 to argue the effect of the pay records of Jarod Lampkin from Alside Revere after his permanent placement. The new and previously submitted evidence, as well as the transcript of the previous hearing were reviewed.
2. The Claimant was 30 years old at the time of the initial hearing. He had approximately six (6) jobs after high school before seeking a position through this Employer, Career Employment Professionals, d/b/a Snelling Staffing Services. Snelling is a placement company that provides assignments for employees with other employers. Claimant had taken two different assignments with Snelling. The first was with Ben Arnold from May 2011 until September 30, 2011. He

made \$11.50 an hour in that position. That assignment ended; the testimony at the initial hearing was that the position ended as part of the problem was trying to work around Claimant's skill set and his school schedule. (Trial 46) On November 11, 2011 he was given an assignment with Alside Revere. He was making \$13.00 an hour. On November 21, 2011 he was injured at work.

3. As indicated in the previous order, the Claimant's wage history of 20 weeks with Snelling was insufficient to base his average wages. The parties provided the Employer's (Snelling) wages of three other employees who worked the same assignment at Alside Revere. (The wages are reflected in the initial order.) The newly submitted evidence is the new wage information for one of these employees, Jared Lampkin, with Alside Revere, after his subsequent, permanent hiring from the Snelling assignment. Mr. Lampkin was hired from Snelling to work with Alside at the rate of \$13.25 an hour.
4. As indicated in the previous order, whether the Claimant would have been permanently hired by Alside Revere, is unknown. The Claimant had only worked on the assignment for ten (10) days at the time of the accident. Dan Cobb, the representative of Alside Revere, testified via deposition that it was too early to tell, and that ten (10) days was not enough time to determine if there would have been a permanent offer. (Depo. 14 and 17) As had happened previously, the Claimant may have ended up with another assignment. Therefore, the permanent placement wages of any one employee with a subsequent company are not used or averaged.
5. The best method to most nearly approximate the Claimant's wages under Section 42-1-40 would be to average the Claimant's wages with the three "like employees" that were earning wages with the Employer, Snelling. It was represented by the Parties that the other three individuals worked in the same position as the Claimant. (Trial 8) To use one employee's wages would not be representative of the earnings, especially with the nature of the assignments. The average of the Claimant's wages and the three like employees would result in an average weekly wage of \$537.91, and a resulting compensation rate of \$358.62.

RULINGS OF LAW

1. "Average weekly wage' must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred. . . divided by fifty-two or by the actual number of weeks paid. . . When for exceptional reasons the foregoing would be unfair, either to the employer or

employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.” § 42-1-40.

2. Given that Claimant was working for a temporary staffing service, it is unknown whether Claimant would have been permanently hired by Alside Revere, and the shortness of the duration of Claimant’s work at the assignment on which he was injured, Claimant has shown exceptional reasons why the methods for calculating his average weekly wage provided for in the first paragraph of § 42-1-40 would be unfair.
3. The method which would most nearly approximate his average weekly wage at the time of his injury is to average Claimant’s wages with the three “like employees” that were earning wages with the Employer, Snelling.

ORDER

IT IS THEREFORE ORDERED that Claimant’s average weekly wage shall be \$537.91, with a corresponding compensation rate of \$358.62.

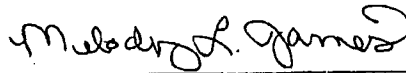
IT IS FURTHERMORE ORDERED that Claimant is entitled to a lump-sum payment by the Employer/ Carrier of back-owed temporary total and temporary partial disability in the amount of the difference between the amount that the Claimant was actually paid and the amount the Claimant should have been entitled using the average weekly wage and corresponding compensation rate as contained in this Order. Payment must be made with 30 days of the date of this Order.

IT IS FURTHERMORE ORDERED that the Motions to Quash the Subpoenas of Nicole Service, Angela Baldwin, and Jim Pascutti are GRANTED, as the sole issue to be decided at this time is the impact of the pay records of Jared Lampkin on the determination of Claimant’s average weekly wage, and there is no testimony that could be elicited from these individuals that is relevant to the Alside pay records of Jared Lampkin.

IT IS FURTHERMORE ORDERED that any and all issues regarding additional discovery and motions were not before the undersigned at the Hearing on July 12th, 2012, as the sole issue to be decided was the impact of the pay records of Jared Lampkin on the determination of Claimant's average weekly wage.

All other issues are held in abeyance.

AND SO IT IS ORDERED!



Commissioner Melody L. James

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.

September 30, 2013

By: Tamara Morris, Administrative Assistant to Commissioner James

South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel	}	
employee	}	
	}	
	Claimant	}
Snelling Staffing Services	}	Affidavit II
employer	}	
	}	
And	}	
	}	
United Wisconsin Insurance Company c/o	}	
United Heartland	}	
Carrier	}	
	Defendant	}

1. I, John C. McDaniel am the Claimant in the above SC Workers Compensation Claim. I am claiming benefits under the South Carolina Workers Compensation Act for an on the job injury that occurred on November 21, 2011.

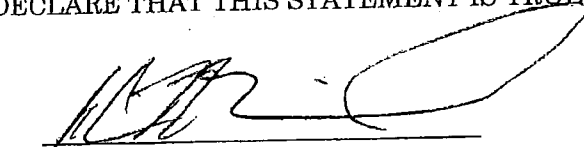
2. On June 18, 2013 I received notices from the SC Workers Compensation Commission denying a Motion for additional evidence and testimony for completion of the file and notices denying a Motion for additional evidence and Notice of Additional APA Submissions. Please see attached Exhibit A.

3. On June 20, 2013 I contacted Amy Bracy from SC Workers Compensation regarding the denial of these Motions. Please see attached Exhibit B.

4. On July 1, 2013 I contacted Gary Cannon from the SC Workers Compensation regarding the remand of my case and the denial of motions. Please see attached Exhibit C.

5. On July 8, 2013 I attempted to submit evidence to Commissioner Melody James during a hearing. Please see attached Exhibit D (excerpts from hearing).

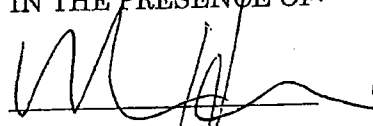
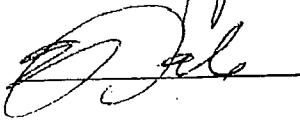
UNDER PENALTY OF PERJURY, I DECLARE THAT THIS STATEMENT IS TRUE AND CORRECT



John C. McDaniel

IN WITNESS WHEREOF, we have hereunto set our hand this 4th day of October, 2013.

IN THE PRESENCE OF:

 10-4-13
 10-4-13

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

John McDaniel v Career Employment Professionals

SCWCC: 1116275
Commissioner: James

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

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

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending Motion for Additional Evidence Dated May 10, 2013 be, and hereby is;

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

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

Remand to Panel as indicated below.

<input type="checkbox"/> Barden	<input type="checkbox"/> James	<input type="checkbox"/> Taylor
<input type="checkbox"/> Beck	<input type="checkbox"/> Roche	<input type="checkbox"/> Wilkerson
	<input type="checkbox"/> McCaskill	

Remand for Order consistent with the Order of the Court.

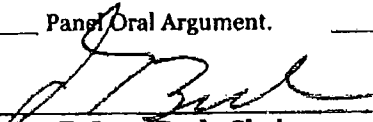
Remand to the Hearing Commissioner.

Remand to the Jurisdictional Commissioner.

Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



T. Scott Beck, Chair

Columbia, South Carolina

6/17 2013

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

X

DISSENTING:

CERTIFICATE OF SERVICE

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

This 17 day of June, 2013.

By: Valerie D. Beller
SCWCC Judicial Department

John McDaniel (Reg: cert)
R Mark Davis

Exhibit A

John C. McDaniel

1387 Camp Road, Unit C, Charleston SC 29412

Phone Number: [REDACTED]

Email: [REDACTED]

May 10, 2013

Via US Mail

Virginia Crocker, Judicial Director
S.C. Workers Compensation Commission
Post Office Box 1715
Columbia, SC 29292-1715

RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Ms. Crocker,

Enclosed please find the original and one copy of the Appellant/Claimant's Motion for additional evidence and testimony to complete the record. Please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope provide.

If you have any questions, please do not hesitate to call. Thank you in advance for your assistance in this matter.

Thank you,


John C. McDaniel

CC: R. Mark Davis (via US Mail)

COJ/CC
MAY 14 2013
JUDICIAL

South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel
employee
Claimant

Snelling Staffing Services
employer

And

United Wisconsin Insurance Company c/o
United Heartland
Carrier

Defendant

Claimant's Motion for additional
Evidence and Testimony to Complete
the Record

WILL YOU PLEASE TAKE NOTICE that the undersigned hereby submit this Motion for Additional Evidence for completion of the records and Notice of Additional Evidence and Additional testimony under S.C. Code Ann. § 1-23-320 of the Administrative Procedures Act and Regulation 67-707(A). The Claimant requests the Commission to allow additional evidence to complete the record.

The Claimant contends that the evidence sought to be introduced is not evidence of a cumulative nature but would likely have produced a different result had the evidence been submitted.

The Claimant contends that the evidence was not known to him to have been excluded from the record at the time of the first hearing and the Additional Evidence and APA Submission is being brought to the attention of the Commission immediately.

During the single commission hearing the attorney for the Defendant cross examined the Claimant and raised numerous references to the Claimant's deposition, which had been taken prior to the single commissioners hearing.

The Claimant contends that the specific questions alone due not speak to the entirety of the Claimant's testimony at his deposition. The Claimant contends that he was under the impression that his deposition testimony was part of the record.

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commissioner: James**

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

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

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending Motion for Additional Evidence Dated May 6, 2013 be, and hereby is;

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

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

Remand to Panel as indicated below.

Barden

James

Taylor

Beck

Roche

Wilkerson

McCaskill

Remand for Order consistent with the Order of the Court.

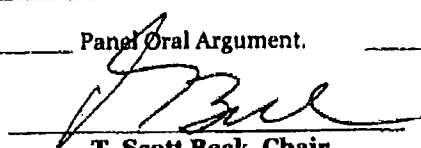
Remand to the Hearing Commissioner.

Remand to the Jurisdictional Commissioner.

Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

6/17 2013

CONCURRING:

Commissioner Susan S. Burden

Commissioner Melody James

Commissioner Aisha Taylor

Commissioner Avery Wilkerson

Commissioner Andrea C. Roche

Commissioner Gene McCaskill

NOT PARTICIPATING:

X

DISSENTING:

CERTIFICATE OF SERVICE

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

This 17 day of June, 2013.

By: Valerie D. Miller
SCWCC Judicial Department

John McDaniel (Reg & cert)
R. Mark Davis

John C. McDaniel

1387 Camp Road, Unit C, Charleston SC 29412

Phone Number: [REDACTED]

Email: [REDACTED]

May 6, 2013

Via US Mail

Virginia Crocker, Judicial Director
S.C. Workers Compensation Commission
Post Office Box 1715
Columbia, SC 29292-1715

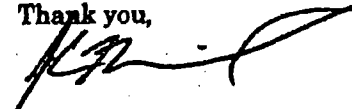
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Ms. Crocker,

Enclosed please find the original and one copy of the Claimant Motion for Additional Evidence and Notice of Additional APA Submissions for the above referenced claim. Please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope provide.

If you have any questions, please do not hesitate to call. Thank you in advance for your assistance in this matter.

Thank you,



John C. McDaniel

CC: R. Mark Davis (via US Mail)

SCWCC
MAY 11 2013
JUDICIAL

South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel
employee
Claimant

Snelling Staffing Services
employer

And

United Wisconsin Insurance Company c/o
United Heartland
Carrier

Defendant

Claimant's Motion for additional
Evidence to Complete the Record and
Notice of Additional Evidence and
Additional APA Submissions on
behalf of the Claimant

WILL YOU PLEASE TAKE NOTICE that the undersigned hereby submit this Motion for Additional Evidence for completion of the records and Notice of Additional Evidence and Additional APA Submission under S.C. Code Ann. § 1-23-320 of the Administrative Procedures Act and Regulation 67-707(A). The Claimant requests the Commission to allow additional evidence to complete the record.

The Claimant contends that the evidence sought to be introduced is not evidence of a cumulative nature but would likely have produced a different result had the evidence been submitted.

The Claimant contends that the evidence was not known to him to have been excluded from the record at the time of the first hearing and the Additional Evidence and APA Submission is being brought to the attention of the Commission immediately.

Pursuant to S.C. Code Ann § 1-23-320(E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

Pursuant to SC Code Ann. §42-3-20 (C) The commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements,

john mcdaniel <[REDACTED]>

Denial of motions/1116275

john mcdaniel <[REDACTED]>

Thu, Jun 20, 2013 at 4:42 PM

To: abracy@wcc.sc.gov

Ms. Bracy,

My name is John McDaniel and I recently had two motions in front of the judicial conf. These were denied but had no grounds for denial. Would it be possible to get specific findings of fact/conclusions of law for these orders. Ms. Crocker said they were found to be interlocutory but I do not fully understand that statement, as this was the action outlined for this purpose in 67-707 (A). Please advise on when this request might be answered.

Thank you for your time,
John McDaniel

Exhibit B

Compose
Inbox
Sent

Reply Reply To All Delete | Print
Message 1 of 2 First | Previous | Next | Last
From: "Cannon, Gary" <gcannon@wcc.sc.gov>
To: "jmcDaniel1982@gmail.com" <jmcDaniel1982@gmail.com>
Cc: Mark Davis <mdavis@mgclaw.com>
Subject: RE: FW: Denial of motions/1116275
07/01/2013 4:22 PM
Mr. McDaniel

Please be advised the date of your hearing before Commissioner James is July 8, not July 9 as stated in #10 below.

I apologize for my error.

Gary M. Cannon
Executive Director

From: Cannon, Gary
Sent: Monday, July 01, 2013 3:30 PM
To: [REDACTED]
Cc: Mark Davis
Subject: FW: FW: Denial of motions/1116275

Mr. McDaniel,

while I am not an attorney and cannot provide you with legal advice, I will attempt to respond to your questions below.

1. <![ENDIF]>You may only communicate with the Commissioners and their Administrative Assistants regarding scheduling or other administrative purposes that do not deal with the substance of your claim or the issues you have raised or are contesting. Forms, Motions, and official pleadings must be filed with the Commission as provided for in the regulations and served on all parties. All other communications with the Commission should be directed to my office.
2. <![ENDIF]>The same rules apply to the Defendants. However the defendants attorney does not contact the Commissioner's office and pose questions that you have posed.
3. <![ENDIF]>The defendants attorney does not contact the Commissioner's office and pose questions that you have posed.
4. <![ENDIF]>The Commission orders stand on their own. Legal counsel provides clarification of the language in an order.
5. <![ENDIF]>It is the Commissioner's decision as to evidence that will be accepted.
6. <![ENDIF]>It is the Commissioner's decision as to evidence that will be accepted.
7. <![ENDIF]>Commissioner James has jurisdiction of your case, the motion received by the SCWC on June 14, 2013 has been referred to her for consideration.
8. <![ENDIF]>The Commission orders stand on their own. Legal counsel provides clarification of the language in an order.
9. <![ENDIF]>The Commission decides on Orders that is

Page 1

Exhibit C

PGP Universal Web Messenger - Message Display_e
before it. You are asking an opinion, of which I cannot
provide.

10. <![ENDIF]>Your case will be heard by Commissioner James
on July 9. Any appeals of her decision and order may be
presented to the Full Commission for consideration.

Gary M. Cannon
Executive Director

From: john mcdaniel [REDACTED]
Sent: Monday, July 01, 2013 11:58 AM
To: Cannon, Gary
Subject: Re: FW: Denial of motions/1116275

Mr. Cannon,

I had a bad attorney, he failed on many fronts and I am trying
to fix his err. I seek clarification on a few points. Please
explain each in turn.

- 1) Am I restricted from contacting anyone in the SCWCC except
you?
- 2) Is this restriction imposed on the defendants?
- 3) What is considered "ex parte" of asking for clarification
of an order?
- 4) At the hearing before Ms. James will she accept evidence
presented then?
- 5) Can Ms. James decline entering evidence into the file?
- 6) I have a motion before the SCWCC for penalties at this
moment, will it be stayed until Ms. James' order.
- 7) Can I get clarification of the two orders that were denied?
- 8) Should these orders have been held instead of heard?
- 9) Am I now under the jurisdiction of the full commission, the
single commissioner, or both?

I appreciate your answers to the above and your time in this
matter.

Thanks,
John McDaniel

On Mon, Jul 1, 2013 at 10:39 AM, Cannon, Gary
<gcannon@wcc.sc.gov> wrote:
Dear Mr. McDaniel

I am responding to your emails to Amy Bracy and Commissioner
Beck. You have a pending case before the Commission therefore
to avoid ex parte communications, please direct all future
correspondence to me.

You have a hearing scheduled before Commissioner James on July
8 at 9:30 a.m. in the N Charleston City Hall. The hearing is
for the purpose of considering additional evidence you
requested to be considered. After the hearing, Commission
James may issue an Order, which will be forwarded to the Full
Commission for review.

Gary M. Cannon
Executive Director

From: john mcdaniel [REDACTED]
Sent: Wednesday, June 26, 2013 2:14 PM

Page 2

PGP Universal Web Messenger - Message Display_e

To: Bracy, Amy
Subject: RE: Denial of motions/1116275

Ms. Bracy, my last email was never addressed. Could I please receive a written motion outlining the denial of the two motions with findings of law and fact? Thank you again, John McDaniel

On Jun 21, 2013 11:14 AM, "john mcdaniel"

[REDACTED] wrote:
Ms. Bracy, The "order" that denied the motion is a form. All I request is clarification as to why it was denied. The form has no comments of findings or conclusions. Without this information it would be impossible to determine if this decision was controlled by error of law.

Thanks again,
John McDaniel

On Jun 21, 2013 10:03 AM, "Bracy, Amy" <abracy@wcc.sc.gov>
wrote:

The order stands as written and is self-explanatory.

From: john mcdaniel [REDACTED]
Sent: Thursday, June 20, 2013 4:42 PM
To: Bracy, Amy
Subject: Denial of motions/1116275

Ms. Bracy,

My name is John McDaniel and I recently had two motions in front of the judicial conf. These were denied but had no grounds for denial. Would it be possible to get specific findings of fact/conclusions of law for these orders. Ms. Crocker said they were found to be interlocutory but I do not fully understand that statement, as this was the action outlined for this purpose in 67-707 (A). Please advise on when this request might be answered.

Thank you for your time,
John McDaniel

Reply Reply To All Delete | Print
Message 1 of 2 First | Previous | Next | Last

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1116275

EMPLOYEE/CLAIMANT: JOHN McDANIEL
EMPLOYER: CAREER EMPLOYMENT PROFESSIONAL
INSURER: UNITED WISCONSIN INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 8TH DAY OF
JULY, 2013, COMMENCING AT THE HOUR OF 9:39 A.M., IN
CHARLESTON, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY JAMES,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

Exhibit D

APPEARANCES

ALLISON C. NUSSBAUM, ESQUIRE, OF THE FIRM
McANGUS, GOUDELOCK & COURIE, L.L.C.
POST OFFICE BOX 650007
MT. PLEASANT, SOUTH CAROLINA 29465

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: ELIZABETH DALE

1 _____ THE -- I WOULD ACTUALLY -- I KNOW THIS IS --
2 WILL YOU ACCEPT THIS DEPOSITION AS IMPEACHMENT OF
3 DAN COBB'S NOW DISPROVEN TESTIMONY, OR AM I BEING
4 DENIED THE RIGHT TO PRESENT EVIDENCE?

5 BY COMMISSIONER JAMES:

6 _____ NO, SIR, I'M HERE ON THE REMAND WITH REGARDS TO
7 THESE PAY RECORDS, WHICH IS ---

8 BY THE CLAIMANT:

9 _____ RIGHT, THAT'S ---

10 BY COMMISSIONER JAMES:

11 _____ IF THE FULL ---

12 BY THE CLAIMANT:

13 _____ MY QUESTION IS MISUNDERSTOOD. MY QUESTION IS
14 MISUNDERSTOOD. I HAVE ---

15 BY COMMISSIONER JAMES:

16 _____ MR. McDANIEL.

17 BY THE CLAIMANT:

18 _____ --- A NOTEBOOK RIGHT HERE, AND I AM ASKING YOU
19 MAY I PRESENT IT TO YOU, OR AM I BEING DENIED THE
20 RIGHT TO PRESENT EVIDENCE? I UNDERSTAND THAT YOU
21 ARE ONLY HERE TO CONSIDER THE ISSUES OF THE AVERAGE
22 WEEKLY WAGE. IN ORDER TO AVOID FURTHER LITIGATION,
23 I WOULD LIKE THIS EVIDENCE AS I HAVE ORGANIZED IT
24 AND READIED IT TO BE PRESENTED, AND WHETHER OR NOT
25 YOU REVIEW IT IN THE CONTEXT OF JAROD LAMPKIN'S

1 AVERAGE WEEKLY WAGE, I BELIEVE THAT AS AVERAGE
2 WEEKLY WAGE REACHES INTO THE FUTURE AND NOT THE
3 PAST, THAT THESE RECORDS ALL HAVE AN IMPACT ON IT,
4 AND I WOULD MOVE FOR YOU TO ACCEPT THESE RECORDS.
5 BECAUSE I UNDERSTAND THAT THE JUDICIAL COMMITTEE HAS
6 DENIED TWO MOTIONS. THOSE TWO MOTIONS WERE BASED ON
7 THE INFORMATION PRESENTED TO THEM. I AM HERE NOW
8 WITH ORGANIZED EVIDENCE TO PRESENT, WHICH UNDER THE
9 RULES OF THIS HEARING, I MUST BE AFFORDED THE
10 OPPORTUNITY TO PRESENT IT. I KNOW THAT YOU KEEP
11 TELLING ME THAT THIS IS JUST THE ONE ISSUE, BUT I
12 BELIEVE THAT THIS EVIDENCE SPEAKS TO THAT ISSUE, AND
13 IF EVIDENCE -- IF SOMETHING NEW IS DISCOVERED BY
14 ADDITIONAL EVIDENCE, THEN THAT SHOULD BE DONE RIGHT.
15 BECAUSE NO THING IS DONE UNTIL IT'S DONE RIGHT.

16 **BY COMMISSIONER JAMES:**

17 _____ MR. McDANIEL, THE FULL COMMISSION HAS REMANDED
18 IT FOR THIS PARTICULAR ISSUE. ALL OF THE
19 OUTSTANDING MOTIONS FOR NEW EVIDENCE HAVE BEEN
20 ADDRESSED, OKAY. I CANNOT TAKE ANY ADDITION -- I
21 CANNOT TAKE ANY ADDITIONAL EVIDENCE.

22 **BY THE CLAIMANT:**

23 _____ OKAY.

24 **BY COMMISSIONER JAMES:**

25 _____ OKAY.

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



WCC File #: 416275
Carrier File #: 041100021048
Carrier Code #: 1001
Employer FEIN #: 58-1292180

Claimant's Name: John L. McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professionals
Address: 1387 Camp Rd Unit # C Address: _____
City: Charleston State: SC Zip: 29412 City: _____ State: SC Zip: 29407
Home Phone: [REDACTED] Work Phone: _____ Insurance Carrier: _____
Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: (843)425-3000

SUBPOENA

To: Jim Pascutti, Saelling Staffing c/o RMark Davis & Alison Nussbaum

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case. *South Carolina Workers' Compensation Com'n*
PLACE OF TESTIMONY: 1333 Main St. Suite 500 ROOM: Panel B
Columbia, SC 29201 DATE AND TIME: 10/14/13 at 1:15 PM

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.
PLACE OF DEPOSITION: _____ DATE AND TIME: _____

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.
LIST OF DOCUMENTS: See Exhibit A
PLACE: Same as Place of Testimony DATE AND TIME: Same as Date and time of Testimony

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.
PREMISES: _____ DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

[Signature] Judicial Director 803 737 5739 10/4/13
ISSUING OFFICER'S SIGNATURE AND TITLE PHONE NUMBER DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

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



WCC File #: 111 6275
Carrier File #: 041100021048
Carrier Code #: 1001
Employer FEIN #: 58-1292180

Claimant's Name: John L. McDaniel SSN: [REDACTED] Employer's Name: Career Employment Professionals
Address: 1387 Camp Rd Unit # C Address: 2090 Executive Hall Rd
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: 29407
Home Phone: [REDACTED] Work Phone: 843-425-3000 Insurance Carrier: United Wisconsin Insurance Co
Preparer's Name: John C. McDaniel Law Firm: Preparer's Phone #: (843) 425-3000

SUBPOENA

To: Nicole Service, United Heartland c/o R. Mark Davis & Allison Mussbaum

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: S.C. Workers' Compensation Commission
1333 Main St. Suite 500 ROOM: Panel B
Columbia, SC 29201 DATE AND TIME: 10/14/13 at 1:15 PM

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: DATE AND TIME:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: See Exhibit A

PLACE: Same as Place of Testimony **DATE AND TIME:** Same as Date and Time of Testimony

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

[Signature] Judicial Director 803 737 5739 10/4/13
ISSUING OFFICER'S SIGNATURE AND TITLE PHONE NUMBER DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

Exhibit A

Any and all documents related to John C. McDaniel. Documents responsive to this subpoena include, but are not limited to any and all correspondence, notes, memos, handwritten notes, emails, evaluations, applications and all records related in any way John C. McDaniel regardless of whether the documents are maintained electronically, on microfilm, disk, or paper.

Any and all personnel records related to John C. McDaniel.

Any and all notes, memos correspondence, letters and communication regarding employment, placement, assignments and/or possible placement, assignments of John McDaniel.

Any and all correspondence, emails and communication to and/or from Barnwell Whaley Patterson & Helms regarding assignments

Any and all correspondence, emails and communication to and/or from Barnwell Whaley Patterson & Helms regarding John C. McDaniel

Any and all correspondence, emails to and communication from Allside Revere regarding John C. McDaniel

Any and all correspondence, emails and communication to and/or from Allside Revere and/or Revere Building Supply regarding assignments.

Any and all correspondence, emails and communication to and/or from Clawson and Staubes regarding assignments and/or John McDaniel.

Any and all correspondence, emails and communication between Snelling Staffing departments regarding John C. McDaniel regardless of whether the documents are maintained electronically, on microfilm, disk, or paper.

Any and all correspondence, emails and communication between Snelling Staffing and United Heartland regarding the John C. McDaniel regardless of whether the documents are maintained electronically, on microfilm, disk, or paper.

E-Amp agreement(s) of Alside Revere and/or Revere Building Products.

Any and all contracts with Ben Arnold.

Any and all contracts with Barnwell Whaley Patterson & Helms

Any and all Workers Compensation Policies from 2011-2012.

Any and all General Liability Policies from 2011-2012.

City: [Redacted] State: SC Zip: 29107 City: [Redacted] State: SC Zip: 29107
 Home Phone: [Redacted] Work Phone: 803 737 5739 Insurance Carrier: [Redacted]
 Preparer's Name: [Redacted] Law Firm: _____ Preparer's Phone #: 803 737 5739

SUBPOENA

To: Judge William Smith, SC 29107

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:

1703 N. 3rd St. 2nd Fl.
Columbia, SC 29201

ROOM:

DATE AND TIME:

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

DATE AND TIME:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS:

PLACE:

DATE AND TIME:

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

[Signature] Judicial Director
ISSUING OFFICER'S SIGNATURE AND TITLE

803 737 5739
PHONE NUMBER

10/12/07
DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

John C. McDaniel

1387 Camp Road, Unit C, Charleston SC 29412

Phone Number: [REDACTED]

Email: [REDACTED]

June 24, 2013

27

Via US Mail

R. Mark Davis
McAngus, Goudelock & Courie
PO Box 650007
Mt. Pleasant, SC 29465

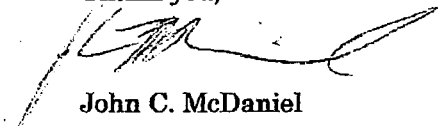
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Counsel,

Enclosed for service, please find subpoenas to Jim Pascutti, Angela Baldwin and Nicole Service for the above referenced claim.

If you have any questions, please do not hesitate to call.

Thank you,



John C. McDaniel

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



WCC File #: 1116275
Carrier File #: 041100021048
Carrier Code #: 1001
Employer FEIN #: 88-1297180

Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment of BJA Snelling
Address: 1327 Camp Road, Unit C Address:
City: Charleston State: SC Zip: 29412 City: State: Zip:
Home Phone: [REDACTED] Work Phone: Insurance Carrier: United Wisconsin Insurance
Preparer's Name: John McDaniel Law Firm: Preparer's Phone #: 843 425 3000

SUBPOENA

To: Jim Pascutti

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: North Charleston City Hall
2500 City Hall Lane, 3rd Floor
Charleston SC 29406

ROOM: Council Chambers
3rd Floor
DATE AND TIME: July 8, 2013
9:00 AM

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

DATE AND TIME:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: Any and All emails relating to; claim # 1116275, between United Heartland & Snelling, Bonnell Whaley & Snelling, and any other correspondence relating to the same or possible re-employment opportunities from John McDaniel
PLACE: DATE AND TIME:

SAME / See ABOVE

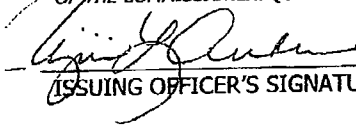
SAME / SEE ABOVE

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

 Judicial Director
ISSUING OFFICER'S SIGNATURE AND TITLE

803 737 5739
PHONE NUMBER

6-27-13
DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

SUBPOENA

WCC Form # 27
Rev. 3/96

27

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



WCC File #: 1116275
Carrier File #: 041100021048
Carrier Code #: 1601
Employer FEIN #: 58-1292180

Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment of/b/a Snelling
Address: 1387 Camp Bel Unit C Address:
City: Charleston State: SC Zip: 29412 City: State: Zip:
Home Phone: [REDACTED] Work Phone: Insurance Carrier: United Wisconsin Insurance
Preparer's Name: John McDaniel Law Firm: Preparer's Phone #: 434253000

SUBPOENA

To: Angelo Baldwin

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: North Charleston City Hall ROOM: Council Chambers
2500 City Hall Lane, 3rd floor 3rd floor
Charleston SC 29404 DATE AND TIME: July 8, 2013
9:00 AM

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

DATE AND TIME:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS:

PLACE:

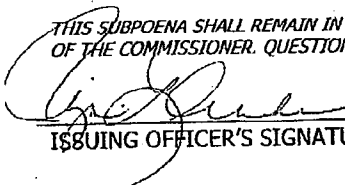
DATE AND TIME:

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

 Judicial Director 803 737 5739 6-27-13
ISSUING OFFICER'S SIGNATURE AND TITLE PHONE NUMBER DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

WCC Form # 27
Rev. 3/96

27

SUBPOENA



Claimant's Name: John McDaniel SSN: [REDACTED] Employer's Name: Career Employment Bible Shelter
Address: 137 Camp Rd, Unit C Address: _____
City: Charleston State: SC Zip: 29412 City: _____ State: _____ Zip: _____
Home Phone: [REDACTED] Work Phone: 8434258000 Insurance Carrier: United Wisconsin Insurance
Preparer's Name: John McDaniel Law Firm: _____ Preparer's Phone #: 8434258000

SUBPOENA

To: Nicole Service Claims Rep. III United Heartland % R. Mark Davis

YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:

North Charleston City Hall
2500 City Hall Lane, 3rd Floor
Charleston SC 29406

ROOM: Council Chambers
3rd Floor
DATE AND TIME: July 8, 2013
9:00AM

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

DATE AND TIME:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: Any and All Non privileged records of claim # WCL 1116275
of Any nature whatsoever, stored physically, electronically or on other media

PLACE: SAME / SEE ABOVE

DATE AND TIME:

SAME / SEE ABOVE

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

[Signature] Judicial Director
ISSUING OFFICER'S SIGNATURE AND TITLE

803 737 5739
PHONE NUMBER

6-27-13
DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.



Claimant's Name: John McDaniel Employer's Name: Career Employment Professional d/b/a Snelling Staffing
Address: 1387 Camp Rd. Address: Ashley River Rd.
Unit C
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: _____
Home Phone: _____ Work Phone: _____ Carrier: United Wisconsin Insurance Company
Preparer's Name: Thomas M. White, Esquire Preparer's Phone #: (843) 572-0700

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

Injury Illness Repetitive Trauma

1. Compensation Rate: \$418.19 2. AWW: \$627.25 Date of Injury: November 21, 2011

3. Type of injury and body part(s): left foot

4. Facts in controversy: The Defendants have admitted an injury to the left foot. What is the Claimant's correct average weekly wage and compensation rate? For what period of time is Claimant entitled to temporary total and/or temporary partial disability? Is Claimant entitled to a higher compensation rate than reflected on the Form 20? Is Claimant entitled to the underpayment of temporary total paid to date? Is Claimant at maximum medical improvement? If so, what is his loss of use and disability? Does Claimant have future medical needs under Dodge? Claimant has been referred to a pain specialist. Claimant has not been able to return to work as no work has been provided within his restrictions by his employer?

5. Legal issues involved: Correct average weekly wage and compensation rate. Claimant is still in need of medical care and has been referred for pain management.

6. Unusual aspects: Defendants have failed to provided income information from similar employees that have been subpoenaed. Claimant has not been able to return to work and no work has been offered within his restrictions. Claimant has been referred for pain management, is still treating, and will have future medical needs. Claimant received a pay increase from \$11.50 an hour to \$13.00 an hour shortly before his injury and had moved to a new position in the warehouse where he was averaging 45.5 hours per week. Average weekly wage should be \$627.25 per week. Claimant has provided this information to the Defendants who have refused to pay appropriate benefits and are continuing to underpay the Claimant.

7. Witnesses (designate if expert):* Dan Cobb

8. Exhibits: Pay Stubs, TTD check stubs, Subpoenas and letters regarding like employee pay, any items from Personnel File

9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): SEE ATTACHED LIST

10. Name, address, and specialty, if any, of the treating physician: Dr. Ohlsen, Dr. Gudas, Dr. Brilliant

11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Ohlsen 8/13/12 Claimant is at maximum medical improvement. Refer to Dr. Nancy Lembo for chronic pain management. Walking tolerance is limited to one hour. Lifting capacity 10 pounds. Can't climb ladders, can't do roof work, can't run, can't stand for long periods of time. Needs future medical care to include possible surgery. Orthotics will be needed. 15% of the left lower extremity. And additional 2% for the ankylosis of the fifth toe for a total of 17% to the left lower extremity. Continuing to take occasional Celebrex and Lyrica. Dr. Brilliant 10/11/12 50% of the left foot. Should avoid strenuous activities such as running, jumping, prolonged standing. Basically limited to sedentary activity

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

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

Signature: [Signature]

Email: twhite@steinberglawfirm.com

Date of hearing: November 15, 2012

Time needed for hearing: 1 hour

On behalf of Claimant Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

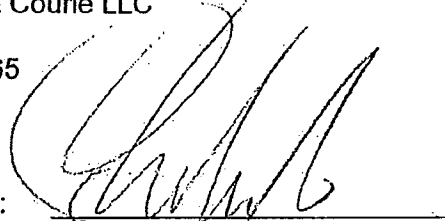
CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2012, I served the Defendant in the foregoing matter with a copy of the attached Form 58/Pre-Hearing Brief and APA Submissions by mailing a copy of same via first class mail, postage pre-paid and addressed as follows:

S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

R. Mark Davis, Esquire
McAngus Goudelock & Courie LLC
Post Office 650007
Mt. Pleasant, SC 29465

By:



Thomas M. White

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116275

John McDaniel, Employee,

Claimant,

vs.

Career Employment Professional d/b/a
Snelling Staffing, Employer, and

United Wisconsin Insurance Company,
Carrier,

Defendants.

**BRIEF ON BEHALF OF
CLAIMANT/APPELLANT**

STATEMENT OF CASE

This matter was originally heard on November 28, 2012 and an Order was issued by the Single Commissioner finding that the Claimant had a compensable injury of November 21, 2011 to his left leg and had reached maximum medical improvement as of August 13, 2012. The Order further found that the Claimant's average weekly wage was \$537.91 with an applicable compensation rate of \$358.62. The Order provided for a 34% loss of use to the left leg and gave a credit for all weekly benefits paid after the date of maximum medical improvement. Finally, the Order provided future medical care with Dr. Ohlsen and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals set out by Dr. Ohlsen in his report of August 13, 2012.

This matter was appealed by the Claimant. A Form 30 was filed and raised 6 exceptions to the Order. Those exceptions have been reduced to 3 arguments.

ARGUMENT

1. THE AVERAGE WEEKLY WAGE AND COMPENSATION RATE SHOULD HAVE BEEN BASED ON THE CLAIMANT'S FUTURE EARNING CAPACITY SINCE THE COMPENSATION BENEFITS REACH INTO THE FUTURE AND NOT THE PAST.

The Claimant's average weekly wage was found by the Single Commissioner to be \$537.91 with a compensation rate of \$358.62. The Claimant argues that is incorrect and the average weekly wage should have been based on his potential earnings from his employment at the time he was injured. Based upon the earnings of his replacement, the average weekly wage should have been \$656.50 with a compensation rate of \$437.69 or, in the alternative, additional earnings of Jerod Lampkin provided by Alside Revere subject to a subpoena served on them by the Claimant to produce those records.

The Claimant worked for a staffing agency and was employed by that staffing agency with Alside Revere shortly before his injury. He was hired at the rate of \$13.00 per hour.

Section 42-1-40 states that the calculation of average weekly wage is based upon the actual number of weeks for which wages were paid. When the injured employee has worked for a period less than 52 weeks, the method of dividing the earnings during the period by the number of weeks, or parts thereof, in which the employee earned wages shall be followed as long as the results are fair and just to both parties. The Commission is allowed for exceptional reasons to compute average weekly wages based upon what will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

The objective of wage calculation for Workers' Compensation purposes is to arrive at a fair approximation of the Claimant's probable future earning capacity. Sellers v.

Pinedale Residential Ctr., 350 S.C. 183, 191, 564 S.E.2d 694, 698 (Ct. App. 2002).

The disability of a Workers' Compensation Claimant reaches into the future, not the past; his loss as a result of the injury must be thought of in terms of its impact on probable future earnings, for purposes of calculating the Claimant's average weekly wage. Sellers v. Pinedale.

The Workers' Compensation Act is remedial legislation enacted to protect the worker. The Statute provides an elasticity or flexibility with a view towards always achieving the ultimate objective of reflecting fairly a Claimant's probable future earning loss. Elliott v. South Carolina Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (Ct. App. 2004).

It is fair to the Claimant to base his average weekly wage and compensation rate on what his **probable** future earning capacity is.

The Claimant was placed by the staffing agency with Alside Revere. The Claimant's supervisor at Alside Revere was Dan Cobb. The Claimant was hired at \$13.00 per hour but was told by Angela Baldwin, his direct contact at Snelling Staffing, that he could expect 42 to 45 hours per week regularly. (Tr. p. 22).

Dan Cobb told the Claimant that he would typically get 45 hours per week. (Tr. p. 23). The Claimant was also told by Dan Cobb that he liked the Claimant's work and he wanted to employ him with Alside Revere. (Tr. p. 24). The Claimant had no conflict with school and wanted to stay with Alside Revere as he was looking for long term stability for work. (Tr. p. 24).

Dan Cobb testified in his deposition that he makes the hiring and firing decisions as operations manager for Alside Revere. He testified that the Claimant was brought on full

time and was working at least 40 hours per week with overtime of a couple of hours up to 10 hours per week. (Cobb Dep. p. 13). He testified there was consistent overtime. (Cobb Dep. p 13). He testified the Claimant was a good employee and if it worked out, he felt that he would be permanent. (Cobb Dep. p.14). Dan Cobb told Snelling the Claimant was working out and if they do well, the intent is to make them permanent employees. (Cobb Dep. p. 15).

The Claimant worked and got overtime for the 2 pay periods he worked. The one full week he worked, he received 5 hours of overtime.

The best projection of what the Claimant would have made while working at Alside Revere is to review what the Claimant's replacement, Jerod Lampkin, made following the Claimant's injury. Jerod Lampkin consistently made overtime and for the weeks worked, deducting the first and last weeks as partial weeks, he averaged \$656.50 per week. (APA #22). Over an 11 week period, he made \$7,221.52. This would result in a compensation rate of \$437.69.

These were the wages paid to Mr. Lampkin by Snelling Staffing while he was an employee of Snelling Staffing. Alside Revere had also been served a subpoena to produce Mr. Lampkin's wages after he became a permanent employee. As of the date of the Hearing, Alside Revere had not complied with the subpoena although they had been properly served.

As the goal is to protect the worker and to project his probable future earning loss, the fairest way to calculate his average weekly wage and compensation rate would be to base it upon the overtime hours earned by the employee that replaced the Claimant. The Claimant's replacement averaged over 7 hours of overtime per week.

It was an error to base the Claimant's average weekly wage and compensation rate on \$537.91 per week which is less than 1 hour per week of overtime.

2. THE CLAIMANT'S LOSS OF USE AND DISABILITY GREATLY EXCEEDED THE 34% IMPAIRMENT RATING GIVEN BY THE COMMISSIONER.

The Claimant is 30 years of age and a high school graduate. He had done various jobs prior to going to work for the Defendant Employer. He had done jobs as a salesman of ATV's and motorcycles, where he worked on his feet 12 hours per day, stood and walked all day long. He worked as a waiter where he stood the entire shift and lifted 60 to 70 pounds routinely. He had worked in construction where he had to lift 80 to 100 pounds and was on his feet constantly. He worked as an auditor in bars where he had to do inventory which included lifting kegs and cases of beer, all heavy lifting, and was mostly working on his feet. He worked as a caddy and had to carry 60 pound golf bags and routinely walked a number of miles around the golf course. He worked briefly in car sales where he had to stand and walk most of the day. For the Defendant Employer, he had been a route driver for a distributor where he had to routinely deliver boxes weighing up to 40 pounds. With his last job at Alside Revere, he was delivering building materials which required routinely lifting up to 75 pounds. (Tr. p. 13-15)

Under his current restrictions, the Claimant could not return to do any of the work he had done in the past. He was limited to walking less than 1 hour and his lifting was limited to 10 pounds or less. He could not climb ladders. He could not work on a roof. He could do no prolonged standing. (Tr. p. 18). The Claimant had never had a Workers' Compensation case before. He had cut his finger one time and required medical care but resulted in no treatment. He had no previous problems with his left foot. He had no

limitations and he was able to do all aspects of his job.

He had multiple problems during his treatment. His wound treatment was delayed in being approved. There were long delays in approving his chronic pain physician. He never received the appropriate shoes that were ordered for him. As of the date of the Hearing, he was still required to wear special shoes and orthotics. He needed extra padding and protection. He had significant swelling that was visible at the Hearing.

The Claimant wore a 12 C on his right foot and a 12 E on his left. (Tr. p. 30). There was a 4 width size in difference between his feet. He had bad circulation according to the doctor and had neuropathic symptoms in his foot. (Tr. p. 30).

The pain was always at a 3 to 4 out of 10 level. With activity, that would increase to a 6 to 7 out of 10. If he stood or walked longer than an hour, it felt like his foot was in boiling water. (Tr. p. 36). He also had a large area of his foot where he had no feeling.

To get relief, he would stop his activity and take medication. He would have to get off his foot. After an hour, he would have to get some sort of relief. (Tr. p. 37).

The Claimant would elevate his foot for relief. He estimated he elevated his foot for probably 2 to 3 hours per day. (Tr. p. 38). He took Celebrex and Gralise daily. Standing was limited to 15 to 20 minutes. Walking was limited to 15 to 20 minutes. (Tr. p. 38). He felt he could stand or walk for about 15 minutes out of one hour, which would be a total of 2 hours out of an 8 hour day. He could no longer run, climb ladders, squat, or jump. (Tr. p. 39). It was very difficult for him to walk downhill and he had problems with balance. (Tr. p. 39).

In considering loss of use and disability, the consideration is what loss the Claimant has suffered from a vocational standpoint considering his age, education, and work history.

The Claimant here was a high school graduate who had a history of doing only manual jobs. He could not return to do any of the work he had ever done before. He could not do any job that required standing or walking more than 15 minutes out of an hour and was going to be relegated in the future to sedentary jobs only that also allowed him to elevate his feet for periods of time.

From a vocational standpoint, the Claimant had lost all the use of his leg for any light, medium, or heavy work. The Claimant was relegated to sedentary work only and even sedentary work would be significantly restricted due to limitations on standing and walking and limitations on having to elevate his feet. The Claimant was also having to take medication on a daily basis. To award a loss of use and disability of 34% was unfair to the Claimant and did not accurately reflect his loss of use and disability from a vocational standpoint.

The Claimant's foot was run over by a forklift and he had a crush injury with multiple fractures. He was left with a permanent limp, having to wear custom shoes and orthotics, and future medical care to include surgery. His fifth toe was malunited. His treating physician gave him 17% to the leg. A second opinion by Dr. Brilliant gave him 50% to the foot.

The award to the Claimant should consider the overall impact to him from a vocational standpoint and the percentage of his loss of use and disability to the leg should be much greater than that awarded by the Single Commissioner.

3. THE SINGLE COMMISSIONER SHOULD NOT HAVE GIVEN THE DEFENDANTS A CREDIT FOR THE PAYMENTS MADE AFTER THE DATE OF MAXIMUM MEDICAL IMPROVEMENT.

The Single Commissioner gave a credit to the Defendants for payments made after

August 13, 2012, the date of maximum medical improvement. The Defendants did not file a Stop-Pay Application until September 17, 2012. The Claimant takes the position that the Defendants should not have been given a credit for the payment of weekly benefits. The Statute is clear under §42-9-10 that any payments made by an employer to an injured employee during the period of his disability, which by the terms of this title were not due and payable, when made may, subject to approval by the Commission, be deducted from the amount to be paid as compensation. The awarding of a credit by Statute is in the discretion of the Commission.

Here, the Claimant had never had a Workers' Compensation claim before. The Claimant had worked consistently throughout his adulthood and based upon this injury, could not return to any of the jobs he had ever done before. When he was released to return to work, he went back to his employer, Snelling Staffing, and inquired about the availability of work. They provided him with a job at a law firm where he worked for a period of time until the law firm no longer had work available. At all times, he advised Snelling Staffing that he was ready, willing, and able to work and was willing to work any job that was available within his restrictions. No work was ever provided except for with the law firm. In addition to that, the Claimant has been going to school to better himself by studying Civil Engineering.

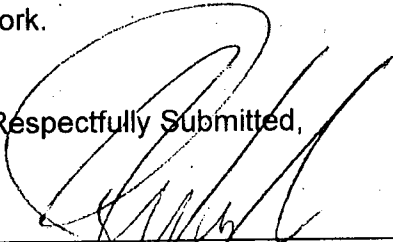
He was told by his employer that he was a great employee and they would find him work. (Tr. p. 40). He had applied for 30 to 40 jobs and called approximately 20 jobs. (Tr. p. 40). The Claimant had done everything he could possibly do to get back to work and the Defendants, Snelling Staffing Agency, had made no effort to employ him even though they are a staffing agency with multiple jobs in the area. The Claimant should not have been

penalized by giving a credit back to the date of maximum medical improvement, which in this case equated to a credit of almost \$7,000.00 by the time the Order was issued. This was clearly not fair to the Claimant and was a misuse of discretion by the Commissioner.

CONCLUSION

The Claimant's compensation rate should be based on his probable future earnings and there is evidence in the record that is not speculative. The Claimant's loss of use and disability greatly exceeds the 34% loss of use to the leg that he received from the Commissioner. Finally, it was an error to give any sort of credit to the Defendants for payment of temporary total after the date of maximum medical improvement when there was not a Stop-Pay Application filed at that time and there had been no effort by the Defendants to put the Claimant back to work.

Respectfully Submitted,



THOMAS M. WHITE

March 26, 2013

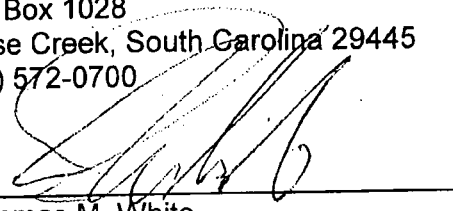
CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2013, I served the Defendant in the foregoing matter with a copy of the attached *Brief on Behalf of Claimant/Appellant* by mailing a copy of same via first class mail, postage pre-paid and addressed as follows:

S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

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By: 
Thomas M. White
Attorneys for Claimant

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,

Employee,

Claimant,

vs.

SNELLING STAFFING SERVICES,

Employer,

AND

UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND

Carrier,

Defendants.

**RESPONDENTS' BRIEF TO THE
FULL COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND JOHN
MCDANIEL, *PRO SE* CLAIMANT:

STATEMENT OF THE CASE

A hearing was held in the above-referenced workers' compensation claim on November 28, 2012 before the single Commissioner. The purpose of the hearing was to determine the issues as set forth on Workers' Compensation Commission Forms 50/51 and Form 21, including a determination of whether Claimant had reached maximum medical improvement, the extent of any permanent partial disability, whether Defendants were entitled to stop payment of temporary disability benefits to Claimant and to determine if Claimant was entitled to any additional benefits. The single Commissioner issued a Decision and Order dated January 4, 2013 in which she found, *inter alia*, that Claimant had an appropriate average weekly wage of \$537.91 with a

corresponding compensation rate of \$358.62; that Claimant had reached maximum medical improvement and Defendants were entitled to stop payment of temporary total disability benefits; that Defendants were entitled to a credit for all weekly benefits paid after Claimant's date of maximum medical improvement; that Claimant had suffered a 34% permanent partial disability to the left leg; and that Claimant was entitled to future medical care per Dr. Ohlson's report of August 13, 2012.

Claimant also filed a Motion to Admit Additional and Newly Discovered Evidence to which Defendants replied on March 18, 2013. In summary, Claimant subpoenaed a representative of Alside Revere to the hearing on November 28, 2012, the Alside Revere representative failed to appear and, during the pre-hearing conference, the single Commissioner asked Claimant if he intended to proceed with the case without the Alside Revere representative. By and through his attorney, Claimant proceeded with the hearing based on the evidence submitted in the Pre-Hearing Brief and declined the opportunity to postpone the hearing. Furthermore, Claimant did not request the record be left open to submit additional pay records which had been subpoenaed from Alside Revere. Therefore, pursuant to Regulation 67-707(2), Claimant would be required to prove the evidence requested was unknown to him at the time of the first hearing, and could not have been secured prior to the hearing. Claimant's alleged new evidence fails to satisfy the requirements of Regulation 67-707(2), because Claimant was aware of the requested evidence at the time of the original hearing and, when presented with the opportunity to obtain the additional evidence prior to going forward with the hearing, opted to proceed with evidence submitted in his Pre-Hearing Brief. Therefore, Defendants assert Claimant's Motion to Add Additional Evidence should be denied and the instant Appeal should go forward.

STANDARD OF REVIEW

While it is well-established that the Full Commission may make its own Findings of Fact and Conclusions of Law in workers' compensation cases, "it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion..." *Muir v. C.R. Baird, Inc.*, 519 S.E. 2d 583 (S.C. Ct. App. 1999).

ARGUMENT

Defendants hereby respond to Arguments set forth in Claimant's Appellant's Brief to the Full Commission:

- I. **THE HEARING COMMISSIONER CORRECTLY DETERMINED CLAIMANT'S AVERAGE WEEKLY WAGE AND COMPENSATION RATE OR, IN THE ALTERNATIVE, CLAIMANT'S AVERAGE WEEKLY WAGE AND COMPENSATION RATE SHOULD BE LOWER.**

The Hearing Commissioner received testimony and evidence at the hearing concerning Claimant's correct average weekly wage and compensation rate. Claimant completed 20 weeks of work, from May 9, 2011 to September 30, 2011, via Snelling Staffing Services at Alside Revere. Defendants therefore calculated Claimant's average weekly wage and compensation rate based on his actual time worked, resulting in an average weekly wage of \$492.85 with a corresponding compensation rate of \$328.58. However, the Hearing Commissioner chose to utilize wages of similar employees working Claimant's same or similar position at Alside Revere (via Snelling Staffing Services) to calculate an average weekly wage and compensation rate. Specifically, the Hearing Commissioner utilized the wage records of Jarod Lampkin, Alvin Robert Clark and Wayne Atkins, in addition to Claimant's wages, to reach an average weekly wage calculation of \$537.91 and a corresponding compensation rate of \$358.62. Therefore, Defendants contend the Hearing Commissioner's methodology was "fair and just to both parties"

as required by statutory and case law and should be affirmed by the Full Commission.

