

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-23-7975
W.C.C. File No.: 0622179

RECEIVED

JUN 04 2013

SC Court of Appeals

Jacqueline Carter, Respondent,

v.

Verizon Wireless and
American Home Assurance Company, Appellants.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
P.A. B. WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2307975

Jacqueline Y Carter

2012 AUG - 8 A 1

Verizon Wireless

American Home
Assurance Co

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order; (formal order to follow)
- Statement of Judgment by the Court:

Defendants Verizon Wireless and American Home Assurance Company's Motion to Reconsider this Court's June 12, 2012 Order is respectfully denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Hamilton

Circuit Court Judge

2138

Judge Code

8/6/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on 8/8/12, and a copy mailed first class or placed in the appropriate attorney's box on 8/8/12, to attorneys of record or to parties (when appearing pro se) as follows:

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Court - Clerk of Court

Court Reporter

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE IN THE COURT OF COMMON PLEAS
PAUL B. WICKENBARGER

COUNTY OF GREENVILLE 2017 JUL 19 A 8 20 THIRTEENTH JUDICIAL CIRCUIT

Jacqueline Y. Carter,)

Claimant/Appellant,)

ORDER

v.)

Civil Action No.: 2011-CP-23-7975

Verizon Wireless,)

WCC File No.: 0622179

Employer,)

and)

American Home Assurance Co.,)

Carrier,)

Respondents.)

Jacqueline Y. Carter ("Carter") appeals the Decision and Order of the South Carolina Workers' Compensation Commission ("the Commission"). Jeremy A. Dantin, Esquire, represented the Carter and Nicolas L. Haigler, Esquire represented the Respondents, Verizon Wireless and American Home Assurance Co. ("Respondents"). After hearing the arguments of counsel, reviewing the record, and considering the applicable law, the decision of the Commission is hereby reversed.

FACTUAL & PROCEDURAL BACKGROUND

Carter injured her left knee on December 27, 2006. The authorized treating physician, Dr. Walter Grady, performed surgery on her left knee on June 29, 2007. Carter reached maximum medical improvement ("MMI") on March 3, 2008, and was assigned an 18% impairment rating from Dr. Grady. In an Order dated December 3, 2009, Carter was awarded 25% permanent partial disability to her left lower extremity, as well as causally-related Dodge medicals that may tend to lessen her period of disability,

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as recommended by the authorized treating physician, including Darvocet or comparable medication.

Carter filed for a change of condition, based upon worsening problems she began experiencing with her knee in the summer of 2010. The authorized treating physician, Dr. Grady, opined that she had suffered a change of condition and increased her impairment rating from 18% to 42% of the left lower extremity. (Claimant's APA #1, at 5). Dr. Grady also specified that Carter will require replacement of her left knee in the future. (Claimant's APA #1, at 5; Dr. Grady Depo., pp. 32, 37, 41). Dr. Grady's opinions are undisputed in the record.

On April 18, 2011, Commissioner Avery B. Wilkerson, Jr. found Carter did not suffer a change of condition for the worse, and that her future medical treatment was restricted to Darvocet or a comparable medication. On November 9, 2011, the Full Commission affirmed the Single Commissioner's Order. Carter raises three primary issues for this Court's consideration:

1. Does the evidence support the Commission's finding that there was no change of condition?
2. Does the evidence support the Commission's finding that there were two intervening causes of Carter's change of condition?
3. Did the Commission improperly limit the prior award of Dodge medical treatment?

STANDARD OF REVIEW

"The Administrative Procedures Act ("APA") establishes the standard for judicial review of workers' compensation decisions." Trotter v. Trane Coil Facility, 393 S.C. 637, 644, 714 S.E.2d 289, 293 (2011) (citing Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010); Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981)).

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“Under the APA, [a reviewing court] can reverse or modify the decision of the Commission where the substantial rights of the Carter have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence considering the record as a whole.” Totter, 393 S.C. at 644-645 (citing Transp. Ins. Co. v. South Carolina Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010)).

LAW & ANALYSIS

I. The Commission’s finding that Carter did not suffer a change of condition is affected by an error of law and is otherwise not substantially supported by the evidence.

Whether Carter experienced a change of condition for the worse was the primary issue for the Commission’s consideration. The Commission found the deposition testimony of the authorized treating physician, Dr. Grady, along with the other medical evidence, as well as Carter’s hearing testimony, support a finding that there was no change of condition. This Court disagrees, and finds there is no substantial evidentiary or legal support for such a determination.

A. Dr. Grady’s Testimony

The Commission determined Dr. Grady’s deposition testimony supported a finding that there was no change of condition to Carter’s knee. In fact, Dr. Grady testified as follows:

- “It’s my professional medical opinion within a reasonable degree of medical certainty that the patient per my examination, history, physical, etc., had a natural progression of her disease process” (Dr. Grady Depo., p. 28).
- Q: And doctor, it is your opinion that – to a reasonable degree of medical certainty that she had sustained a material worsening of her left knee?
A: That’s correct. Id. at 37-38.

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- “[W]hen I saw her again on November 4th, she had the joint space narrowing and collapse of the medial tibial femoral joint compartment or the inner aspect of the knee joint. That constitutes a material worsening. The other thing that constitutes a material worsening is pain. . . . If I have objective findings of diminution or decrease in range of motion, worsening of the patient’s knee joint as far as the narrowing and increased pain, that’s material worsening.” Id. at 43.

• Q: Three months after she saw you [on November 4, 2010], her pain is constantly an eight. . . . And in your mind, knowing that there has been that kind of increase in pain, does that further solidify your opinion that there has been a change or worsening of her condition?

A: Yes, it does. Id. at 45-46.

• Q: One other thing, Doctor, the order in this case was actually based upon your 18 percent rating, and that’s the rating that you assigned back in 2008. Is it your opinion, again, that she is worse now than she was when you made that 18 percent rating that the order was based on?

A: Yes. Id. at 46.

As the authorized treating physician, Dr. Grady was familiar with Carter and her problems both well before and after she originally reached MMI in 2008, and before and after the time of her hearing in October 2009. Dr. Grady repeatedly stated and explained his opinion that Carter suffered a change of condition (or “material worsening” of her condition). Nowhere in his deposition did he ever opine that Carter had not suffered a change of condition. Therefore, Dr. Grady’s testimony supports a finding that Carter suffered a change of condition, and this opinion is not disputed by any other medical opinions in the record.

Respondents argued that Dr. Grady’s opinion on Carter’s change of condition should not be considered because “[Dr. Grady] was unable to answer . . . the medical question of whether the change occurred either before the last hearing or after the last hearing because . . . he did not see [her] from January of 2008 . . . until [November of 2010].” (2/16/11 Hearing Tr., p. 8). This notion also appears in the Single Commissioner’s Decision & Order (“Dr. Grady admitted that there was no way to

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determine whether [Carter's] knee condition was . . . present during the periods before and after the Hearing held October of 2009.”), and was discussed at length during oral argument before the Full Commission. (4/18/11 Order, p. 9; Full Commission Hearing Tr., pp. 11-12, 15-18, 20-21, 23-28). This argument—made by Respondents and adopted by the Commission—reflects a misunderstanding of the law.

The Court of Appeals has already determined that the argument is erroneous in ~~Mungo v. Rental Uniform Service, 383 S.C. 270, 768 S.E.2d 825 (Ct.App.2009)~~. In Mungo, a doctor examined the claimant a week prior to her hearing, but the record of that examination was not considered by the Hearing Commissioner because the record was not able to be submitted in a timely manner. As such, the doctor's record (which showed the conditions asserted in the change of condition actually existed prior to the hearing) were “not considered or factored into [the Hearing Commissioner's] award,” which was based upon the claimant's condition as of May 2, 2003, the date she reached MMI. Id. at 281. In finding that “the appropriate date from which the single commissioner should evaluate a change in [the] claimant's condition is May 2, 2003 [the date she reached MMI], not June 10, 2003, the date of the hearing,” the Court of Appeals held: “Review of an award at a change of condition hearing is . . . concerned with **the date as of which the claimant's condition was determined rather than the date of the actual hearing in which that award was rendered.**” Id. at 280 (citing Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 109, 576 S.E.2d 191, 195-196 (Ct.App.2003)) (emphasis added).

Before the Full Commission, Respondents argued that Mungo is solely about the “exclusion of evidence,” asserting that the Court of Appeals merely clarified that if you exclude evidence at the original hearing, you cannot exclude it on a change of condition.

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(Full Commission Hearing Tr., p. 16). This argument fails to recognize that the exclusion of evidence only matters in this instance because the evidence existed *prior to the date of the hearing*. The evidence was excluded from consideration on the change of condition because of the same error of law Respondents and the Commission have labored under – the notion that review of an award at a change of condition hearing is concerned only with the date of the actual hearing. This is the legal error the Court of Appeals addressed in Mungo, by specifically holding the Commission's conclusion that it was unable to consider evidence which actually existed prior to the original hearing "is erroneous" because that evidence was not considered in forming the basis of the original award. Mungo, 383 S.C. at 280.

In this case, unlike Mungo, there is no evidence establishing the conditions asserted in the change of condition claim actually existed *prior* to the original hearing. Rather, Carters argue that because Dr. Grady could not testify whether the change took place before or after the date of the hearing, the claim is precluded.

However, because the original award was based upon Dr. Grady's ratings and not upon any evidence asserted in the change of condition claim, Mungo instructs that it is immaterial whether Dr. Grady can make this timing assertion, because "[r]eview of an award at a change of condition hearing is . . . concerned with the date as of which the claimant's condition was determined," which, in this case, just as is true in Mungo, is the date of maximum medical improvement – not the date of the hearing. Id. at 280-281; see also Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 576 S.E.2d 191 (Ct.App.2003) (Change of condition award was affirmed, even though there was evidence of a change of condition before the original hearing date, because that evidence

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was not considered by the Commission in making its initial determination. The Court of Appeals explained: "The issue before the Commission [on a change of condition claim] is sharply restricted to the question of extent of improvement or worsening of the injury on which the original award was based."); Clark v. Aiken Co. Government, 366 S.C. 102, 110, 620 S.E.2d 99, 103 (Ct.App.2005) (Defendants appealed Commission's decision to award a change of condition, arguing "that because the change of condition asserted by [the claimant] occurred before the Full Commission issued its order in the initial proceeding, the change could not have occurred subsequent to the first award." The Court of Appeals, relying heavily on the decision in Gattis, disagreed with the defendants' argument, and specifically noted that "[t]he full commission did not address the issue of whether [the claimant's] condition had changed since he reached MMI. . . ." The Court of Appeals further noted: "[I]t is undisputed that the full commission did not address any change in [the claimant's] condition at the time of its decision.").

The 25% permanent partial disability award announced in the Order dated December 3, 2009 (pertaining to the hearing of October 15, 2009), is based upon the date of MMI on March 3, 2008, at which time Dr. Grady assigned 18% impairment. (12/3/09 Order, p. 9, Findings of Fact #11, #12). There was no evidence of any other complicating or worsening condition considered by the Single Commissioner at that time. It is undisputed that the Single Commissioner did not address any change in Carter's condition at the time of her decision. Further, Dr. Grady specifically testified he believes Carter is worse now than she was at the time he assigned the 18% impairment to her left lower extremity which formed the basis of the award in the December 3, 2009 Order. (Dr. Grady Depo., p. 46). Therefore, the Commission erred in failing to consider the change

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of condition based upon the evidence which formed the basis of the original award (in this case, the date Dr. Grady placed Carter at MMI and assigned an impairment rating), not the date of the hearing.

Further, this Court is not persuaded by Respondents' argument that if MMI is the date used to determine whether a change of condition occurred, this claim would be untimely as per § 42-17-90. Respondents contend § 42-17-90 requires an application for ~~change of condition to be made within one year of the hearing. However, § 42-17-90~~ provides a review must not be made after twelve months from **the date of the last payment of compensation**, not twelve months from the date of the hearing. In this case, the original Order was signed on December 3, 2009; and the Form 61 was signed on January 14, 2010. Carter filed her Form 50 alleging this change of condition on November 29, 2010, which clearly is within twelve months of the date of last payment. Regardless, § 42-17-90 does not require a claim for a change of condition be filed within twelve months of the date of maximum medical improvement. This argument is without merit.

B. The Medical Evidence

The Commission found the medical evidence supported a finding that there was no change of condition to Carter's knee. In fact, the medical evidence established the following:

- ***Carter's impairment rating increased***

Dr. Grady found Carter reached MMI on January 3, 2008, the date he last saw her regarding her work-related left knee injury; later, on March 3, 2008, he assigned **18% impairment** to her left lower extremity. (Defendants' APA #2, at 24-27).

Dr. Grady saw Carter again regarding her left knee on November 4, 2010, and concluded there had been "interval progression of arthritis when we had to

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remove some of the meniscus That is expected over time. Eventually she will require total knee arthroplasty." Dr. Grady opined **Carter's impairment increased to 42%**. (Claimant's APA #1, at 5).

- ***Carter now has crepitance in left knee***

1/3/08: No mention of crepitus (Defendants' APA #2, at 24-26).
11/4/10: Positive for crepitus on flexion and extension. (Claimant's APA #1, at 1).

- ***Carter lost range of motion in left knee***

~~1/3/08: Range of Motion of left knee = 0-120° (Defendants' APA #2, at 24-26).~~
11/4/10: Range of Motion of left knee = 0-82°, to 90° with positive assist "but it does hurt her to take it to 90" (Claimant's APA #1, at 3).

- ***Carter now has fluid on left knee***

1/3/08: no mention of fluid on the knee (Defendants' APA #2, at 24-26).
11/4/10: fluid on left knee (Claimant's APA #1, at 2).

- ***Carter now has joint space collapse in left knee***

1/3/08: x-ray showed "excellent joint space interval without joint space collapse to any appreciable degree." (Defendants' APA #2, at 25).
11/4/10: x-ray showed "joint space collapse and approximately 1 mm joint space remaining," which "represents a change from 3 mm in March 2008." (Claimant's APA #1, at 3).

- ***Carter's pain increased***

1/3/08: pain = 5/10 (Defendants' APA #2, at 24).
11/4/10: pain goes up as high as 6 or 7/10 (Claimant's APA #1, at 1).

There is no medical evidence other than that from the authorized treating physician, Dr. Grady. Not only is it apparent from these citations to the medical evidence there was a change in Carter's condition, Dr. Grady personally confirmed and explained that this medical evidence led him to conclude there was a material worsening of Carter's condition.

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The Commission is not entitled to make its own independent medical findings, but must rely on the expert testimony presented in the record. Cf. Rohan v. Chater, 98 F.3d 966, 970-71 (7th Cir. 1996) (reminding that social security disability judges “must not succumb to the temptation to play doctor and make their own independent medical findings. . . . [Claimant] is entitled to a decision based on the record rather than a ‘hunch’”). Carter’s treating physician Dr. Grady opined that she incurred a change in condition to her left knee. ~~His testimony is substantial evidence that Carter has proven her contention.~~

While the Commission can certainly disregard any witness’ testimony, that does not license them to create their own factual finding concerning whether Ms. Carter incurred a change of condition. The evidence, including Dr. Grady’s testimony, does not substantially support the Commission’s finding to the contrary.

C. Carter’s Testimony

The Commission found Carter’s testimony supported a finding that there was no change of condition to her knee. In fact, Carter testified as follows:

- Q: Now, we’re here today because you believe your left knee problem has worsened, correct?
A: Yes. (2/16/11 Hearing Tr., p. 17).
- When asked why she believes her knee is worse than it was at the time of her hearing in 2009, Carter testified: “It’s constantly grinding when I walk or go up-down stairs. It’s swelling. It has burning, sharp pains. There’s a knot there and it feels full and heavy as the – like there’s fluid on it.” Id. at 23.
- In 2009, her pain averaged 5 out of 10, and when she saw Dr. Grady in November 2010, her pain averaged 5 out of 10, but went as high as 6 or 7 out of 10. Her pain as of January 2011 and continuing through the time of her hearing was up to 8 out of 10. Id. at 23-24.
- While she has pain everyday just as she did in 2009, the level of pain she has now is “absolutely” worse. Id. at 56.

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- The crunching sound in her leg (crepitance) is worse now than it was in 2009. Id. at 57.
- She is unable to flex and bend her leg as much as she could in 2009. Id.
- The problem she currently has with fluid on her knee was not present in 2009. Id.

While there are a few aspects of her condition that may not have changed for the worse (for example, she is no longer using a cane), there are multiple areas which have significantly changed for the worse according to Carter. Based upon Dr. Grady's testimony, the medical evidence, and Carter's testimony, the evidence in this case does not substantially support the Commission's finding that the Carter failed to prove a change of condition, rendering the Commission's findings clearly erroneous.

II. The Commission's finding that there were two intervening causes of Carter's change of condition is both an error of law and clearly erroneous in light of the evidence.

The Single Commissioner's Order and the Full Commission Order both contain an internal contradiction on this point. This is because Finding of Fact Four in both the Single Commissioner's Order and the Full Commission Order provide that "a physical change of condition has not occurred." (4/19/11 Order, p. 10; Full Commission Order, p. 3). Then, in Finding of Fact Six of both the Single Commissioner Order and the Full Commission Order, it is announced there were "at least two intervening causes" of the change in Carter's condition. (4/19/11 Order, p. 10; Full Commission Order, p. 4). It is not possible for something to be an intervening cause of a change of condition if the change of condition "has not occurred." Upon further examination, it is apparent there is no evidentiary support for a finding that either "Zumba" or Carter's fractured right ankle are intervening causes in this instance, and to conclude otherwise is an error of law.

A. “Zumba” Classes

The evidence establishes that aside from water aerobics, the only other exercise Carter attempted was “Zumba” class, which Carter testified is a “cardio dance class.” (2/16/11 Hearing Tr., p. 21). According to Carter, she wanted to try “Zumba” to work on her upper body because it has arm movements that mimic boxing. Id. at 21, 22. Carter explained that the upper body movements were the only movements she could perform – ~~she specifically testified that she was not able to perform any of the dance moves or get~~ on the floor during “Zumba.” Id. at 22. Carter further testified that she could not stand for an entire “Zumba” class, and ultimately ceased attending as it was not benefitting her because she could not perform any of the other movements. Id. Carter participated in only three “Zumba” classes in this limited manner, and all of those classes were attended after she saw Dr. Grady on November 4, 2010, the date on which he found she had suffered a change of condition. Id. at 21, 46.

There is no evidence to contradict any of the aforementioned testimony by Carter on the issue of “Zumba.” There is no testimony that “Zumba” hurt Carter or changed her condition in any way. There is no medical opinion stating that “Zumba” was an independent, intervening event. To the contrary, Dr. Grady testified: “I think overall the progression from when I initially did her surgery to the point where I saw her [on November 4, 2010] – where I noted the changes here, I think that was expected” (Dr. Grady Depo., p. 23). Our courts have clearly held the natural consequences flowing from a compensable injury, absent an independent intervening cause, are compensable. Mullinax v. Winn-Dixie Stores, 318 S.C. 431, 436 (Ct.App.1995) (citing Whitfield v. Daniel Constr. Co., 226 S.C. 37, 83 S.E.2d 460 (1954)). Moreover, the evidence

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establishes that Carter had not participated at all in any "Zumba" class prior to November 4, 2010, meaning that "Zumba" had no bearing at all on Dr. Grady's opinions in this matter. Therefore, there is no support for the finding that "Zumba" was an intervening cause of Carter's change of condition.

B. Carter's Right Ankle Fracture

Carter broke her right ankle in February 2009. She had a hearing on her workers' compensation claim on October 15, 2009. ~~No assertion was made by Respondents at the~~ 2009 hearing that Carter's right ankle fracture in any way constituted an intervening cause of her left leg problems. In fact, Carter testified in that hearing her right ankle fracture did not hinder her ability to walk, and that her right ankle fracture was "fully healed." (10/15/09 Hearing Tr., p. 15). In the hearing regarding her change of condition in 2011, Carter explained that after her ankle fracture, she was not putting any weight on her left knee because she was in a wheelchair for six to eight months. (2/16/11 Hearing Tr., p. 37). There is no other evidence in the record stating that her February 2009 ankle fracture in any way affected her left leg, much less rose to the level of an intervening cause of her change of condition. Thus, there is no evidence in the record to support a finding of an intervening cause of Carter's change of condition.

III. The Commission's restriction of additional medical treatment was erroneous.

The Order dated December 3, 2009, provided: "[Carter] is entitled to causally-related Dodge medicals that may tend to lessen her period of disability, as recommended by the authorized treating physician, including Darvocet or comparable medication." (12/3/09 Order, p. 11). At the time of the October 15, 2009, hearing, an issue was raised as to whether the Darvocet Carter was taking at the time was for her compensable left

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lower extremity injury, or for her unrelated right ankle fracture. Carter testified on cross-examination that while Darvocet had been prescribed for her right ankle fracture, she was taking Darvocet for her compensable left lower extremity injury as well. (10/15/09 Hearing Tr., p. 14). This issue is also discussed in the "Evidence of the Case" section of the Order dated December 3, 2009:

[Carter] further testified she is currently taking Darvocet for her left knee, at the direction of Dr. Grady. See Claimant's Deposition, p. 24, ll. 17-21. She also testified she is taking Darvocet for her recent right ankle fracture, which occurred in February 2009, but is unrelated to her work-related injury. See Claimant's Deposition, p. 25, l. 14 - p. 27, l. 12.

(12/3/09 Order, p. 8). It is apparent to this Court the Single Commissioner determined Darvocet was necessary for Carter's compensable left lower extremity injury, not just her unrelated right ankle fracture, which was memorialized in the Order by specifically including "Darvocet or comparable medication" in the award of future medical.

In the Order dated April 18, 2011, the Single Commissioner concluded as follows:

Under § 42-15-60 and Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 100, 576 S.E.2d 593 (Ct.App.1999), and pursuant to the Order of Commissioner Barden filed December 3, 2009, [Carter] is entitled to causally-related future medical treatment that may tend to lessen her period of disability, as recommended by the authorized treating physician, **specifically restricted** to Darvocet or a comparable medication.

(4/18/11 Order, p. 11) (emphasis added). This conclusion was affirmed by the Full Commission. (Full Commission Order, p. 4). As explained above, this is not what Commissioner Barden ordered, in that the words "specifically restricted" replaced "including" relative to the provision of future medical treatment. It is a contradiction to provide on the one hand that medical treatment should be provided "as recommended by

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the authorized treating physician," then restrict that provision to one specific item. The interpretation of the original provision of Dodge medicals adopted by the Commission renders the award of medical treatment "as recommended by the authorized treating physician" meaningless.

In this case, the authorized treating physician has opined Carter will eventually require a total knee arthroplasty. (Dr. Grady Depo., pp. 32, 37, 41; Claimant's APA #1, at 5). Further, while Dr. Grady testified he anticipated such an eventuality even in January 2008, the purpose of ordering that future medical treatment shall be provided "as recommended by the authorized treating physician" is to allow for medical to be adapted to address related future needs as Dr. Grady sees fit. To deny Carter the future medical treatment she very much needs (and which is being recommended by her authorized treating physician) would be draconian in light of the fact the original award of future medical was restricted only to the extent it must be recommended by the authorized treating physician. This Court finds the Commission misinterpreted the intent of the original Order:

Moreover, in view of the fact this Court finds the only conclusion that is substantially supported by the evidence of this case is that Carter has suffered a change of condition, the Court finds Carter is entitled to the treatment recommended by the authorized treating physician relative to that condition, namely a total knee arthroplasty to be performed at a suitable time as determined by Carter and the authorized treating physician, as well as other medications or treatment as recommended by the authorized treating physician.

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ORDER

In sum, this Court finds the Decision and Order of the South Carolina Workers' Compensation Commission in this claim is not supported by substantial evidence and is affected by errors of law.

THEREFORE, IT IS ORDERED that the decision of the Commission be and is hereby reversed.

~~AND IT IS SO ORDERED.~~

D. Garrison Hill

D. Garrison Hill
Circuit Judge

Greenville, South Carolina

July 16, 2012:

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0622179

JACQUELINE Y. CARTER, EMPLOYEE CLAIMANT/APPELLANT,

VS.

VERIZON WIRELESS, EMPLOYER,

AND

AMERICAN HOME ASSURANCE COMPANY, CARRIER,
DEFENDANTS/RESPONDENTS.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on August 16, 2011, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, 11/9/11

APPEARANCES: CLAIMANT/APPELLANT represented by Jeremy A. Dantin, Esquire, of Harrison,
White, Smith & Coggins, P.A., Spartanburg, South Carolina.

DEFENDANTS/RESPONDENTS represented by Grady L. Beard, Esquire, of
Sowell Gray Stepp & Laffitte, LLC, Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by the claimant from the Decision and Order of Commissioner Avery B. Wilkerson, filed on April 18, 2011.

The claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 50 filed by the claimant on November 29, 2010, wherein the claimant alleges she sustained a material worsening in her medical condition pursuant Section 42-17-90 of the Act. The claimant requested additional medical treatment only at this time with regard to her left knee as recommended by Dr. Walter Grady.

The defendants deny the claimant sustained a compensable change of condition for the worse with regard to her left knee under Section 42-17-90. Moreover, the defendants also contend the claimant sustained an intervening accident or trauma involving her left knee subsequent to the previous Hearing, which was the true cause for her new complaints. As such, the defendants deny the claimant is entitled to any further benefit and/or medical treatment, as alleged.

By way of Decision and Order dated April 18, 2011, the Single Commissioner determined the claimant did not sustain a compensable change of condition to her left knee. Moreover, the Single Commissioner found that Darvocet or a comparable medication is the only compensable medication. The Single Commissioner further determined that the claimant suffered subsequent intervening causes for her left knee problems. Finally, the Single Commissioner found the claimant's current problems were not related to her 2006 accident with Verizon.

Within the statutory period, the claimant filed a Form 30, Application for Review, in the case setting forth her reasons for appeal, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on August 16, 2011.

The claimant contends the Single Commissioner erred in finding and concluding: no change of condition occurred; in finding only Darvocet, or a comparable medication is the only compensable

medication; in finding claimant sustained intervening causes; and in finding claimant's current problems are not related to her 2006 accident with Verizon. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Full Commission and has since been under study and consideration.

In an Appellate Review, the Appellate Panel shall, pursuant S.C. Code Ann. 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial Hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner.

After careful review in the instant case of all grounds raised by claimant in her appeal and after consideration of the arguments presented by both parties, the Commission finds, that by unanimous vote, the Decision and Order of the Single Commissioner must be **Affirmed in its entirety**.

FINDINGS OF FACT

After careful review of the evidence and arguments presented by the parties in their respective Briefs and at oral argument, including the Hearing and deposition testimony of the claimant, the deposition of Dr. Grady, and the medical records and exhibits submitted through the APA, the Appellate Panel finds as a fact that:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jacqueline Y. Carter, as employee, Verizon Wireless, as employer, and American Home Assurance Company, as carrier.
2. Per the Decision and Order of Commissioner Barden filed December 3, 2009, the claimant sustained a compensable injury to her left knee on December 27, 2006, arising out of and in the course of her employment with defendant-employer.
3. The claimant's average weekly wage and compensation rate are \$486.56 and \$324.39, respectively.
4. We find that a physical change of condition has not occurred. This finding is based upon the deposition of Dr. Grady, the testimony of the claimant, and the medical evidence substantiated at both Hearings.

5. We find that Darvocet or a comparable medication is the only compensable medication and clarifies any earlier decision on that point.
6. We find that claimant suffered at least two intervening causes – Zumba as well as a broken right ankle in February of 2009, which caused her to place more weight on her left knee. This finding is based upon the greater weight of evidence in the record, specifically the deposition testimony of Dr. Grady and the claimant.
7. Claimant's current problems are not related to her 2006 accident with Verizon. This finding is based upon the totality of evidence submitted in this case.
8. Any benefits for change of condition are denied.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Panel that:

1. Under § 42-1-130, claimant was a covered employee at the time in question.
2. Under § 42-1-140, defendant-employer was a covered employer under the Act.
3. Under § 42-17-90 and pursuant to Cromer v. Newberry Cotton Mills, 201 S.C. 349, 23 S.E. 2d 19 (1942); Causby v. Rock Hill Printing and Finishing Co., 249 S.C. 225, 153 S.E. 2d 697 (1967) and Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 576 S.E. 2d 191 (Ct. App. 2003), claimant did not sustain a compensable change of condition with regard to her left knee.
4. Under § 42-15-60 and Dodge v. Brucoll, Clark, Layman, Inc., 334 S.C. 100, 576 S.E.2d 593 (Ct. App. 1999), and pursuant to the Order of Commissioner Barden filed December 3, 2009, claimant is entitled to causally-related future medical treatment that may tend to lessen her period of disability, as recommended by the authorized treating physician, specifically restricted to Darvocet or a comparable medication.

ORDER

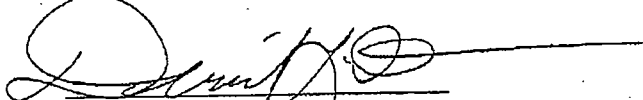
IT IS, THEREFORE, ORDERED, the Decision and Order of the Single Commissioner filed in the above-captioned matter on April 18, 2011, is hereby AFFIRMED in its entirety.

IT IS FURTHER ORDERED, the Claimant did not suffer a compensable change of condition for the worse.

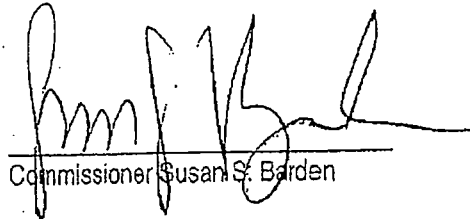
FULL AFFIRMATION.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Derrick L. Williams
For the Appellate Panel



Commissioner Susan S. Barden

Commissioner Huffstetler

"I would add a conclusion of law to cite 42-17-90(A) which states a change of condition must be related to the original injury and come after the last payment of compensation."

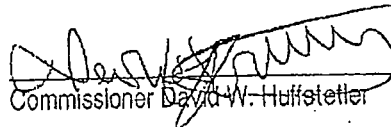
CERTIFICATE OF SERVICE

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

This 9 day of November, 2011
By Valerie D. Deller

Administrative Assistant to the Commissioner

Grady L. Beard
Ben C. Harrison
Jeremy A. Dantin



Commissioner David W. Huffstetler

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0622179

Jacqueline Y. Carter,)
)
Employee,)
)
Claimant,)
)
v.)
)
Verizon Wireless,)
)
Employer,)
)
American Home Assurance Company,)
)
Carrier,)
)
Defendants.)
_____)

DECISION AND ORDER

HEARING: Hearing held in Greenville, South Carolina, on February 16, 2011.

APPEARANCES: Claimant represented by Harrison White Smith & Coggins, P.A., with
Jeremy A. Dantin, Esquire, appearing.

Defendants represented by Sowell Gray Stepp & Laffitte, L.L.C., with
Grady L. Beard, Esquire, appearing.

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

DECISION AND ORDER: By Honorable Avery B. Wilkerson, Jr., Commissioner.