The Workers' Compensation Act defines an average weekly wage as "the earnings of the injured Employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately proceeding the date of injury." S.C. Code §42-1-40. The primary method for calculating average weekly wage, as provided in S.C. Code Ann. §42-1-40, has been interpreted by South Carolina Courts to contemplate the "usual" job situation with one Employer. See *Forrest v. A.S. Price Mechanical*, 644 S.E.2d 784 (S.C. Ct. App. 2007) citing *Foreman v. Jackson Minit Markets, Inc.*, 217 S.E.2d 214 (S.C. 1975). However, the Statute provides both a primary method of calculation of an average weekly wage, as well as alternative methods of calculation when the primary method is unavailable because "the employment, prior to the injury, extended over a period of less than 52 weeks" or unless "for exceptional reasons" it would be unfair to utilize the primary method.

The seminal case of *Forrest v. A.S. Price Mechanical* and its progeny, *Pilgrim v. Eaton and Revis*, shed additional light upon the directives for calculating a correct average weekly wage and compensation rate. See *Forrest, supra*; *Pilgrim v. Eaton and Revis*, 703 S.E.2d 241 (S.C. Ct. App. 2010). In *Forrest*, the Court of Appeals noted S.C. Code Ann. §42-1-40 provides that when exceptional reasons make one of the standard approaches for calculation of average weekly wage unfair to either the Employer or Employee, "such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured Employee would be earning were it not for the injury." *Forrest at 787*. In expanding on the directives of *Forrest*, *Pilgrim* spells out the precise methods which must be employed to calculate a correct average weekly wage and compensation rate. See *Pilgrim, supra*. In *Pilgrim*, the Court of Appeals held that the provisions of S.C. Code Ann. §42-1-40 must be employed

sequentially, in that first the primary method of calculation must be used, but if such method proves "impracticable" one may move to the first, second or third alternative methods of calculation. *Id.* at 245. However, "the third alternative method of calculation may not be used unless the first or second methods are 'impracticable.'" *Pilgrim* at 245, fn 7.

The primary method of calculation is to utilize the 52 weeks of payment immediately preceding the date of injury, in the employment in which Claimant was working at the time of the injury, excluding the quarter in which the injury occurred, to arrive at an average weekly wage. If such data is unavailable because Claimant's employment extended over a period of less than 52 weeks, making the calculation impracticable, the first alternative method is to be employed. The *Pilgrim* Court noted, in quoting the Statute, "in such a situation, the Commission must use 'the method of dividing the earnings during that period by the number of weeks and parts thereof during which the Employee earned wages.'" *Pilgrim* at 245 (quoting S.C. Code Ann. §42-1-40). Furthermore, the *Pilgrim* Court noted this method of calculation "shall be followed, as long as results fair and just to both parties will be obtained." *Id.* Therefore, the *Pilgrim* Court reasoned, if the Commission chooses to use the first alternative method of calculation of the average weekly wage, two conditions must exist: (1) the alternative must be "practicable" and (2) the calculation must yield a result which is "fair and just to both parties." *Pilgrim, Id.* Importantly, before the Commission may use any of the alternative calculations, the Commissioner must find, and the record must clearly show, that the necessary conditions exist to use an alternative method for calculating the average weekly wage. *Id.*

The second alternative calculation involves utilizing a similar Employee's wages to arrive at an average weekly wage. The Statute requires the Commission to consider "the average weekly amount which...was being earned by a person of a same grade and character employed

in the same class of employment in the same locality or community.” S.C. Code Ann. 42-1-40. The third and final alternative for calculating average weekly wage is to be employed only when “exceptional reasons” exist that make it “unfair, either to the Employer or the Employee, to use the primary or first and second alternative methods.” Furthermore, Section 42-1-40 provides that the third alternative method may not be used unless the first or second methods are impracticable. *See Pilgrim at 245*. In summary, both the South Carolina Worker’s Compensation Statute and applicable case law note that the objective of the calculation of average weekly wage is to arrive at a fair approximation of Claimant’s earnings had he not suffered an injury. However the methods of calculation dictated by S.C. Code 42-1-40 must be employed methodically and sequentially, and may not be haphazardly applied.

Therefore, Defendants submit the Hearing Commissioner should have utilized the “first alternative method of average weekly wage calculation”, as dictated by S.C. Code Ann. §42-1-40 which requires utilizing the number of weeks Claimant worked in employment (if less than 52 weeks) to reach an appropriate average weekly wage and compensation rate. Based on Claimant’s actual wages, such calculation would result in an average weekly wage of \$498.85 and a corresponding compensation rate of \$328.58.

However, the Hearing Commissioner, in Finding of Fact No. 2, opined Claimant’s 20 weeks of work was “insufficient to base his average weekly wage.” Therefore, the single Commissioner clearly elected to use an alternative method of calculation which was both “practicable” and would yield a “fair and just result to both parties.” By averaging the wages of three additional similar employees, working in the same position, with Claimant’s wages, the Hearing Commissioner arrived at an average weekly wage of \$537.91 with a compensation rate of \$358.62. As the Commissioner noted, Claimant had no guarantee his assignment at Alside

Revere would continue. Claimant worked temporary jobs via Snelling prior to his assignment at Alside Revere, and was certainly aware of a temporary employment scenario. Therefore, basing an average weekly wage and compensation rate on "forward looking" and "probable" future earnings would be based on surmise and conjecture, particularly when evaluated in a temporary employment scenario. The business of Employer is to provide temporary assignments of employment. Therefore, although the ultimate goal may be permanent placement, there is simply no guarantee Claimant would have been provided permanent employment with Alside Revere.

However, should the Full Commission find the single Commissioner's method of calculation does not reach the standard of being practicable and fair to both parties, Defendants submit utilizing Claimant's own wages over his 20 weeks of employment would be the most accurate assessment of his average weekly wage and compensation rate. As noted in *Pilgrim*, if the primary method of utilizing 52 weeks of payment immediately proceeding the date of injury is unavailable because Claimant's employment extended over a period of less than 52 weeks, the Commission should use the first alternative method of calculation. In fact, the *Pilgrim* Court noted mandatory language finding "the Commission must use 'the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages.'" (*Pilgrim* at 245 (quoting S.C. Code Ann. §42-1-40)). As the *Pilgrim* Court noted, this first alternative method of calculation [using the actual weeks worked by a Claimant] "shall be followed, as long as results fair and just to both parties will be obtained." Defendants submit utilizing Claimant's own wages, over 20 weeks, would be most fair and just to both parties. Although Defendants elected not to appeal the findings of the Hearing Commissioner, should this claim be remanded for additional determination of average weekly wage and

compensation rate, Defendants will submit that the correct average weekly wage should be \$492.85 with a corresponding compensation rate of \$328.58 based on Claimant's 20 weeks of work for the employer at Alside Revere.

II. THE HEARING COMMISSIONER CORRECTLY DETERMINED CLAIMANT'S LOSS OF USE AND DISABILITY TO THE LEFT LOWER EXTREMITY.

The Hearing Commissioner had the opportunity to evaluate all medical evidence, including the treating physician's opinion that Claimant suffered a 17% impairment of his left lower extremity as a result of his foot injury. Furthermore, the Hearing Commissioner had the benefit of examining Claimant, listening first hand to his testimony and assessing his condition. Based on all available and properly admitted evidence, the Hearing Commissioner opined Claimant had suffered 34% disability to the left lower extremity and was entitled to significant future medical treatment as outlined by Dr. Ohlson. Furthermore, the Hearing Commissioner specifically noted Claimant's entitlement to future medical care and treatment may include additional surgery and ongoing medications. Defendants contend the Hearing Commissioner's assignment of 34% disability of the lower extremity properly considered all available evidence, provided for all potential future medical treatment of the left lower extremity related to Claimant's injury, and is correct based upon the directives of South Carolina Code Ann. Section 42-9-30.

While the Full Commission is entitled to make their own Findings of Fact, great deference should be given to the Hearing Commissioner who carefully evaluated all available information, including Claimant's sworn testimony, in reaching a decision regarding disability. *See Muir v. C.R. Baird, Inc.*, 519 S.E. 2d 583 (S.C. Ct. App. 1999). Therefore, Defendants respectfully request the Hearing Commissioner's assignment of 34% disability to the left lower

extremity be affirmed.

III. THE SINGLE COMMISSIONER CORRECTLY AWARDED DEFENDANTS CREDIT FOR PAYMENTS MADE AFTER AUGUST 13, 2012.

The Hearing Commissioner awarded Defendants credit for all TTD benefits made after August 12, 2012, the date on which Claimant reached maximum medical improvement, pursuant to South Carolina Code Annotated section 42-9-10. In doing so, the Hearing Commissioner relied upon legal interpretation and principles as set forth in *Smith v. S.C. Department of Mental Health* (finding employers are entitled to stop payment of temporary total disability benefits upon a showing that a Claimant has reached maximum medical improvement) and *Curiel v. Environmental Management Services* (holding that the date of maximum medical improvement signals the end of entitlement to temporary total disability benefits). See *Smith v. S.C. Department of Mental Health*, 517 S.E. 2d 694 (S.C. 1999) and *Curiel v. Envtl. Mgmt. Svcs.*, 655 S.E. 2d 482 (S.C. 2007).

Claimant apparently argues “equity” would provide Defendants are not entitled to credit for weekly benefits paid after MMI. Claimant contends that because he has never had a previous workers’ compensation claim, because the employer was only able to provide him one temporary position post-injury (at a law firm), and because he has been enrolled in school, Defendants should not receive credit for temporary total disability benefits paid after MMI. However, as our Court of Appeals noted in *Watson v. Xtra Mile*, “equity follows the law” and, it well-established that entitlement to temporary disability benefits payments ends upon a finding of maximum medical improvement. *Watson v. Xtra Mile* (S.C. S.Ct. Op No. 5013, August 1, 2012). The Hearing Commissioner found Claimant reached MMI on August 13, 2012, and that Finding is unappealed. Therefore, Defendants are entitled to credit for TTD compensation payments made

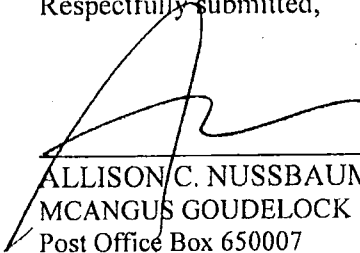
after the date of maximum medical improvement. See *Watson v. Xtra Mile Driver Training*, (S. Ct. Op. No. 5013, August 1, 2012).

Pursuant to South Carolina Code Ann. §42-9-10 and all appropriate case law, the Hearing Commissioner correctly found Defendants are entitled to credit for temporary total disability payments made after the date on which Claimant reached maximum medical improvement.

CONCLUSION

Based on the foregoing, Defendants respectfully request the Full Commission Affirm the Order of the Hearing Commissioner that (1) Claimant's correct average weekly wage is \$537.91 with a corresponding compensation rate of \$358.62; (2) Claimant suffered a 34% permanent partial disability to his left lower extremity and is entitled to appropriate future medical care; and (3) Defendants are entitled to credit for temporary disability payments made after the date on which Claimant reached maximum medical improvement.

Respectfully submitted,



ALLISON C. NUSSBAUM
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Attorney for the Employer/Carrier

Charleston, South Carolina
April 10, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,
Employee,
Claimant,
vs.
SNELLING STAFFING SERVICES,
Employer,
AND
UNITED HEARTLAND,
Carrier,
Defendants.

CERTIFICATE
OF
SERVICE

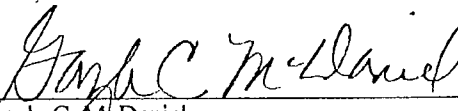
The undersigned certifies that she is an employee at MCANGUS GOUDELCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: John McDaniel (via Certified Mail & U.S. Mail)
1387 Camp Road, Unit C
Charleston, South Carolina 29412

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 · Post Office Box 1715,
Columbia, South Carolina 29202-1715

DOCUMENT: Respondents' Brief to the Full Commission

DATE OF MAILING: April 10, 2013



Gayle C. McDaniel
Legal Assistant to Allison C. Nussbaum

South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel
employee

Appellant

Snelling Staffing Services
employer

Appellant's Reply to
Respondents' Brief

And

United Wisconsin Insurance Company c/o
United Heartland
Carrier

Defendant

AS TO STANDARD OF REVIEW

In worker's compensation cases, the Workers Compensation Commission is the ultimate fact finder. Tims v. J.D. Kitts Const. (S.C. App. 2011) 393 S.C. 496.

Where there are conflicts in the evidence over a factual issue in a workers compensation proceeding, the findings of the Appellate Panel of the Workers Compensation Commission are conclusive. The Appellate Panel of the Workers Compensation Commission is the ultimate fact finder in workers compensation cases and is not bound by the single commissioner's Findings of Fact. Hall v. Desert Aire, Inc. (S.C. App. 2007) 376 S.C. 338

The appellant contends that a standard of review from *Muir v. C.R. Baird* as asserted in Respondents brief, would NOT be applicable in this case since, Mr. McDaniel is representing himself Pro Se and will be at the review hearing, and pursuant to 42-17-50 "if good cause be shown" wide latitude is given to the commission to, during a review hearing, receive additional evidence or take additional testimony among others. Thus, the Full commission will have the benefit of witnessing the testimony first hand, and *Muir, supra*, is NOT applicable as Respondents assert. However, the rest of *Muir v.* goes on to expand as the court ruled " the full commission is empowered to make its own findings of fact and to reach its own conclusions of law, consistent or inconsistent with those of the single commissioner."

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5-14-13 K Deller
ROA 228

The standard of review In workers compensation cases must be the "substantial evidence" standard of review.

The appellant contends that very little evidence was given by the defense to: disprove the extent of injury, correctness of the form 20, AWW figures for Lampkin, Clarke and Atkins, nor, good faith reasons for suspension of benefits, among other issues.

"substantial evidence" is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. Houston v. Deloach and Deloach (S.C. App. 2008) 378 S.C. 543.

**AS TO MOTION FOR ADDITIONAL AND
NEWLY DISCOVERED EVIDENCE**

The Appellants Motion for Additional and Newly Discovered Evidence was properly brought before the Full Commission in Judicial Committee in April, 2013, where the motion was granted.

Although the Appellant objects to the matter in which the motion was granted, where it should be noted, that, in addition to preserving this issue for appeal, correspondence between the Appellant and the S.C. Workers' Compensation Commission judicial department outlines this objection in through detail. Pursuant to 67-707 (C) (2) (D,E,F and G)

This evidence was deemed to be evidence of a non cumulative nature that likely would have resulted in a different outcome.

~~This evidence included in Jared Lampkin's records show that:~~

Since replacing John McDaniel at Alside Revere,

- 1) Lampkin earned \$28,504.09 through Alside Revere in 38 full weeks
- 2) He also earned \$278.25 for a (1) partial week at Alside
- 3) In the 26 weeks from 2/25/12 till 8/18/12 leading up to Dan Cobb's deposition Lampkin **AVERAGED** 12.48 hrs of overtime.
- 4) In this same time frame the **MINIMUM** overtime worked was 5.25 hours.
- 5) In this same time frame the **MAXIMUM** overtime worked was 20.25 hours.

- 6) In this same time frame the **MEDIAN** overtime worked was 12.75 to 13.0 hours.
- 7) This represents the **MINIMUM, MEDIAN and MAXIMUM** wages of Lampkin at \$634.34, \$783.41 to \$788.38 and \$932.47

This clearly calls into question the validity of detail in Dan Cobb's "SWORN TESTEMONY" Mr. Cobb testified to the fact that Mr. Lampkin was working 2-10 hours of overtime a week. This would result in average overtime being approx 6 hours a week. This was less than half of the actual overtime average. This significantly underestimates the ACTUAL time worked on a weekly basis. The record as a whole clearly indicates this was a material misrepresentation.

Further the appellant contends that overtime was essentially guaranteed in contradiction of Respondents brief. As the only weeks (2) that Lampkin did **NOT** work overtime are as follows: Check Dated 12/2/11 (The week he reported as Mr. McDaniel's replacement), and Check Dated 12/30/11 (The week before Christmas). This means that in 49 full weeks and 2 partial weeks Lampkin worked 49 weeks WITH overtime and averaged \$727.10. This represents overtime 96.07% of total weeks worked. Unlike testimony, accuracy of records does not fail over time.

- 8) From Lampkin's first day at Alside till his last, he earned wages equal to;
 - a. \$36,544.61
 - b. This was from 11-22-11 to 11-10-12
 - c. This included 49 full weeks and 2 partial weeks
 - d. Lampkin's AWW excluding the partial weeks would be equal to:
 - e. $(\text{Total wages} - \text{partial week wages}) / \text{full weeks worked} = \text{AWW}$
 - f. $(\$36,544.61 - \$916.5) / 49 \text{ full weeks} = \727.10

In summary, the single Commissioner's order provided for an AWW for Lampkin to be \$618.50 and this is clearly erroneous.

Jarod Lampkin was the only replacement for which there was only one such position with Alside Revere. The Appellant contends that Lampkin's earnings would most accurately reflect earnings "in the employment" working at the time of injury as if he had not been injured.

The respondents brief states the commissioner noted "claimant had no guarantee his assignment at Alside Revere would continue." This contention was brought up in front of the commissioner during the hearing through a line of questioning that is summarized below:

Defendants: Was there any guarantee of continued work?

Mr. McDaniel: No, this is a right to work state.

The appellant contends there is no basis for the applicability of whether or not employment was guaranteed. South Carolina is a right to work state. This means employer can end employment without cause. To lower the AWW in this case, on this basis, would substantially prejudice the rights of the Appellant. This could lead to a "slippery slope" where in becoming the law of the case, there would be a new defense for any employer. The employer could simply state that there was no guarantee of future work, or as a natural progression, employers could claim that the injured was about to be fired and thus would have an AWW of \$0. Title 42 does not provide for consideration of guarantees of work. Further, 42-1-40 makes no reference to such applicability and neither does: Title 67 article 5 or 67-606. Further, there is no reference to the same in any of the applicable laws or definitions as provided for. Particularly, there is no reference to the same in any of the definitions for: employee (42-1-130), employer (42-1-140), or employment (42-1-150). As an additional point, 42-1-160 defines injury, and includes a non-inclusive list (42-1-160 (C)) of "events which are incidental to normal employer/employee relations including but not limited to...terminations..." Given that, any reference to what "might" have happened would be based on speculation, conjecture or surmise. The appellant contends that this portion of finding of fact #2 is non-applicable, contrary to law, irrelevant and highly prejudicial; further, it should be removed from the record.

In light of this new evidence and in direct response to respondents claim that the order as stated should be upheld:

The Appellant claims the Commission should vacate the current Form 20 and Replace his AWW with what would most nearly approximate his income were it not for the injury, by ordering an AWW of \$727.10 with a corresponding comp rate of \$484.76 at the

minimum, or in the alternative, the wages outlined for the same employment by the U.S. Bureau of Labor Statistics 2010 publication or a more recent publication if available at time of decision.

AS TO MAXIMUM MEDICAL IMPROVEMENT

Under the substantial evidence doctrine, the respondents have failed to prove the appellant is at MMI.

The single commissioner erred in finding the appellant was at Maximum Medical Improvement as of August 13, 2012.

The appellant claims that he is not yet at maximum improvement as his treating physician Dr. Tavel has not yet declared MMI.

Pursuant to Dodge v. Brucoli, Clark, Layma, Inc. (SC App. 1999) 334 SC 574, under workers' compensation law, a finding of MMI indicates that a person has reached such a plateau that in the physician's opinion there is no further medical care of treatment which will lessen the degree of impairment.

Pursuant to Dukes v. Daniel Const. Co. (SC 1974) 262 SC 98, where the commission found that further medical care was necessary and should be furnished, implicit in such award is the finding that additional medical treatment will tend to lessen the period of disability, for on no other grounds could liability for additional treatment be based under 42-15-60.

The Appellant pre-hearing brief filed prior to the first hearing states that his treating physician opined that he was at MMI on August 13, 2012. The Appellant agrees that in Dr. Ohlson's report he reached MMI "from an orthopedic standpoint" August 13, 2012. As indicated in Dr. Ohlson's report 7/2/12 which states "He is likely approaching MMI from the orthopedic standpoint. However, he may need ongoing chronic pain management." (APA p.49) At which time Dr. Ohlson once again recommended Pain Management. This had been initially recommended in the report dated 5/14/12 "referral to chronic pain management doctor" (APA p.41). Pain Management would not be provided until October 30, 2012.

Had this treatment been granted in a timely manner more than one visit could have transpired prior to the initial hearing. This would have allowed Dr. Tavel to more clearly relay to the Appellant that MMI had not been reached. This was further talked about at a medical visit 5/6/2013 and should be reflected in the doctors notes. Due to the rules of court not applying to Workers Compensation cases, and the wide latitude given the commission the appellant will bring the related documents and if the commission find "good reason" to include them they will then be provided for review. The "Motion to Complete the Record" is a continuing motion due to the fact that Dr. Tavel is my treating physician and continues to treat me to lessen the extent and duration of disability.

Appellant is not a physician or of the medical profession, therefore the Appellant contends that per conversations with Dr. Ohlson a severe limp will lead to lifelong diminution of the Appellant's physical condition. The appellant was specifically advised of the body parts that are affected by a severe antalgic gate, they included in short: feet, ankles, knees, hips and back. With this in mind, the appellant contends although his condition may have plateaued at this time (in the opinion of 1 of 4 of his doctors), that it will in the future diminish at an accelerated rate due to the injury. The Appellant contends that this should not be taken as a submission of reaching MMI by the Appellant. Further, these future complications should be taken into account when considering extent of disability.

The Appellate contends the single commissioner disregarded Dr. Brilliant's finding that MMI could still be up to a year away. (APA p.60)

The Appellate contends the single commissioner disregarded Dr. Gudas' finding that MMI had not been reached (APA p.58)

The Appellate contends the single commissioner disregarded Dr. Tavel's lack of a finding of MMI although he is Mr. McDaniel's "treating physician." (emphasis added)

The single Commissioners order stated the Appellant is entitled to future medical treatment as indicated by Dr. Ohlson, and that, Dr. Ohlson and Dr. Tavel would be the "authorized treating

physicians." Pursuant to Dodge and Dukes, supra, respectively, MMI may not be established unless and until the treating physicians establish that date.

The Appellant contends he has not reached MMI. As a finding of MMI is not purely an anatomical plateau but has widely been considered to happen when an employee returns to work without future treatment and/or without restrictions.

The Appellant has NOT gained employment, is NOT free of restrictions, and has NOT been deemed to be at MMI by Dr. Tavel whom continues treatment to lessen the extent and duration of the Appellants disability.

The statute clearly outlays in 42-9-10 that the employer should pay or cause to be paid compensation while the employee is unable to work due to injury.

In *Watson v. Xtra Mile S.C. Ct.App. Opinion No: 5013*, the Court did not find that the Commission erred in determining Watson was at MMI and did not find a loss of earning capacity and/or permanent and total/partial disability, therefor Watson was not entitled to payments after MMI.

The Court found that Watson had significant training, education and experience in sedentary work that Watson could utilize. The majority opinion reasons this based on the fact that Watson's strength rating was "light duty" and because her work at the time of injury was sedentary (Geathers, J., concurring in part and dissenting in part).

Due to the above findings Watson could return to work and although her employer had sent her home she could still find work elsewhere. In *Watson* the defendants successfully rebutted Watson's presumption of Total and Permanent Disability.

The Appellant was released to sedentary work with restrictions. Prior to the Appellant's injury he was performing Heavy work and all the Appellant's past job experience would constitute light work to heavy work according to the US Department of Labor, Dictionary of Occupational Titles (4th Ed., Rev. 1991) -- APPENDIX C, Therefor *Watson v. Xtra Mile* is not applicable.

Further, the appellant contends that an application for suspension of benefits should not have been entertained by the commission on November 28, 2012. Pursuant to 42-9-260 (F)

"Further, the commission may not entertain any application to terminate or suspend payments unless and until the employer or carrier is current with all payments due."

Evidence and testimony was presented to the single commissioner as to the fact that as of Nov. 28, 2012 the carrier was NOT current on all payments due.

The Appellant further contends that the Respondents have failed to rebut HIS presumption of continued disability as established in Swinton v. South Carolina Dept of Mental Health (S.C. App. 1994), 314 S.C. 202, which states that since the finding of MMI did not establish the Appellant was no longer disabled, disability was presumed to continue

Due to the above mentioned, a credit to the date of MMI, established Nov. 28, 2012, to be Aug. 13, 2012 is non-applicable as it is against the law to entertain an application for termination of benefits without up to date benefits paid.

The carrier must not be given the credit due to the standard of review the appellant applies instantly.

AS TO REMAINING ISSUES ON

AVERAGE WEEKLY WAGE

Pursuant to 42-1-40 the appellant takes multiple exceptions to this Respondents claim to uphold the order, on this issue, in the following ways:

- 1) The method used
- 2) Claimant's wage (Form 20)
- 3) Atkin's wage
- 4) Lampkin's wage
- 5) Clarke's wage

1 & 2) The method used is not one found in Title 42, the results are not fair and just to both parties and the commissioner did not articulate any findings of fact to the Exceptional reason the alternative methods in Title 42 would not be fair and just to both parties.

The Appellant's AWW was found by the single commissioner to be \$537.91 with a compensation rate of \$358.62. Respondent agrees. Appellant contends that this is an error. The Appellant contends that this figure is highly prejudicial and that it does not reflect accurately his earnings "were it not for the injury" or "in the employment in which he was working at the time of injury." (S.C. code 42-1-40)

The Appellant contends that his AWW should be at the minimum \$727.10 with a corresponding compensation rate of \$484.76, as reflected in Jarod Lampkin's pay records, or in the alternative base the Appellants AWW on the U.S. Bureau of Labor Statistics 2010 national average for Class A Commercial Drivers which the published the median pay as \$54,000 (AWW of \$1040 with a comp rate of \$693.37), or in the alternative, on median pay for Construction Equipment Operators at \$39,460 (AWW of \$789.20 with a comp rate of \$526.16.)

The appellate relies heavily on Sellers v. Pinedale Residential Center (S.C.App. 2002) 350 S.C. 183. "The disability of a workers compensation claimant reaches into the future, not the past; his loss as a result of injury must be thought of in terms of its impact on probable future earnings, for the purposes of calculating the claimant's average weekly wage." "The workers compensation statute, which sets forth several different methods for calculating the claimants AWW, provides an elasticity or flexibility with a view towards always achieving the ultimate objective of reflecting fairly a claimant's probable future earnings loss."

On May 13, 2011 the Appellant became initially employed with Snelling Staffing working with Ben Arnold. The pay rate for this employment was \$11.50/hr. This employment was Tuesday thru Friday with an arrival time of approximately 6:00 am and a departure time varying from noon till 8:00 pm. This job required a Class B CDL (commercial driver's license). This job required constant lifting up to 50lbs, driving a class B vehicle, minimal warehouse work, delivery, stocking and merchandising of beer and wine to various locations for Ben Arnold. This employment ended Sept. 30, 2012.

When this employment ended there was no guarantee of future employment, no timetable given for return and for all intents and purposes the appellant was no longer employed.

Further, the claimant had just been hired at "On The Border" as a waiter as he had often done in the past to insure no period of unemployment became extended. This job was informed as to Mr. McDaniel's intention to accept new job offer from Alside Revere.

Unless claimant knew of and agreed to a new employer-employee relationship replacing the one theretofore existing, his rights under the Workman's Compensation Act against his regular employer were unabridged. Chavis v. Watkins (S.C. 1971) 256 S.C. 409

On November 11, 2011 the appellant entered into a subsequent employee/employer relationship with Snelling Staffing to work for Alside Revere. This employment was for a construction distribution company. The pay rate for this employment was \$13/hr. This position was for Monday thru Friday work from 7:00 am till 4:00 pm with the understanding that there would be regular overtime. Requirements for employment involved possessing a Class A CDL and the ability to lift over 50 lbs constantly. This job included several hours of warehouse work daily and irregular delivery routes, twice a week going within 5 miles of the Georgia border. The Actual number of weeks worked (length of employment) was from 11-11-11 till 11-21-11 (ten calendar days, 7 working days including the day of injury) not 20 weeks as the defendant states in their Brief.

The appellant contends that 42-1-40 states "in the employment working at the time of injury." The previous relationship of employee and employer should not be taken into account as the subsequent employment at Alside Revere was in no way predicated on any other facts of that relationship other than the availability for further employment. Further Chavis, supra, gives the threshold requirements for a NEW employee-employer relationship. Both the respondents and the Appellant were aware of and agreed to the new relationship.

The quarterly earnings of the Appellant used to calculate the current Form 20 consist of wages from a different job and with a different scope of work than that which the Appellant was working at the time of injury. This contradicts SC Code 42-1-40.

Prior to the Appellant beginning work at "Alside Revere", the Appellant's scope of work was solely as a CDL driver/deliveries at a compensation rate of 11.50/hr for "Ben Arnold". During his employment at Ben Arnold the Appellant's scope of work did not include warehouse work and/or warehouse stocking.

The Appellant's duties at Alside Revere consisted of CDL driver/deliveries and warehouse worker/assistant. Further the Appellant was injured while filing the role of warehouse worker in the warehouse at Alside Revere. Due to the additional duties associated with the Appellant's work at Alside Revere, the Appellant was hired at a higher wage rate than at Ben Arnold and was injured as a result of the additional risk and role of warehouse worker.

These facts alone should lead to the form 20 being voided.

Further 42-1-40 states the average weekly wage must be calculated by taking the total wages paid and by the actual number of weeks for which wages were paid. The single commissioner relied on a number of weeks worked that was not substantiated by the evidence, and did not take into account "weeks and parts thereof" for any of the wages she relied on.

Although time sheets of Lampkin, Atkins and Clarke were properly subpoenaed, they were never received. As AWW is an award, and awards may not rest on speculation, surmise, or conjecture, and given that, there is no way for the commission to prove particular fractions of weeks without these records: **The appellant contends that portions of weeks should be excluded from the calculation in this case.**

The Form 20 submitted to the Appellant in June, 2012, has elected by checking a box that employment was less than 52 weeks and the method of calculating comp would be by dividing earnings by actual weeks worked. The Form then instructs the preparer to disregard the quarter in which the injury occurred. The Appellant contends that the form should be amended to include a separate section for figuring AWW for employment lasting less than 52 weeks, as the intent of the

form is in conflict with itself as it instructs both "count actual number of weeks worked" and "do not count the quarter in which the injury occurred."

The Appellant contends that this Form 20 has led to the exclusion of his "actual time worked" where none of the wages received during the employment with Alside Revere have been accounted for.

In addition to the above points, the calculation on the current Form 20 contains material misrepresentations. Reference APA p.71-72 as hand written notes bring attention to pay date, start period and end period.

Uncontested facts:

- 1) The Appellant took unpaid family medical leave under (FMLA) for the week of 8-29-11 thru 9-2-11.
- 2) The employer paid 43 hours for check dated 8/5/11 when actual number of hours worked was 53.
- 3) This error resulted in the Mr. McDaniel being underpaid.
- 4) The employer addressed this error to my satisfaction and remedied it.
- 5) This remedy came in the form of an additional check paid the week of 8/5/11

This check was for 10 hours of overtime equal to \$172.50

- 6) This resulted in two checks being issued for one week of work.
- 7) The respondents representative was made aware of this July 27, 2012

The above resulted in 20 checks being issued over a 20 week period although actual weeks worked were 19 in the two quarters immediately preceding the quarter in which the injury occurred.

The order states that AWW will include "an average of the wages along with the three other employee wages provided, The Claimant - \$492.85; Atkins - \$506.88; Lampkin - 618.50; and Clarke - \$533.41."

42-1-40 states that if employment is over a period of less than 52 weeks, then the method of dividing the earnings by the number of weeks and parts thereof shall be followed.

SC Workers Compensation Code specifically states the compensation rate should be an average of weeks the employee earned wages.

On July 27, 2012 this matter was brought to Allison Nussbaum's attention via email which was replied to by Allison Nussbaum attorney for the respondent. This matter was never resolved and the commissioner disregarded oral argument to the fact that the "Form 20 is miscalculated on its face" (TW hearing) The Defendants in bad faith have repeatedly misrepresented the form 20 as being accurate on a mathematical level, even though they knew the error was contained therein. The appellant will address this further under "As to penalties: Form 20"

3,4,5) The Appellant further contends that, although error, if AWW is to be determined by the average weekly wage of Clark, Lampkin, Atkins and the Appellants wage then weeks and portions of weeks should be accounted for in all of those calculations.

The wage of Atkins was ordered to be \$506.88 this is not substantiated by the evidence as the pay records of Atkins indicate:

- | | |
|------------------------|-------------------|
| 1) Check dated: 4/8/11 | 8 hours @ \$13 |
| 2) 6/10 | 35.5 hours @ \$13 |
| 3) 6/24 | 33.5 hours @ \$13 |
| 4) 7/15 | 36 hours @ \$13 |
| 5) 7/29 | 45 hours @ \$8 |

In summary of Atkins weeks and parts there of: 1) clearly this is not a full week 2,3,4) Dan Cobb testified to hours of operation being 7 am to 4 pm with some overtime being the regular week. (only upon conjecture or surmise could one guess as to the fractions of weeks worked without the daily time sheets which were subpoenaed but never received) and 5) this week is interesting as it was a full week worked (45 hours) but was paid at \$8 an hour (this was a result of having his pay reduced as a penalty for not timely notifying Snelling staffing of his intention to discontinue his employment (min 7 days) as outlined in employment contracts with Snelling. Instance #5 should be accounted for as a full week but at the rate of \$13 an hour resulting in

"wages" for that week equal to \$617.50. The others must be omitted from the calculation as the equivalent fraction of each week would have to be based on conjecture or surmise.

Therefore, Wayne T. Atkins AWW in this instance should be $\$6407.39 / 11 = \582.49 .

The wage of Clarke was ordered to be \$533.41 this is not substantiated by the evidence as the pay records of Clarke indicate:

- | | |
|-------------|-------------|
| 1) 8/5/2011 | 32 hours |
| 2) 9/16 | 36.5 hours |
| 3) 10/7 | 38 hours |
| 4) 10/14 | 37.5 hours |
| 5) 10/28 | 32.25 hours |
| 6) 11/10 | 36.5 hours |
| 7) 11/18 | 8 hours |

See argument above for issues # 1-7 as the same applies.

This results in an AWW for Alvin R. Clarke, Jr. of $\$5664.76 / 9 = \629.41 .

The argument for Lampkin's AWW has been extensively covered and the Appellant, will for convenience, reference his AWW here as \$727.10.

This would result in the same method as used by the single commissioner to result in an AWW of $(\$727.10 + \$629.41 + \$582.41 + \$627.50) / 4 = \$641.60$

This number must be upheld as no substantial evidence exists to uphold the previous calculation.

However the claimant would rely on Lampkin's earnings to most accurately reflect wages likely to be earned, as exceptional circumstances in this case would be:

- 1) 2008 housing crash
- 2) 2008 financial crash
- 3) Dow loses approx half its value (2009)
- 4) Construction jobs become scarce (2009)
- 5) 2010 sees major fluctuations and uncertainty in the economy

6)2011 marks end of bear market (recovery)

7)2012 sees Dow add 50%

8)Home investment rises

9)More jobs available in housing market

The Appellant contends that this further proves how earning looking forward would be the only way to approximate future earnings as any earning in the last 5 years have been tainted by the "GREAT RECESSION"

The Appellant filled the role of warehouse/delivery driver. There was only one such position at Alside Revere. Jared Lampkin was the direct replacement for the injured worker as his start date was 11-22-11. Mr. Lampkin's wages alone would most accurately reflect the probable weekly wage for the appellant as AWW reaches into the future and not the past.

AS TO DISABILITY RATING

§ 42-1-120 Defines Disability as incapacity because of injury to earn the wages which the employee was receiving at the time of injury in same or any other employment.

§ 42-9-10 (A) states when the incapacity for work resulting from an injury is total, the employer shall pay, compensation equal to sixty-six and two-thirds percent of his average weekly wages not exceeding five hundred weeks.

§ 42-9-20 states that when incapacity for work resulting from the injury is partial the employer shall pay compensation equal to sixty-six and two-thirds percent of his average weekly wages not exceeding three hundred forty weeks

§ 42-9-30(22) states for the total or partial loss of, or loss of use of, a member, organ, or part of the body not covered in this section and not covered under Section 42-9-10 or 42-9-20, sixty-six and two-thirds of the average weekly wages not to exceed five hundred weeks. The commission, by regulation, shall prescribe the ratio which the partial loss or loss or partial loss of use of a particular member, organ, or body part bears to the whole man, basing these ratios on accepted medical standards and these ratios determine the benefits payable under this subsection

The single commissioner's order provided for a 34% disability rating to the lower left leg.

The appellant claims that the single commissioner should have awarded Total and permanent disability under 42-9-10, or in the alternative, the maximum allowable under 42-9-20 for permanent partial disability, and/or total and permanent disability under 42-9-30.

The Appellant was given a 17% *impairment* rating to the lower left extremity from Dr. Ohlson, a 50% *impairment* rating to the left foot from Dr. Brilliant even though he opined that Appellant could still be up to a year away from MMI, no impairment rating from Dr. Tavel as he has not yet found Appellant to be at MMI, and no impairment rating from Dr. Gudas as MMI was judged to be premature..

The Appellant's work restrictions include but are not limited to; standing or walking for one hour maximum in an 8-hour shift and no lifting over 10lbs as stated in medical reports. . Due to his extreme work restrictions as a result of his injury he is unable to fulfill any of the job descriptions he previously held. 34% impairment rating would assume the Appellant would be able to complete 66% of the work he previously held prior to injury, and this is not true. Further the Appellant has made numerous attempts to be hired at jobs that fall within his work restrictions. Snelling staffing (employer) has repeatedly tried to staff Appellant but has been unsuccessful. The appellant contends that Snelling could not find a job within his restrictions that he was qualified for either by training or experience. The appellant contends that Snelling is in a unique situation where outsourcing for all levels of multiple fields should make possible employment more readily available. Further, the below excerpt from Snelling's website demonstrates a level of ability to find jobs in multiple, specific fields for candidates.

Appellant contends that, due to work restrictions, lack of education and limited computer skills the Appellant is not employable at these jobs.

Due to the circumstances, the limited resources of resolution and the limited education and computer skills of the Appellant, the 34% impairment rating does not accurately reflect the

Appellant's disability, as defined in title 42, and the effect of injury on the Appellant's earnings capacity.

Outlaw v. Johnson Services Co. (S.C. 1970) 254 SC 486, 176 S.E.2d 152, the loss of earning capacity alone is the criterion for compensation under the Act. *Wynn v. Peoples Natural Gas Co. (1961) 238 SC 1, 118 SE2d 812. Colvin v. E.I. Du Pont DE Nemours & Co. (1955) 227 SC 465, 88 Se2d 581. Coleman v. Quality Concrete Products, Inc. (1965) 245 SC 626, 142 SE2d 43*. Total disability does not require complete helplessness. Inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment.

Prior to the Appellant's injury the appellant's work history consisted of labor work including but not limited to Construction, Distribution, use of the Appellant's class A CDL licenses and work requiring the Appellant to be able to constantly stand, walk and/or run far distances. His role was as a laborer. He stands 6'3" and weighs 260 lbs. His job history from 2000 to present consisted purely of entry level labor intensive jobs. Appellant was a highly capable individual prior to injury.

Workers Compensation law does not take into consideration pain and suffering, loss of enjoyment of life, punitive damages associated with negligent acts or other forms of resolution. The sole purpose of workers compensation is to take in consideration earning and earning capacity. The Appellant's job history shows that his entire prior jobs held consist of labor intensive work

On or about March 9, 2011, The Appellant met with Angela Baldwin from Snelling Staffing. Upon information and belief, Snelling Staffing received the Appellant's resume through an application by the Appellant for a CDL/Labor position found on Craigslist. During the interview process the Appellant was analyzed and evaluated for suitable work by Angela Baldwin and Snelling Staffing.

The Appellant's interview data form reflects a high school level of education and has handwritten notes that reference the Appellant's Class A CDL. On the Employee Master Dossier Report, pg. 2, the Monitor Comments state; *good Attitude, great image, Class A CDL, driving records attached, Good Ben Arnold, girlfriend is Elizabeth Dale, caddie experience, took prove it test in the office*. The Appellant's Employee Master Dossier Report, pg 3, Test Scores state; MS

Word, 87; MS Excel, 87, **Speed Typing, 24 wpm**, basic ruler, 100%, basic industrial math, 93%, basic reading, 90%. The Appellant's Application Questionnaire states jobs applying for as Driver/other and areas willing to work as Industrial/Driver.

The Appellant's Light Industrial D.O.T. Occupation Titles and Skills Coding states; Position Desires #1 as Driver & Position Desired #2 as open. The Appellant's Light Industrial D.O.T. form also states the Appellant to indicate all areas in which you have prior referenceable experience and feel confident. The Appellant's form indicates warehouse inventory, wait staff and also indicates skills with tape measure, screwdrivers and wrenches.

The Appellant's Safety Video Test questionnaire references questions concerning the proper way to lift heavy objects, operation of machinery and equipment and questions regarding the permission to operate Forklifts.

The Appellant was placed in Snelling Staffing's Light Industrial Branch Department for staffing and positions. Snelling Staffing Services is listed as a *Professional Staffing Agent*.

Pursuant to the US Department of Transportation, 49 CFR Part 391.41(b)(2) states that a person is physically qualified for a Commercial Drivers Licenses if that person has no impairment of an arm, foot or leg, or any other significant limb defect. The Appellant contends that due to his injury, impairment and his physical restrictions, the Appellant is no longer able to utilize his class A CDL and no longer able to perform the physical labor associated with his prior work experience or any other similar job. According to the United States Department of Labor, Dictionary of Occupational Titles, Fourth Edition, due to the Appellant's injury and work restrictions, the Appellant is no longer physically able to perform any prior job that he previously held.

The Appellant contends that due to his restrictions, work qualifications, education level, medical complications, injury to multiple scheduled loss body parts as well as non-scheduled body parts, impairment rating of multiple scheduled loss body parts and other applicable factors, the Appellant should receive general disability under permanent total disability or partial disability under 42-9-10 or 42-9-20 and/or a finding of total and permanent disability under 42-9-30.

The appellant contends that Title 42 being remedial in nature must protect the workman who does the work. As the final decision is at the discretion of the commission, being the fact finder, and that the appellant is entitled to award under 42-9-10 or 42-9-20 and 42-9-30 to maximize recovery for the injured, the commission must consider both options to their full extent and award the larger of the two as to do anything less would be contrary to the statute and its intent.

Further the Appellant contends that pursuant to *Lee v. Harborside Café* (S.C. App. 2002) 350 S.C. 74, 564 S.E.2d 354 which states that claimant may proceed under either Workers Compensation Act's general disability section in order to maximize recovery and only when schedule loss is not accompanied by additional complications affecting other parts is scheduled loss exclusive, the Commissioner should have awarded disability compensation under 42-9-10 and/or 42-9-20. The single commissioner awarded for permanent loss of use of leg and toes. However, complications include but are not limited to:

- 1) Loss of use of sural nerve (Ohlson 8/13/12)
- 2) Loss of use of superficial paraneal nerve (Ohlson 8/13/12)
- 3) Loss of use of lesser MTP joints (Ohlson 8/13/12)
- 4) Loss of use of skin (6 months for a skin wound to close)
- 5) Loss of use of vascular system (foot constantly falls asleep)
- 6) Loss of use of nervous system (dysthesias, Ohlson 8/13/12)
- 7) Loss of use of bone density (diffuse osteopenia)
- 8) Ankylosed position of the toe (5th toe)
- 9) Hammertoe deformation (2nd-5th toes)
- 10) Disfigurement of foot (large scar)
- 11) Severe antalgic gate
- 12) Continued medical care to correct flat foot deformity and pes planus (orthopedic shoe inserts)
- 13) Likely future surgery

14) Weight gain and muscle loss/atrophy

15) Permanent work restrictions

16) Lack of congruity in medical opinions (due to the need for multiple specialists in different fields).

The Appellant contends that he has multiple complications affecting other parts of the body and thus scheduled recovery is NOT exclusive.

Further, this list of complications could all be provided for under 42-9-30. The Appellant contends that he had repeated conversations with his former attorney concerning the desire to seek disability under general disability statutes and not solely under the scheduled loss. The Appellant further contends that he approached his former attorney regarding the need to show a loss of earning capacity. The appellant contends that the record, when considered in its entirety, clearly reflects a loss of earning capacity when viewed in the entirety.

The substantial evidence standard should be applied here as during the hearing: (1) the appellant gave extensive testimony during the single commissioners hearing to his work history, (2) this work history shows little training beyond entry level jobs, (3) NONE of the appellants previous jobs can be done within his work restrictions, (4) the appellant holds NO special license or certificates other than a Class A CDL and a D.O.T. card, (5) since the accident the appellant is no longer able to use his ONLY special qualification as under CFR 49.1 he is no longer physically fit to utilize his CDL, (6) the appellant knows of no jobs that fall within his restrictions that he is qualified for that could meet or exceed wages earned at the time of injury, (7) the respondents could only provide employment within his restrictions twice, both times were very short in duration, further proving that the abilities that the appellant has are so limited in scope that there is no stable market for them, (8) the first "light duty offer" was for \$9.10/hour and included shredding paper 1 sheet at a time 5 days a week, (9) although released to "sedentary work" this was within the confines of further restrictions, in which there are many "sedentary" jobs that still do not fall within these restrictions or the appellants physical limitations.

The Appellant contends that the Commission should correctly apply the applicable statutes regardless of the Appellant's forms.

The Appellant contends that expert opinions of his physicians should not be considered facts in conflict as they are professional opinions. Dr. Ohlson's reports, along with Dr. Brilliant's report do not constitute facts in the Appellant's case but medical opinions of the Appellant's condition and treatment.

The Appellant contends that in *Muir v. C.R. Baird* the medical opinions were to address causation in order to prove the six elements that must apply for occupation disease benefits under the SC Workers Compensation and are not applicable to the Appellant's claims.

AS TO CREDIT FROM MMI

The Appellant contends that if the commission determines him to be at MMI, the Defendants are not entitled to a back credit pursuant to *Swinton v. South Carolina Dept of Mental Health (S.C. App. 1994), 314 S.C. 202*, which states that since the finding of MMI did not establish the Appellant was no longer disabled, disability was presumed to continue.

The Respondent's claim my argument on this topic is "apparently 'equity'" as filed in their brief. Respondent states that pursuant to *Cruel v. Environmental*, Appellant is not due compensation after MMI. They further state that *Watson v. Xtra Mile Driver Training* states that "equity follows the law".

The Appellant takes exception to the misapplication of both of these cases.

Upon information and belief, At no time did the Appellant contend that Defendants are not entitled to credit for benefits after MMI due to "equity" or the fact that the Appellant was in school and/or because he has never had a previous workers compensation case as stated in the Defendants Brief.

Although these points should be noted, as to speak to the strength of character of Mr. McDaniel, these alone are not substantial enough for denial of credit.

The Appellant contends that the Commissioner erred in the application of *Cruel v. Environmental Management Services, et. al.* The Appellant contends in *Cruel*, the claimant failed

to cooperate with his physician which resulted in his inability to return to work. The full commission agreed, and this finding was upheld as the highest court noted "claimant was not entitled to Temporary total benefits because claimant had exaggerated the degree of his vision loss. The commission found : Had the claimant been honest with his physicians concerning the sight in his right eye, a corrective lens could have been provided, and the claimant could have worked."

In summary of application of Curiel supra: (1) no evidence exists, nor has the defense asserted that the appellant has been dishonest with his physicians. (2) No substantial corrective treatment exists for the appellant's injury that would instantly return him to work. (3) It is disability resulting from injury that has precluded him from gainful employment. ((4, further facts of the case call into question the weight to be given to Curiel's testimony as he was a criminal. i.e, illegal alien.) and (5, in that case suspension of temporary compensation could have been terminated under S.C. code 67-504 (A) pursuant to 42-9-260 (B)(6) refusal of medical treatment)).

In order to uphold the commissions own previous ruling, the full commission must find the employer is NOT eligible for a credit to the date of MMI as the specificity of the ruling is clear in its intent.

The Appellant contends that the Defendants have hindered his rehabilitation by delaying and not approving treatment prescribed by the Appellant's treating physician. In summary of delayed/never approved medical care: two delays to physical therapy authorization (one of 4 weeks and one of 6 weeks), delays in medication, never approved wound care therapy (which resulted in the hardship of an open wound for approx. 6 months and permanent disfigurement), never approved referral to Dr. Nancy Lembo for chronic pain management (employer substituted Dr. Tavel after approximately 5 month delay), 3 month delay in approval of orthotics, denial of prescription for custom shoes to present.

The Appellant claims this has undoubtedly increased his period of disability and most probably its extent. (further in "as to penalties: treatment")

For the above reasons the appellant contends that the respondent is NOT due a credit to the date of August 13, 2012.

Pursuant to Swinton v. SC Dept of Mental Health the Appellant further contends that he has been ready, willing and able to work with in his restrictions, however he is not qualified for sedentary work and no work has been offered to him within his restrictions through Snelling Staffing Services.

The Appellant has been ready and willing to work with in his restrictions. On 4/2/2012 the Appellant had a follow-up appointment with Dr. Ohlson. The Appellant inquired at the front desk whether he could be released for sedentary work. See APA submission 45-46. The Appellant contends that he inquired regarding sedentary work due to the fact that he had not worked since November of 2011 and was beginning to become depressed and frustrated with his inability to work and the lack of structure of his daily life. At a later follow up appointment on 7/2/12, Dr. Ohlson's records will reflect his status of not being able to return to work. (pg. 51)

The Appellant contends that due to the conditions and him being anxious to return to work and a normal daily life style, he was prematurely assigned to return to sedentary work pursuant to his request in May of 2012. This was approximately 6 months after his injury. Dr. Ohlson had stated in a report dated 1/9/12 that he would keep the injured out of work until the open wound was closed. Due to denial of medical care (wound therapy) this open wound would not be noted closed until 7/2/2012. At this time the doctor elected to keep Appellant out of work until the next follow up 8/13/12 at which point he released with final work restrictions from an "orthopedic standpoint" as stated in the 7/2/12 report.

The Appellant contacted Snelling Staffing immediately being released to sedentary work. Snelling Staffing assigned him duties at their office ranging from filing to shredding documents (approx. 3 weeks). The Appellant was then placed at Barnwell Whaley as an intern in an attempt to gain experience in an office setting (approx. 8 weeks).

Upon information and belief the Appellant was placed at Barnwell Whaley free of Snelling Services' charges and at the expense of the Defendants in order to allow the Appellant to have any office or sedentary work on his resume. Once Barnwell Whaley released the appellant stating strong work ethic but unfortunately no position for him, Snelling staffing declined to have him work

further in their office. Mr. McDaniel kept constant contact with Jim Pascuttii about "possible leads." That was in addition to a personal job search that resulted in 50+ inquires in wide ranging positions from receptionist and file clerk to secretary and phone receptionist. However, none of these would result in as much as an interview.

For the above reasons the Commission must NOT give a credit for overpayment, as payments are of a supportive nature. The payments, when made, went to support the Appellant in a period of total incapacity for employment due to injury.

AS TO PENALTIES

67-510. Unauthorized Suspension or Termination of Temporary Compensation Benefits.

A. If the employer's representative suspends, terminates, or reduces temporary total or temporary partial compensation benefits without first complying with the procedures in this Article, the Appellant may be entitled to additional compensation and penalty as provided in this Chapter and the Act.

42-9-260. Notice to commission when payments have begun: suspension or termination of benefits.

(F) Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current on all payments due.

(G) Failure to comply with this section shall result in a twenty five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section must be paid to the employee in addition to the amount of benefits withheld.

Page 14 of the single Commissioner's order contradicts the above statuettes. In Summary it reads:

IT IS FURTHER ORDERED THAT...Defendants shall pay the claimant for the underpayment of benefits.

The appellant contends that 42-9-260 should have precluded the entertaining of ANY application to terminate benefits. The commissioner was aware that there were weeks of benefits still due to the Appellant.

There were multiple delays in receiving payments when due. The first check received was "issued" 12-2-11 as that would comply with the statutory time limit. The Appellant contends that this document was falsified as to its issuance date being that it was not received until Dec 27, 2011.

I will briefly summarize late payments below: check date received (for benefit period of) \$ amount

- 1) 5/21/12 (4/5-4/6/12) \$13.49
- 2) 5/21/12 (4/7-4/13) \$146.55
- 3) 6/15/12 (4/21-5/25) \$896.56
- 4) Issued 6/27/12 (5/26-6/15) \$475.30
- 5) Issued 8/20/12 (6/16-6/25) \$65.92
- 6) Issued 9/6/12 (6/16-6/25) \$60.93
- 7) In addition to an approx \$1300 late payment (4 weeks beginning after issue #6) that I had to sign over to my former attorney due to high interest bridge loans taken out during that period of non-payment.
- 8) This is a non inclusive list as my former attorneys file keeping was not the most accurate.

The Appellant would further request penalties to be imposed based on the multiple incidents of grossly late payment of compensation benefits, which was the directly cause of financial hardship of the Appellant, including but not limited to the need for the Appellant to take out grossly high interest payday loans, the pawning of the Appellant's assets and withdrawal from classes at Trident Technical College.

The Employee Master Dossier Report, pg 4; 2/16/2012, reflects notes of conversation with Snelling Staffing. In these notes it states, "John called me back and said he was frustrated with insurance. His Dr. had written him for physical therapy on his foot as well as debridement of his wound and it has been hung up waiting on approval." The Appellant contends that the debridement of his wound was never approved and he never received wound therapy to excel the healing of his wound. The Appellant further references later notes from Dr. Ohlson on 2/20/12.

These notes reflect that the appellant is attempting to facilitate wound treatment and Dr. Ohlson encouraging him to touch base with Steinberg to get him into some wound care. The Appellant further referenced Dr. Ohlson's report of 5/14/12, pg 2 which states the patient has "proximal phalanx of the fifth toe complicated by delayed wound healing" and the patient having "significant soft tissue damage". The report further states, "because it took several months for the wound on his foot to heal it would not have been appropriate to place a surgical incision on an area that is asymptomatic."

Form 20

The appellant contends that the defendants should be liable for both Criminal penalties pursuant to Sc code 38-55-540 and civil penalties under SC code 38-55-550.

Four conditions must exist for this law to be applicable as SC code 38-55-530 defines "false statement or misrepresentation"

- 1) Statement is false.
- 2) It is a material representation
- 3) It is made with the persons knowledge.
- 4) Made with the intent of economic advantage.

38-55-540 outlines the criminal penalties for "A person who knowingly makes a false statement or misrepresentation...with an intent to injure, defraud, or deceive...is guilty of a (2) misdemeanor...if the benefit or advantage received is \$1,000 or more but less than \$10,000." The code further outlines that full restitution must be ordered for the victim by the court.

The Appellant claims that the defendants gained an undeserved economic advantage in the amount of \$2867.91. The economic advantage gained in this instance is equal to $\{[(\text{corrected AWW} - \text{deceptive AWW}) * \text{compensation ratio}] * (\text{total weeks paid under the single commissioners order} + \text{total weeks of TTD and TPD})\}$ or $\{[(532.96 - 492.87) * .6667] * (66.3 + 41)\} = \2867.91

The claimant contends that due to consistent delays, material misrepresentations, non/slow payment when due on multiple occasions, need to provide restitution for victims of misrepresentation and inadequate ability to provide prescribed medical care in a timely fashion the

commission should DOUBLE the imposed fine (authority granted under 42-3-105) in this instance AFTER the applicable increases in compensation for non-payment (of 10%) and the penalty imposed for unauthorized termination of disability benefits.67-505.

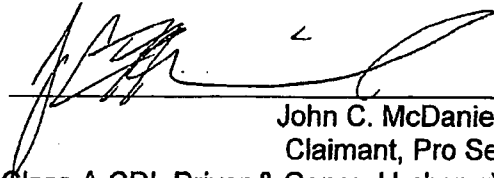
In Summary

The Appellant's compensations rate should be based on the Appellant's future probable earnings or in the alternative the in the employment that the Appellant was working at the time of injury. The Appellant's loss of use and disability greatly exceeds 34% of his leg and the disability should be rated on the Appellant's incapacity to earn the wages which the he was receiving at the time of injury due to injury. The Appellant's disability should also address his inability to utilize his Class A Commercial Drivers Licenses and that effect on his ability to earn wages. The Defendant's should not receive a credit from date of Dr. Ohlson's opined MMI since the finding of MMI did not establish the Appellant was no longer disabled and disability was presumed to continue. Further, the Appellant should not be considered to have reached MMI since only one of the two treating physicians issued a finding of MMI and that was merely from an orthopedic standpoint. Medical records suggest he will have future medical problems and probable need for surgery as a result of this injury. The Commission should apply penalties due to grossly late payments, delayed in approval of medical treatment and unapproved medical treatment which has hindered the Appellant's recovery and contributed to future medical complications to include but not be limited to the need for surgery in the future.

Conclusion

The appellant implores the commission to use the substantial evidence standard of review and order that: 1) Appellants AWW should be at the minimum \$727.10. 2) Find appellant is not at MMI. 3) return to general files until MMI after providing for the reinstatement of TTD payments or in the alternative find MMI as of the date that all past due benefits were made current and a stop payment is properly executed, 4) award total and or partial permanent disability under 42-9-10 or 42-9-20 or total and permanent disability under 42-9-30, 5) order continuing medical care at the

minimum as the single commissioner did, 6) affect all penalties possible to the maximum allowed by law in addition to figuring interest at the maximum allowable for egregious violations of the act for financial gain.



John C. McDaniel
Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1116275

EMPLOYEE/CLAIMANT: JOHN McDANIEL

EMPLOYER: CAREER EMPLOYMENT PROFESSIONAL d/b/a
SNELLING STAFFING

INSURER: UNITED WISCONSIN INSURANCE COMPANY

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 28TH DAY OF
NOVEMBER, 2012, COMMENCING AT THE HOUR OF 3:27 P.M., IN
SUMMERVILLE, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY JAMES,
ATTENDED BY COUNSEL AS FOLLOWS:

**JAN L. WHITWORTH
VERBATIM REPORTER**

**JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376**

APPEARANCES

THOMAS M. WHITE, ESQUIRE, OF THE FIRM
THE STEINBERG LAW FIRM, LLP
POST OFFICE BOX 1028
GOOSE CREEK, SOUTH CAROLINA 29445

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

ALLISON C. NUSSBAUM, ESQUIRE, OF THE FIRM
McANGUS, GOUDELOCK & COURIE, LLC
POST OFFICE BOX 650007
MT. PLEASANT, SOUTH CAROLINA 29465

ATTORNEY FOR THE EMPLOYER/INSURER.

I N D E X

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CERTIFICATE OF NOTARY PUBLIC.....	56

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

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

6 **BY COMMISSIONER JAMES:**

7 TODAY IS NOVEMBER THE 28TH, 2012. WE'RE HERE
8 ON W.C.C. FILE NUMBER 1116275. THIS IS THE CASE OF
9 JOHN McDANIEL VERSUS CAREER EMPLOYMENT PROFESSIONAL,
10 ET AL. PRESENT ON BEHALF OF THE CLAIMANT IS MR.
11 THOMAS WHITE. PRESENT ON BEHALF OF THE DEFENDANTS
12 IS -- NOT MR. MARK DAVIS ---

13 **BY MS. NUSSBAUM:**

14 ALLISON NUSSBAUM.

15 **BY COMMISSIONER JAMES:**

16 IT'S MS. -- HOW DO YOU PRONOUNCE THE LAST NAME?

17 **BY MS. NUSSBAUM:**

18 NUSSBAUM.

19 **BY COMMISSIONER JAMES:**

20 NUSSBAUM, ALL RIGHT. THE DATE OF ACCIDENT IS
21 NOVEMBER THE 21ST, 2011. WE'RE HERE TO DETERMINE
22 THE ISSUES AS SET FORTH ON THE FORMS 50 AND 51 AND
23 THE FORM 21.

24 ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,
25 VENUE, OR ANY OTHER ITEMS?

1 **BY MR. WHITE:**

2 NOT FROM THE CLAIMANT, YOUR HONOR.

3 **BY MS. NUSSBAUM:**

4 NONE FROM THE DEFENSE.

5 **BY COMMISSIONER JAMES:**

6 ALL RIGHT. WITHOUT OBJECTION, THE COMMISSION
7 FILE IS A PART OF THE RECORD WITH THE EXCEPTION OF
8 ANY SELF-SERVING DECLARATIONS AND UNSTIPULATED
9 MEDICAL REPORTS.

10 WITH THE APAs OF COURSE HAS ALSO BEEN SUBMITTED
11 THE DEPOSITION OF DANIEL COBB. THE ISSUES IN
12 CONTEST ARE THE AVERAGE WEEKLY WAGE AND COMPENSATION
13 RATE. THERE IS AN AGREEMENT THAT THE CLAIMANT IS AT
14 MAXIMUM MEDICAL IMPROVEMENT. SO, BOTH PARTIES ARE
15 REQUESTING A DETERMINATION WITH REGARDS TO
16 DISABILITY AND FUTURE MEDICALS. THE DEFENDANTS ARE
17 REQUESTING CREDIT FROM THE DATE OF M.M.I., WHICH IS
18 ALLEGED TO BE AUGUST THE 13TH, 2012.

19 IS THERE ANYTHING ELSE FURTHER WITH REGARDS TO
20 THE ISSUES ON BEHALF OF THE CLAIMANT?

21 **BY MR. WHITE:**

22 YOUR HONOR, ONLY AS TO THE CREDIT. MY CLIENT -
23 - WE WOULD JUST OBJECT TO A CREDIT. MY CLIENT IS
24 STILL WAITING FOR WORK AND IS WILLING TO WORK AS
25 WORK IS AVAILABLE THROUGH SNELLING. IT'S A

1 TEMPORARY STAFFING AGENCY. HE DID WORK SOME AFTER
2 THE DATE, AND WE HAVE SUBMITTED THOSE WAGES, BUT
3 HE'S NOT BEEN ABLE TO FIND WORK, AND I THINK THE
4 AWARDING OF A CREDIT IS IN YOUR DISCRETION. HE'S
5 DONE EVERYTHING POSSIBLE HE COULD DO TO GET BACK TO
6 WORK AND HAS HAD NO LUCK.

7 **BY COMMISSIONER JAMES:**

8 WELL, PURSUANT TO -- IF HE IS AT M.M.I., THEN I
9 HAVE TO MAKE A DETERMINATION ---

10 **BY MR. WHITE:**

11 RIGHT.

12 **BY COMMISSIONER JAMES:**

13 --- AS TO MAXIMUM MEDICAL IMPROVEMENT, AND MY
14 UNDERSTANDING OF THE DECISION OF CURIEL IS AT THE
15 DATE OF MAXIMUM MEDICAL IMPROVEMENT, WHATEVER THAT
16 DATE IS, ---

17 **BY MR. WHITE:**

18 RIGHT.

19 **BY COMMISSIONER JAMES:**

20 --- THAT THAT IS THE DATE THAT THE TEMPORARY
21 TOTAL AND/OR TEMPORARY PARTIAL HAS TO STOP.

22 **BY MR. WHITE:**

23 AND, YOUR HONOR, AS TO THE TEMPORARY TOTAL
24 ARGUMENT, I DO HAVE SOME SELECTED PAGES I WOULD LIKE
25 TO IDENTIFY NOW IF POSSIBLE.

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BY COMMISSIONER JAMES:

OKAY, CERTAINLY.

BY MR. WHITE:

YOUR HONOR, YOU KNOW, WE'RE PROPOSING AN AVERAGE WEEKLY WAGE OF \$627.75 AND A COMP RATE OF \$418.19, WHICH WOULD BE WHAT JOHN WOULD HAVE BEEN EARNING HAD HE BEEN GETTING THE 40 HOURS A WEEK AND FIVE HOURS OVERTIME, WHICH WAS HIS UNDERSTANDING HE WOULD BE GETTING IN THIS JOB. MR. COBB, WHO WAS THE OPERATIONS MANAGER AT ALSIDE REVERE, WHICH IS WHERE JOHN WAS PLACED TO WORK, TESTIFIED ON PAGE TEN, YOUR HONOR, OF HIS DEPOSITION THAT JOHN WAS BROUGHT ON AS A FULL-TIME EMPLOYEE. HE TESTIFIED ON PAGE TEN THAT HE WAS GOING TO GET AT LEAST 40 HOURS A WEEK. HE ALSO TESTIFIED ON PAGE 13 THAT THEY WERE NOW GETTING OVERTIME, AND TYPICALLY IT WAS A COUPLE OF HOURS TO TEN HOURS A WEEK. HE TESTIFIED ON PAGE 13 IT WAS CONSISTENT OVERTIME. HE TESTIFIED ON PAGE 14 THAT JOHN WAS A VERY GOOD EMPLOYEE. HE TESTIFIED ON PAGE 14 THAT IF IT WORKED OUT, HE WOULD BE PERMANENT. HE TESTIFIED IF THEY DO WELL, THEY INTEND TO MAKE THEM PERMANENT. HE TESTIFIED ON PAGE 15 HE TOLD SNELLING, WHO IS THE TEMPORARY STAFFING AGENCY, THAT JOHN WAS WORKING OUT AND IT WAS A PERMANENT POSITION THEY EXPECT TO FILL. THE HOURLY RATE WAS 13 AN

1 HOUR, YOUR HONOR, AND THAT FIRST PAY PERIOD IS
2 REFLECTED ON PAGE 83 OF THE APAs. IN THE ONE WEEK
3 THAT HE WORKED, HE ACTUALLY GOT FIVE HOURS OF
4 OVERTIME, AND THAT'S WHERE THE \$627.25 CAME FROM AS
5 THE AVERAGE WEEKLY WAGE. ALSO, AS WE DISCUSSED IN
6 THE PRETRIAL, YOUR HONOR, WE'VE SUBMITTED THE WAGES
7 OF THREE OTHER SNELLING EMPLOYEES WHO ALSO WORKED
8 THE SAME JOB AT ALSIDE REVERE, WAYNE ATKINS, AND HE
9 AVERAGED 535.66 A WEEK, ALVIN CLARK 562.03, AND
10 JARED LAMPKIN 618.50.

11 **BY COMMISSIONER JAMES:**

12 GO BACK OVER THOSE ONE MORE TIME. MR. CLARK IS
13 WHAT?

14 **BY MR. WHITE:**

15 562.03. AND SOME OF THOSE WEEKS IF YOU LOOK AT
16 THEM ARE NOT -- THEY CAME ON EITHER IN THE MIDDLE OF
17 THE WEEK, SO ARE NOT THE FULL-TIME WEEKS.

18 **BY COMMISSIONER JAMES:**

19 OKAY.

20 **BY MR. WHITE:**

21 BUT JARED LAMPKIN WAS THE ONE WHO CAME AFTER MY
22 CLIENT WAS INJURED, AND HE AVERAGED 618.50 A WEEK.

23 **BY THE WITNESS:**

24 I BELIEVE ---

25 **BY MR. WHITE:**

1 WE CAN CLARIFY THAT.

2 **BY THE WITNESS:**

3 ALL RIGHT.

4 **BY MR. WHITE:**

5 THOSE ARE ALL SUBMITTED, YOUR HONOR, IN THE
6 APAs ON PAGE 121 AND 122.

7 **BY COMMISSIONER JAMES:**

8 IS THERE ANYTHING FURTHER WITH REGARDS TO THE
9 ISSUES FROM THE DEFENDANTS?

10 **BY MS. NUSSBAUM:**

11 YOUR HONOR, I WOULD JUST LIKE TO SPEAK TO THOSE
12 ISSUES. WITH REGARDS TO DAN COBB'S TESTIMONY, IF
13 YOU LOOK AT PAGE TEN, LINE 18, HE SAID THERE'S A
14 POTENTIAL FOR OVERTIME, BUT IT ALL DEPENDS ON HOW
15 BUSY THEY WERE. IT WAS NOT EVERY DAY. THE CLAIMANT
16 WAS ONLY A TEMPORARY EMPLOYEE AND HAD ONLY WORKED
17 THERE TEN DAYS PRIOR TO THE ACCIDENT. SNELLING
18 REQUIRES 550 HOURS BEFORE DAN COBB COULD EVEN BRING
19 SOMEONE ON FULL TIME. HE SAID IT WAS TOO EARLY TO
20 KNOW -- THIS IS PAGE 14, LINE SEVEN, "TOO EARLY TO
21 KNOW WHETHER HE WOULD WORK OUT." PAGE 16, LINE 20,
22 "NEVER GUARANTEES AN EMPLOYEE A CERTAIN NUMBER OF
23 HOURS." PAGE 17, LINE ONE, "THERE'S NO GUARANTEE
24 THAT A PERMANENT JOB OFFER WILL BE MADE." AND PAGE
25 17, LINE SEVEN, "TEN DAYS IS NOT ENOUGH TIME TO KNOW

1 IF A PERMANENT JOB OFFER WOULD BE MADE." SO, IT'S
2 THE DEFENDANTS' POSITION THAT THE MOST ACCURATE FAIR
3 WAY TO DETERMINE HIS AVERAGE WEEKLY WAGE AND COMP
4 RATE IS BASED ON THE ACTUAL TIME WORKED, WHICH IS
5 WHAT THE FORM 20 REPRESENTS. THE CLAIMANT WORKED
6 VARIOUS POSITIONS FOR SNELLING. THAT IS THE VERY
7 NATURE OF THAT BUSINESS TO HAVE VARIOUS ASSIGNMENTS.
8 THERE'S NO GUARANTEE AS TO HOW LONG AN ASSIGNMENT
9 WILL LAST. ALSO WITH REGARD TO THE THREE
10 INDIVIDUALS THAT WERE GIVEN AS LIKE EMPLOYEES, I
11 CAME UP WITH SOME DIFFERENT CALCULATIONS, SO I WOULD
12 JUST LIKE TO NOTE THOSE.

13 **BY COMMISSIONER JAMES:**

14 OKAY.

15 **BY MS. NUSSBAUM:**

16 JARED LAMPKIN, WE CAN AGREE, I THINK I CAME UP
17 WITH THE SAME CALCULATION THAT TOM DID. ALVIN
18 CLARK, I CAME UP WITH AN AVERAGE WEEKLY WAGE OF
19 \$533.41 WITH A CORRESPONDING COMP RATE OF \$355.62.
20 WAYNE ATKINS, I CAME UP WITH AN AVERAGE WEEKLY WAGE
21 OF \$506.88 WITH A COMP RATE OF \$337.94. ALSO, WE
22 WOULD REQUEST A CREDIT BACK TO THE DATE OF M.M.I.,
23 AND I THINK UNDER CUIEL, MY READING OF THAT CASE IS
24 THAT THERE HAS TO BE A MEDICAL BASIS FOR THE CREDIT,
25 AND I THINK THE ONLY DATE OF M.M.I. IN ANY OF THE

1 RECORDS IS AUGUST 13TH, 2012.

2 **BY COMMISSIONER JAMES:**

3 OKAY. I THINK WE'VE COVERED EVERYTHING, AND
4 MR. McDANIEL IS IN POSITION TO TESTIFY.

5 IF YOU WOULD RAISE YOUR RIGHT HAND, PLEASE,
6 SIR.

7 * * * * * * * * * * * * * * *

8 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
9 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
10 MATTER HEREIN:

11 **JOHN McDANIEL**

12 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

13 **BY COMMISSIONER JAMES:**

14 YOUR WITNESS.

15 **BY MR. WHITE:**

16 THANK YOU, YOUR HONOR.

17 **DIRECT EXAMINATION BY MR. WHITE:**

18 Q. IF YOU WOULD STATE YOUR FULL NAME, PLEASE.

19 A. JOHN CHRISTOPHER McDANIEL.

20 **BY MR. WHITE:**

21 AND, YOUR HONOR, WITH YOUR PERMISSION AND
22 ALLISON'S, I'LL LEAD HIM THROUGH A LOT OF THIS.

23 **BY COMMISSIONER JAMES:**

24 OKAY.

25 **DIRECT EXAMINATION RESUMED BY MR. WHITE:**

1 Q. JOHN, YOU'RE 31 YEARS OLD?

2 A. I'M 30.

3 Q. THIRTY, I'M SORRY. BORN MARCH 5TH, 1982?

4 A. YES, SIR.

5 Q. SORRY ABOUT THAT. GRADUATED FROM HIGH SCHOOL IN
6 2008?

7 A. IN 2000.

8 Q. I NEED MY READING GLASSES ON, SORRY.

9 **BY COMMISSIONER JAMES:**

10 MAYBE YOU SHOULDN'T LEAD.

11 **BY MR. WHITE:**

12 YOU'RE RIGHT.

13 **DIRECT EXAMINATION RESUMED BY MR. WHITE:**

14 Q. ANYWAY, TELL ME ABOUT ANY SCHOOL AFTER HIGH SCHOOL.

15 A. I ATTENDED TARRANT COUNTY COLLEGE FOR APPROXIMATELY
16 ONE SEMESTER DIRECTLY OUT OF HIGH SCHOOL, AND THEN
17 I'M CURRENTLY ENROLLED AT TRIDENT TECHNICAL.

18 Q. AND WHAT ARE YOU STUDYING AT TRIDENT TECH?

19 A. CIVIL ENGINEERING.

20 Q. AND HOW FAR ARE YOU INTO THAT?

21 A. I AM -- I'M IN MY THIRD SEMESTER, BUT I'M ONLY
22 APPROXIMATELY ONE YEAR, BECAUSE I HAD TO TAKE SOME
23 REMEDIAL CLASSES.

24 Q. YOU ALSO, I THINK, TOLD ME YOU HAD A COMMERCIAL
25 DRIVER'S LICENSE?

1 A. YES, SIR.

2 Q. HAD THAT SINCE IS IT FAIR TO SAY -- HOW LONG HAVE
3 YOU HAD IT?

4 A. APPROXIMATELY 2006.

5 Q. ALL RIGHT. KIND OF GOING THROUGH YOUR WORK HISTORY
6 AFTER HIGH SCHOOL, WHAT WAS THE FIRST JOB YOU HAD?

7 A. IT WAS A SALES JOB.

8 Q. AND WHAT TYPE OF SALES WERE YOU DOING?

9 A. MOTORCYCLE, ALL TERRAIN VEHICLES AND PERSONAL WATER
10 CRAFT.

11 Q. AND IN DOING THAT JOB, HOW LONG DID THAT JOB REQUIRE
12 YOU TO BE ON YOUR FEET A DAY?

13 A. I WORKED SIX DAYS A WEEK, 12 HOURS A DAY. WE TOOK
14 LUNCH. YOU DIDN'T WANT THE POSSIBILITY TO MISS THAT
15 SALE, SO WE WERE ON OUR FEET 12 HOURS A DAY, SIX
16 DAYS A WEEK.

17 Q. AND THE ENTIRE JOB WAS STANDING ---

18 A. YES, SIR.

19 Q. --- OR WALKING?

20 A. YES, SIR.

21 Q. OKAY.. AND WHAT DID YOU DO NEXT?

22 A. I WAITED TABLES FOR -- AT DIFFERENT ESTABLISHMENTS
23 FOR APPROXIMATELY FIVE YEARS.

24 Q. AND THE LIFTING REQUIREMENTS AND HOW MUCH STANDING
25 WAS REQUIRED AS A WAITER?

- 1 A. UP TO A 12-HOUR DAY STRAIGHT ON YOUR FEET, AND THE
2 HEAVIEST LIFTING WOULD BE UP TO 60 OR 70 POUNDS
3 MAXIMUM.
- 4 Q. AND AFTER WORKING AS A WAITER, WHAT OTHER WORK HAVE
5 YOU DONE?
- 6 A. I OWNED A CONSTRUCTION SITE SERVICES COMPANY.
- 7 Q. AND PHYSICALLY, WHAT WERE YOU DOING?
- 8 A. REMOVING DEBRIS, DOING DIRT WORK, VERY PHYSICALLY
9 DEMANDING.
- 10 Q. AND WHAT WAS THE MAXIMUM AMOUNT YOU WOULD HAVE TO
11 LIFT, AND HOW MUCH TIME WERE YOU SPENDING ON YOUR
12 FEET WITH THAT JOB?
- 13 A. IF I WAS GOING TO LIFT MORE THAN 80 OR 100 POUNDS, I
14 WOULD GET HELP. WE WERE ON A LARGE CREW AND ON OUR
15 FEET CONSTANTLY.
- 16 Q. AND WHAT DID YOU DO AFTER THAT JOB?
- 17 A. AFTER THAT JOB, I WAITED TABLES FOR A SMALL STINT,
18 AND THEN I MOVED FROM TEXAS TO SOUTH CAROLINA.
- 19 Q. AND WHAT DID YOU DO WHEN YOU GOT HERE?
- 20 A. I GOT AN AUDITING JOB, AND THEN ALSO A CADDYING JOB.
- 21 Q. LET'S TALK ABOUT THE AUDITING JOB; WHAT WERE YOU
22 AUDITING?
- 23 A. AUDITING BAR SALES, INVENTORY, LOSS REVENUE REPORTS,
24 DRAFT BEER.
- 25 Q. PHYSICALLY, WHAT DID THAT JOB REQUIRE YOU TO DO?

- 1 A. ON A MAXIMUM BASIS, I WOULD HAVE TO LIFT 75
2 KILOGRAMS, WHICH IS THE WEIGHT OF A FULL KEG TO
3 SHOULDER HEIGHT.
- 4 Q. AND WHEN YOU WERE DOING THE AUDITING JOBS, THAT WAS
5 BEING DONE AT THE BAR?
- 6 A. YES, SIR, ON SITE.
- 7 Q. AND YOU WEREN'T DOING THIS IN AN OFFICE ON A
8 COMPUTER?
- 9 A. NO, SIR.
- 10 Q. OKAY. SO, YOU PHYSICALLY HAD TO GO THROUGH EVERY
11 INVENTORY IN THE BAR?
- 12 A. YES, SIR.
- 13 Q. SO, YOU WERE LIFTING KEGS OF BEER CASES?
- 14 A. YES, SIR.
- 15 Q. AND ALSO THE JOB WAS BEING ON YOUR FEET, PHYSICAL
16 STANDING?
- 17 A. YES, SIR.
- 18 Q. OKAY. YOU MENTIONED CADDYING. WHERE DID YOU CADDY?
- 19 A. KIAWAH ISLAND PRIMARILY. I ALSO WENT TO FLORIDA,
20 NORTH CAROLINA AND WISCONSIN.
- 21 Q. AND PHYSICALLY LIFTING, WHAT WERE THE REQUIREMENTS?
- 22 A. UP TO SAY 60 POUNDS CARRIED CONSTANTLY FOR ROUGHLY
23 TEN MILES A LOOP.
- 24 Q. AND WHAT DID YOU DO AFTER CADDYING?
- 25 A. AFTER CADDYING, I RETURNED BACK TO SOUTH CAROLINA

- 1 FROM WISCONSIN, AND I GOT A JOB WAITING TABLES.
- 2 Q. ALL RIGHT. AND WE'VE KIND OF BEEN THROUGH THE
- 3 PHYSICAL REQUIREMENTS OF THAT JOB. WHAT DID YOU DO
- 4 AFTER THAT?
- 5 A. AFTER WAITING TABLES WAS -- I TRIED CAR SALES.
- 6 Q. AND HOW SUCCESSFUL WERE YOU?
- 7 A. UNSUCCESSFUL.
- 8 Q. AND TELL ME, WHEN YOU WORKED AS A CAR SALESMAN, HOW
- 9 MUCH OF THE JOB WAS SITTING, STANDING, AND WALKING,
- 10 AND HOW MANY HOURS A DAY WERE YOU WORKING?
- 11 A. I WAS WORKING TEN TO TWELVE HOURS A DAY, AND
- 12 PHYSICALLY YOU WERE STANDING UNLESS YOU WERE MAKING
- 13 SALES CALLS. YOU WOULD WALK AROUND THE LOT AND LOOK
- 14 FOR CUSTOMERS LIKE THAT.
- 15 Q. AND AFTER BEING UNSUCCESSFUL IN THE CAR SALES
- 16 BUSINESS, YOU WENT TO WORK FOR SNELLING?
- 17 A. YES, SIR.
- 18 Q. AND I THINK THE RECORDS WILL SHOW YOU STARTED THERE
- 19 IN MAY 2011?
- 20 A. I BELIEVE SO.
- 21 Q. AND YOU FIRST -- I THINK WHEN YOU GO THERE, YOU HAVE
- 22 TO FILL OUT A FORM AS TO WHAT YOU'RE WILLING TO WORK
- 23 FOR, AND HOW MUCH DID YOU FILL OUT WAS THE MINIMUM
- 24 YOU WOULD BE WILLING TO WORK FOR?
- 25 A. I BELIEVE THE MINIMUM WAS 11.50 AN HOUR.

1 Q. ALL RIGHT. AND WHERE DID YOU FIRST WORK WHEN YOU
2 BEGAN WORKING FOR SNELLING?

3 A. BEN ARNOLD, WINE AND SPIRITS DISTRIBUTION.

4 Q. AND I THINK THOSE WAGES HAVE BEEN SUBMITTED TO THE
5 COMMISSIONER, BUT IT LOOKS LIKE WHEN YOU WORKED
6 THERE, YOU WERE MAKING 11.50 AN HOUR?

7 A. YES, SIR.

8 Q. AND IF WE GO THROUGH THOSE RECORDS AND WAGES, IT
9 LOOKS LIKE YOU WERE GIVEN A FAIR AMOUNT OF OVERTIME
10 WHILE WORKING AT BEN ARNOLD?

11 A. YES, SIR.

12 Q. AND WHAT WERE YOU DOING THERE; WHAT WAS YOUR JOB?

13 A. I WAS A ROUTE DRIVER. I WOULD DROP OFF, DELIVER,
14 AND SET UP CASES OF WINE OR CASES OF SPIRITS. EACH
15 BOX WEIGHED ABOUT 40 POUNDS, AND A TYPICAL DAY WOULD
16 BE BETWEEN TWO AND THREE HUNDRED BOXES.

17 Q. AND WE'LL TALK ABOUT THAT JOB ENDING LATER, BUT THE
18 OTHER JOB YOU HAD THROUGH SNELLING WAS WORKING AT
19 ALSIDE REVERE, WHICH IS WHERE YOU GOT HURT?

20 A. YES, SIR.

21 Q. CAN YOU TELL US WHAT YOU WERE DOING THERE?

22 A. DELIVERY OF WHOLESALE BUILDING SUPPLIES. I WOULD
23 LOAD A TRUCK IN THE MORNING, HELP OUT AROUND THE
24 WAREHOUSE AND THEN TAKE THOSE SUPPLIES TO SITES AND
25 DROP THOSE SUPPLIES OFF AND COME BACK.

1 Q. AND THE LIFTING REQUIREMENTS OF THE ALSIDE REVERE
2 JOB?

3 A. BEING ABLE TO LIFT BY MYSELF BOXES 16 TO 18 FEET IN
4 LENGTH AND UP TO 75 POUNDS OR SO.

5 Q. AND THE JOBS THAT WE'VE JUST GONE THROUGH, ARE THOSE
6 ALL THE JOBS THAT YOU'VE DONE SINCE FINISHING HIGH
7 SCHOOL?

8 A. YES, SIR.

9 Q. AND UNDER THE CURRENT RESTRICTIONS THAT YOU'RE UNDER
10 FROM DR. OLSEN, COULD YOU DO ANY OF THOSE JOBS WITH
11 YOUR CURRENT RESTRICTIONS?

12 A. I CANNOT DO ANY OF THOSE JOBS UNDER THE CURRENT
13 RESTRICTIONS.

14 Q. AND YOUR CURRENT LIFTING RESTRICTIONS ARE WHAT?

15 A. TEN POUNDS.

16 Q. AND PRIOR TO THIS INJURY OF NOVEMBER 21ST, 2011, HAD
17 YOU EVER HAD A WORKERS' COMPENSATION CASE BEFORE
18 WHERE YOU RECEIVED ANY SORT OF AWARD FOR ANY SORT OF
19 DISABILITY OR BE OUT OF WORK?

20 A. NO, SIR, NO WORKERS' COMP, NO UNEMPLOYMENT, NEVER
21 HAD ANYTHING LIKE THAT.

22 Q. AND I THINK YOU TOLD ME YOU ONE TIME CUT YOUR FINGER
23 WORKING AS A WAITER?

24 A. YES, SIR.

25 Q. YOU HAD TO GO GET SOME STITCHES?

1 A. YES, SIR.

2 Q. AND THAT'S THE ONLY TIME YOU WERE EVER HURT ON THE
3 JOB?

4 A. YES, SIR.

5 Q. ALL RIGHT. AS FAR AS ANY SORT OF PERSONAL INJURY
6 CLAIMS, YOU WERE INVOLVED, I BELIEVE, IN A
7 MOTORCYCLE WRECK?

8 A. YES, SIR.

9 Q. WHEN WAS THAT?

10 A. APRIL 1ST, 2001.

11 Q. ANY BROKEN BONES?

12 A. NO, SIR, JUST ROAD RASH.

13 Q. ANY CLAIM AGAINST ANY INSURANCE COMPANY?

14 A. JUST FOR THE COLLISION INSURANCE FOR MY MOTORCYCLE
15 AND MEDICAL BILLS FOR PERSONAL INJURY PROTECTION.

16 Q. IN OTHER WORDS, IN REFERENCE TO THAT, YOU DIDN'T
17 BRING A CLAIM AGAINST ANYBODY?

18 A. I DIDN'T BRING A CLAIM AGAINST ANYBODY. IT WAS A
19 POSSIBLE TWO-CAR ACCIDENT.

20 Q. OKAY. AND YOU ALSO WERE INVOLVED IN AN AUTO WRECK
21 IN 2005?

22 A. APPROXIMATELY 2005, 2006, THANKSGIVING.

23 Q. WHAT TYPE OF INJURY DID YOU HAVE?

24 A. BACK PROBLEMS. I RECEIVED CHIROPRACTIC HELP FOR
25 ABOUT SIX MONTHS.

1 Q. AND THAT CASE WAS SETTLED?

2 A. YES, SIR.

3 Q. FOR HOW MUCH?

4 A. I WANT TO SAY APPROXIMATELY SIX OR SEVEN THOUSAND
5 DOLLARS.

6 Q. AND THOSE ARE THE ONLY TWO OTHER CLAIMS OF INJURIES
7 THAT YOU'VE HAD?

8 A. YES, SIR.

9 Q. AND HAD YOU HAD ANY PREVIOUS INJURIES TO YOUR LEFT
10 LEG OR YOUR LEFT FOOT?

11 A. NO, SIR.

12 Q. AND PRIOR TO NOVEMBER 21ST, 2011, WERE YOU
13 PHYSICALLY LIMITED IN ANY WAY AT WORK?

14 A. ABSOLUTELY NOT, I WAS VERY CAPABLE.

15 Q. AND TELL US WHEN YOUR JOB ENDED WITH BEN ARNOLD, AND
16 IT LOOKS LIKE YOU WORKED THERE I GUESS FROM MAY UP
17 UNTIL IT LOOKS LIKE SEPTEMBER -- INTO SEPTEMBER
18 2011. WHY DID YOU LEAVE THAT JOB WITH BEN ARNOLD?

19 A. I WAS LET GO.

20 Q. BUT WHY?

21 A. I WAS -- THERE WAS A SCHEDULING CONFLICT WITH
22 SCHOOL.

23 Q. AND WHAT WAS THE SCHEDULING CONFLICT?

24 A. I HAD TO BE OFF WORK BY APPROXIMATELY THREE IN THE
25 AFTERNOON TO BE ABLE TO MAKE IT TO MY EVENING

1 CLASSES ON WEDNESDAY.

2 Q. AND AFTER YOU LEFT BEN ARNOLD, DID YOU GO A PERIOD
3 WITHOUT WORKING WHILE YOU WAITED FOR SNELLING TO TRY
4 TO FIND YOU OTHER WORK?

5 A. YES, SIR, I WAITED FOR A LITTLE WHILE, AND THEN I
6 GOT HIRED WAITING TABLES AGAIN.

7 Q. AND DID EVENTUALLY YOU GET EMPLOYMENT BACK THROUGH
8 SNELLING?

9 A. THE FIRST DAY I WENT TO THE WAITING TABLES JOB,
10 SNELLING CALLED ME WITH A JOB OFFER.

11 Q. AND THAT JOB WAS WORKING WHERE?

12 A. ALSIDE REVERE.

13 **BY MR. WHITE:**

14 AND IN LOOKING AT PAGE 82 OF THE APAs, YOUR
15 HONOR.

16 **DIRECT EXAMINATION RESUMED BY MR. WHITE:**

17 Q. IT LOOKS LIKE THAT WAS YOUR FIRST PAYCHECK THERE.
18 WHAT WERE YOU MAKING AN HOUR THERE?

19 A. I BELIEVE \$13 AN HOUR.

20 Q. AND DID YOU HAVE ANY CONVERSATIONS WITH ANYBODY AT
21 SNELLING ABOUT THE NUMBER OF HOURS YOU WOULD BE
22 WORKING OR WHAT THAT JOB PROVIDED AS FAR AS PAY AND
23 FULL-TIME EMPLOYMENT?

24 A. THEY SAID THE STORE WAS OPEN FROM SEVEN IN THE
25 MORNING UNTIL FOUR IN THE AFTERNOON, AND THERE WAS A

1 NON-MANDATORY 30-MINUTE LUNCH. SO, I WOULD BE
2 LOOKING AT BETWEEN 42 AND 45 HOURS REGULARLY, AND
3 THEN ON TUESDAYS AND THURSDAYS, THE LAST DELIVERY OF
4 THE DAY WAS ALMOST TO GEORGIA. SO, I MAY OR MAY NOT
5 HAVE TO STAY PAST FOUR THOSE TWO DAYS A WEEK. BUT
6 NOT ACCOUNTING FOR THOSE TWO DAYS A WEEK, IT WAS
7 BETWEEN 42 AND 45 HOURS A WEEK.

8 Q. AND WHO TOLD YOU THAT AT SNELLING?

9 A. ANGELA BALDWIN.

10 Q. AND WHO IS SHE?

11 A. SHE WAS MY DIRECT CONTACT WITH SNELLING.

12 Q. OKAY. AND IT LOOKS LIKE YOU STARTED THERE, I GUESS,
13 NOVEMBER THE 11TH, AND IT LOOKS LIKE YOU WORKED JUST
14 ONE DAY ON THE FIRST PAYCHECK, AND YOU GOT NINE
15 HOURS THAT DAY? THAT'S PAGE 82 OF THE APAs.

16 A. YES, SIR.

17 Q. AND THE NEXT WEEK, YOU WORKED, AND IT LOOKS LIKE
18 THAT WEEK ENDED NOVEMBER THE 18TH, AND YOU GOT 45
19 AND A HALF HOURS THAT WEEK?

20 A. YES, SIR.

21 Q. AND WHO WAS YOUR SUPERVISOR AT ALSIDE REVERE?

22 A. DAN COBB.

23 Q. AND DID DAN COBB HAVE ANY DISCUSSIONS WITH YOU ABOUT
24 HOW MUCH YOU WOULD BE WORKING AND WHAT YOU COULD
25 EXPECT WHILE WORKING THERE?

- 1 A. HE TOLD ME THAT THE DAYS WERE PRETTY TYPICAL THAT
2 SOME OVERTIME WOULD BE THERE, AND SOMETIMES I WOULD
3 HAVE TO STAY LATE, BUT THAT THAT WAS GOING TO BE
4 PRETTY ATYPICAL 45 HOURS A WEEK OR SO.
- 5 Q. AND TOLD YOU THAT YOU COULD NORMALLY WORK 45 HOURS A
6 WEEK?
- 7 A. RIGHT, RIGHT.
- 8 Q. OKAY. AND SO THAT WAS WHAT YOU DID THE FIRST WEEK,
9 AND WAS THAT YOUR EXPECTATION?
- 10 A. YES, SIR.
- 11 Q. AND WAS THERE ANY CONFLICT WITH THE SCHOOL SCHEDULE
12 LIKE YOU HAD AT BEN ARNOLD?
- 13 A. NO, SIR.
- 14 Q. AND WHY NOT?
- 15 A. THE WAY THAT BEN ARNOLD'S BUSINESS WAS STRUCTURED,
16 YOU DIDN'T HAVE A CLOSE DOWN TIME. IF YOU -- YOU
17 MIGHT GET BACK TO THE SHOP AT THREE BUT NOT BE ABLE
18 TO LEAVE 'TIL 5:30. YOU MIGHT GET BACK TO THE SHOP
19 AT NOON AND NOT BE ABLE TO LEAVE 'TIL FOUR, AND THEN
20 AT ALSIDE REVERE, THEY CLOSED AT FOUR, AND THEN THE
21 GEORGIA RUNS WERE ON TUESDAYS AND THURSDAYS, WHERE
22 MY SCHOOLING WAS ON MONDAY AND WEDNESDAY. AND SO,
23 THAT WORKED OUT.
- 24 Q. AND WHAT WAS YOUR UNDERSTANDING OF THE POTENTIAL TO
25 WORK AT ALSIDE REVERE?

- 1 A. DAN COBB SAID THEY LIKED MY WORK AND THAT IF I WAS
2 ON BOARD, THAT HE WOULD LIKE TO EMPLOY ME.
- 3 Q. AND HOW LONG DID IT TAKE YOU TO GO FROM BEING A
4 SNELLING EMPLOYEE TO MOVING OVER TO BE AN ALSIDE
5 REVERE EMPLOYEE?
- 6 A. FROM WHAT I UNDERSTAND, THE CONTRACT BETWEEN
7 SNELLING AND ALSIDE REVERE IS APPROXIMATELY 550
8 HOURS.
- 9 Q. AND TELL ME YOUR PLANS ONCE YOU GOT THE JOB AT
10 ALSIDE REVERE AS FAR AS THE FUTURE. WHAT WERE YOU -
11 - AS FAR AS SCHOOL GOES, DID YOU PLAN TO STAY
12 WORKING THERE IF YOU COULD?
- 13 A. RIGHT, I WAS LOOKING FOR LONG-TERM STABILITY SO I
14 COULD FINISH SCHOOL. THE CADDYING JOB WAS AN
15 EXPERIENCE, BUT IT WASN'T STABLE, AND IT INVOLVED
16 TRAVELING, AND I COULDN'T DO SCHOOLING WITH THAT.
17 SO, I ACTUALLY ENROLLED IN SCHOOL THREE OR FOUR
18 MONTHS BEFORE THE ACCIDENT. SO, I WAS ALREADY
19 WORKING DOWN THAT PATH.
- 20 Q. AND AFTER YOU WERE INJURED ON NOVEMBER THE 21ST,
21 2011, WHO REPLACED YOU AT ALSIDE REVERE THROUGH
22 SNELLING?
- 23 A. I BELIEVE MR. LAMPKIN.
- 24 Q. AND I THINK YOU WERE PRESENT FOR DAN COBB'S
25 DEPOSITION WHERE WE DISCUSSED MR. LAMPKIN?

1 A. YES, SIR.

2 Q. WE'VE ALSO SUBMITTED SOME WAGES THAT WE GOT FROM THE
3 DEFENDANTS IN THE PERSONNEL FILE OR BY SUBPOENA, AND
4 IT LOOKS LIKE BEFORE YOU, THERE WERE TWO THAT WORKED
5 THERE, WAYNE ATKINS AND ALVIN CLARK. WERE THEY
6 DOING THE SAME JOB YOU WERE DOING THROUGH SNELLING
7 AT ALSIDE REVERE?

8 A. FROM MY UNDERSTANDING.

9 Q. AND IN LOOKING AT THE WAGES AND THE HOURS THAT THEY
10 EARNED, I THINK THEIR HOURS ARE SUMMARIZED ON THE
11 PAY SHEETS. DID THEY REGULARLY EARN OVERTIME HOURS?

12 A. YES.

13 **BY MR. WHITE:**

14 AND THE OVERTIME HOURS, YOUR HONOR, WOULD BE
15 REFLECTED ON PAGE 120 AND 121 OF THE APAs. THE LAST
16 TWO COLUMNS GIVE REGULAR HOURS AND OVERTIME HOURS.

17 **BY COMMISSIONER JAMES:**

18 ONE-TWENTY AND WHAT?

19 **BY MR. WHITE:**

20 ONE-TWENTY AND ONE-TWENTY-ONE.

21 **BY COMMISSIONER JAMES:**

22 OKAY.

23 **DIRECT EXAMINATION RESUMED BY MR. WHITE:**

24 Q. AND IT JUST LOOKS IN CALCULATING THOSE WEEKS, I KNOW
25 SOME OF THESE WEEKS WERE PARTIAL WEEKS, BUT THE

1 WEEKS IN BETWEEN THE FIRST AND LAST WEEK WILL ALL BE
2 FULL WEEKS; IS THAT CORRECT?

3 A. YES, SIR.

4 Q. I THINK WHEN YOU KIND OF RUN YOUR NUMBERS, YOU'VE
5 GONE THROUGH AND WEEDED OUT THE PARTIAL WEEKS; IS
6 THAT RIGHT?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND AFTER THAT, JARED LAMPKIN CAME, AND
9 AGAIN HIS WAGES ARE ON PAGE 122, AND HE WAS THE ONE
10 WHO TOOK OVER AFTER YOU GOT HURT?

11 A. YES, SIR.

12 Q. AND IT LOOKS LIKE HE EARNED OVERTIME JUST ABOUT
13 EVERY WEEK, AND THE FIRST AND LAST WEEK ARE EXCLUDED
14 BECAUSE THEY WERE PARTIAL WEEKS; IS THAT RIGHT?

15 A. YES, SIR.

16 Q. AND YOU UNDERSTAND THAT HE STILL WORKS THERE?

17 A. YES, SIR.

18 Q. SO, HE'S NO LONGER A SNELLING EMPLOYEE; HE'S NOW AN
19 ALSIDE REVERE EMPLOYEE?

20 A. AS FAR AS I UNDERSTAND.

21 Q. AND YOU ARE AWARE THAT WE REQUESTED AND SENT A
22 SUBPOENA TO ALSIDE REVERE FOR JARED LAMPKIN'S
23 EARNINGS AFTER HE BECAME AN ALSIDE REVERE EMPLOYEE?

24 A. YES.

25 Q. AND YOU'RE AWARE THAT THEY WERE SUPPOSED TO BE HERE

1 AT 3:00, AND THEY DID NOT SHOW UP?

2 A. I'M AWARE.

3 Q. OKAY. AND YOU STILL WANT TO GO FORWARD WITHOUT THAT
4 INFORMATION IN THE RECORD?

5 A. YES, SIR.

6 Q. OKAY. SO, TELL US NOVEMBER 21ST, 2011, HOW DID YOU
7 GET HURT?

8 A. I WAS WORKING IN A TEAM SITUATION WITH A FORKLIFT,
9 AND SO I HAD THE FORKLIFT IN FRONT OF ME IN ONE
10 AISLE. THERE AT THE END OF EVERY AISLE IS WHERE
11 PRODUCT IS BEING DROPPED OFF BY A SECOND FORKLIFT.
12 SO, HE IS UNLOADING A TRUCK BEHIND ME, AND I'M
13 WORKING WITH A FORKLIFT IN FRONT OF ME. THE
14 FORKLIFT THAT I'M WORKING WITH MOTIONS ME TO PICK UP
15 TWO BOXES OFF THE GROUND. AND I REACH DOWN AND PICK
16 UP THOSE TWO BOXES, AND AS I PICK UP THOSE TWO
17 BOXES, MIKE HITS ME FROM THE BACK LEFT AND STRIKES
18 MY FOOT.

19 Q. AND ALL OF THE MEDICAL RECORDS HAVE BEEN SUBMITTED,
20 SO WE'RE NOT GOING TO GO THROUGH ALL OF THOSE. BUT
21 TO MAKE SURE THAT WE'RE JUST STRAIGHT ON THE
22 CHRONOLOGY, E.M.S. TRANSPORTED YOU FROM ALSIDE
23 REVERE TO ROPER HOSPITAL?

24 A. YES, SIR.

25 Q. AND YOU WERE SEEN THERE IN THE EMERGENCY ROOM, AND

1 THEN YOU WERE REFERRED TO DR. OLSEN?

2 A. YES, SIR.

3 Q. AND HE WAS YOUR TREATING PHYSICIAN?

4 A. YES, SIR.

5 Q. AND IT LOOKS LIKE HE RELEASED YOU ON AUGUST 13TH,
6 2012, BUT AT THAT TIME REFERRED YOU OUT FOR CHRONIC
7 PAIN MANAGEMENT?

8 A. HE ---

9 Q. YOU WERE REFERRED BEFORE, BUT ---

10 A. RIGHT.

11 Q. --- THAT'S WHO YOU'VE SEEN SINCE AUGUST 13TH?

12 A. YES, SIR.

13 Q. ALL RIGHT. SO, AS WE GO THROUGH THE MEDICAL
14 RECORDS, IT LOOKS LIKE YOU HAD SOME SORT OF OPEN
15 WOUND ON YOUR FOOT?

16 A. YES, SIR.

17 Q. AND FROM THE RECORDS OF DR. OLSEN, IT LOOKS LIKE YOU
18 WERE SUPPOSED TO BE TREATED FOR SOME SORT OF WOUND
19 TREATMENT OR TREATMENT FOR THE WOUND. DID YOU EVER
20 GET THAT TREATMENT?

21 A. NO, SIR. HE PRESCRIBED WOUND TREATMENT, AND IT WAS
22 NEVER APPROVED.

23 Q. AND IT LOOKS LIKE YOU ALSO WERE REFERRED OUT TO A
24 CHRONIC PAIN DOCTOR ON MAY 14, 2012, AND WHEN DID
25 YOU FINALLY FIRST SEE A CHRONIC PAIN PHYSICIAN?

1 A. END OF OCTOBER, I BELIEVE THE 30TH.

2 Q. AND THAT'S DR. TAVEL?

3 A. YES, OR HIS PHYSICIAN'S ASSISTANT.

4 Q. AND THAT'S WHERE YOU'RE GOING NOW?

5 A. YES, SIR.

6 Q. YOU ALSO SAW TWO OTHER DOCTORS THAT WE REFERRED YOU
7 TO: DR. GUDAS AND DR. BRILLIANT?

8 A. YES, SIR.

9 Q. AND WOULD THOSE BE ALL THE DOCTORS THAT YOU'VE SEEN?

10 A. OLSEN, TAVEL, BRILLIANT ---

11 Q. GUDAS.

12 A. GUDAS, YES, SIR. I BELIEVE IT'S JUST THOSE FOUR.

13 Q. LET'S TALK ABOUT YOUR FOOT NOW. I NOTICE THAT
14 YOU'VE GOT SOME DIFFERENT PAIRS OF SHOES. TELL US
15 THE SHOES YOU'RE WEARING NOW, WHY DO YOU HAVE THOSE
16 SHOES ON?

17 A. I'M WEARING CROCS RIGHT NOW. THEY HAVE ---

18 Q. WHY DON'T YOU SHOW ---

19 **BY COMMISSIONER JAMES:**

20 I CAN SEE.

21 **THE WITNESS ANSWERS:**

22 A. THEY ARE -- THEY HAVE AN EXTRA PADDING ON THE BOTTOM
23 INSOLE, AND IT'S LIKE THICK AND EXTRA PADDING, AND
24 THEN THE TOE BOX IS THICKER. BECAUSE OF THE
25 SWELLING, ANY NORMAL TOE BOX RUBS AGAINST THE TOP OF

1 MY FOOT, AND THEN I HAVE A PIECE OF BONE ON MY PINKY
2 TOE THAT IS MALUNIONED, AND ANY NORMAL SHOE ABRADES
3 THAT BONE ON MY PINKY TOE. WE TRIED TO GET LARGER
4 SHOES LIKE DIABETIC SHOES. I BELIEVE OLSEN
5 PRESCRIBED OR RECOMMENDED THEM. BUT I HAVE NOT BEEN
6 ABLE TO GET THOSE APPROVED.

7 **DIRECT EXAMINATION RESUMED BY MR. WHITE:**

8 Q. IT LOOKS LIKE JULY 2ND, 2012, IT WAS RECOMMENDED YOU
9 HAVE ORTHOTICS AND CUSTOM SHOES?

10 A. RIGHT.

11 Q. AND DID YOU GO GET THE ORTHOTICS?

12 A. I DID. THE ORTHOTICS WON'T FIT IN CROCS. THE ONLY
13 SHOES THAT WON'T MESS WITH MY PINKY TOE ARE THESE
14 ISOTONERS, BUT THE INSOLES ARE IN THERE, AND THEY'RE
15 PRETTY -- THEY'RE PRETTY HEAVY DUTY, A LOT OF ARCH
16 SUPPORT. I'VE GOT -- ON THE INJURED FOOT, MY ARCH
17 IS ALMOST COMPLETELY FLAT NOW.

18 Q. AND DID YOU GET ALSO -- DID THEY ALSO GET SOME SORT
19 OF SHOE FOR YOU TO WEAR, SOME SORT OF CUSTOM SHOE
20 WHEN YOU WENT TO GET THE ORTHOTICS?

21 A. NO, WE GOT -- I GOT MEASURED FOR THEM AT A 12-C ON
22 MY RIGHT AND A 12 TRIPLE "E" ON MY LEFT. SO,
23 THERE'S FOUR WIDTH SIZE DIFFERENCE BETWEEN MY RIGHT
24 AND LEFT FOOT. AND THEN THE DOCTOR SAID THAT THE
25 CLOSEST WAY TO DESCRIBE WHAT'S WRONG WITH MY FOOT

1 WOULD BE DIABETIC NEUROPATHY, AND THAT I'VE GOT REAL
2 BAD CIRCULATION, AND THAT I NEED TO HAVE A TALL TOE
3 BOX TO KEEP MY TOE FROM BECOMING ABRADED. HE SAID
4 THAT IF I HAD ANY SURGERY ON IT BECAUSE OF THE BAD
5 CIRCULATION, THAT IT MIGHT LEAD TO AMPUTATION AND
6 BONE INFECTIONS, THINGS LIKE THAT. SO, HE'S TRYING
7 TO NOT CUT ON ME UNTIL IT BECOMES ABSOLUTELY
8 MEDICALLY NECESSARY.