FILED: April 18, 2011

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the claimant submitted records, reports, and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1. Walter Grady, DO	Grady Orthopaedics	11/04/10	Pages 1 - 5
2. Eric L. Cole, M.D.	Family Medical Center	01/06/11	Page 6

Exhibits	Date of Reports	Page Numbers
A. Biographical Information		

Pursuant to the Administrative Procedures Act, the defendants submitted records, reports and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1.	Piedmont Imaging	03/07/07	Pages 1 - 2
2. Walter Grady, DO	Grady Orthopaedics	06/07/07 – 02/16/09	Pages 3 – 30
3.	Mary Black Memorial Hospital	06/29/07	Pages 31 – 33
4.	Smith Therapy Services	08/26/08	Page 34

Exhibits	Date of Reports	Page Numbers
A. Trinity Health and Fitness records		Pages 1 – 6
B. Claimant's deposition		
C. SCWCC file		
D. All Orders and APA Submissions from prior Hearing		
E. Hearing transcript from Hearing before Commissioner Barden on 10/15/09		

STIPULATIONS

At the call of the claim, the parties stipulated to the following issues:

1. Notice of the Hearing was timely and properly served upon all parties of interest.
2. The South Carolina Workers' Compensation Commission ("SCWCC") has jurisdiction over this claim.
3. Venue in the County of Greenville is proper.
4. The claimant's average weekly wage and compensation rate are \$486.56 and \$324.39, respectively, pursuant to previously unappealed Order of the SCWCC.
5. Per the Decision and Order of Commissioner Susan S. Barden dated December 3, 2009, the claimant sustained a compensable injury to her left knee only on December 27, 2006.
6. With the exception of any self-serving statements or unstipulated medical reports, the Commission file was made part of the record.

STATEMENT OF THE CASE

The undersigned held a Hearing in this matter at the date and location referenced above. All parties of interest were timely and properly notified of the Hearing, and the parties and/or their representatives appeared at the Hearing. The claimant appeared and was represented by Jeremy A. Dantin, Esquire. The employer and carrier were represented by Grady L. Beard, Esquire.

By way of background, this claim was initially before the South Carolina Workers' Compensation Commission ("Commission") pursuant to the Form 21 filed by the defendants on July 27, 2009, to pay permanent partial disability benefits to claimant. By way of Decision and Order filed on December 3, 2009, Commissioner Barden determined the claimant sustained a compensable injury to her left knee on December 27, 2006; reached maximum medical improvement ("MMI") with regard to her left knee on March 3, 2008; and sustained twenty-five (25%) percent permanent partial disability to her left leg and had advanced pre-existing degenerative joint disease. Commissioner Barden further held, under Dodge, that the claimant is entitled to causally-related future medical treatment that may tend to lessen her period of

disability, specifically Darvocet or a comparable medication. Neither party appealed the Order of Commissioner Barden.

This claim is now before the Commission pursuant to the Form 50 filed by the claimant on November 29, 2010, wherein the claimant alleges she sustained a material worsening in her medical condition under Section 42-17-90 of the Act. The claimant now requests additional medical treatment only with regard to her left knee as recommended by Dr. Walter Grady.

The defendants deny the claimant sustained a compensable change of condition with regard to her left knee under Section 42-17-90. Moreover, the defendants contend the claimant sustained an intervening accident or trauma involving her left knee subsequent to the previous Hearing. As such, the defendants deny the claimant is entitled to any further benefits and/or medical treatment, as alleged.

Accordingly, the primary issues for determination are: (1) whether the claimant sustained a compensable change of condition under Section 42-17-90; (2) whether the claimant sustained an intervening accident or trauma subsequent to the previous Hearing; and (3) whether the claimant is entitled to any further benefits and/or medical treatment.

EVIDENCE OF THE CASE

The undersigned has carefully considered all of the evidence presented by the parties in this claim, including the Hearing and deposition testimony of the claimant; the Hearing testimony of the claimant from the previous Hearing before Commissioner Barden on October 15, 2009; the deposition testimony of Walter Grady, DO; and the medical records and exhibits submitted through the APA. From this evidence, the following is specifically noted:

A. HEARING TESTIMONY OF THE CLAIMANT:

The claimant testified on her own behalf. The claimant testified she is currently employed as a bank teller at BB&T. See H.T., p. 15. She testified she noticed her knee began to worsen in June of 2010, while doing water aerobics. See H.T., p. 17. The claimant testified that she began exercising due to unrelated health reasons. See H.T., p. 18. The claimant testified that she also took three Zumba classes at her gym but was unable to perform the exercises. See H.T., p. 22, 46. Currently, the claimant testified her knee is constantly grinding when she walks or maneuvers stairs. See H.T., p. 23. The claimant has a current prescription of Tramadol for pain. See H.T., p. 24.

On cross examination, the claimant testified she had not seen Dr. Grady concerning her left knee from January 2008 until November 2010. See H.T., p. 36. The claimant testified she fractured her right ankle during that time and that injury was not related to her workers' compensation injury. See H.T., p. 36. The claimant admitted while her ankle was injured, she did use her left knee sporadically for weight bearing. See H.T., p. 37. The claimant also testified that she frequented Trinity Health and Fitness and that during one hundred eighty (180) days, she visited the gym one hundred five (105) days and that is when her left knee started to hurt. See H.T., p. 38. In fact, the claimant testified she occasionally works out two times a day. See H.T., p. 39.

The claimant admitted that she has had pain everyday and her pain has remained unchanged since October of 2009. See H.T., p. 42. The claimant admitted that she still has the same throbbing feeling she had at the first Hearing and has pain every single day. See H.T., p. 43. The claimant testified she continues to have problems sleeping without medication, just like the first Hearing and has problems walking, just like the first Hearing. Id. She also admitted that she understood that she was allowed to go to the doctor as needed for medication. See H.T., p. 47. The claimant testified the November 4, 2010, report of Dr. Grady was wrong, if he reported her average pain level as 5 out of 10. See H.T., p. 51.

Finally, the claimant admitted that the workers' compensation carrier has paid for her causally-related medication. See H.T., p. 53.

B. APA SUBMISSIONS:

1. Medical Evidence

On March 7, 2007, the claimant presented to Piedmont Imaging for an MRI of her left knee. The MRI revealed advanced chondromalacia in the patella posterior aspect of the medial femoral condyle, a small joint effusion, superficial infrapatellar bursitis, very subtle inflammatory edema and sprain of the medial collateral ligament. See Defendants' APA #1, p. 1.

On June 7, 2007, the claimant presented to Walter Grady, D.O., of Grady Orthopaedics, with complaints of left knee stemming from the work-related accident of December 27, 2006. See Defendants' APA #2, p. 3. Dr. Grady noted the claimant received an injection on April 7, 2007, which did not provide relief. Id. Dr. Grady diagnosed the claimant with a medial meniscus tear and scheduled her for arthroscopic debridement and meniscectomy, and provided her sedentary work restrictions including sitting with only short period of standing and walking. Id. at p. 5. On July 16, 2007, the claimant presented to Dr. Grady for a follow-up visit after her arthroscopy, which occurred on June 29, 2007. Id. at p. 7; see also Defendants' APA #3, p. 31. The corresponding report indicated the claimant had mild swelling in the knee; the claimant was ordered to continue physical therapy. Id. at p. 8.

On September 4, 2007, Dr. Grady reported "I did tell her it is time for her to start progressive weight bearing as tolerated on that left knee." Id. at p. 12. He further indicated the claimant's range of motion with regard to her left knee stalled around 95-100 degrees. Id. at p. 13. On October 11, 2007, Dr. Grady indicated the claimant had evolving degenerative joint disease in her left and right knees, which is a "natural type of problem that she has that has the normal type of physiology that is not work related." Id. at p. 14. On October 25, 2007, the claimant presented to Dr. Grady for her second joint injection in her left knee. Id. at p. 17. She received a third, fourth and fifth injection on November 1, 2007, November 8, 2007,

and November 14, 2007, respectively. Id. at pp. 19-23. On January 3, 2008, the claimant underwent x-rays of her left knee, which revealed advanced grade degenerative joint disease in the left knee and patella. Id. at p. 25. Dr. Grady further opined the claimant could return to regular duty work, but should utilize a cane as needed. Id. at p. 26. On March 3, 2008, Dr. Grady opined the claimant sustained zero (0%) percent impairment of her right lower extremity and eighteen (18%) percent impairment of her left lower extremity. Id. at p. 27. On February 16, 2009, the claimant presented to Dr. Grady with a fracture of her right ankle. Id. at p. 28. Dr. Grady reported this injury was not causally-related to her worker's compensation claim from 2006. Id. at pp. 28-30.

On November 4, 2010, the claimant presented to Dr. Grady with complaints relative to her left knee. See Claimant's APA #1, p. 1. Dr. Grady opined the claimant could possibly have a medial meniscus tear. See Claimant's APA #1, p. 4. He further opined that claimant's chronic pain was secondary to degenerative disc disease with the presumptive interval progression of her arthritis, which he concluded was expected over time. See Claimant's APA #1, pp. 4 and 5. Finally, the claimant presented to Dr. Eric Cole to be established as a new patient and obtain medication refills. See Claimant's APA #1, p. 6. Dr. Cole noted claimant denied any acute medical issues and he prescribed Tramadol in substitution of Darvocet, which had been discontinued. Id.

2. Claimant's Biographical Information

The claimant is 48 years old with no children. She graduated from Spartanburg High School, after which she attended the University of South Carolina-Upstate and Midlands Technical College. See Claimant's APA Exhibit A. Her employment history includes work as a financial report processor, adjustment clerk, package handler, transit operator, teller, loan closer, receptionist, and customer service representative. See Claimant's APA Exhibit A.

3. Trinity Health & Fitness Records

The claimant applied for membership at Trinity Health & Fitness on March 3, 2010. See Defendants' Exhibit A, pp. 1-4. She used the facility 105 times from June 8, 2010, through February 7, 2011. Id. at pp. 5-6.

4. Deposition Testimony of the Claimant – January 20, 2011

The claimant testified that she is currently employed with BB&T as a bank teller. See Deposition of Claimant, p. 7. She testified around July of 2010, she first noticed a need to return to the doctor for her left knee. See Deposition of Claimant, p. 11. At this time, the claimant testified she had begun to exercise and her knee began to feel "uneasy like it was going in different directions." See Deposition of Claimant, p. 12. The claimant testified that she contacted her lawyer regarding her knee and was advised to wait for an authorization to see Dr. Grady. Id.

The claimant also testified that she joined Trinity Health and Fitness in July of 2010, where she attended water aerobics classes. See Deposition of Claimant, p. 14. She testified that she went to the gym five times a week prior to her becoming employed with BB & T. Id. The claimant testified she presented to Dr. Grady in November of 2010 with complaints of swelling and feeling unstable in her left knee. See Deposition of Claimant, p. 16. Following her appointment, the claimant testified that her restrictions remained the same and there were no follow-up appointments scheduled. See Deposition of Claimant, p. 18. She testified she is currently prescribed Tramadol, by her primary care physician, Dr. Eric Cole. See Deposition of Claimant, p. 20.

5. Deposition of Walter Grady, D.O. – February 3, 2011

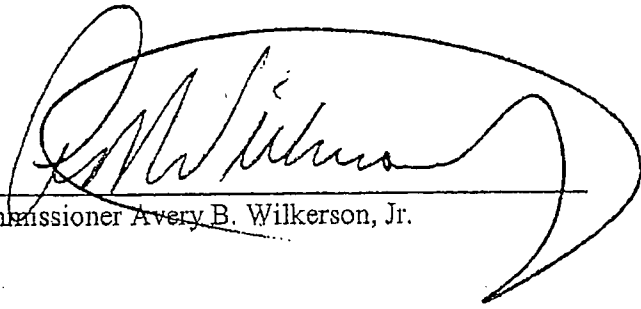
Dr. Walter Grady testified the claimant presented on November 4, 2010, with complaints of pain, crepitation and sensitivity in her left knee. See Deposition of Walter Grady, D.O., pp. 13-14. Dr. Grady testified the claimant's most recent prior appointment was on January 3, 2008. See Deposition of Dr. Grady, pp. 5 and 12. In the interim, Dr. Grady did treat the claimant for other ankle-related problems. See Deposition of Dr. Grady, p. 6. Dr. Grady testified he has no idea what the claimant's left knee looked like on October 15, 2009. See Deposition of Dr. Grady, p. 13. Dr. Grady testified the joint space in the claimant's knee had changed from three millimeters in March of 2008 to one millimeter in November of 2010. See Deposition of Dr. Grady, p. 17. Dr. Grady noted he would expect a change because some of the cushioning was removed from the claimant's knee. See Deposition of Dr. Grady, p. 18. Dr. Grady admitted that there was no way to determine whether the claimant's knee condition was as to present during the periods before and after the Hearing held October of 2009. See Deposition of Dr. Grady, p. 22. Dr. Grady testified he cannot state to within a reasonable degree of medical certainty when claimant's problems developed, as what he saw in November of 2010 is what he expected following surgery. See Deposition of Dr. Grady, p. 23.

Dr. Grady then testified the claimant did not notify him of her frequency of visits to Trinity Health and Fitness. See Deposition of Dr. Grady, p. 25. Dr. Grady admitted that it would have been important to his examination to know the actual nature of the claimant's exercise. See Deposition of Dr. Grady, p. 26. Dr. Grady testified that it is possible that the claimant's knee condition was accelerated by exercise. See Deposition of Dr. Grady, p. 31, 32. Dr. Grady testified the claimant had no changes to the degenerative joint disease in her knee. See Deposition of Dr. Grady, p. 34. Dr. Grady further testified the claimant's pain level was close to the same in November 2010 as compared to her last visit of almost two and one half years prior. See Deposition of Dr. Grady, p. 36. Finally, Dr. Grady testified claimant's treatment has not changed. See Deposition of Dr. Grady, p. 41.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing and deposition testimony of the claimant; the deposition testimony of Walter Grady, DO; and the medical records and exhibits submitted through the APA, as well as my personal observations of the claimant, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jacqueline Y. Carter as employee, Verizon Wireless as employer, and American Home Assurance Company as carrier.
2. Per the Decision and Order of Commissioner Barden filed December 3, 2009, the claimant sustained a compensable injury to her left knee on December 27, 2006, arising out of and in the course of her employment with defendant-employer.
3. The claimant's average weekly wage and compensation rate are \$486.56 and \$324.39.
4. After careful review of the evidence, I find that a physical change of condition has not occurred. This finding is based upon the deposition of Dr. Grady, the testimony of the claimant, and the medical evidence substantiated at both Hearings.
5. I find that Darvocet or a comparable medication is the only compensable medication.
6. I find that claimant suffered at least two intervening causes – Zumba as well as a broken right ankle in February of 2009, which caused her to place more weight on her left knee. This finding is based upon the greater weight of evidence in the record, specifically the deposition testimony of Dr. Grady and the claimant.
7. Claimant's current problems are not related to her 2006 accident with Verizon. This finding is based upon the totality of evidence submitted in this case.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

April 18, 2011

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0622179

Jacqueline Y. Carter,)
)
Employee,)
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Claimant,)
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v.)
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Verizon Wireless,)
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Employer,)
)
American Home Assurance Company,)
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Carrier,)
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Defendants.)

DECISION AND ORDER

HEARING: Hearing held in Greenville, South Carolina, on October 15, 2009.

APPEARANCES: Claimant represented by Harrison White Smith & Coggins, P.A., with
Jeremy A. Dantin, Esquire, appearing.

Defendants represented by Sowell Gray Stepp & Laffitte, L.L.C., with
Nicolas L. Haigler, Esquire, appearing.

PURPOSE OF HEARING: To determine issues as set forth in Form 21.