9 Q. AND AS FAR AS THE SHOES GO, YOU NEVER GOT THE SHOES
10 WITH THE BIG TOE BOX. THAT'S WHY YOU'RE WEARING
11 CROCS?

12 A. YES, SIR, THAT'S WHY I'M WEARING THE CROCS.

13 Q. ALL RIGHT. SO, WHY DON'T WE SHOW THE COMMISSIONER
14 YOUR FOOT. WHY DON'T YOU TAKE YOUR SOCK AND SHOE
15 OFF.

16 A. (WITNESS COMPLIES)

17 BY THE WITNESS:

18 DO YOU WANT ME TO COME OVER THERE A LITTLE BIT?

19 BY COMMISSIONER JAMES:

20 NO, NO. I'LL COME DOWN -- I'LL COME DOWN IN A
21 MOMENT.

22 BY MR. WHITE:

23 DID YOU WANT HIM TO JUST SHOW THE ONE?

24 BY THE WITNESS:

25 DO YOU WANT ME TO TAKE BOTH OF THEM OFF?

DIRECT EXAMINATION RESUMED BY MR. WHITE:

- 1
- 2 Q. YES. AND THIS THING YOU PULLED OFF, WHAT IS THAT?
- 3 A. THIS IS JUST AN ARCH SUPPORT. I CAN'T USE THESE
- 4 INSIDE THE CROCS, BUT I CAN USE THESE INSIDE THE
- 5 CROCS.
- 6 Q. GOTCHA.
- 7 A. SO, IT'S JUST A SUPPLEMENTAL ARCH SUPPORT.
- 8 Q. OKAY.
- 9 A. SO, YOU'VE GOT REGULAR FOOT AND BAD FOOT (WITNESS
- 10 INDICATES).
- 11 Q. AND, SO, THE WOUND -- CAN YOU SHOW US WHERE THE
- 12 WOUND WAS.
- 13 A. INITIALLY, I BELIEVE IT'S CALLED A-SHOE(phonetic).
- 14 IT WENT FROM HERE TO HERE (WITNESS INDICATES), AND
- 15 THEN IT GOT SMALLER AND SMALLER AND SMALLER UNTIL IT
- 16 WAS ABOUT THIS LARGE, AND THEN HE SAID THAT IT WAS
- 17 LIKE FROSTBITE, AND THAT THAT WOULD NEVER HEAL. SO,
- 18 HE CUT THAT OUT, AND THEN THAT WAS WHEN I WAS
- 19 RECOMMENDED TO WOUND CARE. AND THEN I HAD AN OPEN
- 20 WOUND FOR CLOSE TO SIX MONTHS. AND BECAUSE OF THE
- 21 BAD CIRCULATION THING ---
- 22 Q. AND THE BONE THAT'S NOT UNITED, THE MALUNITED BONE,
- 23 WHERE IS THAT?
- 24 A. ON MY PINKY TOE.
- 25 Q. OKAY. AND THE SWELLING, IT LOOKS PRETTY OBVIOUS,

1 BUT IT'S JUST ON THE OUTSIDE OF YOUR FOOT AND ANKLE?

2 A. RIGHT, AND UP ONTO MY ANKLE. MOSTLY ON MY FOOT BUT
3 UP ON MY ANKLE A LITTLE BIT.

4 Q. OKAY.

5 A. AND I DO HAVE SOME PICTURES OF THE A-SHOE AND ALL
6 THAT STUFF IF Y'ALL WANT THOSE ALSO.

7 Q. IF THE COMMISSIONER WANTS TO SEE THEM, THAT'S FINE.
8 I THINK ---

9 **BY COMMISSIONER JAMES:**

10 THE "SHOE" AS IN THE ONE THAT WAS CRUSHED?

11 **BY THE WITNESS:**

12 RIGHT, A-SHOE(phonetic) -- THE DEAD SKIN ON MY
13 FOOT. HERE.

14 **BY COMMISSIONER JAMES:**

15 I DON'T KNOW WHAT HE'S SAYING.

16 **BY MR. WHITE:**

17 HE'S SAYING HE TOOK PHOTOGRAPHS AS HE WENT
18 THROUGH THIS PROCESS.

19 **BY THE WITNESS:**

20 I'M NOT SURE OF THE MEDICAL TERMINOLOGY, BUT
21 IT'S THE FROST BITE.

22 **BY COMMISSIONER JAMES:**

23 OH, WE'RE TALKING ABOUT DURING THE CARE.

24 **BY THE WITNESS:**

25 RIGHT, RIGHT.

1 BY COMMISSIONER JAMES:

2 OKAY. ACTUALLY, WHAT WE'RE DETERMINING IS
3 PERMANENCY.

4 BY MR. WHITE:

5 RIGHT.

6 BY COMMISSIONER JAMES:

7 SO, THOSE -- ALTHOUGH I KNOW YOU WENT THROUGH A
8 LOT, SIR, AND YOUR ATTORNEY HAS PROBABLY EXPLAINED
9 THIS TO YOU, BUT I'M LOOKING AT THE PERMANENCY FOR
10 TODAY. SO, I'LL BE GLAD TO LOOK AT THEM IF YOU WANT
11 ME TO.

12 BY THE WITNESS:

13 OKAY.

14 BY COMMISSIONER JAMES:

15 IT'S UP TO YOU, MR. WHITE.

16 BY MR. WHITE:

17 SURE, WHY DON'T YOU GET ONE, THE BEST EXAMPLE
18 YOU'VE GOT.

19 BY COMMISSIONER JAMES:

20 OKAY.

21 BY MR. WHITE:

22 HAVE YOU GOT THIS IN DIGITAL?

23 BY THE WITNESS:

24 YES.

25 BY MR. WHITE:

1 SO, WE CAN PUT THIS IN EVIDENCE?

2 **BY THE WITNESS:**

3 YES.

4 **BY MR. WHITE:**

5 YOUR HONOR, WE OFFER THESE AS CLAIMANT'S
6 EXHIBITS ONE AND TWO.

7 **BY COMMISSIONER JAMES:**

8 ANY OBJECTION?

9 **BY MS. NUSSBAUM:**

10 I DON'T HAVE ANY OBJECTION.

11 **BY COMMISSIONER JAMES:**

12 OKAY. IF YOU CAN GIVE THE COURT REPORTER JUST
13 A MOMENT.

14 (COURT REPORTER MARKS PHOTOGRAPHS CLAIMANT'S EXHIBIT
15 NUMBERS ONE AND TWO, RETAINED IN COMMISSION FILE)

16 **BY THE WITNESS:**

17 SHOULD I PUT MY SOCKS AND SHOES BACK ON NOW?

18 **BY COMMISSIONER JAMES:**

19 YEAH, YOU HAVE TIME.

20 **BY THE WITNESS:**

21 OKAY.

22 **BY COMMISSIONER JAMES:**

23 WHENEVER ALL OF Y'ALL ARE READY.

24 **DIRECT EXAMINATION RESUMED BY MR. WHITE:**

25 Q. AND TELL US IF YOU WOULD, JOHN, JUST KIND OF HOW

1 YOU'RE DOING NOW AND WHERE YOU HAVE PAIN. CAN YOU
2 DESCRIBE JUST THE FEELING IN YOUR FOOT?

3 A. IF -- IF I'M NOT DOING ANY ACTIVITIES, IF I'M JUST
4 SITTING AT THE HOUSE WITH IT ELEVATED, ON A ONE TO
5 TEN, IT'S A CONSTANT DULL THREE TO FOUR. THE MORE
6 ACTIVITY I GIVE IT, THE WORSE IT GETS UP TO ABOUT A
7 SIX OR SEVEN. AND AFTER ABOUT AN HOUR OF WALKING OR
8 STANDING, IT FEELS LIKE MY FOOT IS IN BOILING WATER.

9 Q. SO, YOU SAY IT'S A THREE TO FOUR ALL THE TIME.

10 A. YES, SIR.

11 Q. IS THAT CONSTANTLY THERE'S SOME LEVEL OF PAIN THERE?

12 A. YES, SIR, IT NEVER STOPS.

13 Q. AND THE THREE OR FOUR, WHAT IS THAT -- WHAT ARE YOU
14 FEELING? I MEAN, IS IT PAIN; IS IT NUMBNESS? I
15 MEAN, DESCRIBE IT FOR US.

16 A. WELL, I HAVE DAMAGE TO TWO OF THE NERVES IN MY FOOT.
17 SO, ANYTHING FROM ESSENTIALLY THE MIDDLE OF THE FOOT
18 TO THE OUTSIDE AND DOWN AROUND A LITTLE BIT IS
19 TYPICALLY NO SENSATION AT ALL. AND SO THERE'S
20 ALWAYS THAT DULLNESS, AND THERE'S PAIN THERE. BUT
21 THERE'S ALSO PAIN INSIDE OF MY FOOT, BECAUSE THE --
22 I MEAN, BECAUSE IT WAS A BAD INJURY I GUESS.

23 Q. SO, WHEN YOU HAVE THE PAIN LEVELS AND THEY START
24 ESCALATING UP TO THE SIX OR SEVEN OUT OF TEN, WHAT
25 DO YOU DO TO GET RELIEF?

1 A. ICE, MEDICATION, STOPPING ACTIVITY IS THE PRIMARY.
2 I MEAN, AS SOON AS IT STARTS TO HURT, I JUST GET OFF
3 MY FOOT. I USE LIKE SHOPPING TIME -- LIKE AT WAL-
4 MART OR SOMETHING AND I WALK AROUND WITH THE CART,
5 AND THEN AFTER ABOUT AN HOUR, IF I'M NOT COMPLETELY
6 DONE, I HAVE TO GO GRAB AN ELECTRIC CART TO GET
7 AROUND ON. BECAUSE AT THAT POINT, IT BECOMES VERY
8 LABORIOUS TO EVEN WALK.

9 Q. AS YOU GO FROM YOUR PAIN LEVELS OF BEING THREE OR
10 FOUR UP TO ABOUT A SIX OR SEVEN OUT OF TEN, DOES IT
11 JUST PROGRESSIVELY GET WORSE IF YOU'RE STANDING OR
12 WALKING?

13 A. RIGHT. AND IT GOES FROM LIKE A DULL TO SHARP PAIN.

14 Q. HOW LONG DOES IT TAKE -- I MEAN, HOW LONG DOES IT
15 TAKE FOR THE PAIN TO ELEVATE AT ALL IF YOU'RE
16 STANDING OR WALKING?

17 A. FIFTEEN OR TWENTY MINUTES.

18 Q. OKAY.

19 A. I MEAN, JUST BEING FROM BEING SITTING TO STANDING,
20 THERE'S AN IMMEDIATE DIFFERENCE JUST FROM PUTTING
21 THE WEIGHT ON IT.

22 Q. DO YOU GET RELIEF BY ELEVATING IT?

23 A. YES.

24 Q. AND HOW MUCH TIME DO YOU SPEND A DAY ELEVATING YOUR
25 FOOT?

- 1 A. TWO OR THREE HOURS PROBABLY.
- 2 Q. WHAT MEDICATION ARE YOU TAKING?
- 3 A. I'M CURRENTLY ON CELEBREX AND GRALISE; I BELIEVE I'M
- 4 SAYING THAT RIGHT.
- 5 Q. AND THAT'S BEING PRESCRIBED BY DR. TAVEL?
- 6 A. YES, SIR.
- 7 Q. AND THE GRALISE IS FOR SOME SORT OF NERVE RELATED
- 8 NEUROLOGICAL THING?
- 9 A. YES, SIR, IT'S AN ANTI-CONVULSANT THAT'S GOOD FOR
- 10 CRUSH INJURIES.
- 11 Q. TELL ME, IF YOU HAD TO STAND SOMEWHERE IF YOU WERE
- 12 ATTEMPTING TO WORK STANDING, HOW LONG CAN YOU STAND
- 13 IN ONE POSITION?
- 14 A. ON BOTH OF MY FEET, 15 TO 20 MINUTES, AND THEN I
- 15 WOULD LOOK LIKE A PELICAN. I WOULD JUST HAVE TO
- 16 START STANDING ON ONE FOOT. I START BALANCING
- 17 MYSELF.
- 18 Q. HOW ABOUT WALKING IF YOU DON'T HAVE A CART THAT
- 19 YOU'RE LEANING AND JUST WALKING UNASSISTED?
- 20 A. VERY QUICKLY.
- 21 Q. HOW LONG?
- 22 A. FIFTEEN TO TWENTY MINUTES.
- 23 Q. WHAT'S THE TOTAL AMOUNT YOU THINK YOU COULD STAND
- 24 AND WALK OUT OF AN EIGHT-HOUR PERIOD IF YOU COULD
- 25 ADD IT ALL UP TOGETHER?

- 1 A. I'D SAY THAT IF YOU PUT IT ON LIKE AN HOURLY BASIS,
2 THAT I COULD STAND OR WALK FOR 15 MINUTES AN HOUR,
3 EIGHT-HOUR DAY, TWO HOURS TOTAL.
- 4 Q. CAN YOU RUN AT ALL?
- 5 A. NOTHING.
- 6 Q. CLIMB LADDERS?
- 7 A. NO.
- 8 Q. SQUATTING?
- 9 A. NO, SIR.
- 10 Q. JUMPING?
- 11 A. NO, SIR.
- 12 Q. TELL ME ABOUT GOING UP -- WALKING UP INCLINES.
- 13 A. INCLINES -- INCLINES AREN'T THAT BAD, BECAUSE I CAN
14 SORT OF DIG IN WITH MY TOES. DECLINES, ANY DOWNHILL
15 AT ALL, IT PUTS -- WHENEVER IT PUSHES UP ONTO MY
16 TOES, IT MAKES ME UNSTABLE. IT MAKES IT PAINFUL TO
17 WALK. IT'S JUST BAD NEWS. I START GRABBING ONTO
18 HANDRAILS WITH LIKE BOTH HANDS TO GET DOWN ANY KIND
19 OF DECLINE.
- 20 Q. AND HOW ABOUT BALANCE IN GENERAL; DO YOU HAVE ANY
21 BALANCE PROBLEMS?
- 22 A. OCCASIONALLY. NOTHING CONSTANTLY, NOTHING REAL BAD,
23 BUT I DEFINITELY RANDOMLY LOSE MY BALANCE WHERE I
24 HAD NEVER DONE THAT BEFORE.
- 25 Q. TELL ME AFTER YOU WERE RELEASED TO GO BACK TO WORK,

1 DID SNELLING FIND ANY WORK FOR YOU?

2 A. NO, SIR. THEY KEPT TELLING ME THAT THERE WAS
3 SOMETHING IN THE WORKS HERE IN THE NEXT COUPLE OF
4 WEEKS, "WE'RE TALKING TO THESE PEOPLE. WE'RE
5 TALKING TO THESE PEOPLE. YOU'RE A GREAT WORKER. WE
6 CAN FIND YOU WORK," AND I JUST HAVE NOT FOUND
7 ANYTHING. AND THEN I WAS LOOKING ON MY OWN, AND I
8 PROBABLY APPLIED TO 30 OR 40 JOBS AND PROBABLY
9 CALLED ANOTHER 20.

10 Q. I THINK AT ONE TIME YOU WORKED PART -- SOME TIME AT
11 A LAW FIRM?

12 A. YES, SIR, FOR BARNWELL WHALEY.

13 Q. RIGHT. WHO GOT YOU THAT JOB?

14 A. SNELLING ESSENTIALLY GOT ME AN INTERNSHIP THERE.
15 SNELLING MAKES MONEY BY CHARGING THEIR CLIENTS.
16 THEY STAFFED ME THERE BUT DIDN'T CHARGE BARNWELL
17 WHALEY ANYTHING, JUST GAVE THEM FREE OFFICE HELP TO
18 WHERE I COULD HAVE SOMETHING ON MY RESUME THAT'S
19 OFFICE. AND THEN AFTER LIKE TWO MONTHS, I TOLD JIM,
20 I SAID -- MR. PASCUTTI IS THE GENERAL MANAGER. HE'S
21 THE ONE I'VE BEEN DEALING WITH SINCE MY INJURY AT
22 SNELLING. AND I ASKED JIM, "ARE THEY GOING TO HIRE
23 ME ON? ARE THEY NOT GOING TO HIRE ME ON? I NEED TO
24 KNOW SOME KIND OF STABILITY HERE, BECAUSE I WAS
25 UNSURE," AND SO HE ASKED THEM, AND THEN THEY LET ME

1 GO AT THE END OF THE NEXT WEEK SAYING THERE JUST
2 WASN'T A FULL-TIME POSITION OPEN.

3 Q. AND IT LOOKS LIKE YOU HAVEN'T WORKED THERE AT LEAST
4 ACCORDING TO WHAT WAS SUBMITTED IN THE APAs SINCE
5 MAY OF 2012; MAY 25TH WAS THE LAST PAY PERIOD?

6 A. YES, SIR.

7 Q. ALL RIGHT. AND SINCE THEN, ARE YOU STILL ON WITH
8 SNELLING AND STILL ON THEIR LIST WITH TRYING TO FIND
9 YOU WORK?

10 A. YES, SIR.

11 Q. AND THEY'VE NOT FOUND ANYTHING FOR YOU?

12 A. NO, SIR.

13 Q. AND YOU MENTIONED THESE OTHER JOBS. HAVE YOU EVER
14 BEEN -- HAS ANYBODY EVEN DONE AN INTERVIEW WITH YOU?

15 A. I GOT ONE INTERVIEW WITH A MR. POTEAT AT CARLOCK AND
16 COPELAND BECAUSE MY FIANCEE USED TO WORK FOR THEM.

17 Q. BUT THEY DIDN'T ---

18 A. THEY JUST ESSENTIALLY LOOKED OVER MY RESUME. HE
19 TOLD ME HOW TO CLEAN IT UP AND TOLD ME THAT HE HAD
20 LAWYERS APPLYING FOR PARALEGAL JOBS AND FOUR-YEAR
21 DEGREE GUYS APPLYING FOR FILE CLERKS, AND THE BEST
22 OF LUCK TO ME, BUT HE COULDN'T HELP ME.

23 Q. AND AT THIS POINT, YOUR PLANS ARE TO CONTINUE ON
24 WITH SCHOOL. HOW LONG WILL IT TAKE YOU TO FINISH
25 SCHOOL?

1 A. YES, SIR. APPROXIMATELY THREE YEARS.

2 Q. AND YOU'RE HAPPY WITH THE DOCTORS, DR. OLSEN AND DR.
3 TAVEL AS BEING YOUR DOCTORS FOR YOUR FOOT ---

4 A. YES, SIR.

5 Q. --- AND FOR PAIN MANAGEMENT?

6 A. YES, SIR.

7 Q. THE SURGERY, I REALIZE THEY HAVEN'T RECOMMENDED
8 THAT, BUT IT LOOKS LIKE MORE LIKELY THAN NOT OLSEN
9 THINKS YOU'RE GOING TO NEED THAT SURGERY EVENTUALLY?

10 A. YES, SIR.

11 Q. IS THAT YOUR UNDERSTANDING?

12 A. YES, SIR.

13 Q. AND THE ORTHOTICS, YOU USE AND ALSO YOU STILL NEED
14 CUSTOM SHOES?

15 A. YES, SIR.

16 **BY MR. WHITE:**

17 THAT'S ALL I HAVE, YOUR HONOR.

18 **BY COMMISSIONER JAMES:**

19 ANY CROSS EXAMINATION?

20 **CROSS EXAMINATION BY MS. NUSSBAUM:**

21 Q. MR. McDANIEL, WE MET AT YOUR DEPOSITION, BUT AGAIN,
22 I'M ALLISON NUSSBAUM. I HAVE A FEW QUESTIONS FOR
23 YOU. AGAIN, WHEN YOU FIRST SOUGHT EMPLOYMENT
24 THROUGH SNELLING STAFF SERVICES, YOU INDICATED YOU
25 WERE LOOKING TO EARN 11.50 AN HOUR AS A MINIMUM?

1 A. YES, MA'AM, AS A MINIMUM.

2 Q. AND YOUR PAY RATE DEPENDS ON THE ASSIGNMENT THAT YOU
3 RECEIVE THROUGH SNELLING?

4 A. YES, MA'AM.

5 Q. AND OBVIOUSLY DIFFERENT ASSIGNMENTS HAVE DIFFERENT
6 PAY RATES?

7 A. YES, MA'AM, BUT TO CLARIFY THAT, SNELLING DOES NOT
8 TAKE YOU ON A DAILY BASIS TO GO TO DIFFERENT PLACES.
9 THEY ARE -- THEIR MISSION IS TO PLACE PEOPLE TO BE
10 HIRED ON AT COMPANIES RATHER THAN FILLING DAY LABOR
11 NEEDS.

12 Q. I UNDERSTAND THAT. BUT DIFFERENT ASSIGNMENTS
13 WHETHER THEY LAST FOR TWO WEEKS, A MONTH OR HOWEVER
14 LONG THEY LAST, DIFFERENT ASSIGNMENTS HAVE DIFFERENT
15 PAY RATES. YOU WOULD AGREE WITH THAT STATEMENT?

16 A. YES, MA'AM.

17 Q. OKAY. AND IT'S POSSIBLE THAT YOU WORK AT ONE
18 ASSIGNMENT, AND YOUR SUBSEQUENT ASSIGNMENT COULD
19 ACTUALLY BE FOR LESS MONEY?

20 A. IF I WERE TO AGREE TO THAT.

21 Q. OKAY. SO, THE ASSIGNMENT IS OFFERED TO YOU, AND YOU
22 CAN EITHER GIVE IT A THUMBS UP OR A THUMBS DOWN?

23 A. YES, MA'AM.

24 Q. SO, IT'S QUITE POSSIBLE THAT YOU CAN GO TO WORK FOR
25 EMPLOYER "A" MAKING 11.50 AN HOUR. THAT ASSIGNMENT

1 CAN END. YOU GO TO EMPLOYER "B" MAKING \$13 AN HOUR.
2 THAT ASSIGNMENT CAN END, AND THEN YOU GO TO AN
3 EMPLOYER "C" AND GO BACK TO 11.50 AN HOUR. THAT
4 SCENARIO IS QUITE POSSIBLE?

5 A. YES, MA'AM.

6 Q. OKAY. SO, PAY IS COMPLETELY CONTINGENT ON THE
7 ASSIGNMENT YOU'RE OFFERED AND WHETHER YOU ACCEPT
8 THAT ASSIGNMENT?

9 A. YES, MA'AM.

10 Q. THERE ARE NO GUARANTEES WHEN YOU GET AN OFFER OF AN
11 ASSIGNMENT FROM SNELLING HOW LONG IT'S GOING TO
12 LAST?

13 A. NO, MA'AM. IT'S A RIGHT TO WORK STATE.

14 Q. AND SO -- I UNDERSTAND THAT, BUT YOU DON'T SIGN
15 ANYTHING WITH SNELLING SAYING YOU WILL BE PLACED AT
16 THIS ASSIGNMENT FOR SIX MONTHS?

17 A. NO, MA'AM, THERE'S NO CONTRACTUAL OBLIGATION LIKE
18 THAT.

19 Q. AND EVEN WHEN YOU GET THE ASSIGNMENT, THEY DON'T
20 EVEN GIVE YOU A TIMEFRAME FOR HOW LONG YOU'RE GOING
21 TO BE THERE?

22 A. YES, MA'AM. THAT'S THE 550 HOURS. THAT'S WHEN YOU
23 BECOME ELIGIBLE TO BE HIRED ON. SO, IT'S NOT AS
24 AMBIGUOUS AS YOU HAVE NO IDEA. THEY TRY TO PUT YOU
25 WITH SOMEONE THAT WOULD BE A GOOD LONG-TERM FIT FOR

- 1 YOU TO BE HIRED ON THERE.
- 2 Q. RIGHT, AND IF IT DOESN'T WORK OUT, THEN YOU CAN GO
- 3 ONTO ANOTHER ASSIGNMENT?
- 4 A. YES, MA'AM.
- 5 Q. OKAY. YOUR FIRST JOB THAT THEY PLACED YOU IN WHEN
- 6 YOU WENT TO WORK FOR SNELLING WAS BEN ARNOLD THAT
- 7 BEGAN BACK IN MAY OF 2011; IS THAT CORRECT?
- 8 A. YES, MA'AM.
- 9 Q. YOU WERE EARNING AN HOURLY WAGE OF \$11.50 AN HOUR AT
- 10 BEN ARNOLD?
- 11 A. YES, MA'AM.
- 12 Q. IT LOOKS LIKE WHEN YOU WERE WORKING FOR BEN ARNOLD,
- 13 YOUR WORK HOURS RANGED FROM ANYWHERE FROM 29.25
- 14 HOURS TO 52.5 HOURS A WEEK?
- 15 A. YES, MA'AM. THERE'S A POSSIBILITY THAT 29 HOURS WAS
- 16 A PARTIAL WEEK.
- 17 Q. OKAY. YOUR JOB WITH BEN ARNOLD ENDED ON SEPTEMBER
- 18 30TH, 2011?
- 19 A. I BELIEVE SO.
- 20 Q. YOU WERE NOTIFIED ON A SATURDAY THAT YOU WERE NO
- 21 LONGER NEEDED.
- 22 A. IS THAT A QUESTION?
- 23 Q. IS THAT CORRECT?
- 24 A. YES.
- 25 Q. THANK YOU. AND YOU WERE TOLD NOT TO REPORT THE

- 1 FOLLOWING TUESDAY, CORRECT?
- 2 A. CORRECT.
- 3 Q. SO EVEN AT BEN ARNOLD, YOU ONLY GOT THREE DAYS
- 4 NOTICE THAT YOU WERE NO LONGER NEEDED?
- 5 A. YES, MA'AM.
- 6 Q. OKAY. AND THEY CAN TELL YOU AT ANY POINT IN TIME
- 7 "WE DON'T NEED YOU ANYMORE," AND YOU GO BACK TO
- 8 SNELLING AND SEE IF YOU CAN FIND A DIFFERENT
- 9 ASSIGNMENT?
- 10 A. YES, MA'AM.
- 11 Q. AND THAT'S WHAT HAPPENED AT BEN ARNOLD?
- 12 A. YES, MA'AM.
- 13 Q. IT JUST DIDN'T WORK OUT?
- 14 A. YES, MA'AM.
- 15 Q. OKAY. AND THEN IT TOOK A FEW WEEKS, IT ACTUALLY
- 16 LOOKS LIKE A LITTLE BIT OVER A MONTH FOR SNELLING TO
- 17 FIND ANOTHER ASSIGNMENT FOR YOU?
- 18 A. APPROXIMATELY SIX WEEKS.
- 19 Q. OKAY. THAT WAS FROM SEPTEMBER 30TH, 2011, UNTIL
- 20 NOVEMBER 10TH, 2011; IS THAT CORRECT?
- 21 A. YES.
- 22 Q. AND PART OF THE PROBLEM WITH FINDING THAT ASSIGNMENT
- 23 IS THEY WERE TRYING TO WORK AROUND YOUR SKILL SET
- 24 AND ALSO YOUR SCHOOL SCHEDULE?
- 25 A. YES, MA'AM.

- 1 Q. THE NEXT JOB YOU WERE PLACED AT WAS REVERE BUILDING
2 PRODUCTS?
- 3 A. YES, MA'AM.
- 4 Q. ALSO CALLED ALSIDE REVERE?
- 5 A. YES, MA'AM.
- 6 Q. ALL RIGHT. YOU STARTED WORKING FOR THEM, FOR REVERE
7 IS WHAT I'M GOING TO CALL THEM, ON FRIDAY, NOVEMBER
8 11TH, 2011?
- 9 A. YES, MA'AM.
- 10 Q. AND YOUR FIRST FULL WEEK OF WORK WOULD HAVE BEEN
11 NOVEMBER 14TH THROUGH NOVEMBER 18TH?
- 12 A. I BELIEVE SO.
- 13 Q. OKAY. YOU WERE INJURED ON NOVEMBER 21ST, THE
14 FOLLOWING MONDAY?
- 15 A. YES, MA'AM.
- 16 Q. OKAY. SO YOU WORKED A TOTAL OF ONE WEEK PRIOR TO
17 YOUR INJURY FOR REVERE?
- 18 A. ONE DAY, ONE FULL WEEK, AND THEN THAT MORNING I WAS
19 INJURED.
- 20 Q. OKAY. BUT ONE FULL WEEK?
- 21 A. YES, MA'AM.
- 22 Q. OKAY. YOUR ON-SITE SUPERVISOR WAS DAN COBB?
- 23 A. YES, MA'AM.
- 24 Q. HE'S A REVERE EMPLOYEE?
- 25 A. YES, MA'AM.

1 Q. HE'S NOT A SNELLING EMPLOYEE?

2 A. HE IS NOT.

3 Q. YOUR JOB WAS A DELIVERY DRIVER AND WAREHOUSE WORKER?

4 A. YES, MA'AM.

5 Q. PRIOR ---

6 **BY MS. NUSSBAUM:**

7 STRIKE THAT.

8 **CROSS EXAMINATION RESUMED BY MS. NUSSBAUM:**

9 Q. DURING THAT TIME PERIOD THOUGH, YOU WERE STILL A
10 SNELLING EMPLOYEE?

11 A. YES, MA'AM.

12 Q. MEANING ALL YOUR WAGES CAME THROUGH SNELLING?

13 A. YES, MA'AM.

14 Q. ALL RIGHT. TYPICAL PROTOCOL WITH SNELLING LIKE YOU
15 JUST SAID IS YOU HAVE TO WORK AT LEAST 550 HOURS
16 BEFORE THE DIRECT EMPLOYER CAN EVEN BRING YOU ON AS
17 A PERMANENT EMPLOYEE?

18 A. FROM MY UNDERSTANDING, THAT'S THE FIRST CONTRACT.
19 THERE'S A CAVEAT IN THE CONTRACT THAT SAYS THAT IF
20 YOU HAVE HAD AN EMPLOYEE THROUGH SNELLING THAT
21 EXCEEDED THE 550 HOURS THAT YOU DID NOT HIRE ON, THE
22 SUBSEQUENT EMPLOYEES DID NOT HAVE TO MEET THAT HIGH-
23 WATER MARK OF 550 HOURS. THEY COULD BE HIRED ON
24 PRIOR TO THAT.

25 Q. AND WHERE DID YOU OBTAIN THIS INFORMATION?

1 A. I WAS ASSIGNED TO SHREDDING PAPERS FOR ABOUT THREE
2 WEEKS AT SNELLING, AND IT'S HARD TO NOT READ STUFF
3 WHILE YOU'RE SHREDDING.

4 Q. OKAY. SO YOU'RE BANKING -- THE TESTIMONY THAT YOU
5 JUST GAVE IS BASED ON SOME PAPERS THAT YOU SHREDDED
6 AND WERE ACTUALLY READING?

7 A. YES.

8 Q. OKAY. SO, YOU HAVE NO KNOWLEDGE AS TO WHETHER
9 THAT'S A CURRENT CONTRACT OR WHAT THAT INFORMATION
10 IS; YOU WERE ACTUALLY SHREDDING THOSE PAPERS?

11 A. I BELIEVE WE HAVE THE CURRENT CONTRACT BETWEEN
12 ALSIDE REVERE AND SNELLING IN MY PERSONNEL FILE THAT
13 YOU REVIEWED TO SEE IF THAT CAVEAT WAS STILL IN
14 THERE, BUT I BELIEVE THAT WAS PART OF THE PREHEARING
15 BRIEF.

16 Q. OKAY. ARE YOU AWARE THAT DAN COBB IN HIS DEPOSITION
17 TESTIFIED THAT A SNELLING EMPLOYEE HAS TO BE
18 EMPLOYED FOR 550 HOURS BEFORE THEY CAN HIRE HIM FULL
19 TIME?

20 A. YES, MA'AM. AND IN MY DEPOSITION, I TESTIFIED TO
21 THE FACT THAT ME AND DAN COBB HAD HAD A CONVERSATION
22 REGARDING THE CAVEAT THAT WAS JUST TALKED ABOUT IN
23 BRINGING ME ON BEFORE THE 550 HOURS BECAUSE IT'S AN
24 EXORBITANT COST FOR THE COMPANY TO OUTLAY FOR THE
25 STAFFING AGENCY.

1 Q. OKAY. BUT YOU UNDERSTAND THAT DAN COBB GAVE
2 TESTIMONY IN HIS DEPOSITION THAT SAID 550 -- THAT AN
3 EMPLOYEE HAS TO WORK FOR 550 HOURS BEFORE THEY CAN
4 BE HIRED FULL TIME; YOU WERE PRESENT WHEN HE GAVE
5 THAT TESTIMONY, CORRECT?

6 A. YES, MA'AM, BUT I'M NOT SURE HE HAD THE CONTRACT IN
7 FRONT OF HIM.

8 Q. OKAY, ALL RIGHT. BUT MY ONLY QUESTION IS YOU WERE
9 AWARE THAT THAT IS HIS TESTIMONY?

10 A. YES, MA'AM.

11 Q. ALL RIGHT, THANK YOU. AT ANY TIME DURING YOUR
12 ASSIGNMENT WITH REVERE, THEY COULD HAVE LET YOU GO?

13 A. YES, MA'AM.

14 Q. OKAY. YOU'VE NOT RETURNED TO WORK FOR REVERE?

15 A. I HAVE NOT.

16 Q. ALL RIGHT. FOR A PERIOD OF TIME, LIKE YOU SAID,
17 SNELLING STAFF SERVICES DID ACTUALLY PROVIDE YOU
18 LIGHT DUTY AT BARNWELL WHALEY?

19 A. YES, MA'AM. AND ADDITIONALLY ALSIDE REVERE DID TRY
20 TO RE-EMPLOY ME SIMPLY AS A DRIVER UNTIL I WAS
21 HEALED ENOUGH TO TAKE OVER FULL DUTIES AGAIN, BUT
22 BECAUSE OF THE C.D.L. AND THE MULTIPLE DRUGS THAT
23 ARE CAUTIONED AGAINST THE USE OF HEAVY MACHINERY, I
24 CANNOT GO BACK TO UTILIZING MY C.D.L., AND IT WAS
25 IMPOSSIBLE TO GO BACK TO THEM, BUT I BELIEVE THAT

1 WOULD SPEAK TO THEIR INTENT OF WANTING TO HIRE ME.

2 Q. OKAY. AND I'M NOT ASKING ABOUT INTENT HERE. BUT
3 YOU WERE PRESENT WHEN DAN COBB TESTIFIED DURING HIS
4 DEPOSITION THAT THERE WAS NO GUARANTEE ABOUT HOW
5 MANY HOURS YOU WOULD GET?

6 A. YES, MA'AM.

7 Q. ARE YOU AWARE THAT HE ALSO TESTIFIED DURING HIS
8 DEPOSITION THAT THERE WAS NO GUARANTEE AND THERE HAD
9 NEVER BEEN ANY OFFER OF PERMANENT EMPLOYMENT FOR YOU
10 AT REVERE?

11 A. YES, MA'AM, I WAS PRESENT FOR THE DEPOSITION IN
12 WHICH HE STATED THAT. I WAS ALSO PRESENT FOR THE
13 CONVERSATIONS IN WHICH I JUST TALKED ABOUT, OUR
14 CONVERSATIONS WITH DAN COBB. THE DEPOSITION DIDN'T
15 ACTUALLY HAPPEN UNTIL ABOUT EIGHT MONTHS AFTER THE
16 INCIDENT, AND IT'S POSSIBLE THAT HE DOESN'T REMEMBER
17 ACCURATELY.

18 Q. YOU'RE AWARE THAT THAT WAS HIS SWORN TESTIMONY UNDER
19 OATH, CORRECT?

20 A. YES, MA'AM.

21 Q. ALL RIGHT, THANK YOU. THE ONLY BODY PART YOU
22 INJURED IN THIS ACCIDENT IS YOUR LEFT FOOT; IS THAT
23 CORRECT?

24 A. YES, MA'AM.

25 Q. ALL RIGHT. AND DO YOU HAVE ANYTHING -- I KNOW

1 YOU'VE TESTIFIED HERE TODAY THAT YOU'VE ASKED THE
2 INSURANCE COMPANY FOR SOME CUSTOM SHOES. DO YOU
3 HAVE ANYTHING THAT YOU'VE SUBMITTED THAT SHOWS THAT
4 THE INSURANCE COMPANY HAS NOT PROVIDED THOSE CUSTOM
5 SHOES?

6 A. JUST THE CORRESPONDENCE FROM, I BELIEVE, CHARLESTON
7 BRACE COMPANY WITH THE ADJUSTER.

8 Q. DID YOU SUBMIT ANY OF THAT IN YOUR PREHEARING BRIEF?

9 A. I DON'T KNOW IF WE DID OR NOT.

10 Q. OKAY, ALL RIGHT. AND WHEN YOU SAW DR. OLSEN BACK IN
11 MAY, HE SPECIFICALLY ADVISED YOU AGAINST SURGERY AT
12 THAT TIME?

13 A. AT THAT TIME, HE SAID THAT WAITING UNTIL IT WAS
14 MEDICALLY NECESSARY WAS THE BEST ROUTE BECAUSE OF
15 POSSIBLE AMPUTATION.

16 Q. ALL RIGHT. AND THAT'S APA PAGE 40 THROUGH 41. AND
17 ONE OF HIS CONCERNS IS THAT YOU SMOKE, CORRECT?

18 A. YES, MA'AM.

19 Q. AND YOU STILL SMOKE; IS THAT CORRECT?

20 A. YES, MA'AM.

21 Q. ALL RIGHT. AND HE WARNED THAT SMOKING CAN CAUSE
22 DELAYED WOUND HEALING?

23 A. YES, MA'AM.

24 Q. AND EVEN WITH THOSE WARNINGS, YOU STILL SMOKE?

25 A. YES, MA'AM.

- 1 Q. YOU WERE RELEASED FROM DR. OLSEN'S CARE ON AUGUST
2 13TH, 2012, CORRECT?
- 3 A. YES, MA'AM.
- 4 Q. YOU HAVE NOT BEEN BACK TO SEE DR. OLSEN SINCE THAT
5 DATE?
- 6 A. I HAVE NOT.
- 7 Q. DR. OLSEN GAVE YOU SPECIFIC WORK RESTRICTIONS,
8 CORRECT?
- 9 A. YES, MA'AM.
- 10 Q. ALL RIGHT. HE ALSO MADE A PAIN MANAGEMENT REFERRAL,
11 CORRECT?
- 12 A. YES. THAT'S -- I BELIEVE THAT WAS THE SECOND TIME
13 HE MADE IT. I BELIEVE THE FIRST TIME WAS BACK IN
14 MAY.
- 15 Q. OKAY. BUT HE DID MAKE A PAIN MANAGEMENT REFERRAL?
- 16 A. YES, MA'AM, HE DID.
- 17 Q. OKAY. YOU'VE SEEN DR. TAVEL, THE PAIN MANAGEMENT
18 PHYSICIAN?
- 19 A. HIS PHYSICIAN'S ASSISTANT, YES.
- 20 Q. OKAY. YOU ALSO ATTENDED AN APPOINTMENT WITH DR.
21 BRILLIANT THAT YOUR ATTORNEY SENT YOU TO?
- 22 A. YES, MA'AM.
- 23 Q. OKAY. DR. BRILLIANT'S OPINION -- I'M REFERRING TO
24 APA PAGE 60 -- WAS ALSO THAT YOU DON'T NEED ANY
25 SPECIAL TREATMENT, AND NO SURGERY WAS INDICATED; IS

1 THAT CORRECT?

2 A. I DON'T HAVE THAT IN FRONT OF ME. FROM WHAT I
3 RECALL OF OUR CONVERSATION IS THAT IMMEDIATE SURGERY
4 WASN'T NECESSARY, BUT THAT IF ANYTHING WERE TO EVER
5 BECOME ABRADED OR ULCERATED ON MY TOE, THAT AT THAT
6 POINT IT WOULD BECOME NECESSARY.

7 **BY MS. NUSSBAUM:**

8 COMMISSIONER, I'LL JUST RELY ON THE MEDICALS
9 FOR THAT.

10 **BY COMMISSIONER JAMES:**

11 OKAY.

12 **CROSS EXAMINATION RESUMED BY MS. NUSSBAUM:**

13 Q. AND SINCE YOUR ACCIDENT, YOU'VE BEEN ABLE TO DO SOME
14 WORK AROUND YOUR HOUSE. I THINK YOU'VE ACTUALLY
15 MOVED SINCE YOUR ACCIDENT?

16 A. YES, MA'AM.

17 Q. AND NOW YOU'RE IN A HOME WITH A YARD?

18 A. YES, MA'AM.

19 Q. AND YOU'VE DONE SOME YARD WORK AROUND THE HOUSE?

20 A. YES, MA'AM.

21 Q. YOU'VE ACTUALLY BUILT A SMALL BRICK WALL, I BELIEVE
22 YOU TOLD ME?

23 A. YES, MA'AM.

24 Q. OKAY.

25 **BY MS. NUSSBAUM:**

1 I BELIEVE THAT'S ALL THE QUESTIONS I HAVE.

2 THANK YOU, YOUR HONOR.

3 BY COMMISSIONER JAMES:

4 ANY RE-DIRECT?

5 BY MR. WHITE:

6 NO, YOUR HONOR.

7 BY COMMISSIONER JAMES:

8 OKAY. THAT CONCLUDES THIS HEARING.

9 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
10 CONCLUDED AT THE HOUR OF 4:17 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1116275

EMPLOYEE/CLAIMANT: **JOHN McDANIEL**

EMPLOYER: **CAREER EMPLOYMENT PROFESSIONAL d/b/a
SNELLING STAFFING**

INSURER: **UNITED WISCONSIN INSURANCE COMPANY**

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 55 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **JOHN McDANIEL** TAKEN ON THE 28TH DAY OF NOVEMBER, 2012.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 16TH DAY OF JANUARY, 2013.

JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3-12-2014

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1116275

EMPLOYEE/CLAIMANT: JOHN McDANIEL
EMPLOYER: CAREER EMPLOYMENT PROFESSIONAL
INSURER: UNITED WISCONSIN INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION HEARING, THE WITHIN HEARING WAS TAKEN ON THE 8TH DAY OF JULY, 2013, COMMENCING AT THE HOUR OF 9:39 A.M., IN CHARLESTON, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY JAMES, ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

ALLISON C. NUSSBAUM, ESQUIRE, OF THE FIRM
McANGUS, GOUDELICK & COURIE, L.L.C.
POST OFFICE BOX 650007
MT. PLEASANT, SOUTH CAROLINA 29465

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: ELIZABETH DALE

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

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

6 **BY COMMISSIONER JAMES:**

7 _____ TODAY IS JULY THE 8TH, 2013. WE'RE HERE ON
8 THE MATTER OF JOHN McDANIEL VERSUS CAREER EMPLOYMENT
9 PROFESSIONAL, ET AL. THIS IS W.C.C. NUMBER 1116275.
10 PRESENT ON BEHALF OF THE CLAIMANT IS MR. McDANIEL.
11 PRESENT ON BEHALF OF THE DEFENDANTS IS MS. ALLISON
12 NUSSBAUM. THIS MATTER WAS ORIGINALLY HEARD ON A
13 PREVIOUS DATE, WHICH THE RECORD WILL REFLECT. I
14 BELIEVE IT WAS NOVEMBER OF LAST YEAR, AND AN ORDER
15 WAS ISSUED FROM THAT HEARING. SUBSEQUENT TO THAT
16 ORDER, THERE WAS AN APPEAL, AND THERE WAS ALSO A
17 MOTION MADE WITH REGARDS TO NEW EVIDENCE -- THE
18 SUBMISSION OF NEW EVIDENCE. THE FULL COMMISSION, AS
19 THE MATTER WAS UNDER APPELLATE REVIEW AT THAT TIME,
20 FOUND THAT ONE OF THE MOTIONS HAD MERIT WITH REGARDS
21 TO THE RECORDS OF MR. JAROD LAMPKIN, PAY RECORDS.
22 THIS IS SUBMITTED UNDER NUMBERS 210 THROUGH 278.
23 THE FULL COMMISSIONER HAS REMANDED FOR CONSIDERATION
24 OF THOSE RECORDS AND THE IMPACT WITH REGARDS TO

1 THOSE RECORDS TO THE ORIGINAL DECISION AND ORDER.

2 MR. McDANIEL, YOU ARE REPRESENTING YOURSELF
3 HERE TODAY, SIR, AND SO I DO HAVE TO ASK YOU IF THAT
4 IS INDEED YOUR DECISION, AND THAT YOU HAVE DECIDED
5 TO GO FORWARD WITHOUT AN ATTORNEY.

6 **BY THE WITNESS:**

7 I ABSOLUTELY HAVE.

8 **BY COMMISSIONER JAMES:**

9 _____ OKAY. AND YOU UNDERSTAND THAT NOT HAVING AN
10 ATTORNEY, THAT THERE'S ALWAYS SOME RISK IN DOING
11 THAT, CORRECT, SIR?

12 **BY THE WITNESS:**

13 THERE'S RISK IN HAVING AN ATTORNEY.

14 **BY COMMISSIONER JAMES:**

15 _____ OKAY. WITH REGARDS TO THE SOLE ISSUE THAT THE
16 COMMISSION HAS SUBMITTED THIS ON, THE CLAIMANT HAS
17 SUBPOENAED THREE INDIVIDUALS FOR PRESENCE HERE
18 TODAY, AND ALTHOUGH THEY HAVE NOT MADE IT TO THE
19 FILE YET, APPARENTLY THERE HAS BEEN A MOTION TO
20 QUASH THOSE SUBPOENAS. THERE ARE THREE INDIVIDUALS
21 SUBPOENAED, AND MR. McDANIEL, I'M GOING TO ASK YOU
22 TO HELP ME WITH THEIR NAMES, SIR. I MAY EVEN ASK
23 YOU TO HELP ME WITH THE SPELLING, BECAUSE WE NEED
24 THAT FOR THE COURT REPORTER. BUT IT'S MY
25 UNDERSTANDING THAT ONE OF THOSE IS THE ADJUSTER, AND

1 IF YOU CAN GIVE ME HER NAME.

2 **BY THE CLAIMANT:**

3 NICOLE SERVICE.

4 **BY COMMISSIONER JAMES:**

5 _____ AND DO YOU KNOW HOW TO SPELL HER NAME?

6 **BY THE CLAIMANT:**

7 N-I-C-O-L-E S-E-R-V-I-C-E.

8 **BY COMMISSIONER JAMES:**

9 _____ AND THAT'S THE WAY IT SOUNDS, BUT I'M JUST
10 MAKING SURE.

11 **BY THE CLAIMANT:**

12 CORRECT.

13 **BY COMMISSIONER JAMES:**

14 _____ OKAY. AND THAT IS THE INSURANCE ADJUSTER ON
15 THIS FILE?

16 **BY THE CLAIMANT:**

17 YES, MA'AM.

18 **BY COMMISSIONER JAMES:**

19 _____ NOW, THERE ARE TWO OTHER INDIVIDUALS. IF YOU
20 WILL NAME THEM ONE AT A TIME AND GIVE THE COURT
21 REPORTER THE SPELLINGS.

22 **BY THE CLAIMANT:**

23 ANGELA BALDWIN, SPELLED TRADITIONALLY A-N-G-E-
24 L-A B-A-L-D-W-I-N.

25 **BY COMMISSIONER JAMES:**

1 _____ THANK YOU, SIR. AND HER POSITION?

2 **BY THE CLAIMANT:**

3 HER POSITION IS HIRING MANAGER FOR C.D.L.
4 DRIVERS IN SNELLING STAFFING, I GUESS. THAT'S --
5 I'M APPROXIMATING HER POSITION.

6 **BY COMMISSIONER JAMES:**

7 _____ OKAY. AND THE THIRD INDIVIDUAL?

8 **BY THE CLAIMANT:**

9 THE THIRD INDIVIDUAL IS JIM PASCUTTI. HE IS
10 THE OWNER OF SNELLING STAFFING, AND J-I-M P-A-S-C-
11 U-T-T-I.

12 **BY COMMISSIONER JAMES:**

13 _____ THANK YOU, SIR. ALL RIGHT. AND THE MOTION TO
14 QUASH IS MADE BY THE DEFENDANTS. SO, AS IT IS YOUR
15 MOTION, MS. NUSSBAUM, I WILL LET YOU ADDRESS THAT
16 FIRST.

17 **BY MS. NUSSBAUM:**

18 DEFENDANTS FILED MOTION TO QUASH ALL THREE
19 SUBPOENAS OF NICOLE SERVICE, ANGELA BALDWIN AND JIM
20 PASCUTTI. DEFENDANTS BELIEVE WE ARE HERE ONLY ON A
21 REMAND HEARING, WHICH IS THE PAY RECORDS OF JAROD
22 LAMPKIN ONLY. JAROD LAMPKIN'S RECORDS THAT WERE
23 ADMITTED BY THE FULL COMMISSION ARE HIS ACTUAL PAY
24 RECORDS FROM THE DIRECT EMPLOYER ALSIDE REVERE.
25 SNELLING STAFF SERVICES HAS NOTHING TO DO WITH THESE

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PAY RECORDS. THEY ARE NOT THE CUSTODIAN OF THESE RECORDS. THEY CANNOT SPEAK TO THESE RECORDS. THEY ARE -- JIM PASCUTTI IS NOT AN EXPERT WITH REGARD TO THESE RECORDS. THEREFORE, THERE IS NO TESTIMONY THAT COULD BE ELICITED FROM ANY OF THESE INDIVIDUALS THAT IS RELEVANT TO THESE PAY RECORDS THAT WERE ADMITTED BY THE FULL COMMISSION. ALSIDE REVERE IS THE ONE THAT COMPLIED WITH THE SUBPOENA AND PROVIDED THESE RECORDS. I DO NOT REPRESENT ALSIDE REVERE. THESE INDIVIDUALS HAVE NOTHING TO DO WITH ALSIDE REVERE OTHER THAN THEY PLACE FROM TIME TO TIME TEMPORARY EMPLOYEES AT ALSIDE REVERE. HOWEVER, THESE ARE NOT THE PAY RECORDS OF SNELLING. THESE ARE THE PAY RECORDS OF ALSIDE REVERE DIRECTLY. IF MR. McDANIEL WOULD LIKE SOMEBODY TO TALK TO THESE RECORDS, THE RELEVANT PERSON WOULD BE FROM ALSIDE REVERE. THEY ARE THE CUSTODIAN OF THESE RECORDS. HE IS TRYING TO GET IN EVIDENCE FROM MY EMPLOYER ABOUT MARKET TRENDS AND ALL OF THIS SPECULATIVE TESTIMONY. IT HAS NOTHING TO DO WITH WHAT WE'RE HERE ON TODAY. WHAT WE'RE HERE ON TODAY IS WHETHER THESE PAY RECORDS FROM ALSIDE REVERE WOULD CHANGE YOUR RULING WITH REGARDS TO HIS AVERAGE WEEKLY WAGE AND COMPENSATION RATE.

BY COMMISSIONER JAMES:

1 _____ AND IF I RECALL CORRECTLY FROM THE FIRST
2 HEARING, MR. LAMPKIN WORKED FOR SNELLING AND THEN
3 RECEIVED PERMANENT PLACEMENT WITH THE SUBSEQUENT
4 EMPLOYER?

5 **BY MS. NUSSBAUM:**

6 THAT'S CORRECT. AS FAR AS I KNOW, BECAUSE
7 WE'VE RECEIVED THE RECORDS. SO, HE MUST HAVE BEEN
8 HIRED DIRECTLY BY ALSIDE REVERE AT SOME POINT.
9 THESE ARE ALL FORWARD LOOKING PAY RECORDS.

10 **BY COMMISSIONER JAMES:**

11 _____ ALL RIGHT. MR. McDANIEL, WITH REGARDS TO THE
12 MOTION TO QUASH THE SUBPOENAS, IF YOU WISH TO
13 ADDRESS THAT, PLEASE.

14 **BY THE CLAIMANT:**

15 OH, I WOULD LIKE TO BOTH ADDRESS IT GENERALLY,
16 AND THEN I WOULD LIKE TO ADDRESS SOME CERTAIN
17 PARAGRAPHS IN HER MOTION.

18 **BY COMMISSIONER JAMES:**

19 _____ OKAY.