DECISION AND ORDER: By Honorable Susan S. Barden, Commissioner

FILED: December 3, 2009

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the defendants submitted records, reports, and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1.	Piedmont Imaging	03/07/07	Pages 1 - 2
2. Walter Grady, DO	Grady Orthopaedics	06/07/07 - 02/16/09	Pages 3 - 30
3.	Mary Black Memorial Hospital	06/29/07	Pages 31 - 33
4.	Smith Therapy Services	08/26/08	Page 34

Exhibits	Date of Reports	Page Numbers
A. Claimant's Deposition		

Pursuant to the Administrative Procedures Act, the claimant submitted records, reports and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1. Barbara Ray, M.D.	Doctor's Care	12/27/06	Pages 35 - 56
2. Mary Joan Black, M.D.	Orthopaedic Associates	03/14/07 - 03/22/07	Pages 57 - 59

Exhibits	Date of Reports	Page Numbers
A. Biographical Information		

STIPULATIONS

At the call of the claim, the parties stipulated to the following issues:

1. Notice of the Hearing was timely and properly served upon all parties of interest.
2. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
3. Venue in the County of Greenville is proper.
4. The claimant's average weekly wage and compensation rate are \$486.56 and \$324.39, respectively.
5. The claimant sustained a compensable injury to her left knee on December 27, 2006.
6. The claimant did not sustain permanent impairment and/or disability to her right hip and/or right lower extremity as a result of the work-related accident.
7. The claimant reached maximum medical improvement with regard to her left knee on March 3, 2008, per the corresponding report of Dr. Walter Grady.
8. Dr. Grady provided the claimant an eighteen (18%) impairment rating of her left leg as a result of the compensable injury by accident.
9. With the exception of any self-serving statements or unstipulated medical reports, the Commission file was made part of the record.

STATEMENT OF THE CASE

The undersigned held a Hearing in this matter at the date and location referenced above. All parties of interest were timely and properly notified of the Hearing, and the parties and/or their representatives appeared at the Hearing. The claimant appeared and was represented by Jeremy A. Dantin, Esquire. The employer and carrier were represented by Nicolas L. Haigler, Esquire.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the defendants on July 27, 2009, to pay permanent partial disability benefits to claimant. The defendants admit the claimant sustained a compensable injury to her left knee on December 27, 2006, arising out of and in the course of her employment with defendant-employer.

However, the defendants contend the claimant reached maximum medical improvement ("MMI") for her compensable left knee injury on March 3, 2008, with eighteen (18%) impairment of her left lower extremity, per the medical report of Dr. Walter Grady, the authorized treating orthopedic physician. Accordingly, the defendants now seek a determination as to the extent of permanent partial disability with regard to the left leg under Section 42-9-30 of the Act.

It is also the position of the claimant that she reached MMI with regard to her left knee on March 3, 2008, with eighteen (18%) impairment of her left lower extremity. Accordingly, the claimant seeks a determination as to the extent of permanent partial disability to the left leg; and contends the claimant is entitled to future medical treatment that may tend to lessen the period of disability under the direction of Dr. Grady, pursuant to Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 100, 576 S.E.2d 593 (Ct. App. 1999). With regard to any alleged right hip injury, the parties stipulated the claimant did not sustain permanent impairment and/or disability as a result of the admitted accident.

Accordingly, the primary issues for determination are: (1) The extent of permanent partial disability the claimant sustained to her left leg; and (2) Whether the claimant is entitled to future medical treatment pursuant to Dodge.

EVIDENCE OF THE CASE

The undersigned has carefully considered all of the evidence presented by the parties in this claim, including the Hearing testimony of the claimant; the deposition testimony of the claimant; and the medical records and exhibits submitted through the APA. From this evidence, the following is specifically noted:

A. HEARING TESTIMONY OF THE CLAIMANT:

The claimant testified on her own behalf. The claimant testified she is 48 years old and had been employed by Verizon Wireless for approximately 5 years at the time of her work-related accident on December 27, 2006.

The claimant further testified she sustained an injury to her left knee on December 27, 2006, after falling on the floor while working for Verizon Wireless. She treated with Dr. Grady, who performed arthroscopic knee surgery on June 29, 2007. Following her recovery from surgery, the claimant resigned from Verizon Wireless to obtain employment closer to her ailing father in Spartanburg. The claimant testified she is now employed as a bank teller for Bank of America, working reduced hours in order to care for her father.

Finally, the claimant testified she continues to take Darvocet, at the direction of Dr. Grady, for her left knee injury as well as for her right ankle, which she fractured in February 2009 after falling in her shower. The claimant confirmed the right ankle fracture is not causally-related to the December 27, 2006, accident.

B. APA SUBMISSIONS:

1. Medical Evidence

On December 27, 2006, the claimant presented to Barbara Ray, M.D., of Doctor's Care, with complaints of right hip pain after slipping in water and doing a "split." See Claimant's APA #1, p. 32. She was diagnosed with strain of her right hip. Id. On January 3, 2007, the claimant returned with continued right hip pain. The corresponding report indicated the claimant stated she "needs time off of work to rest." Id. at p. 41. She was taken out of work pending the authorization of physical therapy. On January 22, 2007, the attending physician indicated the claimant could return to work full-time on January 23, 2007. Id. at 46. On February 20, 2007, the claimant returned to Doctor's Care with

complaints of left knee pain; she indicated she did not want to return to work until physical therapy was completed. Id. at p. 47. On March 7, 2007, the claimant reported her left knee was popping, weak, and heavy. Id. at p. 49. The claimant was removed from work until March 19, 2007.

On March 7, 2007, the claimant presented to Piedmont Imaging for an MRI of her left knee. The MRI revealed advanced chondromalacia in the patella posterior aspect of the medial femoral condyle, a small joint effusion, superficial infrapatellar bursitis, very subtle inflammatory edema and sprain of the medial collateral ligament. See Defendants' APA #1, p. 1.

On March 14, 2007, the claimant presented to Dr. Mary J. Black, M.D., of Orthopaedic Associates, P.A., for an evaluation of her left knee. Dr. Black diagnosed the claimant with a sprain of the medial collateral ligament, and provided her a hinged brace to wear. See Claimant's APA #2, pp. 57-59.

On June 7, 2007, the claimant presented to Walter Grady, D.O., of Grady Orthopaedics, with complaints of left knee stemming from the work-related accident of December 27, 2006. See Defendants' APA #2, p. 3. Dr. Grady noted the claimant received an injection on April 7, 2007, which did not provide relief. Id. Dr. Grady diagnosed the claimant with a medial meniscus tear and scheduled her for arthroscopic debridement and meniscectomy, and provided her sedentary work restrictions including sitting with only short period of standing and walking. Id. at p. 5. On July 16, 2007, the claimant presented to Dr. Grady for a follow-up visit after her arthroscopy, which occurred on June 29, 2007. Id. at p. 7; see also Defendants' APA #3, p. 31. The corresponding report indicated the claimant had mild swelling in the knee; the claimant was ordered to continue physical therapy. Id. at p. 8.

On the September 4, 2007, Dr. Grady reported "I did tell her it is time for her to start progressive weight bearing as tolerated on that left knee." Id. at p. 12. He further indicated the

claimant's range of motion with regard to her left knee stalled around 95-100 degrees. Id. at p. 13. On October 11, 2007, Dr. Grady indicated the claimant had evolving degenerative joint disease in her left and right knees; however, he indicated the right knee disease was "not at all related to her work capacity." Id. at p. 14. On October 25, 2007, the claimant presented to Dr. Grady for her second joint injection in her left knee. Id. at p. 17. She received a third, fourth and fifth injection on November 1, 2007, November 8, 2007, and November 14, 2007, respectively. Id. at pp. 19-23. On January 3, 2008, the claimant underwent x-rays of her left knee, which revealed advanced grade degenerative joint disease in the left knee and patella. Id. at p. 25. Dr. Grady further opined the claimant could return to regular duty work, but should utilize a cane as needed. Id. at p. 26. On March 3, 2008, Dr. Grady opined the claimant sustained zero (0%) percent impairment of her right lower extremity and eighteen (18%) percent impairment of her left lower extremity. Id. at p. 27.

2. Claimant's Biographical Information

The claimant is 48 years old with no children. She graduated from Spartanburg High School, after which she attended the University of South Carolina-Upstate and Midlands Technical College. See Claimant's APA Exhibit A. Her employment history includes work as a financial report processor, adjustment clerk, package handler, transit operator, teller, loan closer, receptionist, and customer service representative. See Claimant's APA Exhibit A.

3. Deposition Testimony of the Claimant

The claimant testified she completed two years of college at the University of South Carolina, but did not receive her degree. See Claimant's Deposition, p. 6, l. 19 – p. 7, l. 1. The claimant then testified as to her employment with Verizon Wireless. Specifically, she testified she was employed as a customer service representative, which required her to primarily answer phones and help customers with billing or cell phone issues. See Claimant's Deposition, p. 9, ll. 2-3. The claimant testified she

resigned from her employment with Verizon Wireless to find a job closer to home in Spartanburg, as her job with Verizon Wireless was situated in Greenville. See Claimant's Deposition, p. 10, ll. 1-7. Her prior employment included work as a customer service representative, receptionist, teller, loan closer and transit operator. See Claimant's Deposition, p. 11, l. 5 – p. 13, l. 10.

The claimant testified with regard to her work-related accident of December 27, 2006, which occurred when the claimant slipped on some water in the break room at Verizon Wireless. See Claimant's Deposition, p. 20, l. 19 – p. 21, l. 2. She testified she injured her right hip and left knee as a result of the fall. See Claimant's Deposition, p. 21, l. 5. The claimant testified she treated with Dr. Grady for her left knee injury; she testified she was released from his care with regard to her left knee in October 2008. See Claimant's Deposition, p. 23, ll. 7-15. The claimant further testified she is currently taking Darvocet for her left knee, at the direction of Dr. Grady. See Claimant's Deposition, p. 24, ll. 17-21. She also testified she is taking Darvocet for her recent right ankle fracture, which occurred in February 2009, but is unrelated to her work-related injury. See Claimant's Deposition, p. 25, l. 14 – p. 27, l. 12.

Finally, the claimant testified she is currently as a bank teller by Bank of America; she began that employment in September 2008. See Claimant's Deposition, p. 27, l. 13 – p. 28, l. 11. She confirmed she works a reduced schedule to allow her time to care for her ailing father. See Claimant's Deposition, p. 29, ll. 2-4.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant; the deposition testimony of the claimant; and the medical records and exhibits submitted through the APA, as well as my personal observations of the claimant, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jacqueline Y. Carter as employee, Verizon Wireless as employer, and American Home Assurance Company as carrier.
2. The claimant sustained an admitted injury to her left knee on December 27, 2006, arising out of and in the course of her employment with defendant-employer. The parties stipulate to same.
3. The claimant's average weekly wage and compensation rate are \$486.56 and \$324.39.
4. I find the claimant was a five-year employee of Verizon Wireless. See Hearing Transcript.
5. I find the claimant is 48 years of age. See Hearing Transcript.
6. I find the claimant attended two years of college. See Deposition of the Claimant, p. 6; and Claimant's APA, Exhibit A.
7. I find the claimant's job with Verizon Wireless was as a customer service representative. This job involved answering the telephone, and assisting customers with billing issues and cell phone issues. See Hearing Transcript; and Deposition of the Claimant, p. 8-9.
8. I find the claimant's employment history includes jobs as a customer service representative for various telephone companies, package handler, customer sales representative for a bank, receptionist, loan closer, and bank teller. See Deposition of the Claimant, pp. 11-13; Claimant's APA, Exhibit A.
9. I find the claimant had pre-existing advanced degenerative joint disease. See Defendants' APA #2, pp. 14 and 25.
10. I find that because of her work-related injury, the claimant underwent surgery on her left knee. See Defendants' APA #2, pp. 31-33.
11. I find the claimant reached maximum medical improvement for her left knee on March 3, 2008. See Defendants' APA #2, p. 27. Also, the parties stipulated to same.
12. I find the authorized treating physician assigned an eighteen (18%) percent impairment rating to the left knee. See Defendants' APA #2, p. 27.
13. I find that because the claimant's pre-accident job with Verizon Wireless was primarily sedentary, the authorized treating physician released the claimant with

no restrictions. He also instructed the claimant to utilize a cane "as needed." See Defendants' APA #2, p. 26; APA #4, p. 34.

14. I find that as of the date of the Hearing, the claimant by choice works for a different employer, at reduced hours as a bank teller, in order to be available to care for her sick father. See Hearing Transcript.
15. I find the claimant is entitled to receive Dodge medicals that may tend to lessen her period of disability, as recommended by the authorized treating physician, including Darvocet or comparable medication. This Finding is based upon the medical evidence in the record, including the medical reports of Dr. Grady.
16. I find the claimant is entitled to twenty-five (25%) percent permanent partial disability with regard to her left leg, pursuant to Section 42-9-30(15) of the Act.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Commissioner that:

1. Under § 42-1-130, claimant was a covered employee at the time in question.
2. Under § 42-1-140, defendant-employer was a covered employer under the Act.
3. Under § 42-1-160, claimant sustained a compensable injury to her left knee on December 27, 2006.
4. Under § 42-9-30, claimant is entitled to twenty-five (25%) percent permanent partial disability with regard to her left leg.
5. Under § 42-15-60 and Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 100, 576 S.E.2d 593 (Ct. App. 1999), claimant is entitled to causally-related future medical treatment that may tend to lessen her period of disability, as recommended by the authorized treating physician, including Darvocet or comparable medication.

ORDER

IT IS THEREFORE ORDERED that the claimant is entitled twenty-five (25%) percent permanent partial disability to the left leg, or 48.75 weeks of benefits, or \$15,814.01.

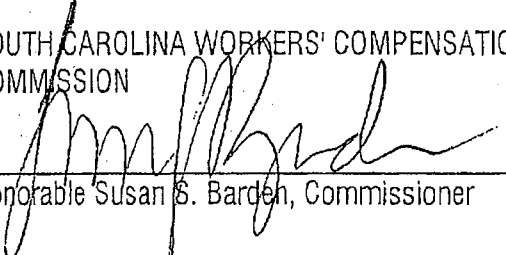
IT IS FURTHER ORDERED that the claimant is entitled to causally-related Dodge medicals that may tend to lessen her period of disability, as recommended by the authorized treating physician, including Darvocet or comparable medication.

No hearing costs are assessed in this matter.

~~IT IS SO ORDERED.~~

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

BY:


Honorable Susan S. Barden, Commissioner

12/3, 2009

CERTIFICATE OF SERVICE

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

JD
TH
GB

This 3rd day of December, 2009.

By KEISTI LOVE
Administrative Assistant to the Commissioner

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Jacqueline Y. Carter, Employee,)
)
 Claimant/Appellant,)
)
 v.)
)
 Verizon Wireless, Employer,)
)
 and)
)
 American Home Assurance Company, Carrier,)
)
 Defendants/Respondents.)