20 **BY THE CLAIMANT:**

21 GENERALLY, JIM PASCUTTI AND SNELLING STAFFING
22 SERVICES ANGELA BALDWIN IN GENERAL, THEY FACILITATED
23 THE RELATIONSHIP THAT CULMINATED IN THESE RECORDS
24 THAT CULMINATED IN THE EMPLOYMENT OF JAROD LAMPKIN
25 AT ALSIDE REVERE. JAROD LAMPKIN HAD A CONTRACTUAL

1 OBLIGATION WITH ALSIDE REVERE. ONCE THAT
2 CONTRACTUAL OBLIGATION WITH ALSIDE REVERE IS OVER, I
3 AM UNDER THE IMPRESSION THAT HIS EMPLOYMENT --
4 TRANSFER OF EMPLOYMENT IS STILL FACILITATED THROUGH
5 SNELLING STAFFING. IF THIS TRANSFER OF EMPLOYMENT
6 IS FACILITATED THROUGH SNELLING STAFFING, THEN IF
7 THEY DO ANY KIND OF BARGAINING ON BEHALF OF JAROD
8 LAMPKIN, IF THERE IS A PREEEXISTING PAY RAISE
9 WHENEVER SOMEONE GETS HIRED ON, THERE ARE MANY
10 QUESTIONS THAT CAN BE ANSWERED BY JIM PASCUTTI AND
11 ANGELA BALDWIN AS TO THE CHARACTER, HOW OFTEN PEOPLE
12 GET HIRED ON AT A HIGHER RATE WHENEVER THEY'RE
13 PLACED SOMEWHERE LIKE THAT AS SPECIFICALLY IN THIS
14 CASE. AND THAT THEY SPEAK VERY MUCH TO THE IMPACT
15 OF THESE RECORDS, AND THE IMPACT OF THESE RECORDS IN
16 COMPARISON TO MY AVERAGE WEEKLY WAGE AND THEIR
17 RELATION TO MY AVERAGE WEEKLY WAGE. AS THE LAW LAYS
18 OUT IN MANY PLACES THAT PEOPLE OF SAME CHARACTER
19 SHOULD BE LOOKED AT AS FAR AS ESTABLISHING AN
20 AVERAGE WEEKLY WAGE, AND I BELIEVE THAT IF THEY CAN
21 SAY THAT WE ARE OF THE SAME CHARACTER AND THAT IT
22 COULD HAVE POSSIBLY TURNED INTO A FULL-TIME
23 EMPLOYMENT FOR EITHER OF US, AND THEY FACILITATED
24 THIS EMPLOYMENT, THEN THEY CAN SPEAK TO IF THEY --
25 IF THEY ASKED FOR ANY HIGHER WAGES FOR JAROD LAMPKIN

1 AT ALL OR EVEN IF THEY RELEASED JAROD LAMPKIN OR IF
2 THEY SAID, "WE WOULD LIKE TO HIRE JAROD LAMPKIN, BUT
3 WE HAVE THESE CAVEATS." THERE ARE MANY QUESTIONS
4 THAT CAN BE ANSWERED BY HAVING JIM PASCUTTI AND
5 ANGELA BALDWIN HERE.

6 **BY COMMISSIONER JAMES:**

7 _____ DO EITHER ONE OF THOSE INDIVIDUALS WORK FOR
8 THIS -- I'LL JUST CALL IT REVERE?

9 **BY THE CLAIMANT:**

10 THEY BOTH HAVE CONTRACTUAL OBLIGATIONS WITH
11 THEM.

12 **BY COMMISSIONER JAMES:**

13 _____ DO THEY -- WHEN YOU SAY "CONTRACTUAL
14 OBLIGATIONS," DO YOU MEAN PROVIDING THEM TEMPORARY
15 EMPLOYEES?

16 **BY THE CLAIMANT:**

17 YES.

18 **BY COMMISSIONER JAMES:**

19 _____ OKAY. WITH REGARDS TO THE RECORDS OF MR.
20 LAMPKIN COMING FROM REVERE, NEITHER ONE OF THE TWO
21 INDIVIDUALS WITH SNELLING IS EMPLOYED BY REVERE?

22 **BY THE CLAIMANT:**

23 YES, BOTH OF THEM ARE EMPLOYED BY REVERE, AS
24 REVERE PAYS THEM TO DO A JOB.

25 **BY MS. NUSSBAUM:**

1 NO, COMMISSIONER, THEY ARE NOT -- THEY ARE NOT
2 EMPLOYEES OR STATUTORY EMPLOYEES OF REVERE IN ANY
3 SHAPE OR FORM. THESE ARE SNELLING EMPLOYEES. THEY
4 MERELY PLACE EMPLOYEES. THEY ARE NOT AN EMPLOYER OF
5 EVERY COMPANY THEY PLACE AN EMPLOYEE AT.

6 **BY COMMISSIONER JAMES:**

7 _____ ALL RIGHT. DID YOU HAVE ANYTHING ELSE, SIR,
8 WITH REGARDS TO THAT MOTION?

9 **BY THE CLAIMANT:**

10 YES, AS TO PARAGRAPH 16, "ON JULY 1ST, 2013,
11 THE DEFENDANTS RECEIVED THREE SUBPOENAS FROM
12 CLAIMANT REQUESTING PERSONAL APPEARANCES BY ANGELA
13 BALDWIN, JIM PASCUTTI AND NICOLE SERVICE AT THE JULY
14 8TH, 2013, REMAND HEARING. ADDITIONALLY, THE
15 CLAIMANT REQUESTED NUMEROUS DOCUMENTS, WHICH HAVE
16 ALREADY BEEN PROVIDED TO HIM MINUS ANY PRIVILEGED
17 DOCUMENTS." THIS IS A MATERIAL MISREPRESENTATION.
18 I HAVE TWO FORM 27 CERTIFICATES OF SERVICE THAT HAVE
19 BEEN SERVED ON THEM AND NOT COMPLIED WITH. THESE I
20 ASKED FOR MULTIPLE RECORDS FROM SNELLING AND UNITED
21 HEARTLAND. I RECEIVED LIMITED RECORDS FROM UNITED
22 HEARTLAND. I WAS THEN INFORMED THAT THEY HAD THE
23 RECORDS THAT I HAD REQUESTED AFTER I SAID THAT I HAD
24 RECEIVED AN IMPARTIAL FILE. AT THAT POINT, THEY
25 PRODUCED MY PERSONNEL FILE AGAIN, BUT THIS TIME

1 ADDED SOME TIME SHEETS. THESE TIME SHEETS SHOULD
2 HAVE BEEN INCLUDED IN THE FIRST SUBPOENA AND WERE
3 NOT. ALONG WITH THAT I HAVE RECEIVED ZERO
4 INFORMATION IN REGARDS TO THE SUBPOENAS TO UNITED
5 HEARTLAND. THE DEFENDANTS SAY THAT THERE IS
6 PRIVILEGED INFORMATION ---

7 **BY COMMISSIONER JAMES:**

8 _____ UNITED HEARTLAND?

9 **BY THE CLAIMANT:**

10 _____ UNITED HEARTLAND IS THE INSURER -- IS THE
11 CARRIER.

12 **BY COMMISSIONER JAMES:**

13 _____ OKAY.

14 **BY THE CLAIMANT:**

15 _____ THE DEFENDANTS SAY THAT THERE IS PRIVILEGED
16 INFORMATION IN THOSE RECORDS. WITHOUT A
17 LAWYER/CLIENT RELATIONSHIP, THERE CAN BE NO
18 PRIVILEGE, AND DEFENDANTS DID NOT RETAIN COUNSEL
19 UNTIL JUNE 12TH. I HAVE NOT RECEIVED ANY
20 CORRESPONDENCE AT ALL FROM UNITED HEARTLAND, AND IT
21 SAYS THAT "IT IS MINUS ANY PRIVILEGED DOCUMENTS,"
22 BUT THEN WHEN I INQUIRED ABOUT I BELIEVE IT'S A RULE
23 26 LOG FOR PRIVILEGED INFORMATION, THAT WAS DENIED
24 AS SAYING THAT THEY HAD NO LOG OF PRIVILEGED
25 INFORMATION, THAT THEY HAD GIVEN ME EVERYTHING.

1 THIS IS A MATERIAL MISREPRESENTATION, BECAUSE I HAVE
2 A LONG LIST OF THINGS THAT WAS ASKED FOR AND NEVER
3 PROVIDED. AND THAT'S JUST AS FAR AS THE DOCUMENTS
4 THAT WERE ADDED TO THE BOTTOM OF NICOLE SERVICE'S
5 FILE FOR HER TO BRING HER FILE INCLUDING EVERYTHING
6 THAT I BELIEVE COULD SPEAK TO LAMPKIN'S PAY RECORDS
7 ALSO. IT SAYS THAT "THE DEFENDANTS REQUEST THE
8 CLAIMANT'S SUBPOENA COMMANDED THE APPEARANCE OF BOTH
9 THE CLAIMS REPRESENTATIVE AND TWO EMPLOYER
10 REPRESENTATIVES BE QUASHED BECAUSE IT REQUIRES
11 ATTENDANCE AT A REMAND HEARING WHERE THE ONLY ISSUE
12 IS THE ADMITTANCE OF ADDITIONAL PAYROLL RECORDS.
13 REQUIRING THEIR PERSONAL APPEARANCE WOULD SUBJECT
14 THEM TO UNDUE BURDEN AND EXPENSES." THEY ARE A
15 PARTY TO THIS CASE. JIM PASCUTTI WAS LISTED ON NO
16 LESS THAN FOUR OR FIVE FORM 50s AND 51s AND 58s AS A
17 WITNESS. THERE WERE TWO TIMES IN NOVEMBER THAT THIS
18 WAS PUSHED BACK. THE DEFENDANTS RECEIVED 45 DAYS
19 NOTICE OF HEARING OF OUR FIRST HEARING WITH YOU.
20 TWO DAYS BEFORE THAT HEARING, ALLISON LET YOU KNOW
21 THAT SHE HAD PROTECTION, AND EVEN THOUGH THAT SHE
22 WASN'T THE NAMED ATTORNEY ON THE CASE, THAT SHE
23 WOULD BE OUT OF TOWN AND THAT WE WOULD HAVE TO PUSH
24 THIS BACK. THAT WAS PUSHED BACK APPROXIMATELY TWO
25 WEEKS, AT WHICH TIME THERE WAS ANOTHER PUSH BACK FOR

1 FOUR OR FIVE DAYS. AT THAT TIME, NOBODY SHOWED UP
2 TO THE HEARING. ALLISON SHOWED UP TO THE HEARING.
3 ME AND MY LAWYER SHOWED UP TO THE HEARING. THAT WAS
4 IT. THERE WAS NO DAN COBB. THERE WAS NO JIM
5 PASCUTTI. THERE WAS NO REPRESENTATIVE FROM THE
6 INSURANCE COMPANY, AND AT THAT POINT, I EVEN BELIEVE
7 THAT IT COULD POSSIBLY BE A TACTIC TO DELAY THESE
8 HEARINGS UNTIL SUBPOENAS FALL THROUGH THE CRACKS,
9 UNTIL THINGS GET LOST, BECAUSE IF IT'S RESCHEDULED
10 AND RESCHEDULED AND RESCHEDULED, AND THEN NOBODY
11 SHOWS UP, AND THE IDEA OF THIS IS TO LOOK OUT FOR
12 THE INJURED WORKER, THEN HOW -- HOW IS IT THAT IF I
13 HAVE NO ONE TO QUESTION, THAT THAT IS LOOKING OUT
14 FOR ME? IF I HAVE NO WAY OF ASKING ANYONE ANYTHING,
15 HOW IS THAT LOOKING OUT FOR ME?

16 **BY MS. NUSSBAUM:**

17 _____ COMMISSIONER, CAN I PLACE A RUNNING OBJECTION
18 TO ALL OF THESE STATEMENTS BEING MADE ON THE RECORD.
19 WE'RE HERE FOR A REMAND HEARING. I FEEL LIKE ALL OF
20 THESE ISSUES THAT HE'S RAISING ARE ISSUES THAT COULD
21 HAVE BEEN RAISED AT THE ORIGINAL HEARING, AND WE'RE
22 GOING OUTSIDE THE SCOPE OF THE REMAND HEARING.

23 **BY COMMISSIONER JAMES:**

24 _____ MR. McDANIEL, I ---

25 **BY THE CLAIMANT:**

1 _____ WE'RE SPEAKING ABOUT THIS MOTION RIGHT NOW, NOT
2 THE REMAND HEARING, CORRECT?

3 **BY COMMISSIONER JAMES:**

4 _____ RIGHT. THE MOTION TO QUASH THE SUBPOENA IS
5 WHAT IS BEING ADDRESSED.

6 **BY THE CLAIMANT:**

7 _____ RIGHT.

8 **BY COMMISSIONER JAMES:**

9 _____ SO IF YOU HAVE ANYTHING ELSE WITH REGARDS TO
10 THE MOTION TO QUASH.

11 **BY THE CLAIMANT:**

12 _____ RIGHT, RIGHT, BUT I'M SAYING ---

13 **BY COMMISSIONER JAMES:**

14 _____ BECAUSE I HAVE TO DETERMINE -- WHAT I HAVE TO
15 DETERMINE IS WHETHER THESE INDIVIDUALS HAVE ANY
16 RELEVANCE WITH REGARDS TO MR. LAMPKIN'S PAY RECORDS.
17 THAT IS THE SOLE ---

18 **BY THE CLAIMANT:**

19 _____ THEY ABSOLUTELY DO.

20 **BY COMMISSIONER JAMES:**

21 _____ THAT IS THE SOLE REASON WE'RE HERE. OKAY, DO
22 YOU HAVE ANY OTHER ARGUMENT IN THAT REGARD?

23 **BY THE CLAIMANT:**

24 _____ YES, THAT THEY FACILITATED THAT EMPLOYMENT.
25 THAT THEY CAN TESTIFY TO THAT EMPLOYMENT, ANY

1 INCREASES IN PAY, ANY CONTRACTUAL OBLIGATIONS THAT
2 HE MAY HAVE RECEIVED IN LIEU OF COMPENSATION, I.E.
3 401K, HEALTHCARE, ANYTHING LIKE THAT. THEY CAN
4 SPEAK TO ALL OF THOSE THINGS, AND I BELIEVE THAT
5 THEY ARE VERY IMPORTANT SPEAKING TO THOSE. I
6 BELIEVE THAT I HAVE THE RIGHT TO SUBPOENA PEOPLE FOR
7 THIS HEARING AS THE NOTICE OF HEARING GAVE ME THE
8 ABILITY TO DO THAT UNDER THE REGULATIONS. THE
9 REGULATIONS PROVIDE FOR SUBPOENAS BEING SERVED. I
10 SERVED THE SUBPOENAS, AND THE PEOPLE DIDN'T SHOW UP.
11 I WOULD ACTUALLY MOVE THAT YOU COMPEL THEM TO
12 APPEAR.

13 **BY COMMISSIONER JAMES:**

14 _____ ALL RIGHT. WITH REGARDS TO THESE THREE
15 SUBPOENAS, NONE OF THESE INDIVIDUALS WORKED FOR
16 REVERE NOR A CUSTODIAN OF THESE RECORDS. AS IT'S
17 BEEN REMANDED FOR THE SOLE PURPOSE OF THE
18 INTERPRETATION OF THE PAY RECORDS AND ANY IMPACT
19 THAT THEY HAVE ON THE DECISION AND ORDER, THEN THOSE
20 INDIVIDUALS UNLESS THEY ARE THE CUSTODIAN OF THESE
21 RECORDS OR WORKED FOR REVERE, DIRECTLY WORKED FOR
22 REVERE, THEN THEIR TESTIMONY WOULD NOT BE RELEVANT
23 TODAY.

24 **BY THE CLAIMANT:**

25 _____ I BELIEVE THAT THAT'S INCORRECT.

1 **BY COMMISSIONER JAMES:**

2 _____ WELL, MR. McDANIEL, AS I EXPLAINED WHEN WE
3 STARTED, I HAVE TO TAKE THIS EXACTLY AS IT WAS
4 REMANDED, OKAY. SO ---

5 **BY THE CLAIMANT:**

6 _____ RIGHT. AND I ASKED FOR A COPY OF THAT AND HAVE
7 NOT BEEN PROVIDED WITH IT. I AM BEING TOLD THAT WE
8 MUST ADHERE WITH REGULATIONS, WHICH I HAVE NOT BEEN
9 PROVIDED WITH. I WAS PROVIDED WITH A NOTICE OF
10 HEARING THAT OUTLINED WHAT REGULATIONS I MUST
11 PROCEED UNDER AND AM NOW BEING TOLD THAT THOSE
12 REGULATIONS DO NOT APPLY IN THIS CASE. I WOULD
13 REQUEST THAT I BE PRESENTED THIS MOTION, AS I HAVE
14 BROUGHT THE MOTION THAT WAS GRANTED AND THE
15 OBJECTION AND THE GRANTING OF THAT OBJECTION, AND I
16 HAVE NOT BEEN PRESENTED WITH ANYTHING EVEN THOUGH I
17 HAVE INQUIRED MULTIPLE TIMES TO THE COMMISSION FOR
18 SPECIFIC FINDINGS ON THIS AND HAVE BEEN TOLD THAT A
19 FORM ORDER STANDS ON ITS OWN.

20 **BY COMMISSIONER JAMES:**

21 _____ ALL RIGHT. MR. McDANIEL, WITH REGARDS TO THIS
22 -- WITH THE SOLE PURPOSE OF TODAY'S HEARING AND THE
23 FACT THAT ONE OF THE INDIVIDUALS I BELIEVE THAT'S IN
24 THE SERVICE IS THE INSURANCE ADJUSTER, AND IT'S THE
25 INSURANCE ADJUSTER FOR UNITED HEARTLAND, WHICH IS

1 THE CARRIER FOR SNELLING. SO, SHE IS NOT EMPLOYED
2 WITH REVERE WITH REGARDS TO THE RECORDS AND THE SOLE
3 PURPOSE OF TODAY'S REMAND. I WOULD HAVE TO GRANT
4 THE MOTION TO QUASH WITH REGARDS TO HER. WITH
5 REGARDS TO THE SNELLING EMPLOYEES, IT IS ALSO THE
6 SAME ISSUE WITH REGARDS TO THAT, SO I HAVE TO GRANT
7 THE MOTION TO QUASH. SO, WHAT I NEED TO DO IS GO
8 DIRECTLY TO THE HEART OF THE ISSUE WITH REGARDS TO
9 MR. LAMPKIN'S PAY RECORDS.

10 **BY THE CLAIMANT:**

11 _____ WE STILL -- WE STILL HAVE OTHER MOTIONS
12 PENDING.

13 **BY COMMISSIONER JAMES:**

14 _____ WHAT OTHER -- WHAT OTHER MOTIONS?

15 **BY THE CLAIMANT:**

16 _____ DEFENDANTS HAVE ALSO MOTIONED TO QUASH LEGAL
17 RECORDS SUBPOENA THAT I PROPERLY SERVED THEM WITH.
18 WE HAVE A MOTION TO COMPEL PENALTIES AND TREATMENT
19 ALSO THAT HAS NOT BEEN ADDRESSED.

20 **BY COMMISSIONER JAMES:**

21 _____ OKAY. THE SOLE PURPOSE FOR TODAY'S HEARING IS
22 MR. LAMPKIN'S PAY RECORDS AS NEWLY DISCOVERED
23 EVIDENCE AS IT WAS A SUBPOENA IN EXISTENCE, AND THE
24 FULL COMMISSION HAS GRANTED THAT. SO, THAT IS WHAT
25 I NEED TO GO DIRECTLY TO THE HEART OF IS TO THE

1 ISSUE ITSELF. SO, IF YOU WOULD ADDRESS WITH REGARDS
2 TO MR. LAMPKIN'S RECORDS, WHAT IMPACT DO THEY HAVE
3 WITH REGARDS TO THE ORDER?

4 **BY THE CLAIMANT:**

5 _____ MR. LAMPKIN'S RECORDS IN REGARD TO THE ORDER,
6 I'LL JUST MAKE A STATEMENT OF CLARIFYING RIGHT QUICK
7 WHAT THESE ISSUES SHOW. THE EVIDENCE INCLUDED IN
8 JAROD LAMPKIN'S RECORDS SHOW ONE, LAMPKIN EARNED
9 \$28,504 THROUGH ALSIDE REVERE IN 38 WEEKS.

10 **BY COMMISSIONER JAMES:**

11 _____ OKAY. REPEAT THAT FOR ME ONE MORE TIME.

12 **BY THE CLAIMANT:**

13 _____ HE EARNED \$28,504 -- I'M JUST GOING TO CUT THE
14 CENTS FOR EASE.

15 **BY COMMISSIONER JAMES:**

16 _____ OKAY.

17 **BY THE CLAIMANT:**

18 _____ HE EARNED \$28,504 THROUGH ALSIDE REVERE IN 38
19 FULL WEEKS. HE ALSO EARNED \$278.25 FOR ONE PARTIAL
20 WEEK WITH ALSIDE REVERE.

21 **BY COMMISSIONER JAMES:**

22 _____ DO YOU HAVE THE -- WELL, THE RECORDS WILL SPEAK
23 FOR THEMSELVES WITH REGARDS TO THE DATES.

24 **BY THE CLAIMANT:**

25 _____ OH, RIGHT, I HAVE THOSE. I HAVE THOSE NOTATED

1 A LITTLE BIT FURTHER DOWN IN MY STATEMENT.

2 **BY COMMISSIONER JAMES:**

3 _____ OKAY. GO AHEAD, SIR.

4 **BY THE CLAIMANT:**

5 _____ IN THE 26 WEEKS FROM 2/25/12 UNTIL 8/18/12,

6 WHICH WAS THE DATE OF DAN COBB'S TESTIMONY ---

7 **BY COMMISSIONER JAMES:**

8 _____ SAY THAT ONE MORE TIME.

9 **BY THE CLAIMANT:**

10 _____ FROM 2/25/12 UNTIL 8/18/12 ---

11 **BY COMMISSIONER JAMES:**

12 _____ OKAY.

13 **BY THE CLAIMANT:**

14 _____ 8/18/12, I BELIEVE WAS THE DATE OF DAN COBB'S
15 DEPOSITION. JAROD LAMPKIN AVERAGED 12.48 HOURS OF
16 OVERTIME. DURING THIS SAME TIME, HIS MINIMUM
17 OVERTIME WORKED WAS 5.25 HOURS. HIS MAXIMUM
18 OVERTIME WORKED WAS 20.25 HOURS, AND HIS MEDIAN
19 OVERTIME WORKED WAS 12.75 TO 13 HOURS. THIS
20 REPRESENTS A MINIMUM, MEDIAN AND MAXIMUM OF SIX
21 THIRTY-FOUR, SEVEN EIGHTY-EIGHT AND NINE THIRTY-TWO
22) FOR HIS AVERAGE -- OR FOR HIS WEEKLY WAGES.

23 **BY COMMISSIONER JAMES:**

24 _____ OKAY. WHEN YOU STATED THE FIRST FIGURE, ---

25 **BY THE CLAIMANT:**

1 _____ YES, MA'AM.

2 **BY COMMISSIONER JAMES:**

3 _____ --- SIX THIRTY-FOUR SEVEN EIGHTY-EIGHT, DO YOU
4 MEAN \$634.78 OR ROUND UP TO 79?

5 **BY THE CLAIMANT:**

6 _____ NO, MA'AM. NO, MA'AM. I'VE OMITTED THE CENTS
7 FOR EASE: \$634 WAS HIS MINIMUM WEEKLY PAYCHECK.

8 **BY COMMISSIONER JAMES:**

9 _____ OKAY.

10 **BY THE CLAIMANT:**

11 _____ \$788 WAS HIS MEDIAN PAYCHECK, AND \$932 WAS HIS
12 MAXIMUM PAYCHECK. FURTHER WAS CONTENDED THAT
13 OVERTIME WAS NOT GUARANTEED, AND THAT THESE RECORDS
14 CLEARLY REFLECT THAT OVERTIME WAS ESSENTIALLY
15 GUARANTEED AS THE ONLY TWO WEEKS THAT LAMPKIN DID
16 NOT WORK OVERTIME WERE THE FIRST WEEK, WHICH HE
17 WORKED IN WHICH HE REPLACED ME AND THE WEEK BEFORE
18 CHRISTMAS OF THAT SAME YEAR. SO, INCLUDING HIS TIME
19 WITH ALSIDE REVERE AND HIS TIME WITH SNELLING
20 STAFFING, THIS RESULTS IN 49 FULL WEEKS WORKED AND
21 TWO PARTIAL WEEKS WORKED. THE 49 WEEKS ALL HAD
22 OVERTIME, AND HE AVERAGED \$727.10. THIS REPRESENTS
23 OVERTIME 96.07 PERCENT OF TOTAL WEEKS WORKED.

24 **BY COMMISSIONER JAMES:**

25 _____ GO BACK TO THE AVERAGE FOR ME, NINE HUNDRED --

1 WHAT DID YOU SAY?

2 **BY THE CLAIMANT:**

3 _____ THE AVERAGE OF THE 49 FULL WEEKS AND TWO
4 PARTIAL WEEKS?

5 **BY COMMISSIONER JAMES:**

6 _____ YES, SIR.

7 **BY THE CLAIMANT:**

8 _____ IS SEVEN TWENTY-SEVEN.

9 **BY COMMISSIONER JAMES:**

10 _____ OKAY.

11 **BY THE CLAIMANT:**

12 _____ FROM LAMPKIN'S FIRST DAY AT ALSIDE 'TIL HIS
13 LAST DAY AT ALSIDE, HE EARNED 36,544. THIS WAS FROM
14 THE PERIOD OF 11/22/11 UNTIL 11/10/12. THIS
15 INCLUDED 49 FULL WEEKS AND TWO PARTIAL WEEKS
16 EXCLUDING -- IF YOU TAKE THE TOTAL WAGES AND
17 SUBTRACT THE PARTIAL WEEKS AND THEN DIVIDE BY THE 49
18 FULL WEEKS, THAT'S HOW YOU ARRIVE AT THE SEVEN
19 TWENTY-SEVEN TEN. A REALLY INTERESTING THING
20 HAPPENS HERE THOUGH. I WORKED ONE WEEK AND TWO
21 DAYS, AND HE WORKED 49 WEEKS AND TWO PARTIAL WEEKS.
22 COMBINED, WE WORKED 51 -- I BELIEVE MY CALCULATION
23 WAS 51.8 WEEKS, AND THE AVERAGE WEEKLY WAGE IS TO BE
24 DETERMINED INITIALLY SET OUT OVER A YEAR'S WORTH OF
25 CALCULATIONS, AND I BELIEVE THAT JAROD LAMPKIN'S

1 WAGES AND MY WAGES WOULD GIVE A YEAR ---

2 (INTERRUPTION - CELL PHONE RINGING)

3 **BY THE CLAIMANT:**

4 _____ I'M SO SORRY ABOUT THAT. THAT THE WAGES...

5 **BY COMMISSIONER JAMES:**

6 _____ TAKE YOUR TIME.

7 **BY THE CLAIMANT:**

8 _____ I'M SORRY. COULD YOU REPEAT WHERE I WAS? I'M
9 SORRY.

10 **BY COMMISSIONER JAMES:**

11 _____ YOU WERE GOING THROUGH THE WEEKS OF YOU AND MR.
12 LAMPKIN, AND YOU WERE ABOUT TO GIVE AN AVERAGE
13 WEEKLY WAGE.

14 **BY THE CLAIMANT:**

15 _____ YES, MA'AM.

16 **BY COMMISSIONER JAMES:**

17 _____ YOU HAD ALREADY WENT OVER HIS 49 FULL WEEKS AND
18 TWO PARTIAL WEEKS, TO GIVE AN ---

19 **BY THE CLAIMANT:**

20 _____ YES, MA'AM, AND ---

21 **BY COMMISSIONER JAMES:**

22 _____ -- AVERAGE OF 727.10?

23 **BY THE CLAIMANT:**

24 _____ AND THAT EQUALS THE -- THAT EQUALS THE 727.10.

25 **BY COMMISSIONER JAMES:**

1 _____ YES, SIR.

2 **BY THE CLAIMANT:**

3 _____ WOULD IT -- COULD IT BE POSSIBLE TO MOVE FOR A
4 15-MINUTE BREAK? THAT -- I DON'T KNOW WHO CALLED
5 ME. I'M SURE I APPEARED TO BE RATHER WELL PUT
6 TOGETHER BEFORE THAT PHONE CALL. I HAVE HAD SOME
7 RECENT FAMILY ISSUES. I ---

8 **BY COMMISSIONER JAMES:**

9 _____ YOU DON'T NEED TO EXPLAIN THE DETAILS, SIR. IF
10 YOU HAVE SOMETHING THAT'S PRESSING THAT WOULD BE A
11 MATTER OF SOME FAMILY URGENCY, THEN I CAN ALLOW YOU
12 A BREAK IN ORDER TO PUT YOURSELF BACK IN POSITION TO
13 CONTINUE WITH YOUR ARGUMENT.

14 **BY THE CLAIMANT:**

15 _____ PLEASE.

16 **BY COMMISSIONER JAMES:**

17 _____ OKAY. I DO HAVE A LIMITED AMOUNT OF TIME
18 THOUGH BECAUSE THERE IS ANOTHER COMMISSIONER COMING
19 IN AFTER ME. SO, ---

20 **BY THE CLAIMANT:**

21 _____ I UNDERSTAND THAT. I JUST ---

22 **BY COMMISSIONER JAMES:**

23 _____ SO IF YOU CAN JUST LIMIT IT TO LET'S SAY, YOU
24 KNOW, FIVE TO TEN MINUTES.

25 **BY THE CLAIMANT:**

1 _____ YES, MA'AM.

2 **BY COMMISSIONER JAMES:**

3 _____ AND IF YOU NEED TO COME BACK IN, IF THERE'S
4 SOMETHING FURTHER THAT WE NEED TO ADDRESS WITH
5 REGARDS TO THAT, THEN WE CAN. OKAY?

6 **BY THE CLAIMANT:**

7 _____ OKAY. THANK YOU.

8 (OFF THE RECORD)

9 **BY COMMISSIONER JAMES:**

10 _____ WE ARE BACK ON THE RECORD.

11 **BY THE CLAIMANT:**

12 _____ I JUST WANT TO EXPLAIN WHAT HAPPENED. I WAS
13 NOT SURE WHO WAS CALLING ME.

14 **BY COMMISSIONER JAMES:**

15 _____ AND, MR. McDANIEL, LET ME SAY THIS BEFORE YOU
16 EXPLAIN. IF IT IS YOUR FAMILY AND YOUR PERSONNEL
17 BUSINESS, YOU DO NOT HAVE TO GIVE AN EXPLANATION,
18 SIR, OKAY.

19 **BY THE CLAIMANT:**

20 _____ OKAY.

21 **BY COMMISSIONER JAMES:**

22 _____ I MEAN, THAT'S -- YOU KNOW, IF YOU NEED TO
23 ADDRESS IT, THAT'S FINE.

24 **BY THE CLAIMANT:**

25 _____ I MEAN, I SHOULD NOT BE HERE TODAY. I SHOULD

1 BE IN TEXAS, BUT I AM HERE TODAY, BECAUSE I SEE THE
2 IMPORTANCE OF THIS ISSUE, AND I'M TRYING TO GET THIS
3 RESOLVED. SO, WE CAN JUST -- WE CAN LEAVE IT AT
4 THAT.

5 **BY COMMISSIONER JAMES:**

6 _____ OKAY. ALL RIGHT. IT'S UP TO YOU.

7 **BY THE CLAIMANT:**

8 _____ YES, MA'AM.

9 **BY COMMISSIONER JAMES:**

10 _____ LIKE I SAID, THAT'S YOUR -- ALL RIGHT. YOU
11 WERE AT THE POINT, SIR, WHERE YOU HAD -- AS I SAID,
12 YOU HAD ALREADY ADDRESSED ---

13 **BY THE CLAIMANT:**

14 _____ YES, MA'AM.

15 **BY COMMISSIONER JAMES:**

16 _____ --- WHAT THE AVERAGE OF MR. LAMPKIN'S 49 FULL
17 WEEKS AND TWO PARTIAL WEEKS, AND ---

18 **BY THE CLAIMANT:**

19 _____ YES, MA'AM.

20 **BY COMMISSIONER JAMES:**

21 _____ --- YOU WERE ABOUT TO, I BELIEVE, SIR, GO INTO
22 A COMBINATION ---

23 **BY THE CLAIMANT:**

24 _____ RIGHT.

25 **BY COMMISSIONER JAMES:**

1 _____ OKAY.

2 **BY THE CLAIMANT:**

3 _____ THE 727 REPRESENTS JAROD LAMPKIN'S AVERAGE
4 WEEKLY WAGE LESS THE TWO PARTIAL WEEKS. IF YOU WERE
5 TO ADD MY WEEKS AND PARTS OF WEEKS WORKED AND HIS
6 WEEKS AND PARTS OF WEEKS WORKED, IT IS, I BELIEVE,
7 ONE DAY SHORT OF A FULL CALENDAR YEAR. THE IDEA OF
8 THE AVERAGE WEEKLY WAGE BEING BASED ON A YEAR'S
9 WORTH OF DATA BECOMES VERY APPLICABLE HERE. THERE'S
10 ALSO -- THIS CLEARLY CALLS INTO QUESTION THE
11 VALIDITY OF DAN COBB'S SWORN TESTIMONY AS HE
12 TESTIFIED THAT MR. LAMPKIN WAS WORKING TWO TO TEN
13 HOURS OF OVERTIME A WEEK, AND THAT WOULD RESULT IN
14 AN AVERAGE OF THAT BEING APPROXIMATELY SIX HOURS A
15 WEEK. AS I NOTED EARLIER, THE MINIMUM OVERTIME THAT
16 WAS WORKED WAS 5.2 HOURS, AND THE AVERAGE TIME
17 WORKED WAS 12.48 HOURS OF OVERTIME. IF THIS SHOWS
18 THAT DAN COBB'S RECOLLECTION IS SO FAR OFF, THEN IT
19 CALLS INTO QUESTION THE VALIDITY OF THE REST OF HIS
20 TESTIMONY. WHEN HIS TESTIMONY HAS BEEN IMPEACHED, I
21 WOULD MOVE TO PRESENT MY DEPOSITION TRANSCRIPT AS A
22 DISCOVERY DEPOSITION THAT MAY BE USED FOR
23 IMPEACHMENT. IF DAN COBB'S SWORN TESTIMONY IS
24 CALLED INTO QUESTION WITH RECORDS AND THEN MY
25 DEPOSITION FURTHER CONFLICTS WITH HIS DEPOSITION,

1 THEN I BELIEVE THAT I SHOULD BE AFFORDED THE
2 OPPORTUNITY TO PRESENT THAT AS I DON'T HAVE THE
3 DEFENDANTS' RESPONSE IN FRONT OF ME, BUT THEY HAVE
4 POINTED OUT THAT IT CAN ONLY BE USED FOR
5 IMPEACHMENT. WHERE -- MY TRANSCRIPT IS RIGHT HERE.
6 MAY I PRESENT THAT TO YOU NOW?

7 **BY MS. NUSSBAUM:**

8 _____ COMMISSIONER, I BELIEVE HE'S HANDING UP A
9 DEPOSITION TRANSCRIPT, AND I WOULD OBJECT. THIS
10 CANNOT COME INTO EVIDENCE AT THIS POINT IN TIME.

11 **BY COMMISSIONER JAMES:**

12 _____ THE FULL COMMISSION HAS ADDRESSED THAT WITH ONE
13 OF THE -- ONE OF THE MOTIONS THAT WAS MADE
14 PREVIOUSLY.

15 **BY THE CLAIMANT:**

16 _____ THEY DID NOT MOVE TO EXCLUDE IT HENCE FORTH.
17 THEY MOVED TO EXCLUDE IT -- I DON'T KNOW HOW THEY
18 MOVED TO EXCLUDE IT, BECAUSE I MOVED UNDER MULTIPLE
19 DIFFERENT DEPARTMENTS OR DIFFERENT REGULATIONS AND
20 STATUTES, AND I'VE GOT THE FORM LETTER, AND THAT'S
21 FINE, AND I UNDERSTAND AT THAT JUNCTURE IT WAS
22 DENIED. HOWEVER, THESE RECORDS, AND WE ARE HERE
23 TODAY TO DISCUSS THESE RECORDS. I HAVE BEEN
24 EXCLUDED FROM SPEAKING TO ANYTHING ELSE, AND THESE
25 RECORDS CLEARLY INDICATE THAT DAN COBB'S TESTIMONY

1 WAS INACCURATE, AND I WOULD LIKE TO PRESENT NOW MY -
2 - A COPY OF THE TRANSCRIPT OF MY DEPOSITION THAT
3 DIRECTLY CONFLICTS WITH DAN COBB'S TESTIMONY.

4 **BY MS. NUSSBAUM:**

5 _____ AGAIN, COMMISSIONER, I WOULD OBJECT. THAT
6 DEPOSITION CAN'T COME IN UNLESS IT WOULD BE
7 IMPEACHING THE CLAIMANT'S OWN TESTIMONY. YOU CANNOT
8 USE THE DEPOSITION, AND IT CAN'T COME INTO EVIDENCE
9 AT THIS POINT IN TIME.

10 **BY THE CLAIMANT:**

11 _____ I WOULD SAY THAT HER OBJECTION SHOULD BE NOTED
12 IN THE RECORD, AND THAT THIS SHOULD BE ACCEPTED.

13 **BY COMMISSIONER JAMES:**

14 _____ ALL RIGHT. MR. McDANIEL, AGAIN, WITH REGARDS
15 TO THE REMAND AS TO THE NEWLY DISCOVERED EVIDENCE, -

16 --

17 **BY THE CLAIMANT:**

18 _____ DOES THIS NOT CALL INTO QUESTION DAN COBB'S
19 TESTIMONY?

20 **BY COMMISSIONER JAMES:**

21 _____ MR. McDANIEL, I BELIEVE -- AND I WILL ADDRESS
22 THAT AT THE END OF THIS HEARING IF I NEED TO. I MAY
23 HAVE TO FIND AN ELECTRONIC FILE. I BELIEVE THERE
24 WAS A MOTION WITH REGARDS TO SUBMITTING THAT AS PART
25 OF THE EVIDENCE, AND THE FULL COMMISSION -- THERE

1 WERE TWO OTHER MOTIONS WITH REGARDS TO NEWLY
2 DISCOVERED EVIDENCE, AND THAT THE FULL COMMISSION
3 DENIED THAT PARTICULAR MOTION. THAT IS ---

4 **BY THE CLAIMANT:**

5 _____ I AM VERBALLY MAKING A NEW MOTION TO ACCEPT
6 THIS BASED ON THE -- THE CLEARLY ERRONEOUS SWORN
7 TESTIMONY THAT DAN COBB HAS GIVEN. LIKE THIS -- IT
8 SAYS THAT IT SHOULD BE -- IT CAN BE USED FOR
9 IMPEACHMENT. THE DEFENDANTS SAYING THAT IT CAN ONLY
10 BE USED FOR IMPEACHMENT OF THE CLAIMANT, THEN WE'RE
11 TALKING ABOUT UNDUE BURDENS -- THIS IS AN UNDUE
12 BURDEN IF I HAVE TO PAY \$300 FOR A COPY OF A
13 DEPOSITION THAT CANNOT BE USED AS EVIDENCE EVEN TO
14 IMPEACH. AND IT DOES NOT SAY SPECIFICALLY TO
15 IMPEACH THE CLAIMANT. IT SAYS THAT "A DEPOSITION
16 MAY BE USED FOR IMPEACHMENT."

17 **BY COMMISSIONER JAMES:**

18 _____ ALL RIGHT.

19 **BY THE CLAIMANT:**

20 _____ WE HAVE RECORDS ---

21 **BY COMMISSIONER JAMES:**

22 _____ MR. McDANIEL, AGAIN, WHAT I SAID IS I WILL
23 ADDRESS THAT AT THE END, OKAY, WITH REGARDS TO THAT.

24 **BY THE CLAIMANT:**

25 _____ OKAY.

1 **BY COMMISSIONER JAMES:**

2 _____ AND ALSO WE WILL NEED TO VERIFY WHETHER MY
3 RECOLLECTION IS CORRECT OR NOT WITH REGARDS TO THAT
4 ISSUE, BECAUSE I WILL LOOK AT THAT. SO, DO YOU HAVE
5 ANYTHING ELSE BESIDES THE DEPOSITION THAT YOU WANTED
6 TO SAY WITH REGARDS TO MR. LAMPKIN'S PAY RECORDS?

7 **BY THE CLAIMANT:**

8 _____ ABSOLUTELY. MR. LAMPKIN, HIS PAY RECORDS
9 REFLECT THAT HE WORKED FOR ALSIDE REVERE. MR.
10 LAMPKIN COULD NOT UNDER THESE PAY RECORDS FILE FOR
11 WORKERS' COMPENSATION AGAINST BEN ARNOLD, AND
12 ANYTHING ON MY FORM 20 THAT WAS USED FROM BEN ARNOLD
13 IS NOT APPLICABLE HERE, BECAUSE THESE RECORDS
14 INDICATE THAT HE WORKED AT ALSIDE REVERE, AND MY
15 FORM 20 INDICATES THAT MY EMPLOYMENT -- THAT MY FORM
16 20 WAS BASED ON EMPLOYMENT ELSEWHERE. I WOULD USE
17 THAT WE ARE HERE TALKING ABOUT THE EMPLOYMENT AT
18 ALSIDE REVERE AS EVIDENCE THAT THE FORM 20 IS
19 ERRONEOUS AND THAT DEFENDANTS CONTINUE TO MAKE
20 MATERIAL MISREPRESENTATIONS ABOUT THE FORM 20 TO THE
21 EXTENT THAT ALLISON NUSSBAUM PERSONALLY HAS STARTED
22 TO DISREGARD MY E-MAILS AND HAS NOT DIRECTLY
23 ANSWERED ANY E-MAILS SINCE JUNE 21ST AND HAS
24 INSTRUCTED ME NOT TO CONTACT ANYONE ELSE. THESE
25 RECORDS -- I WOULD FIRST LIKE TO SAY THAT THESE

1 RECORDS ARE A PORTION OF THE CALCULATION OF THE
2 AVERAGE WEEKLY WAGE; THAT THE FORM 20 WAS POINTED
3 OUT TO DEFENDANTS TO CONTAIN A CLERICAL ERROR ON
4 JULY 27TH OF LAST YEAR, AND WITHIN THE LAST THREE
5 WEEKS, THEY HAVE BEEN INFORMED BY SNELLING STAFFING
6 THAT THERE WAS A CLERICAL ERROR CONTAINED. THE LAST
7 ---

8 **BY MS. NUSSBAUM:**

9 _____ COMMISSIONER, I WOULD OBJECT TO THAT STATEMENT.
10 HE'S PUTTING -- HE'S MAKING STATEMENTS THAT ARE
11 OUTSIDE THE SCOPE OF THE REMAND HEARING. HE'S ALSO
12 MAKING PERSONAL STATEMENTS AND UNTRUE STATEMENTS
13 ABOUT ME AND MY EMPLOYER. I WOULD JUST LIKE TO ---

14 **BY THE CLAIMANT:**

15 _____ I HAVE EVIDENCE.

16 **BY MS. NUSSBAUM:**

17 _____ I WOULD LIKE TO PLACE AN OBJECTION ON THE
18 RECORD TO THESE STATEMENTS THAT HE'S MAKING.

19 **BY COMMISSIONER JAMES:**

20 _____ ALL RIGHT.

21 **BY THE CLAIMANT:**

22 _____ I CAN PRESENT THE EVIDENCE THAT SHOWS THAT JIM
23 PASCUTTI NOTIFIED BOTH UNITED HEARTLAND AND ALLISON
24 NUSSBAUM OF THE ERROR IN THE FORM 20, AND THEN ---

25 **BY MS. NUSSBAUM:**

1 _____ AGAIN, COMMISSIONER, THIS EVIDENCE CANNOT COME
2 IN AT A REMAND HEARING.

3 **BY COMMISSIONER JAMES:**

4 _____ MR. McDANIEL, I AM LIMITED TO WHAT THE FULL
5 COMMISSION HAS REMANDED THIS FOR.

6 **BY THE CLAIMANT:**

7 _____ WHICH I -- WHICH I'M STILL NOT -- I HAVE STILL
8 NOT BEEN PRESENTED WITH A PAPER THAT SHOWS EXACTLY
9 WHAT THIS IS OTHER THAN A NOTICE OF HEARING.

10 **BY COMMISSIONER JAMES:**

11 _____ ALL RIGHT.

12 **BY THE CLAIMANT:**

13 _____ HERE'S THE IDEA IS THAT MY AVERAGE WEEKLY, YOU
14 DETERMINED THAT IT SHOULD BE BASED ON THE FORM 20,
15 THE OTHER AVERAGE OF THE OTHER EMPLOYEES AND JAROD
16 LAMPKIN'S. WE -- WE SUBPOENAED JAROD LAMPKIN'S
17 RECORDS. THE EMPLOYER WASN'T THERE. THE RECORDS
18 WEREN'T THERE. NOTHING WAS THERE AT THE ORIGINAL
19 HEARING. WE ARE HERE TO HAMMER THAT OUT. WHENEVER
20 -- THEY HAVE A CONTINUING OBLIGATION TO UPDATE. IF
21 THEY MAKE A CLAIM THAT THEY KNOW IS FALSE AND DO NOT
22 CORRECT IT, THEN THEY MUST BE REPRIMANDED AND
23 PENALIZED. THEY HAVE MADE REPRESENTATIONS THAT ARE
24 FALSE, AND I WOULD -- I WOULD IMPLORE YOU TO ASK
25 ALLISON NUSSBAUM THE CURRENT RATE THAT THEY SAY MY

1 FORM 20 REFLECTS, AND IF SHE SAYS 492, THEN THAT IS
2 A MATERIAL MISREPRESENTATION. AND I UNDERSTAND THAT
3 WE ARE HERE ON THE ISSUES, AND THE ISSUES ARE JAROD
4 LAMPKIN'S RECORDS AND HOW THEY REFLECT TO MY RECORDS
5 AND HOW THEY REFLECT TO THE AVERAGE WEEKLY WAGE, AND
6 A MISREPRESENTED FORM 20 SPEAKS DRAMATICALLY TO MY
7 AVERAGE WEEKLY WAGE, BECAUSE HOW CAN WE WEIGH THESE
8 RECORDS FAIRLY WITH A RECORD THAT IS FALSE. AND IF
9 WE ARE HERE TO TALK ABOUT JAROD LAMPKIN'S WAGES AND
10 THE IMPACT THAT THOSE WAGES HAVE ON MY AVERAGE
11 WEEKLY WAGE, THEN THE FORM 20, ALVIN -- CLARK,
12 ATKINS, LAMPKIN, THEY ALL NEED TO BE INCLUDED.
13 LAMPKIN'S WAGES ARE HERE. I'VE PRESENTED THOSE TO
14 YOU, AND I'VE GIVEN YOU A SUMMARY OF THOSE, AND THE
15 DEFENDANTS HAVE A CONTINUING OBLIGATION TO UPDATE.
16 IF YOU WERE TO FIND THAT YOU AVERAGE THE FORM 20
17 ATKINS, CLARK AND LAMPKIN'S AND MY WAGES TO COME TO
18 THE AVERAGE WEEKLY WAGE, AND THE FORM 20 IS BASED ON
19 MISREPRESENTATION, THAT IS AN INJUSTICE. WOULD YOU
20 ASK THE DEFENDANTS TO CLARIFY THE CALCULATION ON THE
21 FORM 20 AND SEE IF THEY WILL UPDATE OR IF THEY WILL
22 CONTINUE TO STAND BY A FIGURE THEY KNOW TO BE WRONG?
23 IF THEY CONTINUE TO STAND BY A FIGURE THEY KNOW TO
24 BE WRONG, I WOULD ASK THAT THEY BE REPORTED UNDER
25 TITLE 38 FOR INSURANCE FRAUD, INSURANCE

1 MISREPRESENTATION.

2 **BY COMMISSIONER JAMES:**

3 _____ ALL RIGHT. MR. McDANIEL, DO YOU HAVE ANYTHING
4 ELSE WITH REGARDS TO MR. LAMPKIN'S RECORDS?

5 **BY THE CLAIMANT:**

6 _____ ABSOLUTELY. THE TESTIMONY -- OR WE'RE GOING TO
7 GET BACK -- YOU SAID WE WOULD GET BACK TO WHETHER OR
8 NOT YOU WILL TAKE THIS, THE COPY OF MY DEPOSITION AS
9 RECORDS THAT SPEAK TO THE INVALIDITY OF DAN COBB'S
10 TESTIMONY, BUT OTHER THAN THAT AND THE FACT THAT I
11 HAVE THIS NOTEBOOK OF RECORDS HERE THAT I WOULD LIKE
12 TO PRESENT. I MEAN, OTHER -- ADDITIONALLY THE FACT
13 THAT THE DECISION AND ORDER THAT REMANDED IT HERE
14 CLEARLY STATES ALL ISSUES. I MEAN, I GUESS AT THIS
15 TIME, I HAVE NOTHING FURTHER TO ADD. I MOST LIKELY
16 WILL RE-DIRECT OR WHATNOT AFTER ALLISON HAS A
17 MOMENT.

18 **BY COMMISSIONER JAMES:**

19 _____ ALL RIGHT. MS. NUSSBAUM, WITH REGARDS TO THE
20 LAMPKIN RECORDS.

21 **BY MS. NUSSBAUM:**

22 _____ SURE. COMMISSIONER, I'M GOING TO ONLY SPEAK
23 WITH REGARD TO THE LAMPKIN RECORDS, BECAUSE I
24 BELIEVE THAT'S ALL THAT WE'RE HERE ON TODAY, AND
25 WE'VE PREVIOUSLY HAD A HEARING WHEREIN THE AVERAGE

1 WEEKLY WAGE OF ALVIN ROBERT CLARK, WAYNE ATKINS AND
2 THE CLAIMANT WAS DISCUSSED AND TESTIMONY WAS TAKEN
3 AS WELL AS DOCUMENTS WERE ADMITTED INTO EVIDENCE.
4 WITH REGARD TO THE LAMPKIN RECORDS, AND IF YOU HAVE
5 ANY OTHER QUESTIONS OUTSIDE OF THE LAMPKIN RECORDS,
6 I'LL BE GLAD TO ADDRESS THOSE AS WELL. WITH REGARD
7 TO THE LAMPKIN RECORDS IN AND OF THEMSELVES, ALL OF
8 THESE RECORDS, THE NEWLY DISCOVERED RECORDS, ALL
9 LOOK FORWARD INTO THE FUTURE. THE AVERAGES THAT WE
10 USED AND THE METHOD THAT YOU USED IN YOUR PRIOR
11 ORDER ARE MOSTLY PAST RECORDS. AS THE FORM 20
12 TYPICALLY LOOKS INTO THE PAST AT THE FOUR QUARTERS
13 PRIOR TO THE INJURY. ALVIN ROBERT CLARK WAS ANOTHER
14 EMPLOYEE THAT WAS EMPLOYED AT ALSIDE REVERE IN THE
15 SAME POSITION. WAYNE ATKINS WAS ANOTHER EMPLOYEE
16 EMPLOYED AT ALSIDE REVERE IN THE SAME POSITION. ALL
17 OF THOSE GENTLEMEN'S WAGE RECORDS LOOK TO THE PAST.
18 THESE CURRENT RECORDS OF JAROD LAMPKIN, IT'S A
19 SELLERS TYPE ARGUMENT. THEY ALL LOOK INTO THE
20 FUTURE, AND THEY GO -- THE RECORDS START ON FEBRUARY
21 19TH, 2012, AND THEY GO THROUGH NOVEMBER 10TH, 2012.
22 HE WAS HIRED -- JAROD LAMPKIN WAS EVENTUALLY HIRED
23 DIRECTLY FOR ALSIDE REVERE. IN THIS CASE, THERE'S
24 BEEN NO TESTIMONY, NO DOCUMENTS INDICATING THE
25 CLAIMANT WAS GOING TO BE HIRED DIRECTLY FROM ALSIDE

1 REVERE. IF YOU ACTUALLY LOOK INTO HIS PAST
2 ASSIGNMENTS, HE'S MOVED FROM ONE ASSIGNMENT TO
3 ANOTHER, WHICH IS THE NATURE OF A TEMPORARY STAFFING
4 AGENCY. HE IS WANTING TO USE THE HIGHEST AND THE
5 BEST EARNINGS OF AN INDIVIDUAL THAT PERFORMED A JOB
6 AFTER HIM. HOWEVER, IT'S THE DEFENDANTS' POSITION
7 THAT THAT IS SPECULATIVE. THE METHOD THAT YOU USED
8 AT THE PRIOR HEARING USING JAROD LAMPKIN'S ACTUAL
9 WAGES UP UNTIL THAT TIME, ALVIN CLARK'S AND WAYNE
10 ATKINS, THOSE RECORDS LOOKED TO THE PAST, WHICH
11 WOULD BE A MORE ACCURATE DEPICTION OF HIS AVERAGE
12 WEEKLY WAGE. AGAIN, DEFENDANTS' POSITION IS THAT
13 THE CLAIMANT WORKED 20 WEEKS PRIOR TO HIS ACCIDENT,
14 AND HIS ACTUAL WAGES SHOULD BE USED; HOWEVER, I
15 UNDERSTAND THAT YOU INCREASED IT BY USING A MORE
16 FAIR DETERMINATION OF THESE OTHER EMPLOYEES. BUT WE
17 CONTEND THAT YOU SHOULD NOT USE ALL OF THESE RECORDS
18 THAT LOOK INTO THE FUTURE UNDER A SELLERS ARGUMENT
19 WHEN THAT'S NOT THE DETERMINATION THAT YOU MADE. IT
20 WOULD BE CHANGING THE EXACT CALCULATION THAT YOU
21 MADE AT THE PRIOR HEARING.