IN THE COURT OF COMMON PLEAS
 Civil Action No.: 2011-CP-23-7975
 (W.C.C. File No.: 0622179)

MOTION TO RECONSIDER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKLINSHNER
 2012 AUG -6 A 9:28

Verizon Wireless and American Home Assurance Company ("defendants") hereby move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for this Court to reconsider, alter or amend its decision to reverse the Decision and Order of the South Carolina Workers' Compensation Commission filed on November 9, 2011, for the following reasons:

- (1) By way of Form 4, Judgment in a Civil Case, entered on June 12, 2012, the Circuit Court reversed the Decision and Order of the South Carolina Workers' Compensation Commission ("Commission") filed on November 9, 2011. However, the Order of the Court neither addressed the grounds or arguments raised by parties nor provided the grounds or reasons explaining the reversal, but only requested counsel for the claimant to draft the proposed Order.
- (2) On July 24, 2012, the defendants received the Order of D. Garrison Hill, Circuit Court Judge, filed on July 19, 2012. The Order reversed the Decision and Order of the South Carolina Workers' Compensation Commission in its entirety.
- (3) Defendants contend the Circuit Court's exclusion of any explanation or discussion regarding the grounds raised by the parties or the reasons for reversal prohibits defendants from "concisely and directly" raising such grounds on appeal, as is required by Rule 208(B), SCACR. See *Bowen v. Lee Process Sys. Co.*, 342 S.C. 232, 536 S.E.2d 86 (Ct.App.2000) (remanding trial court's grant of summary judgment for an order more specifically identifying the grounds for its ruling). Additionally, under Rule 208(B), broad general statements of issues on appeal may be disregarded by the appellate court, which would be unavoidable under the current order and would certainly cause unnecessary prejudice to defendants.

- (4) Defendants contend the Circuit Court erred in reversing the Order of the Commission finding the claimant did not suffer a change of condition *apparently* on the basis the denial was premised upon an error of law. Specifically, the Circuit Court erroneously relied upon the precedent set forth in *Mungo v. Rental Uniform Service of Florence*, 383 S.C. 270, 768 S.E.2d 825 (Ct. App. 2009), wherein the Court held, based upon a wholly distinguishable set of facts, that "[r]eview of an award at a change of condition hearing is . . . concerned with the date as of which the claimant's condition was determined rather than the date of the actual hearing in which that award was rendered." Importantly, the Court ignored the controlling precedent of the Supreme Court of South Carolina that a change of condition "means a change in the physical condition of the claimant as a result of the original injury, occurring after the first award." *Causby v. Rock Hill Printing & Finishing Company*, 249 S.C. 225, 153 S.E.2d 697 (1967) (citing *Cromer v. Newberry Cotton Mills*, 201 S.C. 349, 23 S.E.2d 19 (1942) (emphasis added)).
- (5) Defendants further contend the Circuit Court erred in reversing the Order of the Commission finding the claimant did not suffer a change of condition *apparently* on the basis the denial was not supported by substantial evidence. The defendants assert Dr. Grady, the relied upon medical expert, unequivocally testified he could not determine, to within a reasonable degree of medical certainty, whether the claimant sustained a change of condition after the Hearing in October of 2009 but prior to the evaluation by Dr. Grady in November of 2010. See Deposition of Dr. Grady, p. 22, l. 5-p. 23, l. 6. This medical testimony constitutes substantial evidence to support the finding of the Commission that, consistent with the controlling precedent set forth by the Supreme Court in *Causby* and *Cromer*, the claimant could not prove she sustained a change of condition after the initial award.
- (6) Defendants contend the Circuit Court erred in reversing the Order of the Commission finding the claimant's testimony did not support a change of condition *apparently* on the basis the finding was not supported by substantial evidence. Specifically, the defendants assert the Circuit Court has simply overlooked the substantial evidence to support the finding of the Commission including but not limited to claimant's testimony that her pain has not increased since the Hearing in October of 2009. See Hearing Transcript, p. 42, l. 17-p. 43, l. 15, p. 43, l. 22-p. 44, l. 1. In fact, the claimant actually testified her condition is such that she "rarely" uses a cane whereas previously that was not the case. *Id.*
- (7) Defendants further contend the Circuit Court erred in reversing the Order of the Commission finding the claimant sustained "at least two intervening accidents" on the basis the finding was not supported by substantial evidence in the record. The defendants assert the Circuit Court has again overlooked substantial evidence to support the finding. Specifically, the claimant's records from the Trinity Health and Fitness confirm she exercised at the gym 105 times from June 8, 2010, through February 7, 2011. Moreover, the claimant unequivocally testified her knee problems did not return until she started exercising at the gym. See Deposition of Appellant, p. 11, ll. 1-25; p. 12, l. 1-4; p. 13, ll. 24-25; p. 14, ll. 1-9. Finally, Dr. Grady confirmed the claimant's knee pain returned

during the summer of 2010, and certainly could have been caused by exercise. See Deposition of Dr. Grady, pp. 25 and 31.

- (8) Finally, the defendants contend the Circuit Court erred in reversing the Order of the Commission regarding *Dodge* medical based upon the determination the change in the wording of the original Order of the Single Commissioner was erroneous. Specifically, the defendants assert the Circuit Court has failed to acknowledge the finding of the Commission is wholly consistent with the recommendations of future medical treatment by Dr. Grady, who testified his plan from November 4, 2010, remains the same, i.e. prescriptions for analgesics and non-steroidal anti-inflammatory medications. See Deposition of Dr. Grady, p. 40. As such, the Commission's finding does not alter, but only clarifies, the opinion of Dr. Grady with regard to *Dodge* medical treatment and, therefore, should not have been reversed.

Based upon these grounds, defendants, by and through their undersigned counsel, respectfully request this Court to reconsider, alter or amend its Form 4, Judgment in Civil Case, entered on June 12, 2012, to provide specific reasons for the decision to "reverse" the Decision and Order of the South Carolina Workers' Compensation Commission. In addition, the defendants respectfully request this Court to reconsider the Order entered on July 19, 2012.

WE SO MOVE.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Grady L. Beard
Nicolas L. Haigler
Sowell Gray Stepp & Laffitte, LLC.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants

Columbia, South Carolina

August 2, 2012



Claimant's Name: Jacqueline Y. Carter SSN: _____ Employer's Name: VERIZON WIRELESS-SOUTHEAST
Address: 106 Kensington Drive, #102 Address: 1717 Arch Street
City: Spartanburg State: SC Zip: 29306 City: Philadelphia State: PA Zip: 19103
Home Phone: (864) 266 - 8687 Work Phone: () - Insurance Carrier: American Insurance Group Plan
Preparer's Name: Jeremy A. Dantin Law Firm: HWS&C PC Preparer's Phone #: (864) 585 - 5100

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: 12/27/2006
 Injury Illness Repetitive Trauma

- 1a. The claimant sustained an injury to left leg (Part(s) of Body Injured) on 12/27/06 in Spartanburg county, state of SC.
- 1b. Body part(s) affected are: left leg
Briefly describe how the accident occurred: Slipped and fell on water in the break room at place of employment.
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 12/27/06 (Month/Day/Year) in the following manner: Reported to Supervisor

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 leg
7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one): Pre-Mature at this time
 (1) General Disability: Total (2) Specific Disability: Total
 (3) Wage Loss Partial Partial
9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$486.56, 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:
Verizon Wireless, 701 Brookfield Parkway, Greenville, SC 29607; Bank of America, 2190 Southport Rd., Sptg., SC 29306; BB&T, 1488 W O Ezell Blvd., Sptg., SC 29301

- 11a. Further grounds or unusual aspects of claim: This case was tried before Commissioner Susan S. Barden on 10/15/09. An Order dated 12/3/09 was handed down awarding the Claimant a 25% impairment of the left leg. Claimant has suffered a material worsening in her medical conditions as shown by the 11/04/10 notes by Dr. Walter Grady, attached hereto. For such other and further relief as the Commission deems just and proper.

- 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. Barbara Ray, Doctor's Care, 218 E. Blackstock Rd., Sptg., SC 28301; Dr. Mary Joan Black, Orthopaedic Associates, 1330 Boiling Springs Rd., Ste. 1600, Sptg., SC 29303, orthopedic surgeon; Dr. Walter Grady, Grady Orthopaedics, 480 Floyd Rd., Sptg., SC 29307

- 11c. To the best of your knowledge, did you have any prior permanent disability? Yes; If yes, describe: The 25% impairment to the left leg awarded in the Order signed by Commissioner Barden dated 12/3/09.
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: _____ Attorney for Claimant: jdantin@spartanlaw.com
Title: _____ Email: _____
Date: 11/29/10

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.

SC Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715



WCC File #: 0622179
Cal. File #: 200612457380001
Carrier Code #:
Employer FEIN #:

Jacqueline Carter
Claimant's Name SSN
106 Kensington Drive, #102 Spartanburg, SC 29306
Address City State Zip
(864) 266-8687
Home Phone Work Phone

Verizon Wireless Southeast
Employer's Name
1717 Arch Street, Philadelphia, PA 19103
Address City State Zip
American Home Assurance Company
Insurance Carrier

Grady L. Beard, Esquire (803) 929-1400
Preparer's Name Phone #

Date of Injury or Illness: 12/27/06

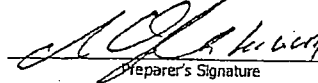
Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is **admitted** the employee sustained an injury on or about the date set forth in the Form 50. The reasons for denial are: **Defendants specifically deny claimant sustained a change of condition with regard to her compensable left knee injury, as alleged.**
2. It is **admitted** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: **See No. 1 and No. 11.**
3. It is **admitted** the relationship of employer and employee existed at the time in question. The reasons for denial are: **See No. 1 and No. 11.**
4. It is **admitted** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: **See No. 1 and No. 11.**
5. It is **admitted** notice of the injury was given to the employer. The reasons for denial are: **See No. 1 and No. 11.**
6. It is **denied** the employee needs / is entitled to additional medical care as a result of injury. The reasons for denial are: **Claimant did not sustain a compensable change of condition, as alleged. See No. 1 and No. 11.**
7. It is **denied** the employee is entitled to temporary total disability for the period(s) of: **None specifically claimed on Form 50. Any benefits due were paid. See No. 1 and No. 11.**
8. It is **denied** the employee is permanently disabled. The reasons for denial are: **None specifically claim on Form 50. No evidence of same. See No. 1 and No. 11.**
9. It is **denied** the employee has a serious disfigurement.
10. It is contented that an average weekly wage of \$ **Previous Order of SCWCC** applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: **See attached. See also No. 1.**
12. Estimated Time Needed for Hearing: **1 hour.**

I certify that I have served this document pursuant to R. 67-212 by delivering a copy to **Jeremy A. Dantin, Esquire**
Name
Harrison, White, Smith & Coggins, P.A., 178 West Main Street, Post Office Box 3547, Spartanburg SC 29304
Address

on the **29th** day of **December**, **2010** by first class mail, certified mail, personal service:

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

 Attorney for The Employer/Carrier **gbeard@sowellgray.com** December 29, 2010
Preparer's Signature Title Email Date

Refer to R.67-205 and R.67-601 through R.67-619. 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 of least 30 days from the date of filing this form.

WCC Form # 51
Rev. 09/07

DEC 29 2010

51

EMPLOYER'S ANSWER TO REQUEST FOR HEARING

ur File No.: 5332/8041

FRONT DESK

052

Jacqueline Y. Carter v. Verizon Wireless Southeast

WCC File No.: 0622179

Date of Accident: 12/27/06

Claim No.: 200612457380001

Our File No.: 5332/8041

(Continuation from Form 51)

11. Further contentions or grounds of defense are: All affirmative and specific defenses (see Reg. 67-603), including but not limited to §42-9-60 and §42-17-90; intervening trauma; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work-related; defendant reserves the right to amend this Answer and plead additional defenses.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Grady L. Beard
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorneys for Employer/Carrier

Columbia, South Carolina

December 29, 2010

RECEIVED
DEC 29 2010
FRONT DESK
SC Workers' Comp Comm

053

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2011-CP-23-07975

JACQUELINE Y. CARTER,
PLAINTIFF,

vs.

VERIZON WIRELESS SOUTHEAST,
DEFENDANT.

TRANSCRIPT OF RECORD

COPY

May 29, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

JEREMY J. DANTIN, ESQ.
Attorney for the Plaintiff

NICHOLAS L. HAIGLER, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

1 She, also, testified about an increase in pain. She
2 believed that she was "absolutely worse." She confirmed
3 that she has that crunching crepitus in her left knee now
4 that she did not have in 2009. She confirmed that she
5 could not flex her leg as much as she could in 2009.

6 All of that, again, we believe shows that there is no
7 basis for the single commissioner's finding that Dr. Grady
8 and the Claimant did not testify or opine in a way that
9 supported a change of condition.

10 We believe, Your Honor, that the real problem in this
11 case comes from a misunderstanding of the law. Most
12 particularly, an issue that came up during the course of
13 this litigation, and at the single commission level, and
14 in front of the appellate panel was this notion that
15 Dr. Grady was not able to pinpoint whether the change of
16 condition took place before the date of her change of
17 condition hearing, or subsequent to that date.

18 We believe that this has no bearing on the change of
19 condition analysis whatsoever. And, in fact, this matter
20 has been directly addressed by the Court of Appeals in
21 Mungo v. Rental Uniform Services, which we briefed
22 extensively. In that case, there was a matter that was
23 coming to a hearing. And a letter -- the Claimant was
24 evaluated by a doctor the week subsequent to -- I'm sorry,
25 preceding the hearing. The Claimant's attorney tried to

1 get that record into evidence, but that record was not
2 allowed as being untimely.

3 So it wasn't considered at all by the commission.
4 They went ahead and gave an order. And then the Claimant
5 subsequently filed for a change of condition. As it turns
6 out, the basis for the change of condition was therein
7 that the record, actually, predated the time of the
8 hearing. The Court -- or the Defense, rather, tried to
9 say, well, that did not -- that change did not occur after
10 the date of the hearing. It, actually, existed before the
11 date of the hearing. And, therefore, it's not a change of
12 condition. That has to occur after the date of the
13 hearing.

14 The Court of Appeals disagreed with that argument
15 and, specifically, said -- and I quote, Review of an award
16 at the change of condition hearing is concerned with the
17 date as to which the Claimant's condition was determined,
18 rather than the date the actual hearing at which the award
19 was rendered. This is exactly analogous of this case.
20 The only difference being there was no evidence that the
21 change existed beforehand.

22 I've noted in both the argument that we've had
23 previously on this and in the brief submitted to you that
24 the Defense has said, well, the difference here is that
25 there was evidence before. We believe that distinction,

1 actually, helps us.

2 In this case, there was no evidence of the condition
3 change before. However, Dr. Grady, specifically,
4 testified that he believed the Appellant was worse now
5 than she was at the time he assigned the 18 percent
6 impairment to her left lower extremity. The original
7 court never considered any other evidence of change. And
8 that's the key factor here. That's, also, been repeated
9 in the Gattis case and in the Clark case, which has, also,
10 been briefed to the Court.

11 THE COURT: Well, they're saying that Dr. Grady
12 didn't see her for like a 20-month period, and that's what
13 takes it out of all these cases you're talking about in
14 part.

15 What about that?

16 MR. DANTIN: Well, there's nothing in any of these
17 orders that suggests that there's a certain period of time
18 that they have to be seen in. The critical analysis is
19 what the commission considered at the time they rendered
20 their opinion. So they were not considering any other
21 evidence of a change of condition. There was no other
22 evidence offered, except what was offered by Dr. Grady.
23 And that was what they considered. So what happened after
24 that was not material, because it was never considered by
25 the single commissioner, or the commission.

1 So the only evidence they considered dealt with how
2 she was at the date of maximum medical improvement, just
3 as it was in Mungo. That's what we should be taking this
4 from, not from the date of the hearing. So we believe
5 that's a fundamental misunderstanding of the law that we
6 think is colored through the decision both of the single
7 commissioner and full commission level.

8 Furthermore, the single commissioner, also, found --
9 and this was, again, affirmed in full by the full
10 commission that there were -- there was no change of
11 condition, but then that there were two intervening causes
12 of the change of condition. Obviously, that's a
13 conflicting order right there. Because if there's no
14 change of condition, there can't be intervening causes.
15 But that contradiction aside, let me just address what the
16 court looked at -- or what the commission looked at.