22 **BY THE CLAIMANT:**

23 _____ I WOULD LIKE TO RE-DIRECT A LOT OF THAT IF ---

24 **BY COMMISSIONER JAMES:**

25 _____ OKAY. HOLD ON ONE SECOND. ARE YOU THROUGH,

1 MS. NUSSBAUM?

2 **BY MS. NUSSBAUM:**

3 _____ I AM.

4 **BY COMMISSIONER JAMES:**

5 _____ OKAY. WITH REGARDS -- I DO HAVE TO ASK --
6 WE'RE HERE SOLELY FOR THE LAMPKIN RECORDS, BUT IF
7 THERE IS -- IF THE 20 HAS BEEN UPDATED?

8 **BY MS. NUSSBAUM:**

9 _____ COMMISSIONER, THE 20 HAS NOT BEEN UPDATED. THE
10 CLAIMANT WORKED 20.7143 WEEKS AT SNELLING. THOSE
11 WERE THE WEEKS THAT IT WAS DIVIDED BY. IT'S MY
12 UNDERSTANDING THAT HE WANTS TO DIVIDE IT BY 19 OR I
13 DON'T KNOW IF THAT'S RIGHT. THAT'S WHAT I
14 UNDERSTOOD THROUGH E-MAILS AND PERSONAL ATTACKS ON
15 MYSELF THAT I'VE RECEIVED FROM HIM. HOWEVER,
16 THERE'S 20.7143 WEEKS THAT WERE SUBMITTED IN THE
17 PRIOR APA, AND THAT'S WHAT THE FORM 20 IS BASED ON.
18 SO, IT'S MY UNDERSTANDING THAT THE 20 IS CORRECT.

19 **BY COMMISSIONER JAMES:**

20 _____ ALL RIGHT. MR. McDANIEL, ANY REPLY, SIR?

21 **BY THE CLAIMANT:**

22 _____ YES, A FEW. I JUST -- I'VE GOT SOME SCRIBBLES.
23 I'M GOING TO GO THROUGH MY SCRIBBLES AND THEN GO
24 BACK TO SOME OTHER THINGS. FIRST OFF, I WOULD LIKE
25 TO POINT OUT THAT SELLERS IS NOT AN ARGUMENT; IT'S

1 CASE LAW, AND IT CLEARLY POINTS OUT THAT AS
2 DISABILITY REACHES INTO THE FUTURE, SO MUST -- SO
3 MUST THE CALCULATION OF AVERAGE WEEKLY WAGE. THEY
4 SET FORTH MANY DIFFERENT ALTERNATIVE METHODS TO
5 WHERE THE LAST ALTERNATIVE METHOD IS ACTUALLY LEFT
6 OPEN TO JUST FAIRLY APPROXIMATE THE AMOUNT THAT
7 WOULD HAVE BEEN EARNED WERE IT NOT FOR THE INJURY.
8 THERE WAS ONE SUCH POSITION AT ALSIDE REVERE, THE
9 DRIVER, THE ONLY POSITION, THE ONE AND ONLY
10 POSITION. I WAS THE ONE AND ONLY EMPLOYEE THAT
11 REPLACED THE ONE AND ONLY EMPLOYEE, AND I WAS
12 REPLACED BY A ONE AND ONLY EMPLOYEE. TO SAY THAT
13 THIS IS NOT VERY ACCURATE OF WHAT I WOULD HAVE MADE
14 HAD I NOT BEEN INJURED IS NEGLECTING THE IDEA THAT
15 THIS IS WHAT THE SINGLE PERSON THAT REPLACED MY
16 SINGLE JOB MADE. AND THE ENTIRE IDEA OF THE AVERAGE
17 WEEKLY WAGE IS TO ARRIVE AT A FAIR APPROXIMATION OF
18 WHAT WOULD HAVE BEEN EARNED WERE IT NOT FOR THE
19 INJURY. AND THEN I'M GOING TO MOVE TO THE 20 WEEKS,
20 THE 20.1746 WEEKS OR I'M NOT SURE EXACTLY THE
21 DECIMAL. THIS AGAIN IS A MATERIAL
22 MISREPRESENTATION. CHAVIS -- CHAVIS V. -- I'VE GOT
23 IT RIGHT HERE. I CAN'T FIND IT; I KNOW IT WELL
24 ENOUGH. IN CHAVIS, ESSENTIALLY IT SAID THAT A NEW
25 EMPLOYER/EMPLOYEE RELATIONSHIP CANNOT COME INTO

1 EFFECT UNLESS THE EMPLOYEE KNOWS AND AGREES TO A NEW
2 RELATIONSHIP. WITHOUT A NEW RELATIONSHIP, RIGHTS
3 AGAINST A PREVIOUS EMPLOYER WERE UNABRIDGED. SO, I
4 WOULD SAY THAT THIS CLEARLY POINTS OUT THAT I WORKED
5 20 WEEKS AT BEN ARNOLD, AND THEN BECAME UNEMPLOYED.
6 SNELLING HIRED ME AGAIN TO WORK FOR THEM AT ALSIDE
7 REVERE. I WORKED TEN CALENDAR DAYS AT ALSIDE REVERE
8 BEFORE I WAS INJURED. THIS 20 WEEKS THAT KEEPS
9 COMING UP IS CLEARLY OUTLINED IN AN E-MAIL THAT I
10 SENT TO ALLISON. ACTUALLY, THIS E-MAIL WAS SENT TO
11 ALLISON ON MY BEHALF. "ALLISON, ATTACHED IS A LIST
12 OF THE PAYMENTS NOT YET RECEIVED ACCORDING TO THE
13 CURRENT FORM 20. THE FORM 20 SHOULD BE REVIEWED.
14 THE ERROR MOST LIKELY STEMMED FROM THE RECEIPT OF
15 TWO CHECKS FOR ONE WEEK OF WORK. THE AMOUNT STATED
16 WAS FOR 19 WEEKS RESULTING IN AN AVERAGE WEEKLY WAGE
17 THAT WAS WRONG. THE AMOUNT OF TEN FOUR FIFTY WOULD
18 HAVE BEEN FOR 20 WEEKS RESULTING IN A DIFFERENT
19 AVERAGE WEEKLY WAGE, WITH RECOVERY OF THE REMAINING
20 BALANCE NOT INCLUDING PENALTIES OF SIX NINETY-TWO."
21 I MEAN, I CAN -- I CAN GIVE YOU THIS BECAUSE THIS IS
22 THE E-MAIL TITLED -- DATED JUNE -- JULY 27TH THAT
23 SAYS THAT THE 20 WEEKS IS ---

24 **BY COMMISSIONER JAMES:**

25 _____ THAT'S PRIOR TO THE LAST HEARING.

BY THE CLAIMANT:

1
2 _____ BUT SHE HAD BROUGHT UP THE -- THAT I WORKED FOR
3 20 WEEKS THERE, AND I'M POINTING OUT THAT I DID NOT
4 WORK FOR 20 WEEKS AT ALSIDE REVERE. I WORKED FOR
5 TEN CALENDAR DAYS AT ALSIDE REVERE; THAT I KNEW OF
6 AND AGREED TO A NEW EMPLOYER/EMPLOYEE RELATIONSHIP,
7 AND THAT THAT 20 WEEKS IS INAPPLICABLE, AS I WORKED
8 FOR ALSIDE REVERE FOR ONE DAY, ONE WEEK AND ONE DAY.

BY MS. NUSSBAUM:

9
10 _____ COMMISSIONER, CAN I SPEAK TO THAT ARGUMENT,
11 BECAUSE I THINK THERE'S SOME CONFUSION WITH THE WAY
12 STAFFING AGENCIES AND PROFESSIONAL EMPLOYER
13 ORGANIZATIONS WORK. THE EMPLOYER -- THE STATUTORY
14 EMPLOYER IN A STAFFING AGENCY SITUATION IS SNELLING
15 STAFF SERVICES. HE WAS PAID THROUGH SNELLING STAFF
16 SERVICES. IF YOU LOOK AT THE STATUTE AND YOU LOOK
17 AT THE PROPER WAY TO CALCULATE AVERAGE WEEKLY WAGE,
18 YOU DON'T JUST HAND PICK ONE ASSIGNMENT. YOU'RE AN
19 EMPLOYEE OF SNELLING STAFF SERVICES. HE WAS AN
20 EMPLOYEE OF SNELLING STAFF SERVICES FOR 20 WEEKS,
21 WHICH THAT IS WHAT THE AVERAGE -- THE FORM 20 IS
22 BASED ON. IT SOUNDS LIKE NOW HE HAS A NEW ARGUMENT
23 THAT IT SHOULD JUST BE BASED ON HIS LAST ASSIGNMENT
24 WITH SNELLING STAFF SERVICES; HOWEVER, THE EMPLOYER
25 REGARDLESS OF ASSIGNMENT IS SNELLING STAFF SERVICES,

1 AND IT'S THE PAYROLL RECORDS OF SNELLING STAFF
2 SERVICES THAT YOU USE IN THESE SITUATIONS.

3 **BY THE CLAIMANT:**

4 _____SO, LET'S USE THE IDEA THAT ---

5 **BY COMMISSIONER JAMES:**

6 _____ALL RIGHT. AND I UNDERSTAND BOTH OF YOUR
7 POSITIONS ON IT, OKAY.

8 **BY THE CLAIMANT:**

9 _____RIGHT. WELL, IF I WORK FOR -- IF I WORK FOR A
10 COMPANY AND THEN THEY FIRE ME AND THEN THEY REHIRED
11 ME BACK AS THEIR C.E.O., AND THEN I GOT INJURED, IT
12 WOULD BE WRONG TO CALCULATE A DIFFERENT JOB IN A
13 DIFFERENT SCOPE WITH DIFFERENT RISKS AS THE SAME.
14 SO, IF YOU SAY THAT YOU UNDERSTAND THE ARGUMENT THAT
15 I ACTUALLY ONLY WORKED FOR ALSIDE REVERE AND THAT
16 THAT WAS WHERE I WAS INJURED, AND THAT EMPLOYMENT IN
17 TITLE 42 CLEARLY SAYS THAT IT IS A LOCATION WHERE
18 FOUR OR MORE WORK IN THE SAME JOB; THAT FOUR OR MORE
19 WORKING IN THE SAME JOB -- IF I'M DELIVERING
20 BUILDING PRODUCTS AND DRIVING A TRUCK, THAT IS NOT
21 THE SAME JOB AS DELIVERING WINE.

22 **BY COMMISSIONER JAMES:**

23 _____OKAY. I ---

24 **BY THE CLAIMANT:**

25 _____THE AVERAGE WEEKLY WAGE IS TO BE IN THE

1 EMPLOYMENT WORKING AT THE TIME OF INJURY NOT FOR THE
2 EMPLOYER IN WHICH YOU WORKED AT THE TIME OF INJURY.

3 **BY COMMISSIONER JAMES:**

4 _____ I UNDERSTAND BOTH. I UNDERSTAND BOTH OF YOUR
5 POSITIONS. THE 20 IS SOMETHING DIFFERENT THAN THE
6 ACTUAL DETERMINATION OF THE AVERAGE WEEKLY WAGE.
7 THE 20 IS THE CALCULATION PURSUANT TO STATUTE.

8 **BY THE CLAIMANT:**

9 _____ OKAY. THEN CONTINUING ---

10 **BY COMMISSIONER JAMES:**

11 _____ IT CAN BE THE AVERAGE WEEKLY WAGE, BUT IT IS A
12 CALCULATION THAT IS SUBMITTED.

13 **BY THE CLAIMANT:**

14 _____ RIGHT. THE TWO ASSIGNMENTS THAT THE COURT
15 NEEDS TO BE INFORMED OF HOW A STAFFING AGENCY WORKS
16 IS A WEIRD ARGUMENT, BECAUSE THIS STAFFING AGENCY
17 DOES NOT STAFF PEOPLE ON A DAILY BASIS. IT IS NOT A
18 WORK FORCE OR A DAY LABORER. THEY ARE A
19 PROFESSIONAL STAFFING AGENCY, AND THE TWO
20 ASSIGNMENTS IS NOT BOUNCING FROM ONE ASSIGNMENT TO
21 ANOTHER ASSIGNMENT TO ANOTHER ASSIGNMENT. IT WAS --
22 I HAD ONE ASSIGNMENT, AND THEN I WAS UNEMPLOYED.
23 DURING THAT PERIOD OF UNEMPLOYMENT, THEY HAD -- THEY
24 DID NOT PAY ME FOR TIME OFF. I DID NOT ACCRUE
25 BENEFITS DURING THAT TIME. I WAS NOT PAID OR

1 CONTACTED BY THEM. THEY COULD NOT FIRE ME FOR NOT
2 WORKING FOR THEM. THERE WAS NO EMPLOYEE/EMPLOYER
3 RELATIONSHIP FOR THE PERIOD FROM SEPTEMBER 30TH
4 UNTIL NOVEMBER 11TH.

5 **BY COMMISSIONER JAMES:**

6 _____ OKAY. AND I DO RECALL THE TESTIMONY WITH
7 REGARDS TO THAT, AND THAT IS GETTING BACK INTO THE
8 HEARING. NOW, I NEED TO PUT US BACK ON TRACK TO MR.
9 LAMPKIN. SO, IF THERE IS NOTHING FURTHER TO BE SAID
10 WITH REGARDS TO MR. LAMPKIN'S RECORDS.

11 **BY THE CLAIMANT:**

12 _____ LAMPKIN WAS HIRED BY DAN COBB. DAN COBB'S
13 TESTIMONY HAS COME INTO QUESTION. IS THE DEPOSITION
14 -- ARE YOU SAYING THAT -- YOU'RE SAYING THAT I
15 CANNOT ADDRESS THE DEPOSITION, THAT WE'RE GOING TO
16 WAIT UNTIL THIS ARGUMENT IS OVER TO ADDRESS THE
17 DEPOSITION THAT IMPEACHES DAN COBB'S TESTIMONY?

18 **BY COMMISSIONER JAMES:**

19 _____ THE DEPOSITION AS I RECALL -- FIRST OF ALL,
20 WE'RE HERE FOR MR. LAMPKIN'S RECORDS.

21 **BY THE CLAIMANT:**

22 _____ RIGHT.

23 **BY COMMISSIONER JAMES:**

24 _____ AND, SO, MY RECOLLECTION IS ALSO THAT THERE WAS
25 TWO MORE MOTIONS TO ADD EVIDENCE BEFORE THE FULL

1 COMMISSION PANEL. ONE OF THOSE HAD TO DO WITH A
2 LARGE NUMBER OF RECORDS, A QUANTITY OF RECORDS, THAT
3 WAS DENIED. MY RECOLLECTION IS -- AND THAT'S WHAT I
4 WAS GOING TO LOOK AT IS THAT THE SECOND OR THIRD
5 MOTION HAD TO DO WITH THE ACTUAL DEPOSITION
6 TESTIMONY OF MR. McDANIEL AND THAT THE FULL
7 COMMISSION DENIED THAT. AND SO IF IT'S BEEN DENIED,
8 THEN I -- FIRST OF ALL, WE'RE HERE LIMITED TO THIS
9 ISSUE OF MR. LAMPKIN'S PAY RECORDS. AND
10 SPECIFICALLY IF THE FULL COMMISSION DENIED THE
11 DEPOSITION TESTIMONY, THEN ADDITIONALLY THAT'S
12 ANOTHER REASON THAT I CAN'T -- I CANNOT ACCEPT THAT.
13 I WILL NEED TO LOOK THROUGH ---

14 **BY THE CLAIMANT:**

15 _____ ADDITIONALLY, I WOULD LIKE TO JUST TAKE TWO
16 STEPS BACK RIGHT QUICK.

17 **BY COMMISSIONER JAMES:**

18 _____ ALL RIGHT.

19 **BY THE CLAIMANT:**

20 _____ YOU ASKED MS. NUSSBAUM IF SHE -- IF THERE HAD
21 BEEN AN AMENDMENT TO THE FORM 20, AND SHE STATED,
22 "WELL, NO, IT'S THE 20 WEEKS. IT'S THIS." THERE
23 WAS A WEEK WHERE I LEFT AND DID NOT GET PAID, AND
24 THERE WAS A WEEK IN WHICH I WAS UNDERPAID AND ISSUED
25 TWO CHECKS. SO, THE 20 WEEKS THAT THEY ARE

1 CALCULATING IS ACTUALLY 20 PAYCHECKS OVER A 20-WEEK
2 PERIOD FOR 19 WEEKS WORKED. SO, THE 20 -- WHENEVER
3 YOU ASKED IF SHE HAD A -- IF SHE HAD AN UPDATE TO
4 THE FORM 20, SHE ESSENTIALLY DECLINED TO ANSWER AND
5 JUST ASSERTED THE 20 WEEKS AGAIN.

6 **BY COMMISSIONER JAMES:**

7 _____ ALL RIGHT.

8 **BY THE CLAIMANT:**

9 _____ BUT THERE WAS A WEEK THAT WAS NOT WORKED AND
10 THAT THEY HAVE BECOME AWARE OF THIS DIRECTLY FROM MY
11 EMPLOYER AND STILL CONTINUE TO AVOID THE QUESTION.

12 **BY COMMISSIONER JAMES:**

13 _____ ALL RIGHT. WELL, MR. McDANIEL, I CANNOT TAKE
14 NEW EVIDENCE INTO ACCOUNT WITH REGARDS TO THAT.
15 AGAIN, WE'RE HERE WITH THE LAMPKIN RECORDS AND THE
16 IMPACT OF THE LAMPKIN RECORDS. SO, I THINK
17 EVERYBODY HAS HAD AN OPPORTUNITY TO FULLY VOICE THE
18 LAMPKIN RECORDS AND WHAT KIND OF IMPACT THAT THEY
19 BELIEVE THAT THEY WOULD HAVE WITH REGARDS TO THE
20 HEARING AND THE DECISION AND ORDER. SO, THAT IS THE
21 SOLE REASON THAT WE'RE -- SOLE REASON THAT WE ARE
22 HERE TODAY. SO, UNLESS EITHER ONE OF Y'ALL HAVE
23 ANYTHING WITH REGARDS TO MR. LAMPKIN'S RECORDS, THEN
24 I BELIEVE YOU'VE BOTH HAD A FULL ARGUMENT.

25 **BY THE CLAIMANT:**

1 _____ THE -- I WOULD ACTUALLY -- I KNOW THIS IS --
2 WILL YOU ACCEPT THIS DEPOSITION AS IMPEACHMENT OF
3 DAN COBB'S NOW DISPROVEN TESTIMONY, OR AM I BEING
4 DENIED THE RIGHT TO PRESENT EVIDENCE?

5 **BY COMMISSIONER JAMES:**

6 _____ NO, SIR, I'M HERE ON THE REMAND WITH REGARDS TO
7 THESE PAY RECORDS, WHICH IS ---

8 **BY THE CLAIMANT:**

9 _____ RIGHT, THAT'S ---

10 **BY COMMISSIONER JAMES:**

11 _____ IF THE FULL ---

12 **BY THE CLAIMANT:**

13 _____ MY QUESTION IS MISUNDERSTOOD. MY QUESTION IS
14 MISUNDERSTOOD. I HAVE ---

15 **BY COMMISSIONER JAMES:**

16 _____ MR. McDANIEL.

17 **BY THE CLAIMANT:**

18 _____ --- A NOTEBOOK RIGHT HERE, AND I AM ASKING YOU
19 MAY I PRESENT IT TO YOU, OR AM I BEING DENIED THE
20 RIGHT TO PRESENT EVIDENCE? I UNDERSTAND THAT YOU
21 ARE ONLY HERE TO CONSIDER THE ISSUES OF THE AVERAGE
22 WEEKLY WAGE. IN ORDER TO AVOID FURTHER LITIGATION,
23 I WOULD LIKE THIS EVIDENCE AS I HAVE ORGANIZED IT
24 AND READIED IT TO BE PRESENTED, AND WHETHER OR NOT
25 YOU REVIEW IT IN THE CONTEXT OF JAROD LAMPKIN'S

1 AVERAGE WEEKLY WAGE, I BELIEVE THAT AS AVERAGE
2 WEEKLY WAGE REACHES INTO THE FUTURE AND NOT THE
3 PAST, THAT THESE RECORDS ALL HAVE AN IMPACT ON IT,
4 AND I WOULD MOVE FOR YOU TO ACCEPT THESE RECORDS.
5 BECAUSE I UNDERSTAND THAT THE JUDICIAL COMMITTEE HAS
6 DENIED TWO MOTIONS. THOSE TWO MOTIONS WERE BASED ON
7 THE INFORMATION PRESENTED TO THEM. I AM HERE NOW
8 WITH ORGANIZED EVIDENCE TO PRESENT, WHICH UNDER THE
9 RULES OF THIS HEARING, I MUST BE AFFORDED THE
10 OPPORTUNITY TO PRESENT IT. I KNOW THAT YOU KEEP
11 TELLING ME THAT THIS IS JUST THE ONE ISSUE, BUT I
12 BELIEVE THAT THIS EVIDENCE SPEAKS TO THAT ISSUE, AND
13 IF EVIDENCE -- IF SOMETHING NEW IS DISCOVERED BY
14 ADDITIONAL EVIDENCE, THEN THAT SHOULD BE DONE RIGHT.
15 BECAUSE NO THING IS DONE UNTIL IT'S DONE RIGHT.

16 **BY COMMISSIONER JAMES:**

17 _____MR. McDANIEL, THE FULL COMMISSION HAS REMANDED
18 IT FOR THIS PARTICULAR ISSUE. ALL OF THE
19 OUTSTANDING MOTIONS FOR NEW EVIDENCE HAVE BEEN
20 ADDRESSED, OKAY. I CANNOT TAKE ANY ADDITION -- I
21 CANNOT TAKE ANY ADDITIONAL EVIDENCE.

22 **BY THE CLAIMANT:**

23 _____OKAY.

24 **BY COMMISSIONER JAMES:**

25 _____OKAY.

1 **BY THE CLAIMANT:**

2 _____ THAT'S -- I WAS JUST -- I WAS LOOKING FOR
3 EITHER -- JUST A DIRECT ANSWER. SO, THIS IS
4 DEFINITELY -- I MEAN, IT'S APPEALABLE OR WHATNOT.
5 AS FAR AS MOTIONS, YOU CAN ACCEPT VERBAL MOTIONS,
6 CORRECT? I WOULD LIKE TO MOVE YOU TO COMPEL THE
7 DEFENDANTS TO AUTHORIZE TREATMENT PURSUANT TO YOUR
8 JANUARY 4TH ORDER AS THEY ARE CONTINUING IN BAD
9 FAITH TO NOT APPROVE TREATMENT.

10 **BY COMMISSIONER JAMES:**

11 _____ THAT WOULD NEED TO BE ---

12 **BY MS. NUSSBAUM:**

13 _____ COMMISSIONER, THIS IS OUTSIDE THE SCOPE ---

14 **BY COMMISSIONER JAMES:**

15 _____ THAT WOULD NEED TO BE IN WRITING SO THAT BOTH
16 PARTIES HAVE NOTICE BECAUSE IT'S SOMETHING NEW.

17 **BY THE CLAIMANT:**

18 _____ OH, IT'S NOT NEW. I'VE GOT ALL KINDS OF E-
19 MAILS WHERE I'VE BEEN ASKING HER FOR COMPLIANCE WITH
20 IT.

21 **BY COMMISSIONER JAMES:**

22 _____ NO, SIR, WHAT I'M SAYING IS IT MAY NOT BE NEW
23 TO YOU, BUT IT IS A NEW ISSUE. YOU WOULD NEED TO
24 FILE A MOTION.

25 **BY THE CLAIMANT:**

1 _____ OH, I BELIEVE THAT AS LONG AS A COURT REPORTER
2 IS PRESENT OR THAT I CAN REDUCE IT TO WRITING ---

3 **BY COMMISSIONER JAMES:**

4 _____ NO, BOTH PARTIES HAVE TO BE AFFORDED AN
5 OPPORTUNITY FOR A NOTICE OF THE MOTION AND TO HAVE A
6 HEARING AND TO PRESENT EVIDENCE ON THAT MOTION.

7 **BY THE CLAIMANT:**

8 _____ I WAS NOT AFFORDED PROPER NOTICE ON THE MOTION
9 TO QUASH THAT YOU GRANTED, AND SO TO SAY THAT I
10 SHOULD NOT BE AFFORDED PROPER NOTICE ON ONE MOTION
11 THAT CAN BE ADJUDICATED HERE, BUT THEN TO SAY THAT
12 ANOTHER MOTION CANNOT BE ADJUDICATED HERE BECAUSE OF
13 LACK OF NOTICE, I BELIEVE IS CONTRARY TO YOUR
14 EARLIER RULING.

15 **BY COMMISSIONER JAMES:**

16 _____ MR. McDANIEL, THAT WAS A FILED MOTION TO QUASH,
17 WHICH WAS PROVIDED TO YOU.

18 **BY THE CLAIMANT:**

19 _____ IT WAS NEVER PROPERLY SERVED ON ME. I HAVE YET
20 TO BE PROPERLY SERVED WITH THAT MOTION TO QUASH.
21 WHETHER OR NOT I KNEW OF ITS EXISTENCE DOES NOT MEAN
22 THAT I WAS PROPERLY SERVED WITH IT.

23 **BY COMMISSIONER JAMES:**

24 _____ ALL RIGHT. MS. NUSSBAUM, ARE YOU AWARE OF A
25 MOTION FOR ANY TYPE OF MEDICAL TREATMENT?

1 **BY MS. NUSSBAUM:**

2 _____ COMMISSIONER, I HAVE NOT RECEIVED ANY TYPE OF
3 MOTION FROM THE CLAIMANT WITH REGARD TO MEDICAL
4 TREATMENT OR HIS ORAL MOTION TO COMPEL THAT HE JUST
5 REFERENCED.

6 **BY COMMISSIONER JAMES:**

7 _____ ALL RIGHT. I CAN ONLY ADDRESS WHAT HAS BEEN
8 PRESENTED WITH REGARDS TO THE REMAND FROM THE FULL
9 COMMISSION. SO, WITH THAT SAID, WE ARE ---

10 **BY THE CLAIMANT:**

11 _____ BUT THERE'S -- THERE'S STILL A MOTION PENDING
12 BEFORE THE COURT FOR PENALTIES.

13 **BY COMMISSIONER JAMES:**

14 _____ THAT IS -- I DO NOT HAVE A MOTION IN FRONT OF
15 ME WITH REGARDS TO PENALTIES. WHAT I HAVE ---

16 **BY THE CLAIMANT:**

17 _____ THIS HAS BEEN FILED AND REPLIED TO AND
18 RESPONDED.

19 **BY COMMISSIONER JAMES:**

20 _____ OKAY. WHAT I HAVE IS A MOTION FOR REMAND,
21 OKAY, AND THAT'S WHAT WAS SCHEDULED, AND THAT IS
22 WHAT IS HEARD TODAY.

23 **BY MS. NUSSBAUM:**

24 _____ I BELIEVE THAT WAS PENDING BEFORE THE FULL
25 COMMISSION.

1 **BY THE CLAIMANT:**

2 _____ THEN WHY WOULD SOME BE PENDING BEFORE THE FULL
3 COMMISSION AND OTHERS TO YOU?

4 **BY COMMISSIONER JAMES:**

5 _____ I DO NOT HAVE THAT, MR. McDANIEL.

6 **BY THE CLAIMANT:**

7 _____ BUT YOU ---

8 **BY COMMISSIONER JAMES:**

9 _____ I HAVE -- I HAVE THE REMAND FOR THE ---

10 **BY THE CLAIMANT:**

11 _____ BUT WE PROCEEDED WITH THE HEARING AND HEARD
12 SOME OF THE OUTSTANDING MOTIONS BUT NOT ALL OF THEM.

13 **BY COMMISSIONER JAMES:**

14 _____ ONLY THE MOTIONS WITH REGARDS TO THE HEARING
15 FOR THE REMAND. ALL RIGHT, THAT CONCLUDES THIS
16 HEARING.

17 (OFF THE RECORD)

18 **BY COMMISSIONER JAMES:**

19 _____ I'M GOING TO LET MR. McDANIEL MAKE A CLOSING
20 STATEMENT.

21 **BY THE CLAIMANT:**

22 _____ I'M NOT TRYING TO BE TRITE; I PROMISE.

23 **BY COMMISSIONER JAMES:**

24 _____ BUT YOU HAVE TO UNDERSTAND, MR. McDANIEL, I AM
25 LIMITED WITH REGARDS TO WHAT THIS IS BEFORE ME.

1 **BY THE CLAIMANT:**

2 _____ RIGHT, AND I TRIED ---

3 **BY COMMISSIONER JAMES:**

4 _____ OKAY. AND I CANNOT -- I CANNOT GO OUTSIDE THE
5 FOUR CORNERS OF WHAT WE'RE HERE FOR TODAY. ALL
6 RIGHT. DID YOU HAVE ANYTHING ELSE WITH REGARDS TO
7 THE LAMPKIN RECORDS?

8 **BY THE CLAIMANT:**

9 _____ IN CLOSING, I WOULD JUST LIKE TO STATE THAT
10 WORKERS' COMPENSATION, THIS ENTIRE COMMISSION, THE
11 PURPOSE OF US BEING HERE TODAY IS TO PROTECT THE
12 WORK MAN WHO ACTUALLY DOES THE WORK. THIS IS A
13 DEPLORABLE SITUATION TO BE IN. THAT I HAVE NEVER
14 BEEN PHYSICALLY LIMITED BEFORE IN MY ENTIRE LIFE.
15 THE FIRST JOB I HAD, I WAS 12. I HAVE ALWAYS BEEN
16 EMPLOYED SINCE. FOR ME TO GO TWO YEARS WITHOUT
17 EMPLOYMENT IS UNTHINKABLE. I -- I DO NOT GO
18 UNEMPLOYED. THIS HAS IMPACTED ME IN SUCH A WAY THAT
19 I CAN NO LONGER UTILIZE THE MOST VALUABLE LICENSE I
20 POSSESS. THAT THE FEDERAL REGULATIONS THAT RULE
21 COMMERCIAL DRIVERS STATE CLEARLY THAT YOU CANNOT
22 HAVE AN IMPAIRMENT OF AN ARM OR LEG THAT IMPEACHES
23 ON YOUR ABILITY TO FUNCTION AS A COMMERCIAL DRIVER.
24 THIS IS ABSOLUTELY DEVASTATING FOR ME. THE AMOUNT
25 OF MONEY THAT I COULD BE MAKING RIGHT NOW VERSUS

1 WHAT I AM MAKING IS REFLECTED GOING FORWARD. THE
2 FIRST JOB WAS FOR ELEVEN FIFTY AN HOUR, AND THEN I
3 WAS UNEMPLOYED, AND THEN THE NEXT JOB WAS FOR
4 THIRTEEN AN HOUR. WHO IS TO SAY THAT THE JOB AFTER
5 THAT WASN'T FOR FOURTEEN FIFTY AN HOUR. BUT I'M NOT
6 TRYING TO GO ON WHAT COULD HAVE BEEN OR WHAT MIGHT
7 HAVE BEEN. THE FACT OF THE MATTER IS THAT A SINGLE
8 PERSON REPLACED ME AT A COMPANY WHERE ONLY ONE
9 PERSON DID THAT JOB. THAT PERSON AVERAGED TWELVE
10 AND A HALF HOURS OF OVERTIME OVER THE NEXT YEAR.
11 THEY MADE \$38,000 IN ONE YEAR IN A JOB THAT I HAD.
12 I WAS INJURED. OVER THE NEXT YEAR, I RECEIVED
13 \$15,000 IN TEMPORARY TOTAL DISABILITY. SO, \$15,000
14 VERSUS \$38,000. THAT THE -- THE AVERAGE WEEKLY WAGE
15 THAT HAS BEEN SET NOT INCLUDING THESE RECORDS DOES
16 NOT ACCURATELY REFLECT MY WAGES GOING FORWARD, AND
17 THAT I JUST -- I PLEAD WITH YOU TO TAKE LAMPKIN'S
18 RECORDS AND TO TAKE MY RECORDS EVEN THOUGH IT WAS
19 ONLY TEN DAYS RIGHT THERE, AND APPLY THE AVERAGE
20 WEEKLY WAGE STANDARDS AS THEY SHOULD BE APPLIED IN
21 THE EMPLOYMENT I WAS WORKING AT THE TIME OF INJURY.
22 I DIDN'T WORK AROUND FORKLIFTS WHEN I WAS DELIVERING
23 WINE. THE FORKLIFTS AT THE WAREHOUSE MAY BE TEN
24 MINUTES OUT OF THE DAY. THE PLACE WHERE I WAS
25 INJURED, I SPENT HOURS EVERY MORNING IN THERE

1 WORKING AROUND FORKLIFTS. SO, I WAS INJURED BECAUSE
2 OF THE INCREASED RISK OF THE NEW JOB THAT I
3 RECEIVED. THIS RISK LED TO MY INJURY, AND IT SHOULD
4 BE REFLECTED IN MY AVERAGE WEEKLY WAGE OR ELSE I'M
5 BEING PAID FOR -- PAID FOR SOMETHING THAT I -- THE
6 SIX TWENTY-SEVEN WAS NEVER ACCOUNTED FOR. THE WORK
7 THAT I DID AT ALSIDE REVERE WAS NEVER ACCOUNTED FOR
8 BECAUSE IT WAS EXCLUDED ON THE FORM 20. SO, THE
9 ACTUAL TIME THAT I WORKED THERE HAS NEVER BEEN
10 INCLUDED IN MY CALCULATION OF AVERAGE WEEKLY WAGE.
11 THE ONLY FULL WEEK I WORKED THERE, I MADE \$627. THE
12 AVERAGE ON THE FORM 20 WAS \$492, A DISPARITY OF \$130
13 IS A PRETTY BIG DISPARITY, AND I WOULD JUST -- I
14 WOULD IMPLORE YOU TO LOOK AT THE LAW AND TO UTILIZE
15 THESE NEW RECORDS AND TO SEE THAT A YEAR'S WORTH OF
16 DATA IS WHAT THIS IS SUPPOSED TO BE BASED ON, AND
17 THAT I AM NOT GOING FOR SOMETHING THAT I'M NOT DUE.
18 THAT THIS INJURY IS CRIPPLING, AND THAT THIS AVERAGE
19 WEEKLY WAGE SHOULD BE BASED ON LOOKING FORWARD. AND
20 I THANK YOU FOR YOUR TIME.

21 **BY COMMISSIONER JAMES:**

22 _____ OKAY. THANK YOU, MR. McDANIEL. ALL RIGHT.

23 THAT CONCLUDES THIS HEARING.

24 **(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS**
25 **CONCLUDED AT THE HOUR OF 10:54 A.M.)**

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1116275

EMPLOYEE/CLAIMANT: **JOHN McDANIEL**
EMPLOYER: **CAREER EMPLOYMENT PROFESSIONAL**
INSURER: **UNITED WISCONSIN INSURANCE COMPANY**

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **55** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **JOHN McDANIEL** TAKEN ON THE 8TH DAY OF JULY, 2013.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 22ND DAY OF JULY, 2013.

JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3-12-2014

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1116275

John McDaniel,)
)
 Claimant,)
)
 v:)
)
 Career Employment Professional,)
 d/b/a Snelling Staffing,)
)
 Employer,)
)
 and)
)
 Wisconsin Insurance Company,)
)
 Carrier/Defendants.)
-----)

FULL COMMISSION PANEL HEARING

Monday, October 14, 2013
1:43 p.m. - 2:10 p.m.

The Full Commission Panel Hearing before the South Carolina Workers' Compensation Commission, was taken at the South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 14th day of October, 2013 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.



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2017-ROA-379

APPEARANCES

COMMISSION PANEL:

Susan Barden, Chair
Andrea Roche
Eugene McCaskill

John C. McDaniel

1387 Camp Road, Unit C
Charleston, South Carolina 29412
Pro Se Claimant

Allison C. Nussbaum, Esquire

McAngus, Goudelock & Courie, LLC
735 Johnnie Dodds Boulevard, Suite 200
Mt. Pleasant, South Carolina 29464
Attorney for the Defendants

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EXHIBITS

(There were no exhibits marked during this hearing.)



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2017-ROA-380

1 **COURT REPORTER:** Today is October 14, 2013. This is
2 South Carolina Workers' Compensation Case
3 Number 1116275. This is the case of John
4 McDaniel, Claimant, versus Career Employment
5 Professional d/b/a Snelling Staffing, and
6 Wisconsin Insurance Company is the carrier.
7 The Appellant is the Claimant, who is Pro Se.
8 The respondent is represented by Allison
9 Nussbaum.

10 **COMMISSIONER BARDEN:** Mr. McDaniel, if you'll take
11 the podium, please. Sir, before we went on the
12 record, I advised you of your right to have a
13 lawyer and offered you the right to a
14 postponement and a rescheduled appeal at a
15 later date, and you advised me, sir, that you
16 wish to represent yourself? Is that still the
17 case?

18 **MR. MCDANIEL:** Yes, ma'am.

19 **COMMISSIONER BARDEN:** Go ahead whenever you're
20 ready.

21 **COMMISSIONER ROCHE:** We may want to hear the motion
22 first.

23 **COMMISSIONER BARDEN:** That's exactly right. Thank
24 you, Commissioner Roche. We did a motion by
25 Mr. McDaniel to call -- I believe there were



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2017-ROA-381

ROA 370

1 three witnesses and/or parties to the
2 proceeding today, and then in response,
3 Ms. Nussbaum, on behalf of her clients filed a
4 motion to quash, and we have, after conferring
5 and in consideration of the pleadings in front
6 of us, granted the motion to quash, Mr.
7 McDaniel.

8 **MR. MCDANIEL:** I mean, first, I would like to start
9 off by saying that without allowing me to argue
10 against the granting or non-granting of the
11 motion to quash, that I feel that I'm being --
12 I'm not being afforded all my due process
13 rights. Particularly, I would go ahead and
14 cite Adams v. H. R. Allen which states that
15 "The South Carolina Constitution provides that
16 in procedures before administrative agencies,
17 no persons shall be finally bound by a judicial
18 or quasi judicial decision of an administrative
19 agency affecting private rights, except on due
20 notice and an opportunity to be heard.
21 Procedural due process requirements are not
22 technical. No particular form of procedure is
23 necessary. The United States Supreme Court has
24 held, however, that at a minimum, certain
25 elements must be present. This includes



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2017-ROA-382

ROA 371

1 adequate notice, adequate opportunity for a
2 hearing, the right to introduce evidence and
3 the right to confront and cross-examine
4 witnesses." We'll go sequentially. First,
5 "adequate notice", the notice of this heaving
6 was received by me on October 4th at 3:52 p.m..
7 I received notice of the appeal -- I received
8 notice of the appellant hearing the night
9 before in my regular mail, and then, the next
10 day, I went to retrieve my certified mail, and
11 that had the Order and the Notice of Hearing.
12 I was afforded 10 days notice of this hearing,
13 and I believe that that is not adequate notice
14 of hearing. As far as the "adequate
15 opportunity for a hearing" -- the "adequate
16 opportunity for a hearing", I've amended a Form
17 30, which I was told by Ms. Crocker would be
18 addressed during this hearing.

19 **COMMISSIONER BARDEN:** We have that in front of us,
20 yes, sir.

21 **MR. MCDANIEL:** Okay. On that, I requested for
22 extended oral argument, and further, I would
23 just say that only having 10 days to dissect an
24 order as a Pro Se Claimant and then be able to
25 argue it effectively is prejudicial to my



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2017-ROA-383

1 rights of due process and adequate notice.
2 "The right to introduce evidence", I would say
3 that the testimony that I was seeking to have
4 provided here today, along with the documents
5 that I was seeking to have provided here today,
6 have not been introduced in the record, have
7 not been attainable and have not been produced
8 by the defendants. I would specifically
9 address Paragraph 16 of their motion to quash.
10 It says "Additionally, Claimant requested
11 numerous documents which have already been
12 provided to him, minus any privileged
13 documents". This is absolutely untrue. I have
14 had -- this is the fourth record subpoena that
15 I have given to the defendants to get the
16 records from the insurance company to me, and
17 this is the fourth subpoena. The second one
18 has actually been quashed, and two of them were
19 just never addressed. So, discovery is not
20 even complete yet whenever they won't even send
21 me the documents that show why they didn't pay
22 for my medical care, why they are currently not
23 paying for my shoes, why, within the last
24 month-and-a-half, they quit paying for one of
25 my two medications. If I'm seeking discovery



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2017-ROA-384

ROA 373

1 and they're not being compliant, then that's
2 not giving an adequate chance to go through the
3 process. This is an exclusive remedy. I am
4 restricted from any other remedy, and to be
5 here and go through y'all's rules, and I'm just
6 not being afforded the opportunity to go
7 through y'all's rules. I have so much other
8 stuff to get to and only 10 minutes, so I'm
9 just going to ---

10 **COMMISSIONER BARDEN:** Now, the order of Commissioner
11 James did provide for you to have future
12 medicals. You are entitled to receive those
13 medicals.

14 **MR. MCDANIEL:** Yes, ma'am.

15 **COMMISSIONER BARDEN:** If you're not receiving those,
16 then you do have a right to file a motion to compel.

17 **MR. MCDANIEL:** I tried to file a motion with
18 Commissioner James after our main hearing for
19 a motion to compel medical treatment, and she
20 denied me the right to motion that.

21 **COMMISSIONER BARDEN:** Yes. Go ahead.

22 **MR. MCDANIEL:** All right. We'll go ahead and go to
23 average weekly wage. Real quickly, some
24 definitions -- or the "average weekly wage"
25 definition, 42-140, I believe, states quite



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2017-ROA-385

1 clearly that it is to be figured for the
2 employee working at the time of injury, not for
3 the employer working at the time of injury.
4 So, we really need to look at Shovis
5 (phonetical spelling) v. Watkins. Shovis
6 (phonetical spelling) lays out really clearly
7 what starts a new employment contract, and that
8 that is that both parties must be aware of and
9 agree to a new employment contract, or else
10 their rights against the previous employer are
11 unabridged. So, that means if both parties
12 know of the new relationship and both parties
13 agree to the new relationship, that that is the
14 standing relationship. That a previous
15 relationship of employer/employee between me
16 and Shelling, while I was working at Ben Arnold
17 has no bearing on today's case. When I was
18 working at Ben Arnold, I was not the warehouse
19 but for a few minutes in the morning and a few
20 minutes in the evening time. There was not
21 extensive warehouse stocking. There was not
22 extensive working around forklifts. The
23 forklift that hit me, I would not have been
24 working around when I was making less money at
25 a previous employment, and I really think it's



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ROA 375

1 important to really look at definition of
2 average weekly wage to where it says the
3 employment that was working at the time of
4 injury -- and then it goes on to say that
5 average weekly wage should reflect the
6 earnings, quote, "were it not for the injury".
7 "Were it not for the injury" is the most
8 important part here, because were it not for
9 the injury, there was one employee at the
10 company that did what I did. I was that one
11 and only employee until I got run over. The
12 very next day, I was replaced by a one and only
13 employee who worked that job for almost a year
14 after me. To take a portion of his earnings
15 and to disregard my earnings completely in the
16 job I was working at, at the time, and to use
17 earnings from a different job, and then to
18 calculate the other two gentlemen's earnings
19 which are Atkins and Clark, to determine each
20 of these individually and then average them is
21 not fair and just to both sides. If you were
22 to take the average weekly wage of each party
23 individually, you would have to account for
24 weeks and parts thereof. Atkins, Clark and
25 Lampkin all had partial weeks. These were all



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2017-ROA-387

1 accounted for as full weeks in the single
2 Commissioner's order. This is contrary to the
3 definition of average weekly wage again. So,
4 you've got the fact that the average weekly
5 wage that she found was not based on the
6 employment that I was in, but based on employer
7 I was working for. The average weekly wage was
8 what I would have earned toward the injury, but
9 an average of what people may have earned in a
10 smaller time frame averaging those together.
11 And I know I'm limited to time, so I'm sorry if
12 it goes a little over bit.

13 **COMMISSIONER BARDEN:** Keep going.

14 **MR. MCDANIEL:** "Disability", for a common laborer,
15 being helpless is not what it takes to be fully
16 and totally disabled. For a common laborer, an
17 inability to do common labor is what makes
18 someone totally incapacitated for work, is the
19 ability to -- I type 24 words a minute. That's
20 in the documents that I've tried a couple times
21 to submit. The employee file that I've tried
22 to submit is, say, 20 pages long. The
23 defendant submitted one page, and my previous
24 attorney failed to submit any additional pages
25 of it. I have moved to have those submitted,



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2017-ROA-388

1 and that denied in judicial committee. I have
2 all those records here, if y'all would like to
3 look over them. The disability has to be if --
4 and I am not saying it is restricted, because
5 my brief lays out that it is not restricted to
6 my leg. However, if you were to find that my
7 injury were restricted to a single scheduled
8 member, then disability is the inability to
9 earn wages that you were earning at the time of
10 injury. I am a laborer. I'm 250 pounds. I'm
11 6' 3". I lift stuff. If you need something
12 moved, I move it. That's what I've done. I
13 had a business that all I did was labor work,
14 and I've employed people doing labor work, and
15 I've always been a physically active labor
16 intensive worker, and my current restrictions
17 from both of my treating physicians are no more
18 than ten pounds lifting and no more than one
19 hour standing in an eight hour day. So,
20 whenever you look at the Dictionary of
21 Occupational Titles, you have the different
22 segments of work. I am less than sedentary.
23 So, if you find that my leg is the one and only
24 injury that I have, then, under the Workers'
25 Compensation, I must be due a total



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1 compensational remedy for that leg, even though
2 the remedy or compensation is inadequate, and
3 it's not meant to make me whole. It is simply
4 meant to make up for the lack of earning
5 capacity. The first job I ever had, I was 12
6 years old. I've been employed ever since. I
7 worked all through high school. I worked
8 after high school. I didn't go to college.
9 That was not the choice I took. The choice I
10 took was to use my body to make a living. I
11 traveled all over the country using my body to
12 make a living as a caddy. I am no longer able
13 to be a caddy. I'm no longer able to use any
14 Class A CDL, because the Federal Regulations --
15 the Code of Federal Regulations, 40-9.1, states
16 clearly that if you have an impairment to an
17 arm or leg, that you may not operate a
18 commercial vehicle, because it's unsafe for you
19 to operate those, in addition to the fact that
20 I'm on several medications that impair my
21 cognitive ability while I'm driving a truck.
22 That's against the Code of Federal Regulations,
23 would be on me, and that's an undue burden to
24 say that I should try to go back to work and do
25 this other. The "MMI" -- the "MMI", Dr. Olson



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1 stated clearly in his next to last report that
2 the MMI -- that "The patient was likely
3 reaching MMI from an orthopaedic standpoint".
4 And then, in the next report, he says, "Patient
5 has reached MMI. However, he will need pain
6 management". And so, when he says that I need
7 pain management, and an MMI is -- when a
8 physician says that no treatment is necessary
9 to diminish the extent or duration of my
10 disability, then I've not reached MMI. We're
11 relying on a Form 30 that was seven months old,
12 and now we've got an amended Form 30 that
13 addresses more of these, but Dr. Tavel, I
14 believe the date is right, was 7-16, was the
15 date that Dr. Tavel, my second treating
16 physician, placed me at maximum medical
17 improvement. Prior to him placing me at
18 Maximum Medical Improvement, they continually
19 changed the cocktail of medicines that I was
20 on.

21 **COMMISSIONER BARDEN:** Finish your thought. Go ahead
22 and finish that thought, and I've given you a
23 little extra time, because I didn't start the
24 clock right at ten minutes. So, go ahead and
25 finish your thought, and then you'll have three



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2017-ROA-391

1 minutes in reply.

2 **MS. MCDANIEL:** Yes, ma'am. And with the MMI, the
3 current trend in the Compensation Commission is
4 to take the latest date, if there are more than
5 one treating physician, and that I would move
6 that at least 7-22 would be the date that I
7 actually reached MMI, because I am not in
8 agreement that I was at MMI on 8-13.

9 **COMMISSIONER BARDEN:** Ms. Nussbaum.

10 **MS. NUSSBAUM:** Before I address the issues that are
11 in the Form 30, I would just like to place on
12 the record that the defendants object to the
13 Amended Form 30 and the addition of additional
14 documents that were not in the record at the
15 time of the single commissioner's hearing. I'm
16 just going to address in my argument the two
17 main issues that are on the Form 30 that were
18 filed -- was filed back in January. One is the
19 correct average weekly wage. Mr. McDaniel's
20 contention of the average weekly wage as found
21 by the commissioner was incorrect and
22 permanency under South Carolina Code 42-9-30.
23 With regard to average weekly wage, to set up
24 a little bit of background without going into
25 all the facts, because it goes to our argument,



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2017-ROA-392

1 Mr. McDaniel was employed was employed per a
2 staffing agency. So, the defendants contend
3 that when you take someone who works for a
4 staffing agency's average weekly wage, you look
5 at all their different assignments. It's a
6 temporary assignment situation. It's not a
7 situation where they're hired by each
8 individual employer, which is the he's arguing.
9 At the original hearing, the defendants
10 originally based Mr. McDaniel's average weekly
11 wage on 20 full weeks work with Snelling
12 Staffing, coming up with an average weekly wage
13 of \$492.85. Commissioner James found that that
14 was not fair and just, and then he moved under
15 42-1-40 to a different ethical way to calculate
16 average weekly wage. What she did was she
17 took -- gave the claimant the benefit of the
18 doubt, actually, and used four employees --
19 three employees who actually worked at the same
20 assignment as he did at the time of the injury.
21 Keep in mind, he had only worked there two
22 weeks when he was injured, and she also
23 included his average weekly wage when making
24 that average. Again, the defendants would
25 contend -- we did not appeal this matter, but



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2017-ROA-393

1 the defendants would contend that she used what
2 -- her discretion in finding that was a fair
3 and just and equitable way to calculate his
4 average weekly wage, which resulted in a higher
5 weekly wage than what we had, basing it on
6 about six months worth of work history. The
7 defendants have paid that under a payment of
8 TTD. Basically, the other argument that was
9 made and that Mr. McDaniel was making with
10 regard to the average weekly wage, it seems
11 during that two weeks, he worked a little bit
12 of overtime. He's arguing that he was entitled
13 to be paid his average weekly wage at \$13.00 an
14 hour, which was the last hourly wage that he
15 worked at for those two weeks and 45 hours a
16 week. The defendants would contend that's
17 completely speculative based on conjecture and
18 surmise. In the record was the testimony of
19 his supervisor at the last assignment whose
20 name was Dan Cobb. Mr. Cobb testified there is
21 no guarantee that Mr. McDaniel would have ever
22 been hired full time at this last assignment
23 which was Alside Revere. There's no guarantee
24 that he would have received five hours overtime
25 every week. In fact, they don't hire a



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2017-ROA-394

ROA 383

1 Snelling employee full time, so that he would
2 have at least worked there for three months, so
3 he had been there two weeks. He just said, "I
4 don't have enough information to tell you
5 whether he would have ever been hired here full
6 time".

7 **COMMISSIONER ROCHE:** Did he testify, though, that it
8 was consistent overtime?

9 **MS. NUSSBAUM:** He testified they have overtime from
10 time to time, which Commissioner James took
11 that into consideration by using the other
12 employees that got overtime and their average
13 weekly wage. She used employees' wages from
14 that last assignment. They're in the record,
15 too. They're in APAs, their actual wage
16 records. She didn't use Snelling employees.
17 What she used was wage records that the
18 claimant had presented to her in their APAs,
19 and they were actually Alside Revere employees.
20 They were Jared Lampkin, Albert Robert Clark
21 and Wayne Atkins who performed that job at
22 Alside Revere. And I could point you to the
23 APAs, if that be helpful.

24 **COMMISSIONER ROCHE:** No, I was looking -- and this
25 was before Mr. White got off the case. He said



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2017-ROA-395

1 that Mr. Cobb testified that there was
2 consistent overtime in his deposition on Page
3 13, and you've just told me that isn't what he
4 said, so that's what I wanted to look -- to see
5 what ...

6 **MS. NUSSBAUM:** He said that overtime was not
7 guaranteed.

8 **COMMISSIONER ROCHE:** He testified that there was
9 consistent overtime.

10 **MS. NUSSBAUM:** And again, it would be defendants
11 position, even with regard to Dan Cobb's
12 testimony, that that's taking the claimant and
13 putting him in the position of an Alside Revere
14 employee, and he was not an Alside Revere
15 employee. He was a Snelling Staffing Agency
16 employee who changed from position to position.
17 Commissioner James took into account that
18 overtime that you're referencing in Dan Cobb's
19 deposition by average the Alside Revere
20 employees that did have overtime in addition to
21 Mr. McDaniel's actual average weekly wage,
22 which increased his average weekly wage, but to
23 say that he would have earned 45 hours a week
24 and been hired as an Alside Revere employee in
25 a permanent position would -- defendants would



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2017-ROA-396

1 contend is bases on speculation, especially in
2 light of the fact that the reason why he
3 stopped working at the first assignment which
4 was Ben Arnold at \$11.00 an hour was because
5 there was a conflict with school. So, there's
6 no guarantee that, had the overtime even been
7 offered, that he would have been able to work
8 it.

9 **COMMISSIONER MCCASKILL:** Was he still in school when
10 he worked this assignment?

11 **MS. NUSSBAUM:** As far as I know, he was.

12 **COMMISSIONER ROCHE:** It looks like that Commissioner
13 James calculated some overtime in there.

14 **MS. NUSSBAUM:** She did, because she took into
15 account the fact that the other employees when
16 using that average would take into account --
17 would give him the benefit of the overtime,
18 without just doing a \$13 hour -- at 45 hours

19 **COMMISSIONER ROCHE:** But an hour of overtime, it
20 looks like was calculated ...

21 **MS. NUSSBAUM:** If you used the \$13.00 an hour wage,
22 but keep in mind, he had worked prior
23 assignments at \$11.00 an hour during those 20
24 weeks that he worked with Snelling Staffing.
25 Again, he had been working for Alside Revere



1 for two, and Dan Cobb's testimony supports the
2 contention that there was no guarantee he would
3 have been hired permanently, as it takes at
4 least three months for them to make that
5 determination, and two weeks is not enough
6 time. If you're okay with me moving past the
7 average weekly wage, I can go onto permanency.

8 **COMMISSIONER ROCHE:** Okay.

9 **MS. NUSSBAUM:** Okay. With regard to permanency, the
10 hearing commissioner doubled the rating
11 assigned by the treating physician. We would
12 contend that that's more than adequate based on
13 the treating physician's record. The injury --
14 also, I'd like to point out -- the injury is
15 actually to the foot. Commissioner James,
16 based on Dr. Olson's 14-B made it an award to
17 the leg, so even though the actual site of the
18 injury is the foot, he actually received 34
19 percent to the leg, not the foot. Also, with
20 regard to MMI, the claimant argued that he's
21 not at MI. However, going back to the original
22 hearing, he actually -- his counsel on his
23 behalf conceded that he was at MMI at that
24 hearing. So, I would contend that that's not
25 even before you, because at that original



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2017-ROA-398

1 hearing, he conceded that they were at MMI --
2 was there to make a determination of
3 permanency. The only body part pled on the
4 Form 50 was the left leg. There was no
5 additional body parts pled, so we're limited
6 under 42-9-30 in that regard. The defendants
7 contend the hearing commissioner correctly
8 applied the caselaw when granting the
9 defendants a credit of TTD going back to the
10 authorized treating physician's statement of
11 MMI. Also, I'd like to briefly add a statement
12 to what Mr. McDaniel addressed in his oral
13 argument, but there's a mention in his brief
14 and on the Form 30 about penalties against
15 defendants. That was neither pled on the Form
16 50 or the pre-hearing brief or argued at the
17 single commissioner level. The defendants
18 would contend that they cannot argue that on
19 appeal, or that issue would not be before you.
20 And unless y'all have any other questions, I
21 think that's all I have.

22 **COMMISSIONER ROCHE:** Mr. McDaniel.

23 **MR. MCDANIEL:** Real quick, impairment versus
24 disability, the impairment rating that
25 Dr. Olson gave me was 17 percent to the left



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2017-ROA-399

1 lower extremity, which medically means
2 including my hip. The injury, the two major
3 nerve damages that I have in my leg, the
4 superficial perineal and the sural nerve, run
5 up into my leg. The actual site that I was run
6 over was my foot. It crushed all the bones in
7 my foot, if you want to say, four of my
8 metatarsals, and then it crushed my pinky toe.
9 The swelling, I had an open wound and six
10 months of swelling. The swelling is what has
11 given me the nerve damage. It was the swelling
12 that I say was due to them not providing me
13 with wound care therapy as it was prescribed by
14 Dr. Olson. They have not prescribed the wound
15 care therapy as provided for by Dr. Olson.
16 They have not provided the shoes as provided
17 for. They have not provide a vascular test.
18 His most recent recommends that I be sent to a
19 knee and back specialist. That has not been
20 complied with. My medications being shut down
21 also is not complied with, and this is -- the
22 more times that they don't comply with
23 something, the more you have to see malice and
24 mal-intent in their actions. The injury is not
25 necessary. An injury does not have to affect



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2017-ROA-400

ROA 389

1 the body part if the naturally stemming
2 subsequent conditions are from the injury. So,
3 whenever my leg is affected because of the
4 nerves and the damage from the swelling, then
5 to say that my injury is confined to just my
6 foot and not my leg, and that she actually gave
7 me a higher rating because she said it was my
8 leg, that's actually inconsistent with
9 Dr. Olson's rating that included my hip, as it
10 is my entire leg -- I can't put -- I can't --
11 weight shift forward. I can't walk normally.
12 The counsel on my behalf -- I was dismissed
13 from the prehearing conference between
14 Commissioner James, Allison Nussbaum and Tom
15 White. I was asked to leave the room. If I
16 would have been in the room, I would said, as
17 the original -- as the lawyer states in the
18 very beginning of the report, that the claimant
19 agreed that the treating physician has placed
20 him at MMI. That is what would have been said
21 if I were there, but we've already accepted the
22 Amended Form 30, and so that is probably before
23 y'all. The penalties were -- I asked for
24 penalties in the Form 50 and previous letters
25 with them, whenever they were late on no less



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2017-ROA-401

ROA 390

1 than five occasions in paying me my weekly
2 benefit, I asked, "This is what y'all owe me,
3 less penalties; this is what y'all owe me, less
4 penalties". So, the penalties are mandatory by
5 law, and I shouldn't have to ask for them. If
6 they are late, there has to be a 10 percent
7 increase in compensation, and there has to be
8 a 25 percent penalty added. The Curiel thing,
9 I would just like to point out real quick that
10 I am not an illegal immigrant. I have not lied
11 to my physician. There is no instant fix that
12 will get me back to work. Curiel says -- oh,
13 I don't want to waste the time. Curiel says
14 that he like to his physicians and that he have
15 returned to work if he (not audible) -- and his
16 boss would have hired him. The penalties ---

17 **COMMISSIONER BARDEN:** You can finish your thought.

18 **MR. MCDANIEL:** The credit, it is in the Commission's
19 discretion whether or not to award the
20 insurance company a credit. The weekly
21 benefits are paid in the idea of support for
22 the injured worker, and the Workers'
23 Compensation Act was provided to protect me.
24 I have been unable to work. I have never had
25 an extended period of not being able to work



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2017-ROA-402

1 like this, and that is why the credit should
2 not be given. Just because I'm in school,
3 that's a good point, but that doesn't make it
4 okay, you know.

5 **COMMISSIONER BARDEN:** Okay. Thank you.

6 **MR. MCDANIEL:** I apologize for running over.

7 **COMMISSIONER BARDEN:** Thank you. That concludes
8 this proceeding.

9 **(Whereupon, the Full Commission Panel Hearing**
10 **concluded at 2:10 o'clock p.m.)**

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2017-ROA-403

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1116275

JOHN McDANIEL,)
)
 Claimant,)
)
 -vs-)
)
 CAREER EMPLOYMENT)
 PROFESSIONAL D/B/A)
 SNELLING STAFFING,)
)
 Employer,)
)
 and)
)
 UNITED WISCONSIN)
 INSURANCE COMPANY,)
 UNITED HEARTLAND TPA,)
)
 Carrier,)
 Defendants.)
)

DEPOSITION OF:
DANIEL J. COBB

The deposition of DANIEL J. COBB, taken before
Julie L. Bonomo, Professional Court Reporter and Notary
Public, at the Steinberg Law Firm, 118 Goose Creek
Boulevard South, Goose Creek, South Carolina, on Monday,
August 20, 2012, commencing at 12:00 p.m.

APPEARANCES

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For the Employee: STEINBERG LAW FIRM
By: Thomas M. White
Attorney at Law
118 Goose Creek Boulevard South
Goose Creek, SC 29445
twhite@steinberglawfirm.com

For the Employer: McANGUS GOUDELOCK & COURIE, LLC
By: Allison C. Nussbaum
Attorney at Law
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Mount Pleasant, SC 29464
allison.nussbaum@mgclaw.com

Also Present: John McDaniel

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INDEX TO EXHIBITS

Marked for I.D.:

(No exhibits were proffered.)

1 (Thereupon, DANIEL J. COBB was, by the Court
2 Reporter, duly sworn to tell the truth, the whole truth,
3 and nothing but the truth.)

4 EXAMINATION BY MR. WHITE:

5 Q. Would you state your full name, please.

6 A. Daniel J. Cobb.

7 Q. Do you go by Dan?

8 A. Yes.

9 Q. Can I call you Dan?

10 A. You sure can.

11 Q. Dan, we met before the deposition. I'm Tom
12 White. I'm representing John McDaniel in a Workers'
13 Compensation case that's pending. The reason we are
14 taking your deposition is we just have some questions
15 about the job he was doing for you through Snelling, and
16 the hours, and what the anticipated future was going to
17 be.

18 If you would, because this is sworn testimony,
19 answer yes or no rather than try to go uh-huh or huh-uh.
20 I will try not to talk over you, and you try to let me
21 finish and not talk over me. I'll assume if I ask you a
22 question, you have understood it and have answered
23 truthfully. Fair enough?

24 A. (Nods head affirmatively.)

25 Q. Can you give me your current home address?

1 A. 128 Brady Street, Daniel Island.

2 Q. Can you give me a daytime phone number where you
3 can be reached?

4 A. That would be my cell phone number, 267 --
5 297-1667.

6 Q. 297-1667?

7 A. Uh-huh.

8 Q. Okay. Where do you currently work?

9 A. At Revere Building Products.

10 Q. Where are they located?

11 A. 4260 Wilbur Street in North Charleston.

12 Q. How long have you worked with Revere?

13 A. A little over six years.

14 Q. What is your position there?

15 A. I'm the operations manager.

16 Q. Operations manager?

17 A. Yes.

18 Q. All right. Just tell me about your job. What
19 are your responsibilities as operations manager?

20 A. Everything. I wear many hats. Building
21 function, employees, credit, accounts payable,
22 receivables.

23 Q. Is Revere commercial? I mean, is it like --

24 A. It's wholesale.

25 Q. Wholesale. Okay. How many employees are at that

1 location?

2 A. Currently, we have two, three, four. Four and
3 one temp.

4 Q. Is Revere, are they -- is there a corporate? Is
5 that the only building or is there some --

6 A. It's a branch. The main company is Associated
7 Materials, they're out of Akron, Ohio. There is about
8 120 to 130 branches anywhere from they have little, you
9 know, there are Revere outside Reveres and Revere
10 Building Products. They go under a couple of different
11 names, but all under the one company is about 120 to 130
12 branches.

13 Q. Who do you report to?

14 A. We have a district -- we're in between district
15 managers, but he would be my immediate boss other than
16 the branch manager.

17 Q. Where do they work?

18 A. The branch manager works there.

19 Q. Out of that building in Charleston?

20 A. In Charleston.

21 Q. Okay.

22 A. The district manager works out of -- he did work
23 out of upstate South Carolina.

24 Q. So it's branch managers running that office?

25 A. Two of us run it. We share different duties.

1 Q. Are y'all over and under each other as far as
2 seniority goes or do you have equal --

3 A. He would trump me particularly on the shift.

4 Q. Got you.

5 A. The branch manager.

6 Q. So hiring and firing, is that something that you
7 do or y'all both do?

8 A. That's something we share. Ultimately, I would
9 make the final decision.

10 Q. Okay. The people that you have working, the four
11 employees, do mainly warehouse-type work?

12 A. It would be office, inside sales and warehouse.

13 Q. All right. And typically -- I know that John
14 came to y'all from Snelling. Typically, how do you get
15 your employees? Is it through a staffing agency and
16 then they work and if you like them, you keep them?

17 A. Correct. I might ask them for any candidates
18 that they might have or I might send somebody that I
19 have that I want to use for a while to them.

20 Q. If somebody came to you and applied and you
21 wanted to try them out before you got committed, you may
22 send them to Snelling?

23 A. We may run them through Snelling first.

24 Q. Got you. That way you're not stuck with them if
25 you don't want them to stay?

1 A. Exactly.

2 Q. So I think John got hurt and he got run over by
3 this forklift or run over his foot back on November 21,
4 2011. I have got some documents that were sent over to
5 me. It looks like in some of the -- just to show you,
6 there is some stuff that Ms. Nussbaum sent to me and it
7 just looks like in the relationship with Snelling there
8 are certain requirements. Are you kind of the
9 go-between between Revere and Snelling as to --

10 A. Yes.

11 Q. -- what they can do and can't do?

12 A. Uh-huh.

13 Q. And certain requirements and all of that?

14 A. Uh-huh.

15 Q. So that's not being done by the other manager.
16 What is his name, the other?

17 A. That's Al Nardone.

18 Q. Okay.

19 A. I'm not even sure if Al was there when John
20 began. We might have been in between branch managers at
21 the time.

22 Q. As far as the pay that you're offering, I know
23 you pay Snelling a certain hourly rate and then they pay
24 the person what they pay. But it looked like, I think
25 when John came to work there, it was maybe \$13 an hour.

1 Is that a number that you're aware of?

2 A. Yes.

3 Q. Y'all were paying Snelling maybe \$19 an hour?

4 A. Approximately, yes.

5 Q. So at the time that John got injured back in
6 November, I think he had only been there a couple of
7 weeks, I believe?

8 A. I guess the 11th, I think, was when his started.

9 Q. When he started?

10 A. Something like that.

11 Q. So at that time there were you, the other manager
12 and four other employees or five other people? When I
13 say employees, I mean either Snelling or people just
14 working there?

15 A. Yes. It was myself, might have been the other
16 branch manager at the time, warehouse manager and inside
17 sales.

18 Q. Okay. At that time that John came over to work
19 there, were there other people there working through
20 Snelling?

21 A. No.

22 Q. He would be the only one?

23 A. Correct.

24 Q. Were the other people working there, had they
25 come through Snelling originally and then you had kept

1 them or did they come from other sources?

2 A. Could have been either/or. I don't think anybody
3 at the time John started we were running anybody through
4 a temp agency. Everybody was a permanent employee at
5 that point.

6 Q. As far as y'all's business, what are your typical
7 hours that people are working there in John's position?

8 A. 7 to 4 Monday through Friday.

9 Q. When John was hired, was it anticipated that that
10 would be full-time work?

11 A. Yeah. We brought him on to be full-time.
12 Full-time temp agency person at the time, yes.

13 Q. So that would be, at least from what we're
14 talking about, at least 40 hours a week at \$13 an hour?

15 A. Correct.

16 Q. Tell me about the potential for overtime. What
17 was the overtime like?

18 A. There was a possibility of it, depending on if we
19 were busy. Depending on how many deliveries we have
20 during the course of the day. John was doing some of
21 the deliveries for us. So if it was real busy that day
22 or something and we ran over, there was a possibility of
23 overtime. It wasn't everyday or anything like that.

24 Q. How many people would be working in John's
25 position? In other words, how many people would be

1 doing the same job?

2 A. I believe he was the only one. My warehouse
3 manager can drive, but it's not my -- I would rather
4 keep him in the building.

5 Q. And John's job was, what was his actual job that
6 he was doing when he was hired? What was he hired to
7 do?

8 A. To make deliveries.

9 Q. He is delivering in a van or truck or what is he
10 using?

11 A. Truck.

12 Q. Did he need a CDL to do that?

13 A. For the truck he was using, he did not. He
14 didn't need a CDL for the box truck that he was using.
15 Our other truck he would need a CDL for. That's why we
16 took him on so we could switch him to the other truck
17 but we hadn't got that far.

18 Q. Got you. The truck he was using to deliver the
19 products, when he got hurt, you obviously had to replace
20 him, somebody has to do that job I take it?

21 A. Correct.

22 Q. Where did that replacement come from? Did that
23 come through Snelling also?

24 A. Most likely Snelling.

25 Q. That's been now maybe nine or ten months ago. Is

1 that person still there?

2 A. No.

3 Q. What happened to them?

4 A. It was just -- I don't recall. We might have
5 gone through a couple of them at that point.

6 Q. It just didn't work out?

7 A. Didn't work out or it was on an as-needed basis.

8 Q. Got you.

9 A. The warehouse manager at that point was taking
10 more control over deliveries.

11 Q. Between then, when John got hurt and now, had the
12 people that had done that position --

13 A. I'm sorry. There was a replacement for John.

14 Q. Came through Snelling?

15 A. Came through Snelling and he is with me today.

16 Q. He is still there?

17 A. Yes.

18 Q. Still is driving that truck, doing that job?

19 A. Yes. He is no longer a Snelling employee. We
20 took him on full-time.

21 Q. Typically, if you like somebody and they are
22 doing a good job, what is the time period that you will
23 bring them over and make them permanent?

24 A. Approximately, 550 hours is what Snelling
25 requires before I can bring them on board and make them

1 a permanent employee.

2 Q. So that's about?

3 A. Three months or so.

4 Q. About three months?

5 A. Give or take.

6 Q. The guy that's there now that came through
7 Snelling that y'all hired permanently, has he been
8 working full time since he came?

9 A. He has been a permanent employee since February.

10 Q. By permanent, is he getting 40 hours a week?

11 A. Yes.

12 Q. Is he getting overtime?

13 A. Yes.

14 Q. What do you think he averages in overtime a week?

15 A. Could range anywhere from a couple of hours maybe
16 to ten.

17 Q. Is that at least consistent, like some overtime
18 every week with a range between two and ten hours?

19 A. Yes, I would say at this time frame.

20 Q. I take it that would be at time and a half?

21 A. Correct.

22 Q. And I guess, tell me when John came to work for
23 you, he would be reporting directly to you?

24 A. Yes.

25 Q. What type of employee was he?

1 A. He was a very good employee. He did very well in
2 the limited time he was there.

3 Q. Again, I understand the timing was limited
4 because of the injury, but had y'all had any discussions
5 about your plans for him or about him being able to
6 maybe stay on? Did y'all discuss that?

7 A. Very early discussed it probably in the initial
8 interview that if he worked out, we would make him a
9 permanent employee, but basically that was about it.

10 Q. Okay.

11 A. I know he had plans on going back to school. So
12 that would probably -- whether it might have interfered
13 with that or not I don't know. Again, it was just too
14 early in it.

15 Q. Right. Under the contractual arrangements with
16 Snelling, they have got to work through them for the 500
17 hours, three months, before they can move over to be
18 your permanent employee?

19 A. (Indicating an affirmative response.)

20 Q. You need to say yes or no.

21 A. Yes. Sorry about that.

22 Q. At any point, had y'all had a discussion where
23 you had told John that you did anticipate moving him
24 over to a permanent position or taking him on as a
25 Revere employee?

1 A. It's all relative when they start in. If they do
2 well, that's my intention.

3 Q. Okay.

4 A. It's all based on performance.

5 Q. So his performance had been good, so that would
6 have been a discussion that y'all may have had?

7 A. It would have been a discussion at the very
8 beginning.

9 Q. Would there have been any discussions with the
10 people at Snelling? I guess, Angela, is that your
11 contact person there?

12 A. Yes. That's usually my main contact there.

13 Q. I guess they wanted feedback as to how the person
14 is doing, and what would have been your reports to her?

15 A. That he was working out.

16 Q. Okay.

17 A. So far so good.

18 Q. And the position that the guy now is working,
19 that was the position that John had, is that a position
20 that you see as being something that you need ongoing?

21 A. Yes.

22 Q. I mean, that's a position that's a permanent
23 position that you don't anticipate is that --

24 A. It's a permanent position.

25 Q. -- being a part time or ending after 90 days or

1 120 days?

2 A. No, it's permanent.

3 Q. I may be finished. It looks like, I guess, the
4 one week that John got a full week in, I think he had
5 five hours of overtime. So that sounds like it would be
6 about average according to what you testified to it
7 looks like he got?

8 A. It's possible. I mean, you have slow weeks, you
9 have busy weeks.

10 Q. Sure. I understand.

11 A. There might be weeks in there you have no
12 overtime.

13 Q. Got you.

14 MR. WHITE: Give me one second.

15 MS. NUSSBAUM: Okay.

16 (A brief pause transpired.)

17 MR. WHITE: No other questions from me.

18 MS. NUSSBAUM: I just have a couple.

19 EXAMINATION BY MS. NUSSBAUM:

20 Q. Dan, when you hire temporary employees through
21 Snelling, do you ever guarantee the employee a certain
22 number of hours?

23 A. No.

24 Q. And the temporary employees that you have used
25 through Snelling, is there any guarantee they will

1 receive a permanent job offer from you?

2 A. No.

3 Q. It's my understanding that you typically look at
4 performance to determine whether you'll make a job
5 offer?

6 A. Correct.

7 Q. In this, I think it was only ten days that John
8 worked for you before his accident. In those ten days,
9 would that have been enough time to determine whether he
10 would have been a permanent employee?

11 A. No.

12 Q. Typically, how long before you make that
13 decision?

14 A. I usually don't do anything prior to 60 days.

15 Q. Okay. How long have you used Snelling Staff
16 Services? How long has that relationship been in place?

17 A. Probably a couple of years now.

18 Q. I think that's all the questions I have got.

19 MR. WHITE: None from me.

20 (The deposition concluded at 12:17 p.m.)

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1 STATE OF SOUTH CAROLINA)
)
2 COUNTY OF CHARLESTON)

3

I, Julie L. Bonomo, Professional Court Reporter and
4 Notary Public for the State of South Carolina at Large,
do hereby certify that the witness in the foregoing
5 deposition was by me duly sworn to testify to the truth,
the whole truth and nothing but the truth in the
6 within-entitled cause; that said deposition was taken at
the time and location therein stated; that the testimony
7 of the witness and all objections made at the time of
the examination were recorded stenographically by me and
8 were thereafter transcribed by computer-aided
transcription; that the foregoing is a full, complete
9 and true record of the testimony of the witness and of
all objections made at the time of the examination; and
10 that the witness was given an opportunity to read and
correct said deposition and to subscribe the same.

11

Should the signature of the witness not be affixed to
12 the deposition, the witness shall not have availed
himself of the opportunity to sign or the signature has
13 been waived.

14

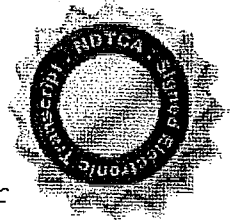
I further certify that I am neither related to nor
15 counsel for any party of the cause pending or interested
in the events thereof.

16

Witness my hand, I have hereunto affixed my official
17 seal this 20th day of August, 2012, at Charleston,
Charleston County, South Carolina.

18

Julie L. Bonomo
Julie L. Bonomo
Professional Court Reporter
My Commission Expires
July 23, 2017



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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116275

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JOHN McDANIEL,)
Employee/Claimant,)
vs.)
SNELLING STAFFING)
SERVICES,)
Employer,)
and)
UNITED WISCONSIN)
INSURANCE COMPANY c/o)
UNITED HEARTLAND,)
Carrier, Defendants.)

COPY

DEPOSITION OF: JOHN McDANIEL
DATE TAKEN: JULY 19, 2012
TIME: 2:00 p.m.
LOCATION: STEINBERG LAW FIRM
118 Goose Creek Boulevard
Goose Creek, South Carolina 29445
REPORTED BY: Helen L. Rose, CSR, RPR
Certified Shorthand Reporter
Registered Professional Reporter
Notary Public

1 APPEARANCES:

2 FOR THE EMPLOYEE/CLAIMANT:
3

4
5 By: THOMAS M. WHITE
6 STEINBERG LAW FIRM
7 118 Goose Creek Boulevard
8 Goose Creek, South Carolina 29445

9 FOR THE CARRIER/DEFENDANT:

10
11 By: ALLISON C. NUSSBAUM
12 MCANGUS, GOUDELOCK & COURIE, LLC
13 735 Johnnie Dodds Blvd. Suite 200
14 P.O. Box 650007
15 Mt. Pleasant, SC 29465
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I N D E X

THE WITNESS:

JOHN MCDANIEL

Direct Examination by:

Page

MS. NUSSBAUM

4

E X H I B I T S

There were no exhibits proffered.

JOHN McDANIEL

4

1 (Witness sworn.)

2 JOHN McDANIEL,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. NUSSBAUM:

7 Q Mr. McDaniel, again for the record, my name is
8 Allison Nussbaum. Our firm represents the employer and
9 insurance carrier in your workers' compensation claim.
10 I'm here today to ask you some questions about your
11 claim. I'm sure your attorney told you ahead of time a
12 little bit about the deposition. I want to reiterate
13 some of those things. The court reporter has to take
14 down everything that we say, so it's important for you to
15 speak loudly and clearly. It's important for you to let
16 me finish my questions before you answer so that we're
17 not talking over the top of each other, even though a lot
18 of times you can anticipate exactly what I'm asking you.

19 If you don't understand the question, it's
20 probably just a bad question. Just say, Allison, I don't
21 know what you're asking me. I don't want you to answer a
22 question that you don't understand. I'm not trying to
23 trick you. If you answer the question, I'm going to
24 assume that you understood it and answered it truthfully.
25 Is that fair?

1 A Yes, ma'am.

2 Q Okay. Are you under the influence of any
3 medication, drugs, or alcohol today?

4 A Yes.

5 Q What did you take?

6 A Celebrex and Lyrica.

7 Q Would Celebrex or Lyrica have an effect on your
8 ability to answer questions and understand questions?

9 A No.

10 Q I don't think we'll be here for that long, but
11 if you need to take a break at any time for any reason,
12 just say, Allison, I need to take a break. We'll go off
13 the record and we can take a break. Okay?

14 A Understood.

15 Q Okay. Can you please state your full name for
16 the record.

17 A John Christopher McDaniel.

18 Q What name do you go by?

19 A John.

20 Q What's your Social Security number?

21 A 458-99-7462.

22 Q Are you originally from somewhere other than
23 South Carolina?

24 A Yes, ma'am.

25 Q Where are you from?

JOHN McDANIEL

6

1 A Fort Worth, Texas.

2 Q How long have you been in South Carolina?

3 A Since July 2008.

4 Q Have you lived in any other states other than
5 South Carolina and Texas?

6 A Yes, ma'am.

7 Q Where else have you lived?

8 A Wisconsin and Louisiana.

9 Q When were you in Wisconsin?

10 A I was there for approximately six months ending
11 at the beginning of November 2010.

12 Q Did you go to South Carolina, then go to
13 Wisconsin and back to South Carolina?

14 A Yes, ma'am.

15 Q And Louisiana, when were you there?

16 A Approximately '86 to '88.

17 Q And other than that six months in Wisconsin,
18 you have been continuously living in South Carolina since
19 July of 2008?

20 A Yes, ma'am.

21 Q And what took you to Wisconsin for about six
22 months?

23 A Work.

24 Q How old are you today?

25 A 30.

1 Q When is your date of birth?

2 A 3-5-82.

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

4 A Yes, ma'am.

5 Q Do you have any problems driving currently?

6 A No, ma'am.

7 Q Do you have an automatic?

8 A Yes, ma'am.

9 Q What kind of car do you drive?

10 A Currently it's a 2007 Jeep Wrangler.

11 Q And that's an automatic? That's not a manual?

12 A Yes, ma'am, it's automatic.

13 Q Do you have any other cars that you drive from
14 time to time?

15 A I was driving my '87 Supra. It's currently
16 decommissioned.

17 Q Do you do any work on it yourself?

18 A Yes, that's why it's decommissioned.

19 Q Have you been able to do any work on the Supra?

20 A No, ma'am.

21 Q You haven't done any kind of maintenance on it
22 since your accident?

23 A Nominal things.

24 Q Like what?

25 A Changing a belt.

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1 Q Change the oil in it?

2 A No, I get that done.

3 Q Anything that requires you to go up underneath
4 the car?

5 A Yes, I changed the radiator in it. But that
6 was not the problem with it, and that's why it's
7 decommissioned.

8 Q When did you change the radiator in it?

9 A Approximately a month ago.

10 Q And so do you have a shop where you live?

11 A No, ma'am.

12 Q Where do you do it?

13 A I did it in our driveway. We own a town home.

14 Q In changing a radiator, do you have to do any
15 lifting?

16 A The radiator weighs 12 pounds.

17 Q So you were able to crawl up underneath the car
18 and switch that out?

19 A Yes, ma'am. And I had help working on it also.

20 Q About how long does that job take you?

21 A Two or three hours.

22 Q Any problem crouching to get underneath the
23 car?

24 A Not necessarily.

25 Q Are you on a dolly of some type?

1 A No.

2 Q You just lay on your back?

3 A I lay on my back.

4 Q Any other maintenance that you have done to
5 either of your cars or anybody else's cars since your
6 accident?

7 A No, ma'am.

8 Q So currently you don't know what the problem
9 is, so it's out of commission?

10 A It's blown. It has a hole in the block.

11 Q Oh, all right. So you don't plan on repairing
12 that yourself?

13 A No.

14 Q Have you been out of state since your accident?

15 A Yes.

16 Q Where have you been?

17 A I drove to Texas.

18 Q When did you drive to Texas?

19 A I don't have that date in front of me. I want
20 to say April.

21 Q Just this past April?

22 A Yes, ma'am.

23 Q And did you do that trip in one day?

24 A No, it took almost two days to get there.

25 Q Did you do all the driving?

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1 A No, ma'am.

2 Q Did you do any of the driving?

3 A Yes.

4 Q What percentage of driving do you think you
5 did?

6 A Less than 50/50.

7 Q Who went with you?

8 A My friend, Darren Kaiser.

9 Q What took you to Texas? Why were you going?

10 A A friend's wedding, and my family is from
11 there.

12 Q What activities did you do while you were in
13 Texas?

14 A Not much. I was still having problems getting
15 around. So we drove there, I saw my niece, and then we
16 drove to my buddy's wedding, and then we drove back.

17 Q How long were you in Texas when you were there?

18 A The trip total from here to back was
19 approximately nine or ten days.

20 Q You took two days to get out there and two days
21 to get back?

22 A Yes, ma'am.

23 Q Were you still on crutches at that time?

24 A I was told to be off of crutches, so I was very
25 badly limping everywhere.

1 Q So you weren't using them at that time?

2 A I was not.

3 Q Now, were you in the wedding?

4 A No, I was not.

5 Q Have you been anywhere else since your
6 accident? Any other long drives? Trips out of state?

7 A No, ma'am.

8 Q Vacations of any kind?

9 A No, ma'am.

10 Q Do you have any trips currently planned?

11 A No, ma'am.

12 Q You haven't been on an airplane since your
13 accident?

14 A No, ma'am.

15 Q Did you have any problems making that drive out
16 to Texas when you were doing the driving?

17 A No, it was an automatic also, and I spent most
18 the time in the passenger seat. But when he got tired, I
19 would drive.

20 Q Were you driving your friend's car?

21 A Yes, ma'am.

22 Q What kind of car does he have?

23 A Oh, it was actually a rental.

24 Q Oh, okay.

25 What is your current address?

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1 A 1387 Camp Road, Unit C, Charleston.

2 Q That's on James Island?

3 A Yes, ma'am.

4 Q How long have you been at that address?

5 A I believe we closed at the end of March and
6 moved in the first week of April.

7 Q You closed the end of March 2012 and moved in
8 first week in April 2012?

9 A Yes, ma'am.

10 Q I assume if you say closing, you own the home?

11 A My girlfriend does.

12 Q It's in her name?

13 A Yes, ma'am.

14 Q Where were you living before Camp Road?

15 A 700 Daniel Ellis Drive, Apartment 5104. It's
16 behind Lowe's.

17 Q Who moved your belongings?

18 A John and Michael Dale. Elizabeth Dale is my
19 girlfriend. Her brothers essentially moved us.

20 Q Does she spell Dale D-A-I-L or D-A-L-E?

21 A D-A-L-E.

22 Q Did you move any belongings in the move?

23 A No.

24 Q You didn't move anything?

25 A I may have helped pack boxes, but I was out of

1 commission.

2 Q When you were in the apartment building, were
3 you on the first, second, or third floor?

4 A First floor.

5 Q I presume -- I think you told me earlier, you
6 are in a townhouse currently?

7 A Yes, ma'am.

8 Q So it's got two stories?

9 A Yes, ma'am.

10 Q Do you have any problems manipulating the
11 stairs?

12 A Yes.

13 Q What kind of problems do you have with that?

14 A I have to balance myself on the walls going up
15 and down.

16 Q Is your bedroom upstairs?

17 A Yes, ma'am.

18 Q And your girlfriend, does she work?

19 A Yes.

20 Q What does she do?

21 A She is a paralegal with Maybank Law Firm.

22 Q Have you ever been married before?

23 A No, ma'am.

24 Q Do you have any children?

25 A No, ma'am.

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1 Q Did you graduate from high school?

2 A Yes, ma'am.

3 Q Where were you living when you graduated from
4 high school?

5 A Burleson, Texas.

6 Q After high school, did you further your
7 education?

8 A I did at Tarrant County Junior College in Fort
9 Worth for approximately a semester. I am currently
10 enrolled at TTC.

11 Q Trident Tech?

12 A Yes, ma'am.

13 Q How long have you been enrolled at Trident
14 Tech?

15 A Since the fall of 2011.

16 Q Did you enroll before or after your accident?

17 A Before.

18 Q Now, have you continuously attended classes
19 since the fall of 2011?

20 A It's summer break currently, but I did attend
21 spring of 2012.

22 Q How many hours did you carry in the spring of
23 2012?

24 A How many did I finish with, or how many did I
25 start with?

1 Q You can tell me both if they are different.

2 A I started with 12. I finished with 6.

3 Q Did you drop some classes?

4 A Yes, ma'am.

5 Q Why did you drop some?

6 A I was having problems with medication and not
7 being able to do my work. It was either drop it or fail
8 it.

9 Q Are you scheduled to go back for the fall?

10 A Yes, ma'am.

11 Q What are you taking classes in? What are you
12 working towards?

13 A A civil engineering degree.

14 Q How much do you have left? You are working
15 towards an associate right now?

16 A It will be a bachelors. It's a two plus two
17 program with The Citadel.

18 Q When do you start at The Citadel?

19 A I have approximately one more year at TCC.
20 Then it will be The Citadel.

21 Q Are you under scholarship?

22 A No, ma'am.

23 Q In the fall of 2011 how many hours were you
24 carrying at Trident?

25 A 12.

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1 Q When did those classes meet?

2 A Two of them were Internet classes. Then two of
3 them met Monday and Wednesday evenings, I believe. It
4 may have been Tuesday and Thursday.

5 Q When the classes met in the evenings, what time
6 did they start?

7 A 5:30.

8 Q How would you get -- how long would it take you
9 to get from work to your class?

10 A 30 minutes.

11 Q So you have to leave work by 5:00 to get to
12 class at 5:30?

13 A Yes, ma'am.

14 Q At least two days a week you had to be off work
15 by 5:00?

16 A Yes, ma'am.

17 Q It was either Tuesday, Thursday or Monday,
18 Wednesday?

19 A Yes, ma'am. I don't recall at this moment.

20 Q In the spring semester, how many of those
21 classes were Internet and how many of those were actual
22 classroom where you had to show up for a class?

23 A I believe two and two. Two Internet and two in
24 person.

25 Q Which ones did you drop?

1 A I dropped chemistry, which was an in-person,
2 and an online class.

3 Q So you ended up with one online and one in
4 person?

5 A Yes, ma'am.

6 Q The in-person classes, how long did they
7 typically last at the time?

8 A Two and a half, three hours, I think. I'm
9 trying to recall right now. I believe that -- I was
10 actually taking three in-person classes. I was taking
11 two math and a chemistry.

12 Q In the fall?

13 A In the spring. I dropped the chemistry class,
14 but continued taking the two math classes.

15 Q You had two in-person classes in the spring?

16 A Yes, ma'am.

17 Q And no onlines?

18 A I had dropped the online class.

19 Q Have you signed up already for next fall?

20 A Yes, ma'am.

21 Q How many classes are you taking next fall?

22 A Twelve hours.

23 Q How many of those are in person?

24 A Two and two.

25 Q You'll still have two days a week that you have

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1 to be off of work by 5:00?

2 A I believe it will be four days a week. I
3 believe it's one class Monday, Wednesday; one class
4 Tuesday, Thursday.

5 Q Both those classes start at 5:30?

6 A I do not have that information in front of me.
7 They are evening-time classes. I know that one of them
8 has a scheduling conflict. But one of them, I believe,
9 starts late, 7:00.

10 Q Do you already have that information at your
11 house?

12 A I do. I didn't bring it with me, though.

13 Q That's okay. Any other technical
14 certifications or anything else that you have?

15 A My driver's license is a Class A CDL.

16 Q How long have you had your CDL?

17 A Since approximately 2006.

18 Q And you kept up with it since then?

19 A Yes, ma'am.

20 Q When does it expire?

21 A 3-5-2016.

22 Q When was the last time you had to go for a
23 medical examination for your CDL?

24 A 2-8-11.

25 Q So the February before your accident?

1 A Yes, ma'am.

2 Q Did anything come up on that medical
3 examination?

4 A No, ma'am.

5 Q Do you remember where you had that? Or does it
6 say on there where you had that?

7 A I don't believe it states on here. It was on
8 Folly Road, the physicals.

9 Q Like Doctors Care?

10 A Doctors Care.

11 Q What I want to do now is get an employment
12 history from you, to get an idea of the different jobs
13 that you've held in the past, the positions that you've
14 held. After you graduated from high school, did you
15 enter the work force?

16 A Yes.

17 Q Do you recall what was your first real
18 full-time job that you had?

19 A I was a sales manager at Action Power Sports in
20 Inez, Texas.

21 Q Is that like a motorcycle, jet ski type place?

22 A Yes, ma'am, seven lines, all-inclusive.

23 Q Did you start as sales manager or work yourself
24 up to that?

25 A I was hired on as sales, slash, sales manager.

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1 Q How long did you do that, give or take?

2 A Approximately six months.

3 Q Did you quit that job?

4 A Yes, ma'am.

5 Q Why did you decide to leave?

6 A Improprieties over financial concerns.

7 Q What do you mean by that?

8 A If you sell an item, the manufacturer of the
9 item may issue a spiff, which is a manufacturer's rebate
10 to the salesperson. Those spiffs should be paid monthly
11 or quarterly. I was not receiving my spiffs. It came to
12 the point I was owed about 4,000 or \$5,000 in spiffs and
13 thought I could go down the road and get another job
14 doing what I was doing.

15 Q Did you have to file any kind of lawsuit to get
16 the money?

17 A No, there was never anything came of it. Once
18 I quit, if I never had to talk to that guy again, it was
19 fine with me.

20 Q What was the next job that you held?

21 A Waiting tables.

22 Q How long did you wait tables?

23 A Until approximately 2005 at various
24 establishments.

25 Q When did you start, what year?

1 A February 2001.

2 Q So for about four years you waited tables?

3 A Yes, ma'am.

4 Q Still in Texas?

5 A Yes, ma'am.

6 Q You worked as a waiter for all those
7 establishments?

8 A Yes, ma'am.

9 Q Any injuries while you were employed as a
10 waiter?

11 A Not through the course of employment.

12 Q Around those same years did you have an injury
13 outside of your job?

14 A Yes, I was in a motorcycle accident April 1,
15 2001.

16 Q You were the driver?

17 A Yes, ma'am.

18 Q Was it a single accident or --

19 A It was a possible two-car collision.

20 Q Were you at fault or somebody else?

21 A It was no fault.

22 Q What injuries did you sustain?

23 A Skin abrasions.

24 Q Did you have to have medical treatment?

25 A I went to the ER.

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1 Q What did they do for you at the ER?

2 A Bandaged me up, gave me some pain medications.

3 Q Did you have to return after that one visit?

4 A No, I never went back to the ER again.

5 Q Did you have to go to another doctor?

6 A I retained an attorney, and he -- I'm trying to
7 recall right now.

8 Q Sure.

9 A I did not retain an attorney for the motorcycle
10 accident. Because it was a waiting tables job, it was
11 obvious that I was not able to work. And then they told
12 me to come back whenever I could work. I tried to return
13 to work after, say, two months, but I was still messed
14 up. My bandages -- the skin abrasions went from
15 fingertip on my left hand, around the back down, and all
16 the way to my fingertips on my right hand.

17 Q So they were limited to your arms?

18 A Yes.

19 Q Did have any on your legs?

20 A A couple of small abrasions, but I was wearing
21 big leather shoes and pants.

22 Q Did you receive any kind of compensation on
23 that accident?

24 A Just for my motorcycle, and my medical bills
25 were paid.

1 Q Did you have any medical bills besides the
2 emergency room?

3 A No, ma'am.

4 Q You said you did not have an attorney for that?

5 A No, ma'am, I did not.

6 Q Do you still have a motorcycle?

7 A No, ma'am.

8 Q Have you had one since then?

9 A No, ma'am.

10 Q That was the end of your motorcycle riding
11 days?

12 A Yes.

13 Q It sounds like you may have had another
14 accident because you said something about retaining an
15 attorney.

16 A I did.

17 Q When was the other accident?

18 A I want to say just before Thanksgiving in 2005,
19 although it may have been 2006.

20 Q So sometime in November 2005 or 2006?

21 A Yes, ma'am.

22 Q Was this a motor vehicle accident?

23 A Yes, ma'am.

24 Q Were you in a car this time?

25 A I was in a truck.

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1 Q Were you driving?

2 A Yes, ma'am.

3 Q Were you at fault or somebody else?

4 A The other party was at fault.

5 Q And what kind of injuries, if any, did you
6 sustain in that accident?

7 A That was the time that I retained an attorney,
8 and he put me through to a chiropractor and I went
9 through about six months of chiropracty.

10 Q What were they working on?

11 A My back. The truck I was in was a classic
12 truck, no seat belts. The night of the wreck I believed
13 that I was okay. The following day I was in lots of
14 pain, and that was Thanksgiving Day. But I was in lots
15 of pain, so the day after Thanksgiving I retained an
16 attorney to get medical treatment.

17 Q That was also ultimately provided to you?

18 A Yes, ma'am.

19 Q Did you have anything besides a chiropractor?

20 A There were some tests, a CAT scan I believe.
21 There were tests, but never any real treatment outside of
22 the chiropractor.

23 Q What kind of body parts did you have tests on?

24 A Mostly my back.

25 Q And you didn't ever see a specialist besides

1 the chiropractor?

2 A No, I did not.

3 Q Okay. Was this still in Texas at this point?

4 A Yes, ma'am.

5 Q Do you remember the name of the chiropractor's
6 name?

7 A It was an office. I did not necessarily see
8 one chiropractor. It was. . .

9 Q Do you remember the name of the office?

10 A I do not.

11 Q Ultimately did you receive a settlement or have
12 to go to court for that?

13 A I received a settlement.

14 Q Do you know how much you received?

15 A My portion of the settlement, I believe, was
16 \$2200.

17 Q After that accident, that treatment with the
18 chiropractor, did you continue to have any kind of
19 ongoing back problems?

20 A Somewhat. The chiropractor helped mostly, but
21 I have had nagging issues since. But nothing ever put me
22 out of commission.

23 Q But ever since then, you've had some nagging
24 issues with your back?

25 A Yes, ma'am.

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1 Q Have you ever sought treatment outside of that
2 chiropractic that you had?

3 A No, ma'am.

4 Q Ever been to an emergency room for your back?

5 A No, ma'am.

6 Q Any other car accidents that you've been
7 involved in?

8 A Multiple when I was younger, but nothing that
9 ever hospitalized me or that I needed medical treatment
10 for.

11 Q All the ones when you were younger, no EMS ever
12 came to the scene?

13 A No, ma'am.

14 Q And you never went to the emergency room?

15 A No, ma'am.

16 Q Any other lawsuits related to the car accident
17 where --

18 A Not to my knowledge.

19 Q And you never received a settlement for any of
20 the other car accidents?

21 A No, ma'am.

22 Q So you never went back to work as a waiter
23 really after the motorcycle accident?

24 A After the motorcycle accident I did. That was
25 in 2001, and I was a waiter until 2005.

1 Q I thought you told me the motorcycle accident
2 happened in 2005.

3 A No, that was the car accident was in '05 or
4 '06. The motorcycle accident was April 1, 2001.

5 Q Okay. I had the wrong date.

6 And the last time you worked as a waiter
7 was in 2005?

8 A No, ma'am, I have worked as a waiter here in
9 South Carolina after I returned from Wisconsin for
10 approximately three months.

11 Q I want to get the chronology then. After you
12 worked as a waiter from 2001 to approximately 2005, what
13 line of work did you go in next?

14 A The construction site services company with my
15 father.

16 Q Still in Texas?

17 A Yes, ma'am.

18 Q What was the name of your company?

19 A JSM Construction Services.

20 Q What was your job with that company?

21 A I was a foreman.

22 Q Were you a working foreman?

23 A Yes, ma'am.

24 Q General construction?

25 A Site services, debris cleanup, lot leveling,

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1 dirt work. Essentially anything I could do with dump
2 trucks or tractors or labor.

3 Q Was that at the same time you got your CDL?

4 A Yes, ma'am, that was the reason why I got my
5 CDL, to be able to drive the trucks.

6 Q How long did you do that work?

7 A I would say until the end of 2007.

8 Q So about two years?

9 A Two and a half years.

10 Q Did you dissolve that company?

11 A My father fired me.

12 Q Does he still have that company?

13 A He does not.

14 Q What was the reason for your father terminating
15 you?

16 A We parted ways based on a conversation I had
17 with a non-employee.

18 Q What do you mean by that?

19 A I was taking a dump truck to a waste management
20 facility. This girl asked me where my father was because
21 I was the main proprietor of the company and he
22 occasionally drove trucks. We dumped regularly at this
23 site. The young lady asked me where my dad was. I asked
24 her what time it was. She said 10:30. I said, well, are
25 the bars open at 10:30? And then that Friday, whenever

1 the week's work was done, he demanded the keys to my
2 truck and told me that we were done.

3 Q Did you file for unemployment after that?

4 A I did not.

5 Q Where did you go to work next?

6 A Back to waiting tables.

7 Q How long did you wait tables the second
8 go-around?

9 A From the end of the company until I moved out
10 here, so approximately six months.

11 Q What brought you to South Carolina?

12 A I stopped by to visit a friend.

13 Q Decided to stay?

14 A Didn't leave.

15 Q You have been in the Charleston area the whole
16 time?

17 A Except for the Wisconsin.

18 Q After you came down to South Carolina, what was
19 the first job that you had?

20 A I was an auditor for Bevinco. They have since
21 changed their name to Bevintel. And they produce detail
22 inventory, revenue loss reports for local food
23 establishments.

24 Q How long did you do that?

25 A I would say from July of '08 through March of

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1 '09.

2 Q How did that job end? Did you leave
3 voluntarily?

4 A I was transitioning to being a caddy. I picked
5 up a caddy job, I believe, in August of '08 and was
6 working both jobs and then decided that I wanted to
7 pursue the caddy job full-time and gave two months'
8 notice to my employer.

9 Q How long did you work as a caddy?

10 A Until the beginning of November 2010.

11 Q Why did you stop doing that?

12 A Because I -- my last assignment was in
13 Wisconsin, and me and Elizabeth had met before I went to
14 Wisconsin. I came back here to pursue her instead of
15 pursuing the traveling caddy job.

16 Q Okay. So that was what took you to Wisconsin,
17 is you were working as a caddy?

18 A Yes, ma'am.

19 Q Were you on a specific tour?

20 A No, I worked for Caddy Master Enterprises,
21 Caddy Services, Incorporated. They are a caddy company
22 that has, I want to say, 70 properties in 18 countries.
23 And you can work anywhere because they are all under the
24 umbrella of C.S.E., C.M.E. So you can work anywhere, and
25 they allow you to travel within the company. That's what

1 I was doing.

2 Q So you had voluntarily traveled to Wisconsin?

3 A Yes, ma'am.

4 Q But decided to come back to South Carolina?

5 A Yes, ma'am.

6 Q Did you keep working with them when you came
7 back to South Carolina?

8 A No, ma'am, I did not.

9 Q What was the next job that you went to?

10 A Whenever I got back I waited tables for
11 approximately three months at Red Lobster in West Ashley
12 until I found a job selling cars at Hudson Nissan on
13 Rivers Avenue.

14 Q Why didn't you continue the caddy job in South
15 Carolina? Was it not available for you?

16 A No.

17 Q How long did you work for Hudson Nissan?

18 A Approximately two months.

19 Q Why only two months?

20 A I had been in sales when I was 18, and I loved
21 it. And at 30 it was just different. I didn't want
22 to -- I was no longer motivated by the dollar the way I
23 was when I was younger, and sales was not the way I
24 remembered it. And so I chose to seek other employment.

25 Q You left voluntarily?

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1 A Yes, ma'am.

2 Q Where did you go work next?

3 A Snelling Staffing.

4 Q Have you ever been injured on the job before?

5 A No, ma'am.

6 Q This is the first time you have ever had any
7 kind of accident at work?

8 A Yes, ma'am.

9 Q Other than the car -- do you have another one?

10 A Well, I was in construction when I was younger.
11 There were all kinds of like little injuries and stuff,
12 but I've never been hospitalized; I've never been out of
13 work.

14 Q Have you ever had to go to the doctor for one
15 of those little injuries?

16 A No.

17 Q When you say little injuries, you are talking
18 about cuts and bangs and bruises?

19 A Right.

20 Q Anything, any kind of injuries that you recall
21 of any significance to your left leg or left foot?

22 A Not at all.

23 Q The only job I think that you told me you were
24 terminated from was when you were working for your
25 father?

1 A The service industry, being waiters, there was
2 a couple of times I was fired or quit at the same time.

3 Q Do you recall any reasons for those
4 terminations?

5 A No.

6 Q Do you remember those restaurants that you were
7 terminated from?

8 A No show, no call. Whether it's quitting or
9 being fired, depending on who you talk to.

10 Q Usually just absenteeism type things?

11 A Right.

12 Q Have you ever been a supervisor anywhere
13 before?

14 A With my -- the construction site services
15 company, definitely. I'm usually put into supervisory
16 roles when I was waiting table. Lead trainer, stuff like
17 that.

18 Q So this is your first workers' comp claim?

19 A Yes, ma'am.

20 Q Have there been any reasons where you've been
21 out of work for any extended period of time in your past?

22 A No.

23 Q Ever collected unemployment benefits before?

24 A No, ma'am.

25 Q When did you first become associated with

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1 Snelling Staffing Services?

2 A I believe 5-20-10 -- or 2011, 5-20-11. I had a
3 spreadsheet earlier.

4 Could you grab my folder?

5 Q Is it in your APA?

6 A I produced my own stuff just to keep everything
7 in line.

8 Q It looks like I may have your first pay stub.
9 Your APA, it says start period is 5-6-11, end period is
10 5-13.

11 A Yes, ma'am.

12 Q Did you first begin working there on May 6th?

13 A Yes, ma'am. That was my first assignment. I
14 had done some training at the Snelling location, but that
15 was nonpaid training.

16 Q What was the first job that they had placed you
17 in through Snelling?

18 A I was a route driver with Ben Arnold doing wine
19 and spirits distribution.

20 Q Were you ever offered a position to come
21 onboard with Ben Arnold?

22 A No, ma'am.

23 Q So the whole time you worked for them, you were
24 working through Snelling Staff Services?

25 A Yes, ma'am.

1 Q Just to clarify Snelling Staff Services is a
2 temp agency?

3 A Yes, ma'am.

4 Q And when it works, are you paid through
5 Snelling Staff Services?

6 A Yes, ma'am.

7 Q Your paycheck stubs all come through Snelling
8 Staff Services?

9 A Yes, ma'am.

10 Q How long did you work for Ben Arnold?

11 A The last week of Ben Arnold was ending period
12 of 9-30-2011.

13 Q How does that work? Was the job over? Did
14 they not have any more work?

15 A Yes, ma'am, it was over, because it's
16 temporary. They said that my services were no longer
17 needed at that location.

18 Q And do you get advance notice of that?

19 A No, ma'am.

20 Q You just show up for work one day, and they say
21 we don't need your services anymore?

22 A Most of the communications -- although I worked
23 at Ben Arnold, all the communications went through
24 Snelling. My contact with Snelling was Angela Baldwin.
25 Angela called me and told me that I would not be needed

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1 for the following week. I believe on Saturday she told
2 me I would not be needed for the following Tuesday.