17 First, the commissioner and the full commission found
18 that Zumba classes were an intervening cause of this.
19 First of all, I'll tell you, and I've said this to the
20 commission as well, I don't know what Zumba is. But it's
21 been explained as some kind of cardio dance class. And
22 the Claimant testified that it has motions that mimic
23 boxing. She --

24 THE COURT: I don't know how I can decide this
25 without you forming some kind of --

1 the cases cited in both briefs for that matter. I'm not
2 sure there is a misunderstanding of the law. In fact, I'm
3 sure there's not a misunderstanding of the law. In fact,
4 I'm reading a Supreme Court case -- and this is the
5 sentinel case on this issue. We have both cited it. It's
6 cited in the Gattis case that we both cited. A change of
7 condition is as follows -- and this is from 1967, a case
8 that is still good from the Supreme Court of South
9 Carolina where a change of condition is defined as a
10 change in Claimant's physical condition as a result of the
11 original injury occurring after the first award.

12 I can't say it any clearer than that. That is what
13 the Court said, Occurring after the first award
14 reiterating Gattis where Gattis -- the Court of Appeals in
15 Gattis said it a few years ago. A change of the condition
16 occurs when the Claimant experiences a change in the
17 physical condition as a result of the original injury
18 occurring after the first award, citing Causby. I don't
19 know where the misunderstanding is. I'm just citing
20 Supreme Court precedence. That's all I'm doing.

21 THE COURT: Well, so I guess the question is, what
22 was unclear about Dr. Grady's testimony that didn't fit
23 that definition exactly?

24 MR. HAIGLER: And that was my next point. And you
25 brought it up earlier when you were referencing the

1 timeline, the delay in pursuing this opinion. And he
2 gave -- the timeline he laid out was absolutely correct.
3 What he didn't -- there was one part he didn't mention,
4 though.

5 The Claimant reached MMI in March of 2008. We didn't
6 get to a hearing until October of the next year. And the
7 only reason we got to that hearing was because I filed for
8 it. Otherwise, he would have -- this could have gone on
9 forever without there ever being a determination. He was
10 never pursuing the determination of permanent disability.
11 The only reason we got there is because I filed the 21 to
12 get us there. And then, subsequent to that, another 20
13 months went by before he ever got an opinion on the change
14 of condition.

15 So what he's asking you to do, basically, is allow
16 the change of condition to start when the Claimant reaches
17 MMI. He can sit on his rights to pursue permanent
18 disability for as long as he wants, have a hearing, and
19 then he has a year to file. But the change could have
20 occurred any time during the period between when the guy
21 reached MMI and whenever -- we had that first award. And
22 that is not what the statute is trying to get to. That is
23 completely not the statute. That is a manipulation of
24 what the Court of Appeals said in the cases that have been
25 cited by the Claimant.

1 occurred before the hearing, a day after the last time I
2 saw her, or afterwards. That's a causation issue. And he
3 wasn't able to give that to a reasonable degree of medical
4 certainty. In fact, he said it repeatedly in his
5 deposition, which we took last year. So that's the issue.

6 The issue is that if you go by what the Supreme Court
7 says, then he couldn't give a causation statement to a
8 reasonable degree of medical certainty as to when the
9 change of condition occurred. So it's critically
10 important, in my opinion. And we would submit to this
11 Court the same thing.

12 I think there's another -- I still think the most
13 telling issue in this entire case is the intervening
14 accident issue. And I would submit to you, Your Honor,
15 Zumba occurred after she saw Dr. Grady. However, what
16 Jeremy didn't telling you was -- is in her testimony, she,
17 clearly, stated -- we asked her, when did you start having
18 these problems with your left knee?

19 She said, Well, when I started going to the gym.

20 That's a direct quote from her deposition. It's on
21 Page 11 of her deposition, Page 14 of her deposition, and
22 Page 15 of her deposition. "My knee started hurting in
23 the summer of 2010." Well, in the summer -- and so, of
24 course, we go, Where were you working out? We went and
25 got her records and find out she had been working out five

1 times a day [sic], 100 -- I think it was 105 times over a
2 160-day period. In fact, she said sometimes she went
3 twice to the gym.

4 THE COURT: Well, is there any medical testimony in
5 the record that --

6 MR. HAIGLER: Absolutely, absolutely.

7 In fact -- well, first, I'll say if your knee
8 feels -- if your knee is in such bad shape that you've had
9 a change of condition, then how in the world are you going
10 to the gym? That's my first statement. And so she went
11 all that time.

12 So I asked -- so, of course, she tells us, My knee
13 started hurting when I started exercising. So we asked
14 Dr. Grady, Could that have exacerbated or accelerated her
15 problem with her knee?

16 He said, Yeah, it could have.

17 He -- it's in his deposition. Now, he didn't want to
18 move from his opinion that she had a change of condition.
19 Well, we're not really arguing that. The question is,
20 what caused the change of condition, and can he meet the
21 statute? First of all, he can't meet the statute.

22 Secondly, if there is a change, which is what the
23 commissioner was saying, even if there's a change of
24 condition that's causally related to the accident, there's
25 an intervening accident. In fact, I don't think -- I

1 mean, there's just no doubt about that. She admitted it
2 in her deposition. She admitted it at the hearing
3 repeatedly that the reason her knee started hurting, the
4 reason she needed to go see Dr. Grady is because she was
5 exercising. That's plain and simple.

6 And the reason it's important, Your Honor, is that
7 this is a substantial evidence question. If there's
8 substantial evidence to support the intervening accident,
9 then it's for the fact finder to decide. And there is,
10 certainly, substantial evidence to support Dr. Grady's
11 testimony, one, the Claimant's testimony in two different
12 occasions, two, that she had an intervening accident.

13 And, in 2010, the real reason she has this change of
14 condition or whatever change she's had is because of her
15 excessive working out at the gym. I don't think there's
16 any way that Jeremy can get around the substantial
17 evidence question in this case.

18 THE COURT: Well, I still haven't heard the medical
19 testimony to a reasonable degree of medical certainty that
20 it was a cause of her worsening condition.

21 Where is that in the record?

22 MR. HAIGLER: On Page 27 of Dr. Grady's deposition.
23 And I'll just read it to you, read it right to you,
24 Doctor -- or Judge. I said, I guess my question is when
25 you saw her in November and as you noted quite thoroughly

1 in the report the condition of her knee, was that
2 accelerated by the fact that she was exercising that
3 frequently during the period of time just prior to this
4 report? Was it accelerated over what it would have been
5 just naturally using her knee?

6 He said, I would have to say -- I would have to
7 answer it's possible.

8 And then I asked, Is there any way for you to state
9 to a reasonable degree of medical certainty whether the
10 condition -- and then he went into this whole dialogue
11 about backing right up in his prior opinion.

12 But that's not -- the point, Judge, Your Honor, is he
13 just, clearly, said it's absolutely possible that that's
14 what happened, but there's no way for me to know.

15 THE COURT: He said it's absolutely possible, those
16 were his words?

17 MR. HAIGLER: Well, I mean, I would have to answer
18 it's possible, Your Honor. That was his answer.

19 THE COURT: Possible, does that meet the standard
20 of --

21 MR. HAIGLER: It's not my burden to meet the
22 standard, Your Honor, if it's possible.

23 THE COURT: Well, how are you going to -- how is the
24 commission going to make a medical conclusion when they
25 don't have evidence of causation to a reasonable degree of

1 symptoms.

2 THE COURT: Was there something in the original order
3 that prevented her from exercising?

4 MR. HAIGLER: In the order of the single
5 commissioner, there was not.

6 THE COURT: Pardon?

7 MR. HAIGLER: There was not. No, there was not.

8 And so I think -- to wrap up my argument, I think
9 there's two parts. First of all, the Supreme Court has
10 laid out what the standard is. Dr. Grady was not able to
11 give an opinion to a reasonable degree of medical
12 certainty as to whether the change of condition, if one
13 occurred, occurred after the award or before. I mean, I
14 can't make the law. I'm just reading what the Supreme
15 Court said. He couldn't give that opinion. And that's
16 crystal clear.

17 The other thing is that substantial evidence supports
18 the intervening accident that occurred during the summer
19 of 2010. And, therefore, we don't believe that this can
20 be reversed on the basis of substantial evidence.

21 Thank you, Your Honor.

22 THE COURT: An intervening accident is exercising?

23 MR. HAIGLER: It can be.

24 THE COURT: Okay. Thank you.

25 MR. DANTIN: Your Honor, if I may very briefly.

1 ~~First of all, the commission didn't find that~~
2 exercise in general was an intervening cause. They,
3 specifically, found that Zumba was the intervening cause.
4 And she hadn't a at the time that Dr. Grady had seen her.
5 So there is absolutely no evidence whatsoever that Zumba,
6 which is the specific thing identified by the commission,
7 was an intervening cause of this change of condition.

8 Further -- and I won't beat this to death, Your
9 Honor. But, insofar as the law is concerned, you know,
10 the 1967 opinion says a change of condition from the date
11 of the hearing. But that law was quoted by the Court of
12 Appeals in Mungo. They understand that. But what they're
13 trying to point out is what you look at critically is what
14 the commission considered the condition to be at the time
15 of the hearing, not the date of the hearing itself.

16 And, again, in this case, they had not considered any
17 other evidence, other than what Dr. Grady based his
18 opinion on when he last saw her. I mean, we could reach
19 an absurdity under this hypothesis wherein you could
20 always ask a doctor, well, couldn't it possibly --
21 theoretically, couldn't her condition have changed before
22 this date of the hearing if they didn't see her, you know,
23 a month before the hearing, or two months before the
24 hearing? Yeah, theoretically, I guess that always could
25 have taken place. I mean, we would enter a realm where we

1 ~~have to send somebody to the doctor the day of or the day~~
2 before the hearing in every case in order to get some base
3 line so that we can use the exact date of the hearing as
4 our benchmark going forward for a change of condition.
5 Clearly, that's not what the legislature intended with
6 this.

7 And insofar as, you know, having a year to file it,
8 the year to file a change of condition starts on the date
9 of last payment, not the date of the hearing. And very
10 frequently, Your Honor, we'll have Claimant's and
11 Claimant's will choose to take their payments by the week,
12 instead of lump sum. And those weekly payments may
13 stretch out for years. And the change of condition time
14 doesn't start until the last payment is received. And
15 then they have a year after that. So this notion of
16 stretching the time occurs routinely in comp.

17 Thank you.

18 THE COURT: Thank you all for your arguments.

19 I'm going to look at it in light of what you've told
20 me today. And I'll let you know my decision, hopefully,
21 in the next several days.

22 *****END OF TRANSCRIPT OF RECORD*****

23

24

25

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0622179

EMPLOYEE/CLAIMANT: JACQUELINE Y. CARTER

EMPLOYER: VERIZON WIRELESS

INSURER: AMERICAN HOME INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING
BEFORE THE FULL COMMISSION PANEL

PURSUANT TO NOTICE OF THE WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 16TH
DAY OF AUGUST, 2011, COMMENCING AT THE HOUR OF 1:30
PM AT THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION, COLUMBIA, SOUTH CAROLINA, ATTENDED BY
COUNSEL AS FOLLOWS:

KATHRYN BOSTROM,
VERBATIM COURT REPORTER

COPY

BOSTROM REPORTING

107 TYBORNE CIRCLE
COLUMBIA, S.C. 29210
803-446-7040

1 THE EFFORT BEING OBVIOUSLY TO KEEP PRESSURE
2 OFF THAT OTHER KNEE. SO, THERE IS ABSOLUTELY
3 NO EVIDENCE THAT HER RIGHT ANKLE FRACTURE HAD
4 ANY BEARING ON HER LEFT KNEE. THERE IS
5 CERTAINLY NO MEDICAL TESTIMONY ABOUT IT. THERE
6 IS NO MEDICAL OPINION ABOUT IT AND CERTAINLY
7 FAR FROM ANYTHING THAT WOULD ARISE TO A
8 SUPERCEDING, INTERVENING CAUSE. TO THE
9 CONTRARY DR. GRADY TESTIFIED SPECIFICALLY THAT
10 WHAT HE SAW IN TERMS OF HER PROGRESSION WAS
11 EXACTLY WHAT HE EXPECTED TO SEE GIVEN THE STATE
12 OF HER KNEE WHEN HE LAST SAW HER IN MARCH OF
13 2008. SO, I DON'T THERE IS ANY EVIDENCE TO
14 SUPPORT ANY FINDING REGARDING AN INTERVENING
15 CAUSE ON EITHER THE ZUMBA OR WITH REGARD TO
16 THAT RIGHT ANKLE FRACTURE. YOU KNOW, ANOTHER
17 ISSUE IN THE CASE THAT CAME UP AND I HANDED UP
18 THE MUNGO CASE FOR YOUR REVIEW AND I'M SURE YOU
19 ARE FAMILIAR WITH IT, BUT A LOT WAS MADE BOTH
20 AT THE TIME OF THE HEARING AND IN RESPONDENT'S
21 BRIEF ABOUT DR. GRADY'S INABILITY TO PINPOINT
22 WHETHER THIS CHANGE OCCURRED BEFORE OR AFTER
23 THE DATE OF THE HEARING. AND, THIS IS AN ISSUE
24 THAT IS -- MUNGO IS EXACTLY ON POINT WITH THIS
25 AND IT HAS BEEN SETTLED BY THE COURT OF

1 APPEALS. WHEN YOU HAVE MEDICAL EVIDENCE THAT
2 IS NOT CONSIDERED PRIOR TO, OR ALONG WITH, THE
3 ORIGINAL HEARING, THEN IT IS -- YOU DON'T GO
4 BACK TO THE DATE OF THE HEARING TO TALK ABOUT
5 WHERE THE CHANGE OF CONDITION WAS, YOU GO BACK
6 TO THE TIME, THE DATE WHEN THE PHYSICAL
7 CONDITION WAS ASCERTAINED. IN MUNGO, YOU
8 ACTUALLY HAD A SITUATION WHERE A DOCTOR HAD
9 AUTHORED A REPORT THE WEEK BEFORE THE HEARING
10 WAS TO TAKE PLACE. AND, COMMISSIONER LYNDON
11 WOULD NOT ALLOW IT IN BECAUSE IT WAS UNTIMELY.
12 AS IT TURNS OUT WHEN A CHANGE OF CONDITION WAS
13 FILED LATER FOR THAT CLAIMANT, THE ITEMS THAT
14 WERE IN THE REPORT WERE THE SAME CONDITIONS
15 BEING CLAIMED ON THE CHANGE OF CONDITION AND
16 THE DEFENSE SAID, NOW WAIT A MINUTE, THOSE
17 CONDITIONS EXISTED PRIOR TO THE DATE OF THE
18 HEARING, THEREFORE, THERE IS NO CHANGE. THE
19 CIRCUIT COURT AND THE COURT OF APPEALS REJECTED
20 THAT AND SAID THAT REVIEW OF AN AWARD AT A
21 CHANGE OF CONDITION HEARING IS CONCERNED WITH
22 THE DATE AS IN WHICH THE CLAIMANT'S CONDITION
23 WAS DETERMINED RATHER THAN THE DATE OF THE
24 ACTUAL HEARING IN WHICH THAT AWARD IS RENDERED.
25 AND, IN THAT CASE, ALL THE EVIDENCE WAS THAT