3 Q You typically reported to work there on a
4 Tuesday?

5 A Yes, ma'am, Tuesday through Friday.

6 Q How many hours a week were you getting when you
7 worked for Ben Arnold?

8 A If I were to say from my own recollection, it
9 was approximately 45 hours. There were weeks where it
10 was over 50, and weeks where it was under 40.

11 Q How does that work? It just depends on what
12 they need you for?

13 A Right. It was not irregular to work 12- to
14 14-hour days or longer.

15 Q Also it sounds like it was not irregular
16 sometimes to work less than eight-hour days, if you were
17 getting less than 40?

18 A There were a few weeks where I got less than
19 40, but most were between 45 or over.

20 Q They paid you \$11.50 an hour?

21 A Yes, ma'am.

22 Q That pay, is that set by the company you are
23 working for?

24 A Possibly through their correspondence with
25 Snelling. Snelling hires people at a rate, and then

1 they're overpaid by Ben Arnold.

2 Q Gotcha. So in other words, when you got hired
3 by Snelling, before they ever placed you in an
4 assignment, did they tell you what your pay rate would
5 be?

6 A Yes, ma'am.

7 Q So when you go in and fill out an application
8 at Snelling Staff Services, they say, okay, we can hire
9 you, and we're going to pay you \$11.50 an hour?

10 A They say we have an assignment at this company
11 doing this job for this pay, do you want this job or not.

12 Q So the pay rate really depends on the
13 assignment?

14 A Yes, ma'am.

15 Q Is it possible that you work at one assignment,
16 and when that assignment is over the subsequent
17 assignment could be for less money?

18 A Yes, ma'am, if I were to agree to it.

19 Q Okay. They always offer it to you and allow
20 you to --

21 A Yes, ma'am.

22 Q -- thumbs it up or thumbs down?

23 A Yes, ma'am.

24 Q So it's possible you worked for Employer A, say
25 Ben Arnold, and you get \$11.50 an hour. You go to work

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1 for Employer B making more money. That job ends. Then
2 Employer C could be back to \$11.50 an hour?

3 A Yes, ma'am.

4 Q Do you ever have any knowledge of when or how
5 long a job is going to last with Snelling Staff Services?

6 A It's supposed to be temp to hire, depending
7 upon the relationship that's formed with their client.

8 Q Okay. So even with Ben Arnold, it was supposed
9 to be temp to hire?

10 A Yes.

11 Q Do you know why you didn't get hired on there?

12 A No, ma'am.

13 Q Never heard anything from them about why they
14 didn't hire you?

15 A No, they were pretty concise: You were not
16 needed come Tuesday.

17 Q Are you offered multiple assignments at the
18 same time that you can turn up or turn down?

19 A I don't follow.

20 Q When you get with Snelling Staff Services, do
21 they offer you a specific assignment, or do they have
22 multiple assignments for you to choose from?

23 A No, each offer is for one assignment. And then
24 you can give the yea or nay. Then they may give you
25 another offer; they may not give you another offer.

1 Q So if you turn it down, it may be that they
2 just don't have anything for you?

3 A Right.

4 Q Is there any guarantee when you are hired for
5 Snelling Staff Services you will be employed for a
6 certain period of time?

7 A No.

8 Q So it's really just as long as they have work
9 available?

10 A Yes, ma'am.

11 Q When you get a specific assignment, is there
12 anything in writing about that assignment?

13 A There may be a contract between Snelling and
14 Ben Arnold or Snelling and Alside Revere, but I don't
15 receive any written correspondence or anything like that.

16 Q You are not a party to that contract?

17 A Correct.

18 Q It may be a contract between Ben Arnold and
19 Snelling, but it doesn't say anything about you. It
20 doesn't say John McDaniel will work for this period of
21 time.

22 A Right. And if it does, I have not seen that
23 contract or been a party to it.

24 Q All right. The way I understand -- and correct
25 me if I'm wrong -- with staff agencies, if they're not

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1 happy with the work a temp is doing, they can just call
2 the temp agency and say I don't want this temp anymore
3 and the temp agency will send somebody else out?

4 A Correct.

5 Q So there really is no guarantee how long that
6 job is going to last?

7 A Correct.

8 Q It sounds like even with Ben Arnold, you found
9 out two days beforehand that you didn't have that job
10 anymore?

11 A Correct.

12 Q And so after that job ended with Ben Arnold in
13 July, that she told you not to go there to work on
14 Tuesday, did you go in to Snelling Staff Services?

15 A I maintained phone contact with them.

16 Q Were you offered a different position?

17 A Because of the scheduling conflicts with being
18 enrolled in school, it had taken them a little while to
19 find me staffing with Ben Arnold. And then I was off of
20 work from 9-30 to 11-10 of 2011, approximately 40 days.

21 Q Give me the dates again.

22 A From 9-30-2011 till 11-10-2011.

23 Q So you were completely off of work those days
24 because they could not find a position that would
25 coincide with your school schedule?

1 A Correct.

2 Q Were you offered any positions during that time
3 period?

4 A I do not recall.

5 Q You don't recall if you turned any down?

6 A No, ma'am.

7 Q Then at some point you were offered the
8 position at Revere?

9 A Yes, ma'am.

10 Q Was that offer made to you over the phone?

11 A Yes, ma'am.

12 Q Did you work anywhere else between September 30
13 and November 10, 2011?

14 A I did not.

15 Q Did you have applications in anywhere else?

16 A I was putting out applications via the Internet
17 to a lot of places.

18 Q But didn't get a job or take a job with any of
19 those places?

20 A No, ma'am.

21 Q You started working at Revere, it looks like
22 from your notes, maybe November 11, 2011. Or would that
23 be November 4th?

24 A No, the November 4th was the start of that
25 period. I only worked that Friday, which would be

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1 11-11-11.

2 Q Okay. So the first day you worked at Revere
3 would have been November 11, 2011?

4 A Yes, ma'am.

5 Q When you got the assignment that you ultimately
6 took at Revere, was it communicated to you what they
7 would pay an hour?

8 A Yes, ma'am.

9 Q What was communicated to you?

10 A \$13 an hour.

11 Q When you receive an assignment through the
12 staff agency, do they communicate anything to you in
13 terms of hours, how many hours you are going to get?

14 A They give a ballpark estimate. Because it's a
15 needs-based service they are providing, they don't give
16 you that you will get 40 hours a week. It's dependent
17 upon the needs of the company.

18 Q What ballpark figure did they give you for
19 working at Revere?

20 A Over 40.

21 Q And who communicated that to you?

22 A Angela Baldwin.

23 Q So do you remember exactly what she said to
24 you?

25 A No, I do not.

1 Q But it was somehow communicated to you that you
2 would get over 40 hours?

3 A Yes, because the operating hours of Alside
4 Revere are from 7:00 a.m. to 4:30 p.m. with a
5 non-mandatory 30-minute lunch break.

6 Q Did she give you any kind of indication of how
7 long you would be able to work at Revere, how long the
8 assignment was?

9 A No, ma'am. They had previously had someone
10 staffed there. And then they told me that he was no
11 longer going to be staffed there and that they were
12 placing me there.

13 Q So you basically -- they had another temp that
14 was there, and you took over that position?

15 A Yes, ma'am.

16 Q Did you have an on-site supervisor that you
17 reported to at Revere?

18 A From Snelling?

19 Q Well, did you have one from Snelling?

20 A No.

21 Q Did you have one that worked for Revere?

22 A Yes.

23 Q Who was that?

24 A Dan Cobb.

25 Q What was your job at Revere?

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1 A Delivery driver, warehouse worker.

2 Q How much of your job percentage was a delivery
3 driver?

4 A I spent about the first two hours of every day
5 doing warehouse work. The remainder of the day was
6 delivery driver.

7 Q So the majority of your time was driving a
8 delivery truck?

9 A Yes, ma'am.

10 Q Did you have to unload and load?

11 A Yes, ma'am.

12 Q What type of things were you delivering?

13 A Building supplies, 25-foot boxes that weighed
14 up to 100 pounds.

15 Q Did you have a partner with you?

16 A No, ma'am.

17 Q Were you given any type of job description
18 before taking the position at Revere?

19 A Yes, ma'am.

20 Q Would that be in your file with Snelling?

21 A I don't know. I have not seen the employee
22 dossier from Snelling.

23 Q So the job description, do you remember who
24 showed it to you?

25 A It was a verbal job description. Physically

1 demanding, using my CDL, more than 40 hours a week for
2 \$13.

3 Q So you don't know if there is a written job
4 description?

5 A I do not.

6 Q You never saw one?

7 A Not to my recollection.

8 Q The \$13 an hour and the over 40 was
9 communicated to you from Angela?

10 A Yes, ma'am.

11 Q Is she still employed for Snelling?

12 A Yes, ma'am, I believe.

13 Q Then when you report to work at Revere, who do
14 you talk with?

15 A Dan Cobb.

16 Q He was your direct supervisor?

17 A Yes, ma'am.

18 Q And does he work in an office environment, or
19 is he out in the warehouse?

20 A Both. He has a desk in the office environment.
21 It's a small operation, five people or so. Everybody
22 pitches in everywhere.

23 Q So total at the company is only five people?

24 A I believe so.

25 Q Do you know who Dan Cobb reports to?

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1 A He was essentially second in command. I do not
2 remember the general manager's name. I believe Allen.
3 That could be wrong.

4 Q So you go to work on November 11, 2011, which
5 is a Friday. When you report to work that morning, do
6 you have to have a meeting with Mr. Cobb or anyone else
7 before you start work?

8 A Momentarily.

9 Q During that meeting, what comes up?

10 A Just what I will be doing that day. I was
11 essentially shadowing Mike. His last name is in there.
12 He was the one that eventually struck me. But he was,
13 say, the warehouse manager. But because they were
14 short-staffed, he was then delivering. So I shadowed him
15 for the first -- that Friday and possibly the next
16 Monday.

17 Q When you met with Dan that first day, was there
18 any conversation about hours or pay?

19 A Not about pay. He said that as far as the
20 hours go that I may have to work over, that it's not
21 unheard of to work past 4:00, but that more than likely
22 it would be a 7:00 to 4:00 job. But that two days a week
23 it's a drive almost to Georgia, and that those two days I
24 would be expected to work overtime if necessary.

25 Q Okay. If necessary. Correct?

1 A Yes, ma'am.

2 Q Did Mr. Cobb or anyone else at Revere tell you
3 how long you would be employed there?

4 A Mr. Cobb wanted to bring me on as soon as
5 possible to permanent employment status.

6 Q When did he communicate that to you?

7 A The middle of the following week.

8 Q So the middle of the week after November 11?

9 A Yes, ma'am.

10 Q So your second week at work, he communicated to
11 you that he would like to bring you on as permanent?

12 A Right.

13 Q Did you have to fill out any paperwork towards
14 that?

15 A No, ma'am.

16 Q And did he discuss with you pay?

17 A Yes.

18 Q What did he say that you would be paid as a
19 permanent employee?

20 A He said that there may or may not be an
21 increase in pay because they were already paying \$13 an
22 hour, that I may get an increase up to 13.50. But it
23 would be something that he would have to talk to his
24 superior about.

25 Q Did you have any other conversations after that

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1 about that, about being brought on before the injury?

2 A I believe that he had contacted either Angela
3 or Jim about bringing me on full-time, I want to say, the
4 Friday of that week.

5 Q How do you know about that?

6 A Because the way I left the first week after the
7 first day of work was I asked him if he would have me
8 back the following Monday. And he said, well, yeah, so
9 far, so good.

10 Q Is that how it goes? Like you just have to
11 check, I mean, am I still going to have a job next week?

12 A Well, it was more or less a good old boy
13 communication saying, Hey, Mr. Cobb, are you going to
14 have me back next week? Yeah, John, you're doing a good
15 job, I'll see you on Monday.

16 Q Okay.

17 A Even though the communication -- that's not
18 necessarily communication paradigm, but that's the way
19 that conversation came about. And then that Friday after
20 having a conversation with him midweek -- because they
21 had previously been staffed. I believe in the Snelling
22 contract that if a previous employee doesn't fulfill the
23 full 550 hours before they can be brought on full-time
24 that there's a discount or that the fee is waived to
25 bring on a subsequent employee.

1 Their previous employee had been there for
2 an amount of time, I believe, to exceed the 550 hours.
3 From my understanding, their intention was to bring him
4 on. I do not know why he quit, but they say that it was
5 unbeknownst to Dan Cobb why the former temporary employee
6 did not come back.

7 Q Okay. So typically protocol is that you have
8 to work somewhere for 550 hours before you can be
9 full-time?

10 A I believe that's the figure. That figure may
11 be fluid. It may change depending upon contract or
12 whatnot, but I believe that 550 is the norm.

13 Q But there is always a chance that week two or
14 week three somebody at Revere could come and say we don't
15 need your services anymore?

16 A Right.

17 Q So there is no guarantee about the length of
18 the assignment?

19 A No.

20 Q Did you work for anyone else besides Ben Arnold
21 or Revere while you were employed for Snelling Staff
22 Services?

23 A Prior to the accident, no.

24 Q Thanks for clarifying that. After the
25 accident, did you ever go back to work for Revere?

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1 A No, ma'am.

2 Q With the restrictions from the doctors, could
3 you have gone back to Revere?

4 A Revere had expressed concern about bringing me
5 back, even though I would be physically unable to
6 perform, that I could still drive the trucks. But
7 because of the medication aspect of it, that's not
8 feasible.

9 Q So at some point you were brought back on to do
10 light duty through Snelling Staff Services?

11 A Yes, ma'am.

12 Q For a different company?

13 A In their office, in Snelling office.

14 Q When did you do light duty with them?

15 A I only have the pay stubs through the injury.

16 Q Let me see if I have them. Looks like I have
17 starting period March 30th, I'm looking at APA Page 70.
18 Would that be the first time that you worked in their
19 office?

20 A Yes, ma'am, I believe that's accurate.

21 Q Can you tell what day you started during that?

22 A No, ma'am. I believe that I had the
23 doctor visit on Monday and started work on Thursday.

24 Q So sometime the end of March, beginning of
25 April you started light duty?

1 A Yes, ma'am. Then I was with Snelling for
2 approximately three weeks before I was assigned to
3 Barnwell Whaley.

4 Q When you were working in Snelling's offices,
5 what were you doing?

6 A Shredding paper, filing.

7 Q They paid you \$9.10 an hour?

8 A Yes, ma'am.

9 Q How many hours were you getting a week?

10 A I do not know those figures.

11 Q Did you work every hour that you were offered?

12 A Yes. There was physical therapy a couple of
13 times a week, doctor visits, mitigating circumstances.

14 Q Outside of doctor visits and physical therapy,
15 you were working every hour that you were offered?

16 A Yes, ma'am.

17 Q So approximately three weeks later you were
18 assigned to work at Barnwell Whaley?

19 A Yes, ma'am.

20 Q The law firm?

21 A Yes, ma'am.

22 Q What were you doing at Barnwell Whaley?

23 A Helping digitize files in their real estate
24 division.

25 Q Were you sitting at a desk most the time?

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1 A Yes, ma'am.

2 Q How many hours a week were you getting a week
3 there?

4 A If I had to say, I would say approximately 32,
5 30 hours a week.

6 Q The last pay stub dated June 1, 2012, it looks
7 like the period May 25, 2012. Would that be the last
8 time you worked, or are there pay stubs after this?

9 A No, ma'am, that is the last time I worked.

10 Q Was the assignment over at Barnwell Whaley?

11 A Yes, ma'am. They had staffed me there because
12 I didn't have office experience, and they were not
13 charging Barnwell Whaley for my services. They simply
14 staffed me there to get experience. And then I'm not
15 sure what happened there afterwards.

16 Q Okay. Was the job over? Was the task
17 complete?

18 A The job was a mountain of work.

19 Q Okay. So there was probably more --

20 A But I helped out. There was more work. But in
21 conversations with Jim asking if Barnwell Whaley wanted
22 to bring me on or not, he said that it was up in the air.
23 And then it got to a point of where I was like, well,
24 Jim, are they going to hire me or not. And then the
25 following Friday he contacted me and said there was no

1 need to report back to Barnwell Whaley on Monday.

2 Q Did he give you any kind of reasoning that he
3 had gotten?

4 A No, he said they had positive reviews for me,
5 but no position.

6 Q Okay. And during the time period that you were
7 working light duty, did you receive a second check from
8 the insurance company?

9 A Yes, ma'am.

10 Q Did you receive those all the way up until May
11 25th, that second check?

12 A Yes, ma'am.

13 Q Did you start receiving your temporary total
14 check after May 25th?

15 A I have not received any checks inclusive of
16 this last week up to present.

17 Q You have not gotten a single check since
18 May 25, 2012?

19 A Correct.

20 Q Okay. You haven't gotten a check in the amount
21 of 418.19? You're not getting those checks? You're not
22 getting your regular check in that amount, 418.19?

23 A This average weekly wage is actually what is
24 being contested. The average weekly wage, the insurance
25 company is using 492 and some change, I believe.

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1 Q Sure. Have you been getting 328.50?

2 A I have not received any payments since --

3 Q May 25th?

4 A -- that date.

5 Q Have you worked at all in any capacity since
6 May 25?

7 A No, ma'am.

8 Q So explain to me what your reasoning is for why
9 you are entitled to a higher average weekly wage than the
10 insurance company is paying you?

11 A Because the insurance company -- due to my own
12 research, I believe that the insurance company
13 incorrectly filed a Form 20 stating that -- I have not
14 actually seen the Form 20 that was filed, but under the
15 research I did I concluded that you had to work for a
16 place up to a year in order to have the previous two
17 quarters figured as your average weekly wage. And if
18 that did not happen, then you had to have an employee of
19 similar aptitude and employment that had worked average
20 hours, to use a similar employee for the average weekly
21 wage figure. And if that's not available, then it should
22 revert to the actual time that I had worked there. And
23 being that the only full week that I had worked there,
24 which I was told would be a typical week by Dan Cobb, I
25 believe the amount was 627 and some change.

1 Q You are basing it on that one week that you
2 worked at Revere?

3 A Yes, ma'am, and upon Dan Cobb's comments that
4 it would be a typical week.

5 Q Have you ever injured your left foot or left
6 leg at all in any other capacity?

7 A Other than abrasions in the motorcycle
8 accident, that's a negative.

9 Q Never had any kind of surgery on your left leg
10 or your left foot?

11 A Removal of ingrown toenails.

12 Q On your left foot?

13 A Yes, ma'am.

14 Q How many do you think you had removed in the
15 past?

16 A Between both of my big toes, I had three
17 surgeries. But the last one that I had, I was probably
18 13 or 14. I have not had any issues in 15 years or more
19 with ingrown toenails.

20 Q Have you ever had any surgeries before other
21 than the ingrown toenails?

22 A Double hernia operation at birth. Other than
23 that, nothing.

24 Q Do you have a family doctor that you have in
25 town?

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1 A Not here.

2 Q The last time you had a family doctor, would
3 that be in Texas?

4 A Yes, ma'am.

5 Q Who was that, for the record?

6 A Dr. Shaw. I believe his first name was Robert.

7 Q Never treated with a chiropractor for left foot
8 or left leg?

9 A No, ma'am, it was all back.

10 Q Let's talk about the accident. Tell me what
11 happened in your own words.

12 A I was working on an aisle in a team situation
13 with a forklift. Me and the forklift are facing each
14 other. The forklift operator motioned for me to move
15 some boxes. I reached down, and as I picked up the boxes
16 I was struck from behind by the other forklift.

17 Q Where exactly were you struck?

18 A Ran directly over my left foot.

19 Q Who was driving the forklift that ran over your
20 left foot?

21 A Mike. I do not recall his last name.

22 Q Did Mike work directly for Revere?

23 A Yes, ma'am.

24 Q He wasn't a temp employee with anybody?

25 A No, ma'am.

1 Q Did you injure anything other than your left
2 foot in this accident?

3 A No, ma'am.

4 Q You reported it and started receiving medical
5 treatment?

6 A Immediately. Ambulance ride.

7 Q You went by ambulance to Roper?

8 A Yes, ma'am.

9 Q I'm just going to go briefly through your
10 medical treatment to make sure we have everything. You
11 went to Roper. Then it looks like -- and correct me if
12 I'm wrong -- you started treating with Dr. Ohlson?

13 A Yes, ma'am.

14 Q Soon thereafter?

15 A Yes, ma'am.

16 Q So you went straight from the ER to a
17 specialist?

18 A With seven days in between. They put me in a
19 half cast at Roper and told me that they would have to
20 have a reduction in swelling before a specialist could
21 even really look at my foot.

22 Q Dr. Ohlson, from what I can tell, has basically
23 done casting and wound care. Have you had wound care?

24 A He removed an issue from the top of my left
25 foot. And other than that, it's all been

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1 self-administered wound care.

2 Q You haven't been to any kind of specialty
3 clinic for wound care?

4 A No, ma'am.

5 Q How many casts do you think you have had on?
6 Have you had anything besides that first one?

7 A I had that half splint. And then I was given a
8 walking boot with my first visit to Dr. Ohlson.

9 Q How long were you in the walking boot?

10 A I want to say two and a half months to three
11 months.

12 Q You have been out of that walking boot for
13 quite some time?

14 A Yes, ma'am.

15 Q After you were out of the walking boot, did you
16 go straight to regular shoes?

17 A No, ma'am, I still cannot wear regular shoes.

18 Q What kind of shoes do you have to wear?

19 A Crocs currently. They're wide enough for my
20 foot. All of my shoes are no longer wide enough for my
21 left foot.

22 Q Is that because of swelling?

23 A And possible deformation of my foot just
24 because it was crushed so badly.

25 Q When is the last time that you used crutches to

1 get around?

2 A I would have to refer to my doctor's notes. He
3 instructed me to quit using crutches, and I do not recall
4 that date.

5 Q Well, I think I saw sometime in February when
6 he was telling you to stop using crutches. Does that
7 ring a bell?

8 A That sounds approximately right. It may have
9 been the subsequent visit.

10 Q But in terms of if we were to figure out the
11 date in terms of when Dr. Ohlson told you to stop, you
12 stopped?

13 A Yes, ma'am.

14 Q You followed doctor's orders?

15 A Yes, ma'am.

16 Q You have not had any kind of surgery on your
17 left leg?

18 A No, ma'am.

19 Q The last note I have from Dr. Ohlson -- you've
20 probably been back since then, but the last one I have is
21 May 14th. Have you been back since then?

22 A Yes, ma'am. July 2nd. We have not received,
23 as of this date, the transcript of the visit.

24 Q What happened at that visit?

25 A He told me that probably the next visit would

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1 be close to maximum medical improvement, that the
2 structure of my foot is essentially healed, and now we
3 just need to look at long-term pain management and that
4 the nerve damage and the damage to my foot has healed,
5 per se.

6 Q What medications is Dr. Ohlson currently
7 maintaining you on?

8 A Celebrex, Lyrica and Tylenol.

9 Q Over-the-counter Tylenol?

10 A Yes, ma'am.

11 Q Where do you fill your prescriptions?

12 A Walgreen's on Folly Road.

13 Q Do you take the Lyrica every day?

14 A Yes, ma'am, twice a day.

15 Q And how about the Celebrex?

16 A Once or twice a day, depending on the pain of
17 that day. They are 200 milligram capsules.

18 Q All right. How long have you been on that
19 medication regimen?

20 A The Lyrica was prescribed at the most recent
21 visit, I believe, on July 2nd. And the Celebrex, if I
22 had to guess, I would say right at four months.

23 Q I know you smoke because you were taking a
24 smoke break before the deposition. Correct?

25 A Yes, ma'am.

1 Q How much do you typically smoke a day?

2 A Half a pack.

3 Q How long have you smoked?

4 A The last ten years.

5 Q Has it typically been half a pack, or have you
6 cut down?

7 A Oh, it's typically been half a pack.

8 Q Has Dr. Ohlson counseled you on smoking and the
9 healing process?

10 A Yes, ma'am.

11 Q Are you trying to quit?

12 A Yes, ma'am.

13 Q And you did physical therapy?

14 A Yes, ma'am.

15 Q At RCC?

16 A Yes, ma'am.

17 Q Are you still in physical therapy?

18 A I am not.

19 Q What was the last time you attended therapy?

20 A I do not have the date in front of me.

21 Q I saw, I think, that your attorney sent you to
22 Dr. Gudas?

23 A Yes, ma'am.

24 Q A podiatrist?

25 A Yes, ma'am.

JOHN McDANIEL

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1 Q Had you ever seen Dr. Gudas before?

2 A I have not.

3 Q Have you ever heard of him before?

4 A I have not.

5 Q Tell me what Dr. Gudas recommended for you?

6 A He recommended possible orthotics. He
7 recommended surgery on the distal head of my
8 fifth phalanx and recommended speaking further to
9 Dr. Ohlson. He said that he was restricted because he
10 was simply giving an opinion. He was more a set of eyes
11 than he was my treating physician and that he was
12 essentially just talking to me about my injury, like this
13 is what you could do, this is what you could do, this is
14 what you should talk to Dr. Ohlson about.

15 Q Did you ultimately mention all those topics to
16 Dr. Ohlson?

17 A Yes, ma'am.

18 Q And were you pleased with the response that you
19 got, the explanation of what to do and what not to do?

20 A Yes, ma'am.

21 Q Thus far have you been pleased with Dr. Ohlson?

22 A To an extent after Dr. Gudas' visit.

23 Q Something changed after that?

24 A His bedside manner.

25 Q Ever since you had the second opinion, you feel

1 like Dr. Ohlson has been kinder and nicer to you?

2 A Yes, ma'am.

3 Q Since that appointment with Dr. Gudas, you're
4 more pleased with Dr. Ohlson?

5 A Yes, ma'am.

6 Q All right. So you're happy treating with him
7 at this time?

8 A Yes, ma'am.

9 Q It looks like from his notes he said that
10 orthotics would not be a good solution for you?

11 A That changed as of the most recent visit. As
12 it was explained to me, he had previously said orthotics
13 would be nonbeneficial due to the fact that he would
14 rather my arch flatten than rotate my foot into an
15 awkward position. He said that of the two evils, we
16 would rather let your bones heal before we worried about
17 orthotics at all.

18 Q So at this time he is not recommending
19 orthotics?

20 A He has prescribed me orthotics, and I'm
21 currently waiting on insurance to approve Charleston
22 Brace Company.

23 Q Charleston Brace Company or Floyd Brace
24 Company?

25 A I don't have that information in front of me.

JOHN McDANIEL

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1 I believe Charleston Brace Company. It's in West Ashley
2 approximate (sic) to the Roper location.

3 Q And that's been approved, or you are waiting on
4 approval?

5 A I'm waiting on approval.

6 Q That's in his most recent note?

7 A Yes, ma'am.

8 Q Is there anything else that you are currently
9 waiting on approval from Dr. Ohlson?

10 A Not to my knowledge. I'd have to further
11 review the records, but nothing comes to mind right now.

12 Q Tell me what kinds of current symptoms you are
13 having that you relate back to this accident.

14 A Inability to walk long distances, stand for
15 extended periods of time, to bear weight at all on the
16 outside of my left foot. The pain is diminished
17 considerably, but on a scale of one to ten, it's still in
18 the four to five range regularly, along with after
19 extended stimulus I get a burning sensation in my foot,
20 which is what he said he would treat with the
21 prescription of Lyrica. It's mitigated it some, but it's
22 still a not normal feeling in my foot.

23 Q How long walking before you need to sit down?

24 A If I push it, an hour. If I were to say that
25 as soon as my foot started hurting, I should sit down, 20

1 minutes.

2 Q How about standing, just standing in one spot?

3 A Less time. I have essentially gone to standing
4 on my right leg.

5 Q Does it bother you sitting?

6 A Right now I'm in pain.

7 Q What are your current work restrictions?

8 A Sedentary work only.

9 Q That's what you were doing at Barnwell Whaley?

10 A Yes, ma'am.

11 Q Have you stayed in contact with Snelling?

12 A Yes, ma'am.

13 Q At this time they don't have any positions for
14 you?

15 A Correct.

16 Q Are you able to do anything outside of work in
17 your current state? Do you do anything around the house?
18 Do you have any hobbies that you still are able to do?

19 A I'm fixing my front yard very slowly.

20 Q What kind of things are you doing to the front
21 yard?

22 A Like little things. We just moved in. I
23 essentially get my buddy to come over, and I direct him
24 and do what I can and sit down most the time.

25 Q What kinds of things have you found that you're

JOHN McDANIEL

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1 able to do?

2 A Most of the stuff I do I can do from my knees.
3 I put up a little brick wall. But I did it on top of a
4 papasan cushion that I laid on the ground and did it from
5 my knees. There's not really the option of bending or
6 stooping or carrying anything.

7 Q How did you get to the bricks to where you were
8 putting them on the wall?

9 A Either my girlfriend or my friend, Darren.

10 Q What other kind of things? Any other home
11 repairs?

12 A No, John and Michael Dale have been very
13 helpful in moving stuff. And she has an extended family
14 close by that anytime we need anything done, we just call
15 them.

16 Q Have you ever been arrested or convicted of any
17 criminal activity?

18 A I have been arrested twice.

19 Q Any charges out of that?

20 A One of them was for a no muffler ticket that I
21 failed to take care of. I believe the other one was for
22 a speeding ticket I failed to take care of.

23 Q Do you have any kind of pending charges?

24 A No, ma'am. That's been years.

25 Q And no kind of psychological treatment in the

1 past?

2 A No, ma'am.

3 Q No treatment for drug or alcohol abuse?

4 A No, ma'am.

5 Q Ever broken any bones before?

6 A When I was 10 or 12, I had a small fracture on
7 one of my arms. It was a lower brace, but I can't even
8 remember which arm, it was so long ago.

9 Q Have you ever had to go to court for any reason
10 other than problems with the speeding ticket and the
11 muffler ticket?

12 A No, ma'am.

13 MS. NUSSBAUM: I think that's all the questions
14 I have right now.

15 MR. WHITE: I don't have any.

16 (The deposition was concluded at 3:20 p.m.)

17

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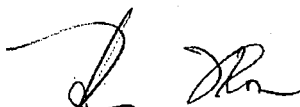
1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)

3
4
5 I, Helen L. Rose, Certified Shorthand Reporter,
6 Registered Professional Reporter, and Notary Public for
7 the State of South Carolina at Large, do hereby certify
8 that the witness in the foregoing deposition was by me
9 duly sworn to testify to the truth, the whole truth and
10 nothing but the truth in the within-entitled cause; that
11 said deposition was taken at the time and location
12 therein stated; that the testimony of the witness and all
13 objections made at the time of the examination were
14 recorded stenographically by me and were thereafter
15 transcribed by computer-aided transcription; that the
16 foregoing is a full, complete and true record of the
17 testimony of the witness and of all objections made at
18 the time of the examination.

19 I further certify that I am neither related to nor
20 counsel for any party to the cause pending nor do I have
21 any interest in the events thereof.

22 Further, that at the time of said deposition the
23 witness elected to waive signature.

24 Witness my hand, I have hereunto affixed my official
25 seal this 21st day of July, 2012, at Charleston,
Charleston County, South Carolina.



Helen L. Rose
CSR #084-003436, RPR #051505
My Commission expires
December 8, 2016.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1116275

John McDaniel,)
)
Claimant,)
)
v.)
)
Career Employment)
Professional,)
)
Employer,)
)
and)
)
United Wisconsin,)
)
Carrier/Defendants.)
)

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FULL COMMISSION HEARING

Tuesday, March 21, 2017
9:49 a.m. - 10:13 a.m.

The Full Commission Hearing was heard before Commissioners T. Scott Beck, Avery B. Wilkerson, Jr., and R. Michael Campbell, II, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 19th day of February, 2013, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



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2017-ROA-490

APPEARANCES

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Attorney for the Defendants

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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2017-ROA-491

1 **COURT REPORTER:** Today is March 21st, 2017. This is
2 South Carolina Workers' Compensation Case
3 Number 1116275. This is the case of John
4 McDaniel, claimant, versus Career Employment
5 Professional, employer, and United Wisconsin,
6 carrier.

7 The Appellant is pro se. The Respondent is
8 represented by Ms. Helen Hiser.

9 Each side is allowed ten minutes for oral
10 argument and the Appellant three minutes in
11 reply. You are requested to argue the grounds
12 of exception and stay within the record.

13 **COMMISSIONER BECK:** All right, Mr. McDaniel. Before
14 we went on the record, we had a conversation
15 regarding your right to counsel. It's my
16 understanding you wish to proceed pro se as
17 your own counsel here today; is that right?

18 **MR. McDANIEL:** I do wish to proceed as my own
19 counsel.

20 **COMMISSIONER BECK:** Okay.

21 **MR. McDANIEL:** Proceed pro se, correct.

22 **COMMISSIONER BECK:** And we also discussed a motion
23 for extended oral arguments, and the panel has
24 denied that motion. We've indicated to you
25 that we have your full brief, as well as



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1 Ms. Hiser's brief, and a reply brief from you
2 as well as in the file. That would be part of
3 our deliberations. And as such, the time
4 allotted will be ten minutes for you, ten
5 minutes for Ms. Hiser, and an additional three
6 minutes for you. Do you have any questions
7 before we begin, sir?

8 **MR. McDANIEL:** No.

9 **COMMISSIONER BECK:** All right. I'm gonna ask you to
10 step up to the podium, and you will have ten
11 minutes to provide your argument to the panel.

12 **MR. McDANIEL:** I just want to be able to see what
13 kind of time I got left.

14 **COMMISSIONER BECK:** All right. Sure. We're gonna
15 start the time now.

16 **MR. McDANIEL:** Well, I mean, it's been completely
17 fully briefed. So I think the ten minutes can
18 be best spent answering any questions that
19 y'all have over my claims.

20 **COMMISSIONER BECK:** I mean, we've read your brief.

21 **MR. McDANIEL:** Oh, then what questions would you
22 like me to answer over my brief?

23 **COMMISSIONER BECK:** I don't have any questions.

24 **COMMISSIONER WILKERSON:** I don't have any. I've
25 read it.



1 COMMISSIONER BECK: Why don't you make sure that you
2 get all the highlights of everything you want
3 us to know. I know you're ---

4 MR. MCDANIEL: I -- ten minutes is insufficient time
5 to cover 27 issues on appeal that are all based
6 in sound legal reasoning. Ten minutes is
7 insufficient. If there are particular issues
8 that y'all have seen that you would like my
9 oral clarification on, please ask me any
10 questions that you have. This is -- I drove a
11 thousand miles to spend this ten minutes
12 talking to y'all. If you have some questions,
13 please let me know what questions you have
14 about my case, and I will do the best I can to
15 testify to them.

16 COMMISSIONER BECK: Do you have any questions?

17 COMMISSIONER CAMPBELL: I have no questions.

18 COMMISSIONER WILKERSON: I don't have any questions.
19 I mean, I think that the briefing was quite
20 clear. Now, you know, if you -- you have --
21 you're gonna have your three minutes to
22 respond. So you may want to respond when she
23 gets up and tell anything that she has to say.

24 MR. MCDANIEL: Oh, would it be possible to reserve
25 the remainder of my oral argument in response?



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1 COMMISSIONER BECK: Sure.

2 COMMISSIONER WILKERSON: Yeah.

3 MR. McDANIEL: Then I'm showing that a minute in a
4 half expired. Is that fine?

5 COMMISSIONER BECK: Yeah.

6 MR. McDANIEL: So an additional eight and a half on
7 the response, so I'll been looking for an
8 11-and-a-half-minute response?

9 COMMISSIONER CAMPBELL: That'll be fine.

10 Ms. Hiser?

11 MR. McDANIEL: Thank y'all very much.

12 COMMISSIONER WILKERSON: Absolutely.

13 MS. HISER: Your Honors, I object to that procedure
14 because what it essentially does is allows him
15 to respond to my argument, whereas he, as the
16 appellant, has the burden of moving forward.
17 It -- my time should be spent responding to the
18 arguments he makes. He made no arguments.

19 COMMISSIONER BECK: We understand your position,
20 Ms. Hiser.

21 MS. HISER: Pardon?

22 COMMISSIONER BECK: We understand your position.

23 MS. HISER: Okay. The employer -- first of all, I'd
24 like to state our position that the amended
25 Form 30 that he filed is not properly before



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1 y'all. It was not timely to appeal the
2 January 4th Single Commissioner order. And it
3 was not effectively filed to appeal the
4 September 30th, Single Commissioner decision
5 because it was not accompanied by the
6 statutorily required filing fee.

7 The Commission provides for amended Form 50s,
8 amended Form 51s. But it has no provision for
9 amended Form 30s. Mr. McDaniel's created an
10 amended Form 30 and insists that this
11 commission has to accept it. There's no
12 regulation that provides for it, and there is
13 no such thing as an amended Form 30. So the
14 issues that are on appeal here are those that
15 were raised in the first Form 30 filed on
16 January 14th, nineteen -- or 2013. And those
17 go to the average weekly wage, the compensation
18 rate, and the credit.

19 The average weekly wage was decided not once
20 but twice. That second decision,
21 September 30th, is now the law of the case
22 because it was never effectively appealed, so
23 I don't believe there can be really any dispute
24 at this point concerning the average weekly
25 wage. That's -- it's been decided. The



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1 Commissioner found there were exceptional
2 reasons to look at the pay records of the three
3 similar employees, all of whom were employed by
4 Snelling, none of whom were employed full-time
5 by Alside/Revere. So to look at either
6 Mr. McDaniel's earnings, the one full week that
7 he worked at Alside/Revere would be unfair and
8 would improperly inflate his average weekly
9 wages.

10 To look at Mr. Lampkin's records while he was
11 a Alside/Revere employee, first of all,
12 there -- the Commission looks at the wages
13 earned prior to the injury, not after. There's
14 case law that establishes that wages and
15 increases in pay awarded after an injury are
16 not relevant to the calculation of the average
17 weekly wage. Yes, it projects into the future
18 what a claimant might earn, but it's based on
19 the claimant's past earnings.

20 Second of all, Mr. Lampkin, at the time he was
21 earning those wages that were admitted later
22 into the record, he was an Alside/Revere
23 employee. That makes him not similar to
24 Mr. McDaniel, who was employed at all times
25 prior to his injury by Snelling. And he's even



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1 admitted that on the record. So, first of all,
2 I don't think average weekly wage is appealable
3 at this point. But even if it is, we urge you
4 to affirm the Single Commissioner who found not
5 once but twice that his average weekly wage ---

6 **COMMISSIONER BECK:** Ms. Hiser, do you have a date on
7 the amended Form 30?

8 **MS. HISER:** It was submitted my e-mail, I think, on
9 October 12th. So it would have been timely to
10 appeal the September 30, decision, accompanied
11 by ---

12 **COMMISSIONER CAMPBELL:** The 12th of what year? What
13 year, ma'am, '16?

14 **MS. HISER:** Two thousand -- it was the same year
15 that was hearing was in. Was it '14?

16 **COMMISSIONER CAMPBELL:** '13.

17 **MS. HISER:** Okay. I know it was within the 14-day
18 window to appeal the September 30th decision,
19 but it was never accompanied by a filing fee.
20 That's statutorily required. The Commission
21 cannot expand its appellate jurisdiction in any
22 way.

23 And the statute 42-9-50 says the application for
24 review must be accompanied by the filing fee
25 that's set by the circuit court.



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1 COMMISSIONER CAMPBELL: The only reason I'm asking
2 is I'm not seeing that, you know, in our
3 online -- I'm not seeing it, an amended 30 ---

4 MS. HISER: That's because it was never accepted by
5 this commission.

6 COMMISSIONER CAMPBELL: Oh, okay. It's not before
7 us?

8 MS. HISER: He filed it, but it was never accepted.
9 Right. It's not before you.

10 COMMISSIONER WILKERSON: It wouldn't be before us.

11 MS. HISER: But he's raised it in his brief, and so
12 that's why I'm addressing it now. It's not
13 before you now. It went before you then. It
14 never should be before you.

15 COMMISSIONER CAMPBELL: I understand.

16 MR. MCDANIEL: I received a motion ---

17 MS. HISER: Excuse me. You'll have your time in
18 response.

19 The second issue that is before you is the
20 adequacy of his disability award. His
21 authorized treating physician gave him a 17
22 percent impairment rating to the lower left
23 extremity. The only body part he ever alleged
24 was his left foot. So that's the only body
25 part that's even at issue here. The Hearing



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1 Commissioner took testimony, heard the
2 testimony, reviewed the records, and doubled
3 that award to the lower left extremity, which
4 gave him 140 weeks versus -- excuse me -- 195
5 weeks versus 140 to the foot. So she gave him
6 a generous award. It's the proper award. It's
7 supported by substantial evidence, and we --
8 the respondents urge this Commission to affirm
9 that on appeal.

10 The other issue that was raised in the only
11 Form 30 that's effective here is credit for
12 overpayment. The claimant reached medical --
13 maximum medical improvement on August 12th,
14 2013. And the case law is uniform that once a
15 claimant reaches maximum medical improvement,
16 his or her entitlement to temporary total
17 disability benefits ends. And credit is given
18 statutorily when payments are made when they're
19 not due and payable. So if total -- temporary
20 total disability is not due and payable after
21 the date of maximum medical improvement, then
22 the credit can be applied. Yes, it's
23 discretionary, but there's no reason not to
24 deny it. The only argument that was made below
25 as to why credit should not be awarded is that



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1 Snelling didn't provide him a job. That's not
2 in consideration for awarding or withholding
3 credit.

4 Once a claimant has reached medical -- maximum
5 medical improvement, that's a consideration
6 that comes into play when an employer wants to
7 stop paying TTD before a claimant reaches MMI
8 and the claimant is back at work or, you know.
9 All of the circumstances that are set up in the
10 statute and the regulations, that -- those
11 concerns are not -- don't even come into play
12 once the claimant has reached MMI.

13 And he conceded. His counsel conceded at the
14 first hearing that he'd reached MMI. That's
15 not an issue. I know he's raised a number of
16 issues with the July 2013 remand hearing. That
17 remand was specific and solely for
18 consideration of Mr. Lampkin's pay records
19 while he was an Alside/Revere employee.

20 None of the other issues -- well, the other
21 issue that was raised in the Form 30 was never
22 raised in the Form 50 or his Form 58, which is
23 sanctions for a failure to timely paid
24 benefits. So that arguably could be before
25 y'all, but it was never raised on the Form 50.



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1 So I would assert it's not before you. Even if
2 it is, it's Claimant's burden to prove there
3 was -- there were late payments. He's never
4 proved. It was never argued at the first
5 hearing. So I would urge you to deny that, his
6 claim for sanctions. And I believe this
7 Commission's already denied his motions for
8 sanctions.

9 The other issues that he's raised in his brief
10 are simply not before this Commission at this
11 time. If you have any questions, I'll be glad
12 to address them. But those issues are simply
13 not before the Commission.

14 **COMMISSIONER CAMPBELL:** Any questions? I don't have
15 any.

16 (No audible response.)

17 **MS. HISER:** All right. Thank you.

18 **COMMISSIONER BECK:** Thank you, Ms. Hiser.

19 Mr. McDaniel?

20 **MR. MCDANIEL:** May I have just two seconds to look
21 over the notes that I've made?

22 **COMMISSIONER BECK:** Fine.

23 **MR. MCDANIEL:** Thank you.

24 **COMMISSIONER BECK:** All right. Mr. McDaniel, you're
25 up.



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2017-ROA-502

1 MR. MCDANIEL: Yes, sir. So let's talk about this
2 amended Form 30 and whether or not the
3 Respondents understand what a remand hearing
4 is. The statute is clear. When I apply to
5 have the case remanded to the original Hearing
6 Commissioner, that the action, the appeal, is
7 stayed. The case is remanded back to the
8 original commissioner to have the additional
9 hearing. At that point, it goes back to an
10 appeal. The reason that it does not need a
11 statutory filing fee is because you do not have
12 to refile a filing fee when you amend a form.
13 She asserts that amended Form 30s are not
14 allowed. That is incorrect. They are not
15 prohibited by statute. The law says if you
16 need to amend a form, write amended on the form
17 and file it. One of the reasons you would
18 amend a form would be if your defense changes
19 or your claim changes. So January 4th order
20 gets appealed. It gets remanded back. Then
21 there's a -- the second order for Melody James.
22 After that second order, to go forward with a
23 stale pleading, the original Form 30, that
24 doesn't make any sense. Why would I go forward
25 with something whenever there's already been a



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hearing to correct some of the defects that have been appealed with that Form 30?

So, at that point, I filed a Form 30, amended, because the 67-7-11, I believe, is the actual regulation that states that if you change the -- it's 67-7-01 -- is that if you change the -- if your defense changes or the claim you're making changes, then you amend the file -- amend the form. So I amended the form and sent it in soon as possible.

I received the original order and the hearing notice for the first appellate hearing on October 4th. The original appellate hearing was October 14th, and I served the amended Form 30 on the 10th or the 12th. That is within the 14-day period. It doesn't need a filing fee because the filing fee has already been paid. And you don't have to refile. Nowhere in Regulations, Chapter 67, anywhere does it say that when you amend a file, you have to repay the filing fee.

The filing fee was already paid. I was never given the review hearing from the original filing fee that was paid. And so why would I be -- it's an undue burden for me to have to



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1 pay the extra \$150 again, especially when I'm
2 here because I'm injured and I can't work. So
3 demanding extra money for me whenever I've
4 already spent the money to be heard on the
5 appeal is not how the statutes were
6 constructed.

7 So the amended Form 30 also was -- I received
8 an order from y'all. They inquired about
9 whether or not the amended Form 30 would be
10 applicable to this hearing, and then I received
11 a form order that denied their motion to strike
12 the amended Form 30. And in my reply brief, I
13 said that there's no reason to continue arguing
14 about the Form 30 because y'all have already
15 said that it's accepted. And I'm under that
16 impression as of this moment that y'all -- that
17 this hearing is based on an amended Form 30 and
18 not on a Form 30 filed in 2012 or at the
19 beginning of 2013. Am I correct, or am I
20 wrong?

21 **COMMISSIONER CAMPBELL:** Please proceed.

22 **MR. McDANIEL:** Okay. The average weekly wage. She
23 said that the average weekly wage has been
24 decided. That's now the law of the case.
25 Well, it's not the law of the case because her



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2017-ROA-505

1 argument this it is the law of the case is
2 based on the fact that my appeal was not
3 timely. It is timely. It was served within
4 seven or nine days of me receiving the order,
5 and that's definitely within the 14-day
6 statutory period.

7 Saying the Lampkin records are not applicable.
8 This is a absolute misreading of how average
9 weekly wage is determined. Average weekly wage
10 is not determined by the employer you are
11 working for at the time of injury. The statute
12 is clear. Average weekly wage is to be
13 determined in the employment working at the
14 time of injury. Title 42 defines "employment"
15 as a place where four or more individuals -- a
16 building or a place where four or more
17 individuals participate in the same course of
18 business.

19 When I -- Snelling was my employer. I had two
20 employments under Snelling. I worked for Ben
21 Arnold, which was a wine delivery company where
22 I needed a Class B license, and I had to lift
23 40 pounds up to 1600 times a day. I will go
24 from that to needing a Class A license,
25 delivering building supplies, a different scope



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1 of work, a different employment.
2 Under the definition of "employment," four or
3 more individuals performing the same kind of
4 work. At Alside/Revere, they do construction.
5 At Ben Arnold, they do wine. These are not the
6 same employment. To use the average weekly
7 wage that I had earned while I was in the
8 employment of Ben Arnold, but the employer was
9 still Snelling staffing, the agency that I
10 worked for, then my employer was the same. But
11 average weekly wage is not determined upon your
12 employer. It's determined upon your
13 employment. Because you couldn't say that if
14 someone was just promoted from line worker to
15 CEO, that they were the same employer. It's a
16 different employment. It's a different scope
17 of work. It's a different license required.
18 It's different lifting requirements.
19 40 pounds is the heaviest that the wine got.
20 Up to 125 pounds was the heaviest the
21 construction stuff got. I'm a big dude. I
22 move stuff for a living. So that's definitely
23 a different scope of work. And with a Class B
24 license, it is significantly lower
25 qualification than a Class A license.



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1 I just got to say one thing that the -- in the
2 Respondent's brief, they stated there was
3 absolutely no indication that I had studied or
4 prepared for a career driving trucks. If you
5 want to be a lawyer in the state of
6 South Carolina, you go to law school and
7 then -- well, I mean, you have to get your
8 bachelors, and then you go to law school. And
9 then you apply to the Bar, pass the Bar. Apply
10 to the Bar. You get licensed by the State to
11 practice law. So she has a law degree. She's
12 practicing law. It's obvious she's studied for
13 her career in law.

14 I was driving a truck. People don't just drive
15 trucks. You have to be licensed. In order to
16 gain that license, you have to have experience.
17 You have to take that experience, then you have
18 to go through a written and driving test. At
19 that driving test, if you speed one mile an
20 hour over, you'd fail. If you become a
21 hindrance on traffic, you'd fail. If you do
22 not do a brake leak-down test on your rig,
23 you'd fail. If you parallel-park your rig and
24 any of your tires touch the curb, you failed.
25 If you any of your tires are further than 18



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1 inches away from the curb, you'd fail. These
2 are thing that layman drivers do not know. A
3 Class A commercial driver's license holder
4 knows these things.

5 It's patently offensive for the Respondents to
6 belittle me and say that, well, who is this
7 guy? He's just a truck driver. That's no
8 evidence that he even prepared to be a truck
9 driver. I held a Class A commercial driver's
10 license for ten years. The ability to drive
11 any truck overload at 84,000 pounds, I could
12 drive it. No one else in this room, I'm pretty
13 sure, has ever parallel-parked an 18-wheeler.
14 So I did prepare for this career, and I can no
15 longer do it. In fact, I can no longer do any
16 of the jobs that I have ever held prior to my
17 injury. I have moved to Michigan to attend law
18 school, because I was in college when I got
19 hurt. I was in college following civil
20 engineering. Then I got to a class that was
21 Surveying I. And one of the requirements for
22 Surveying I was to be able to walk long
23 distances under -- over uneven ground. And
24 right now -- y'all can't see it right now, but
25 I'm standing on one leg, supporting myself with



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1 one arm. I can't walk long distances over
2 uneven ground. My permanent work restrictions:
3 15 pounds lifting, two hours a day standing.
4 And that's like two hours, aggregate. An
5 entire day.

6 I was a waiter. I was a construction worker.
7 I was a truck driver. None of these things you
8 can do on one leg. All of these things take
9 physical labor. And the case law is clear that
10 an inability to do common labor for a common
11 laborer is total disability.

12 So you say that my impairment is only to a
13 single-scheduled member. So then it goes under
14 the medical instead of the economic model. The
15 medical model is not allowed to disregard the
16 impact that it has on your vocation. The
17 impact that these permanent restrictions have
18 on my vocation make me unemployable until I
19 graduate law school. You put -- I have an
20 associates degree right now of paralegal
21 studies. As soon as I put down on the
22 application that my permanent physical
23 restrictions are can't carry 15 pounds, there's
24 not a file box that weighs less than 15 pounds.
25 I can't even do office work. And the ownness



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1 of ever being injured, again, falls on me.
2 If I exceed my work restrictions and then I get
3 injured, I'm liable for that. So I can't take
4 that additional risk by exceeding my permanent
5 work restrictions. And these permanent work
6 restrictions make it impossible for me to hold
7 any job that I'd ever held prior to my injury.
8 And so if the impairment is to my extremity,
9 which is inclusive of my hip, although she said
10 leg, which is in-inclusive of hip.
11 And the Respondents argue that Commissioner
12 James doubled the award. The medical
13 evaluation of the impairment to my extremity
14 was 17 percent due to nerve damage and these
15 other things. That is an impairment to
16 everyday-living activities. That takes no
17 consideration into how I work: What form of
18 work I do, the scope of work I do, or the fact
19 that I am a common laborer. Until I reach that
20 license where I can practice law, it doesn't
21 matter. I mean, that's -- there are -- it is
22 not fair to exclude my hip whenever the
23 treating physician says medically that the
24 impairment is to the extremity, which is
25 inclusive of hip.



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1 And I didn't even get time to get to the
2 sanctions or the -- oh, the sanctions of
3 penalty: She said I never presented any
4 evidence at all. The checks, look at the
5 checks. The checks say they were paid on this
6 date for benefits from this date to this date.
7 So when the check is issued two months after
8 the benefit period, and the payments are due
9 within 14 days of the payment period, then the
10 evidence speaks for itself. Penalties are
11 mandatory.

12 **COMMISSIONER CAMPBELL:** Your time has expired, sir.

13 **MR. McDANIEL:** So thank you for allowing me to --
14 the extended rebuttal. I appreciate that.

15 **COMMISSIONER BECK:** Thank you. Thank y'all for
16 being here.

17 **COMMISSIONER CAMPBELL:** That concludes this hearing.
18 (There being no further questions, the deposition
19 concluded at 10:13 a.m.)
20
21
22
23
24
25



CERTIFICATE

This is to certify that the within hearing consisting of twenty three (23) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on June 15, 2017.



Cortney N. Glover
Court Reporter

Notary Public for South Carolina
My Commission Expires: December 1, 2025



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