1 NOTING THAT FIRST, ALTHOUGH FOURTEEN ERRORS OF
2 LAW, OR ERRORS OF LAW, ERRORS OF FACT. GROUNDS
3 FOR REVIEW WERE RAISED, ONLY THREE ISSUES HAVE
4 BEEN PERSERVED FOR THIS APPEAL. THE FIRST ONE
5 BEING THAT THE CLAIMANT TAKES POSITION THAT THE
6 COMMISSIONER ERREDED IN FINDING THAT THE
7 CLAIMANT DID NOT SUSTAIN A CHANGE OF CONDITION
8 FOR THE WORSE, AND THAT COULD NOT BE FURTHER
9 FROM THE TRUTH. THE LAW OF SOUTH CAROLINA IS
10 CRYSTAL CLEAR. THE CASE OF CROMER V. NEWBERRY
11 COTTON MILLS, 23 S.E.2nd 19, THE 1942 SUPREME
12 COURT OPINION LATER FOLLOWED BY THE COSBY V.
13 ROCK HILL CASE, SAYS THE FOLLOWING: A CHANGE
14 OF CONDITION MEANS "A CHANGE IN THE CLAIMANT'S
15 PHYSICAL CONDITION AS A RESULT OF THE ORIGINAL
16 INJURY OCCURRING AFTER THE FIRST AWARD." SO,
17 TO HAVE A CHANGE OF CONDITION, YOU MUST HAVE
18 SOMETHING OCCUR AFTER THE FIRST AWARD, IN THIS
19 CASE AFTER YOU AWARDED THE BENEFITS IN THIS
20 CASE, COMMISSIONER BARDEN, AND A DOCTOR NOW,
21 BECAUSE WE HAVE A STATUTE OR REG THAT SAYS YOU
22 HAVE TO ATTACH A DOCUMENT THAT SUPPORTS THAT TO
23 YOUR FORM 50. WE DEPOSED DR. GRADY. NOW,
24 WHAT'S IMPORTANT IS THIS: THEY HAVE COMPLETELY
25 MISCONSTRUED THIS MUNGO CASE. MUNGO DOESN'T

1 SAY WHAT JEREMY JUST SAID IT SAYS. MUNGO SAID
2 BECAUSE COMMISSIONER LYNDON DIDN'T CONSIDER
3 THAT REPORT A WEEK BEFORE THAT THAT COULD THEN
4 BE CONSIDERED IN A CHANGE OF CONDITION CASE.
5 THAT'S WHAT MUNGO SAYS. NOT THAT BECAUSE THE
6 CLAIMANT OR HER LAWYER OR WHOEVER DIDN'T GO SEE
7 A DOCTOR FOR 20 MONTHS, 20 MONTHS FROM THE DATE
8 OF THE HEARING, SHE DIDN'T GO SEE A DOCTOR.
9 YOU DIDN'T EXCLUDE ANY EVIDENCE IN YOUR CASE.
10 THAT'S WHAT MUNGO'S ABOUT, THE EXCLUSION OF
11 EVIDENCE. AND, THEN AN ARGUMENT ABOUT, WELL,
12 IF YOU EXCLUDED IT AT THE FIRST HEARING, YOU
13 CAN'T EXCLUDE IT ON A CHANGE OF CONDITION.
14 WE'VE GOT TO HAVE SOMEWHERE TO CONSIDER.
15 THAT'S NOT WHAT HAPPENED HERE. THEY SAT ON
16 THIS CASE. SHE REACHED MMI ACCORDING TO YOU
17 WAY BACK IN EARLY 2008. SHE DIDN'T GO SEE DR.
18 GRADY, I DON'T KNOW WHY I CAN'T HAVE A HARD
19 TIME WITH HIS NAME, IT'S MY NAME. SHE DIDN'T
20 GO SEE HIM AGAIN, LITERALLY, UNTIL ALMOST
21 EXACTLY THREE YEARS, NOT A YEAR, NOT TWO
22 MONTHS, NOT -- FROM THE TIME WE CAME TO YOUR
23 HEARING, WE WERE AT HEARING BECAUSE WE ASKED
24 FOR A HEARING, NOT BECAUSE THEY ASKED FOR A
25 HEARING. WE HAD TO ASK FOR THE HEARING IN THIS

1 CASE. TWENTY MONTHS FROM THE DATE OF MMI OR
2 FROM THE DATE OF THE LETTERS, HE HADN'T
3 ACTUALLY SEEN HER SINCE JANUARY OF '08. HE
4 GAVE A LETTER THAT SAID MMI AND A RATING MARCH
5 OF '08. WE DIDN'T COME TO A HEARING IN FRONT
6 OF YOU IN THE MIDDLE OF SUMMERTIME OF '09 AND
7 THAT'S WHEN THE AWARD WAS MET. NO EVIDENCE
8 EXCLUDED. IN FACT, THE EVIDENCE ABOUT THE
9 OTHER INJURIES WERE INCLUDED IN THE RECORD.
10 MUNGO DOESN'T SAY JUST BECAUSE YOU DON'T GO SEE
11 THE DOCTOR DURING THAT PERIOD OF TIME, THAT YOU
12 GO ALL THE WAY BACK TO THE DATE OF MMI AND
13 THAT'S WHERE CHANGE OF CONDITION STARTS FROM
14 BECAUSE THAT WOULD ABSOLUTELY MAKE THE STATUTE
15 COMPLETELY MEANINGLESS BECAUSE IF WE DID THAT,
16 SHE REACHED MMI IN JANUARY OR MARCH OF '08.
17 SHE DIDN'T EVEN FILE A CHANGE OF CONDITION
18 UNTIL LITERALLY JANUARY OF '11 -- THEN WHAT
19 MEANING DOES 42-17-90 HAVE? ZERO MEANING. SO
20 THAT'S NOT WHAT MUNGO SAYS. AND, TO TRY TO
21 SOMEHOW PUT THIS CASE IN MUNGO IS JUST
22 DISINGENUOUS AND IS NOT CORRECT. SO, WHAT
23 HAPPENED AFTER THE ACCIDENT THAT CAUSED A
24 CHANGE OF CONDITION OR AFTER THE AWARD, RATHER?
25 WELL, WE WENT AND ASKED DR. GRADY. "DR. GRADY,

1 YOU'RE THE DOCTOR THEY'RE RELYING ON TO SAY
2 THERE'S A CHANGE IN CONDITION SINCE THE AWARD
3 IN THIS CASE. CAN YOU STATE THAT TO WITHIN A
4 REASONABLE DEGREE OF MEDICAL CERTAINTY?" HIS
5 ANSWER IS NOT NO, BUT ABSOLUTELY HECK NO,
6 BECAUSE I DIDN'T SEE HER FOR 20 MONTHS. I
7 DON'T KNOW WHETHER THIS CHANGE OCCURRED BEFORE
8 YOU HAD A HEARING WITH HER OR IF THIS CHANGE
9 OCCURRED AFTER THE HEARING. I JUST KNOW IT
10 OCCURRED. SHE'S NOW DIFFERENT THAN SHE WAS
11 WHEN I SAW HER ALMOST THREE YEARS AGO. NOT 12
12 MONTHS AGO, NOT A FEW MONTHS AGO. YES, SHE'S
13 DIFFERENT BUT I CAN'T TELL YOU IF THIS OCCURRED
14 BEFORE OR AFTER. WELL, THAT'S THE LAW. THE
15 STATUTE IS: YOU MUST SHOW THE CHANGE OCCURRING
16 AFTER THE ACCIDENT. NOW, IF YOU RELY ON THEIR
17 THEORY WHICH IS AN IMPAIRMENT MEANS AUTOMATIC,
18 EVEN IF THE IMPAIRMENT RATING CHANGES.
19 AUTOMATICALLY THAT MEANS THERE'S A CHANGE OF
20 CONDITION. WELL, THEN THAT MEANS WHY DO WE
21 HAVE HEARINGS? WHY DO WE EVEN PUT CLAIMANTS UP
22 ON THE STAND TO SAY HOW BAD I AM AT A HEARING
23 BECAUSE ALL YOU'VE GOT TO DO IS GO WITH A
24 RATING, AND IF A RATING EVER CHANGES, YOU JUST
25 GO WITH THE NEXT RATING -- THAT'S NOT WHAT WE

1 AND DOES THAT AND THERE'S ALL THERE IS ON A
2 CHANGE, THAT'S NOT ENOUGH. SUPREME COURT SAID
3 THAT -- OR A COURT OF APPEALS SAID THAT. IT'S
4 NOT ENOUGH. YOU'VE GOT TO SHOW SOMETHING
5 MEDICALLY DIFFERENT AND IT'S GOT TO OCCUR AFTER
6 THE ACCIDENT. YOU CAN'T DO IT. NOW, --

7 COMMISSIONER BARDEN:

8 AFTER THE AWARD.

9 MR. BEARD:

10 I MEAN AFTER THE AWARD. I KEEP SAYING
11 ACCIDENT, I'M SORRY. BECAUSE THERE IS NO DOUBT
12 THAT THE RATING IS DIFFERENT AFTER THE
13 ACCIDENT. I MEAN HE'S CHANGED HIS RATING, BUT
14 AGAIN AND I -- IF JEREMY CAN POINT OUT TO YOU
15 OR STATE TO YOU THAT DR. GRADY DID NOT SAY THE
16 FOLLOWING AT THE FOLLOWING PAGES. I'M JUST
17 GOING TO READ YOU A COUPLE OF PAGES HERE ABOUT
18 CHANGE IN CONDITION. PAGE 21 OF DR. GRADY'S
19 DEPOSITION SAYS AND I QUOTE: IT IS IMPOSSIBLE
20 FOR HIM TO TELL THE DIFFERENCE BETWEEN THE
21 CLAIMANT'S CONDITION IN OCTOBER OF '09 WHICH
22 WAS WHEN THE FIRST HEARING WAS AND WHEN HE SAW
23 HER ON NOVEMBER OF '10 SINCE HE DID NOT SEE HER
24 FOR TWENTY MONTHS LEADING UP TO THE ORIGINAL
25 HEARING. THAT'S WHAT HE SAID. HE SAID AT PAGE

1 22: HE ADMITS HE HAS NO WAY OF KNOWING HOW HER
2 LEFT KNEE WAS BETWEEN JANUARY 3RD OF '08 AND
3 OCTOBER OF '09 BECAUSE HE DIDN'T SEE HER. IN
4 FACT, DID NOT SEE HER BETWEEN OCTOBER OF '09
5 AND NOVEMBER OF '10. HE SAID AT PAGE 23 AND
6 THIS IS IMPORTANT BECAUSE THIS IS THE MAGIC
7 STANDARD LANGUAGE. PAGE 23: HE CANNOT STATE
8 TO WITHIN A REASONABLE DEGREE OF MEDICAL
9 CERTAINTY WHEN HER PROBLEMS DEVELOPED. WHAT HE
10 SAW IN NOVEMBER OF 2010 WAS WHAT HE EXPECTED
11 FOLLOWING SURGERY ALL THE WAY BACK IN 2007.
12 THAT'S EXACTLY WHAT HE EXPECTED. THAT'S NOT A
13 CHANGE.

14 COMMISSIONER BARDEN:

15 BUT HE CAN'T PINPOINT A TIME FRAME?

16 MR. BEARD:

17 IT'S IMPOSSIBLE TO PINPOINT A TIME AND HE
18 CANNOT STATE WITHIN A REASONABLE DEGREE OF
19 MEDICAL CERTAINTY. HER TREATMENT REGIMEN FROM
20 JANUARY OF '08 AND WHEN HE SAW HER IN NOVEMBER
21 10 COMPLETELY THE SAME -- NOTHING'S CHANGED.
22 HE DOESN'T RECOMMEND ANYTHING DIFFERENT, JUST
23 THE SAME MEDICATIONS THAT THE COMMISSIONER
24 ORDERED SPECIFICALLY AS DODGE IN THIS CASE.
25 NOW, WHAT THEY WANT TO ARGUE IS YOU CAN COME IN

1 COMMISSIONER BARDEN:

2 I THOUGHT THIS WAS A DIFFERENT ANKLE INJURY
3 THAN THE ONE PERHAPS THAT I -- THIS IS THE SAME
4 ONE.

5 MR. BEARD:

6 NO, IT'S THE SAME ANKLE INJURY, BUT HE'S
7 ARGUING THAT YOU CAN'T HAVE AN INTERVENING
8 TRAUMA IN THAT PERIOD OF TIME, BUT YET YOU'VE
9 GOT TO GO BACK TO THAT TO ESTABLISH A CHANGE IN
10 CONDITION. WELL, THAT MAKES ABSOLUTELY NO
11 SENSE. IT'S CLEAR IF YOU CAN GO BACK TO
12 JANUARY OF '08 OR MARCH OF '08 AND ARGUE THE
13 CHANGE IN CONDITION STARTS THERE WHICH IS WHAT
14 HE SAYS MUNGO SAYA, WHICH IS NOT WHAT IT SAYS.
15 BUT, IF THAT'S CORRECT, WELL, YOU CLEARLY HAVE
16 TO BE ABLE TO ARGUE ANYTHING THAT HAPPENED
17 AFTER MARCH OF '08 CAN BE AN INTERVENING
18 TRAUMA. WHEN WE WERE BEFORE YOU, THAT WASN'T
19 AN ISSUE. IT JUST WASN'T AN ISSUE. IT'S AN
20 ISSUE NOW. AND, THEN SHE HAS EXERCISES. YOU
21 CAN READ. IT SAYS: "WHEN DID YOU FIRST
22 DEVELOP PROBLEMS? WHEN DID YOU FIRST START
23 DEVELOPING PROBLEMS AFTER THE HEARING?" "WHEN
24 I JOINED THE GYM AND STARTED WORKING OUT." WE
25 WENT AND GOT HER RECORDS. WITHIN 180 DAYS, SHE

1 WENT TO THE GYM A 109 TIMES -- AND, SEVERAL
2 DAYS, MULTIPLE TIMES. AND, SHE TESTIFIED "MY
3 KNEE KILLED ME WHEN I WENT AND WORKED OUT AT
4 THE GYM." THAT'S AN INTERVENING TRAUMA.

5 COMMISSIONER BARDEN:

6 . OKAY, THANK YOU, SIR.

7 MR. BEARD:

8 THANK YOU.

9 COMMISSIONER BARDEN:

10 ALL RIGHT, MR. DANTIN.

11 MR. DANTIN:

12 MR. BEARD CAN STAND UP HERE ALL DAY AND SAY
13 MUNGO DOESN'T SAY WHAT IT SAYS, BUT YOU HAVE
14 THE CASE IN FRONT OF ME.

15 COMMISSIONER HUFFSTETLER:

16 LET ME ASK YOU WHAT THE STATUTE SAYS.

17 MR. DANTIN:

18 SIR, I'M SORRY?

19 COMMISSIONER HUFFSTETLER:

20 LET ME ASK YOU WHAT THE STATUTE SAYS. I'M
21 LOOKING AT 42-17-90 WHICH SAYS THE COMMISSION
22 ON ITS OWN MOTION OR THE MOTION PARTY MAY
23 REVIEW AN AWARD OF THE COMMISSION TO INCREASE,
24 DECREASE, DIMINISH -- AND IT SAYS -- I'LL PICK
25 UP IN MID SENTENCE. " -- ON PROOF BY

1 PREPONDERANCE OF THE EVIDENCE, THAT THERE HAS
2 BEEN A CHANGE OF CONDITION CAUSED BY THE
3 ORIGINAL INJURY AFTER THE LAST PAYMENT OF
4 COMPENSATION."

5 MR. DANTIN:

6 CORRECT.

7 COMMISSIONER HUFFSTETLER:

8 SO, THE CHANGE OF CONDITION HAS TO COME AFTER
9 THE AWARD.

10 MR. DANTIN:

11 NO, THE CHANGE OF CONDITION HAS BEEN
12 INTERPRETED BY THE COURT ALREADY.

13 COMMISSIONER HUFFSTETLER:

14 I'M READING THE STATUTE.

15 MR. DANTIN:

16 THE TIME, COMMISSIONER THE TIME TO FILE FOR A
17 CHANGE OF CONDITION HAS TO BE MADE WITHIN ONE
18 YEAR FROM THE TIME OF THE AWARD.

19 COMMISSIONER HUFFSTETLER:

20 THAT'S NOT WHAT I'M ASKING. WHAT I JUST READ
21 SAYS THAT IT'S CHANGE OF CONDITION CAUSED BY
22 THE ORIGINAL INJURY AFTER THE LAST PAYMENT OF
23 COMPENSATION.

24 COMMISSIONER BARDEN:

25 DO YOU NOT --

1 MR. DANTIN:

2 I DON'T THINK THAT SPEAKS TO WHEN THE --

3 COMMISSIONER BARDEN:

4 WHEN DO YOU BELIEVE IT HAS TO HAVE OCCURRED?

5 MR. DANTIN:

6 I'M SORRY?

7 COMMISSIONER BARDEN:

8 WHEN DO YOU BELIEVE THE STARTING POINT FOR
9 DETERMINING WHETHER THERE WAS A CHANGE OF
10 CONDITION?

11 MR. DANTIN:

12 IN THIS CASE, I BELIEVE IT IS EXACTLY AS IT WAS
13 IN MUNGO WHICH YOUR -- THE DATE THAT THE
14 CONDITION WAS ASCERTAINED WAS THE DATE OF
15 MAXIMUM MEDICAL IMPROVEMENT BECAUSE THAT IS THE
16 ONLY THING MENTIONED IN YOUR ORDER.

17 COMMISSIONER HUFFSTETLER:

18 THE WHOLE SECTION 42-17-90 IS A REQUEST FOR A
19 REVIEW OF AN ORDER OF THE COMMISSION.

20 COMMISSIONER BARDEN:

21 SO, IT CAN'T READ --

22 COMMISSIONER HUFFSTETLER:

23 HOW CAN YOU HAVE A CHANGE OF CONDITION BEFORE
24 THE AWARD AND CLAIM THAT TO BE -- I DON'T GET
25 THAT. HOW CAN YOU HAVE AN AWARD AFTER A CHANGE

1 OF CONDITION WHEN THE SECTION ADDRESSES A
2 REQUEST TO AMEND AN AWARD?

3 MR. DANTIN:

4 BECAUSE THE COURT OF APPEALS HASN'T INTERPRETED
5 THAT AS BEING THAT YOU GO BACK TO THE TIME THAT
6 THE CONDITION IS ASCERTAINED, NOT JUST THE DATE
7 OF THE HEARING OR THE DATE OF THE AWARD.

8 COMMISSIONER BARDEN:

9 WELL, THEN WHAT DOES --

10 COMMISSIONER HUFFSTETLER:

11 BUT THEN WHAT ABOUT THE EVIDENCE?

12 COMMISSIONER WILLIAMS:

13 YEAH, WELL IF WE SYNTHESIZE THAT WITH OUR
14 STATUTE AND WITH THE REG, AND WE TAKE WHAT YOU
15 SAY ABOUT MUNGO, THAT MEANS THAT YOU HAVE TO
16 FILE THAT CHANGE -- WHEN DOES THE CHANGE HAVE
17 TO BE FILED? BECAUSE THEN THAT YEAR WOULD HAVE
18 RUN BACK IN '09 TO 2011. SO, YOU WOULD HAVE
19 BEEN FROM THE STATUTE OF LIMITATION TIME
20 PERIOD, YOU WOULD HAVE BEEN OUT, THAT DOESN'T
21 MAKE ANY SENSE.

22 MR. DANTIN:

23 THE TIME TO FILE IS DIFFERENT FROM THE TIME
24 THAT YOU ARE IDENTIFYING WHEN THE CHANGE
25 OCCURRED. THEY ARE TWO DIFFERENT ISSUES.

1 THAT'S WHAT THE COURT IN MUNGO SAYS CLEARLY.

2 COMMISSIONER HUFFSTETLER:

3 YOU ARE ARGUING THE CHANGE IN CONDITION CAME
4 BEFORE THE AWARD.

5 MR. DANTIN:

6 JUST AS IT DID IN MUNGO.

7 COMMISSIONER HUFFSTETLER:

8 OKAY.

9 MR. DANTIN:

10 I'M NOT ARGUING THAT IT CAME BEFORE THEN. WHAT
11 I'M SAYING IS THAT IT CAN AS IT DID IN MUNGO.
12 IN THIS CASE --

13 COMMISSIONER HUFFSTETLER:

14 SO, YOU DON'T BELIEVE MUNGO SPEAKS TO THE
15 EVIDENCE THAT WAS EXCLUDED?

16 MR. DANTIN:

17 I THINK IT SPEAKS OF BOTH. BUT, WHAT I WOULD
18 SUBMIT IS, IN THAT CASE, YOU ACTUALLY HAD
19 EVIDENCE THAT THERE WAS A CHANGE BEFORE IT.
20 YOU DON'T EVEN HAVE THAT IN THIS CASE.

21 COMMISSIONER BARDEN:

22 THANK YOU. THAT CONCLUDES THIS PROCEEDING.

23 (THERE BEING NO FURTHER QUESTIONS, THIS
24 HEARING WAS CONCLUDED AT THE HOUR OF 1:56
25 PM.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0622179

JACQUELINE Y. CARTER)
 CLAIMANT,)
 VS.)
 VERIZON WIRELESS)
 EMPLOYER,)
 AND)
 AMERICAN HOME ASSUR)
 CARRIER.)

SC WORKERS' COMPENSATION COMMISSION
 HEARING OF
 JACQUELINE Y. CARTER
 VS
 VERIZON WIRELESS

This is the Transcript of the South Carolina Workers' Compensation Hearing of Jacqueline Y. Carter versus Verizon Wireless, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 3:28 P.M., Wednesday, February 16, 2011, at Greenville County Square, 301 University Ridge, Suite 5100, Greenville, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

1 condition the doctor -- we'd have to send somebody
2 to the doctor on that day and I don't think the
3 law requires that.

4 Commissioner Wilkerson: Okay. ma'am, I'm going
5 to get you to raise your right hand. We're going
6 to swear you in -- and have the Court Reporter
7 swear you in and we'll take your testimony here.

8 Whereupon;

9 JACQUELINE YVONNE CARTER, being duly sworn and
10 cautioned to speak the truth, the whole truth and nothing
11 but the truth, testified as follows:

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

14 Witness: Jacqueline Yvonne Carter.

15 Court Reporter: Thank you, ma'am.

16 DIRECT EXAMINATION

17 By Mr. Dantin:

18 Q. All right, Ms. Carter, at the time of your last hearing
19 in October 2009, you were working with Bank of America,
20 correct?

21 A. Yes.

22 Q. But you're not working there anymore?

23 A. No.

24 Q. All right. What happened?

25 A. My branch closed.

1 Q. Okay. And did you receive unemployment benefits for a
2 while?

3 A. Yes, I did.

4 Q. About how long did you receive those?

5 A. Eight (8) months.

6 Q. All right. And are you working currently?

7 A. Yes.

8 Q. And where are you working?

9 A. BB&T.

10 Q. And what do you do at BB&T?

11 A. A Bank Teller.

12 Q. When did you start with BB&T?

13 A. October 4th of last year.

14 Q. All right. Do you believe the people with and for whom
15 you work at BB&T are aware of your knee injury?

16 A. Yes, they are.

17 Q. Why do you believe that?

18 A. I mentioned it to them.

19 Q. Okay. Are you able to sit and stand as needed to do
20 your job?

21 A. Yes, I am.

22 Q. Now, you work part time, correct?

23 A. Correct.

24 Q. And why do you -- well, let me ask you this. How many
25 hours a week are you working?

- 1 A. No more than twenty (20).
- 2 Q. Okay. And -- and why are you only working part time?
- 3 A. I take care of my daddy.
- 4 Q. And that's something you were -- that you testified
- 5 about in the last hearing as well.
- 6 A. Yes.
- 7 Q. Your father is how old?
- 8 A. He's sixty-eight (68).
- 9 Q. Okay. And does he have medical problems?
- 10 A. Yes, he does.
- 11 Q. Okay. And are you pretty much his prime caregiver at
- 12 home?
- 13 A. I am.
- 14 Q. Okay. Now, in your last hearing we discussed the fact
- 15 that you use a cane prescribed by Dr. Grady?
- 16 A. Yes.
- 17 Q. You don't have your cane here today?
- 18 A. No, I don't.
- 19 Q. Okay. Do you ever use it anymore?
- 20 A. Rarely.
- 21 Q. Okay. Well, if you use it rarely, I mean, did your
- 22 knee start feeling better?
- 23 A. No.
- 24 Q. Well, why aren't you using it more?
- 25 A. Well, my shoulder and -- and back started to hurt and I

1 learned to deal with the pain and -- and -- to
2 compensate for it without using it.

3 Q. Do you feel like the cane was making your shoulder and
4 back hurt?

5 A. Yes.

6 Q. Now, you testified in 2009, that your knee felt weak
7 and that you felt like it may give out from you from
8 time to time, which is why you relied on the cane; does
9 it -- does it still feel that way to you today?

10 A. Yes, it does.

11 Q. Is -- when you say that you got used to it, is -- is
12 that the feeling that you're talking about?

13 A. Yes, I've learned to deal with it.

14 Q. Okay. Now, we're here today because you believe your
15 left knee problem has worsened, correct?

16 A. Yes.

17 Q. When did you begin to notice increased problems with
18 your left knee?

19 A. In June of last year.

20 Q. Okay. And --

21 A. Excuse me.

22 Q. -- and was there anything in particular that made you
23 begin to be aware of increased problems?

24 A. I started water aerobics and I found it difficult to do
25 some of the exercises in the water.

1 Q. Okay. And you started doing water aerobics in June
2 2010; is that correct?

3 A. Yes.

4 Q. Okay. Now, prior to June 2010, had you been using your
5 leg much?

6 A. No, I wasn't that active before.

7 Q. Okay. Why did you decide to begin exercising?

8 A. For health reasons. I've been at risk of being
9 diabetic because my dad is a diabetic and I needed to
10 lose the weight to help my knee to try to strengthen
11 it.

12 Q. Okay. Why did you select water aerobics in particular
13 as your form of exercise?

14 A. Because in the water it takes a lot of the pressure off
15 my knee. I can't basically do too much on the floor.

16 Q. Okay. Had you ever done any kind of water aerobics or
17 water therapy previously?

18 A. Yes.

19 Q. Okay. And had Dr. Grady ever recommended water therapy
20 or water aerobics for you?

21 A. Yes.

22 Q. When was that?

23 A. Right after my surgery.

24 Q. Okay. Where do you take water aerobics?

25 A. At Trinity Health and Fitness Center.

- 1 Q. And do you take water aerobics from a certified
2 instructor?
- 3 A. Yes I do.
- 4 Q. And what is her name?
- 5 A. Lori Burgess.
- 6 Q. Now, during water aerobics are you actually in the
7 water the whole time you exercise?
- 8 A. Yes, I am.
- 9 Q. And did you notice pain and difficulties the very first
10 time you did water aerobics?
- 11 A. Yes.
- 12 Q. Did you continue to notice problems with your knee as
13 you continued exercising with water aerobics?
- 14 A. Yes, I did. But then there would be some days when I
15 -- I wouldn't be able to go.
- 16 Q. Why is that?
- 17 A. Because the pain was too severe.
- 18 Q. At some point did you think you should see Dr. Grady
19 about these problems?
- 20 A. Yes.
- 21 Q. About when was that?
- 22 A. About a month after I started.
- 23 Q. It was in?
- 24 A. Around July.
- 25 Q. Okay. July of 2010?

1 A. Yes.

2 Q. What did you do at that point?

3 A. I called my Attorney's office.

4 Q. Okay.. And what is your understanding about whether you
5 were authorized to go back to the doctor at that time?

6 A. I was denied.

7 Q. Okay. Why didn't you go to see him yourself then?

8 A. I don't have insurance.

9 Q. Do you have insurance now?

10 A. No, I don't.

11 Q. Why not?

12 A. I work part time. Under fifteen (15) hours you don't
13 get insurance.

14 Q. Okay.

15 A. Or under twenty (20) hours you don't get insurance; I'm
16 sorry.

17 Q. All right. All right, now, ultimately, I sent you back
18 to see Dr. Grady and you had an appointment in November
19 of 2010, correct?

20 A. Correct.

21 Q. Now, as of November 4, 2010, when you saw Dr. Grady,
22 had you done any exercises other than water aerobics?

23 A. I tried to do the Zumba class.

24 Q. All right. Now, this is before November 4th, 2010?

25 A. Well, before I hadn't done anything.

1 Q. Other than water aerobics?

2 A. Well, other than water aerobics, correct.

3 Q. Okay. Now, since November 4th, 2010, have you done
4 anything else?

5 A. I tried to do the -- the Zumba class.

6 Q. Okay. And I'm sure, if the Commissioner is anything
7 like me, he may not know what Zumba is or maybe --
8 maybe he does Zumba but --

9 Commissioner Wilkerson: I already know what it
10 is; I heard Woody Wyndom on the show in Columbia
11 trying to tell me what it was the other day and
12 other than that that's the first time I'd heard of
13 Zumba.

14 Mr. Dantin: -- tell him.

15 Commissioner Wilkerson: I can tell you. So, why
16 don't you tell me because I'm not sure what he was
17 said was what I needed to hear, so.

18 A. It's a cardio dance class.

19 Commissioner Wilkerson: Okay.

20 Q. All right. Now, a cardio dance class seems like an odd
21 choice for somebody with a knee like yours. Why would
22 you try Zumba?

23 A. Because, I wanted to work on the upper -- my upper body
24 and that's the only part that I could do --

25 Q. Okay.

- 1 A. -- to lose weight on the upper body.
- 2 Q. Did you actually -- are you able to do any of the dance
3 moves?
- 4 A. No.
- 5 Q. Could you get on the floor or anything like that?
- 6 A. No.
- 7 Q. I don't know what's involved in Zumba. You just did,
8 what the arm movements? I guess there's --
- 9 A. Yes --
- 10 Q. -- arm movements?
- 11 A. -- it's like the boxing parts.
- 12 Q. Okay. How long is a Zumba class?
- 13 A. It's an hour.
- 14 Q. All right, can you even stand for that long to do the
15 class?
- 16 A. No, I can't.
- 17 Q. Have you continued to do Zumba?
- 18 A. No.
- 19 Q. Why not?
- 20 A. Because I can't do all of the exercises.
- 21 Q. Okay. It just wasn't benefiting you without --
- 22 A. No.
- 23 Q. -- doing the other stuff?
- 24 A. I couldn't do any -- no.
- 25 Q. No. Okay. All right. Did you ever injure yourself

1 while you were doing water aerobics?

2 A. No.

3 Q. Did you have any falls or other accidents that injured
4 your knee between the time of your last hearing in 2009
5 and when you saw Dr. Grady in November of 2010?

6 A. No.

7 Q. In what ways do you believe your knee is worse now than
8 it was at the time of your hearing in 2009?

9 A. It's constantly grinding when I walk or go up -- down
10 stairs. It's swelling. It has burning, sharp pains.
11 There's a knot there and it feels full and heavy as the
12 -- like there's fluid on it.

13 Q. Okay. Now, you had kind of sharp, stabbing pain in
14 2009, correct?

15 A. Yes.

16 Q. Now, you said in 2009, that your pain averaged about
17 five (5) out of ten (10)?

18 A. Correct.

19 Q. When you saw Dr. Grady in November 2010, his report
20 says that your pain was averaging five (5) out of ten
21 (10) and went as high as six (6) or seven (7) out of
22 ten (10); does that --

23 A. Yes.

24 Q. -- sound right to you?

25 A. Yes.

1 Q. Now, your deposition was taken a few weeks ago in late
2 January and at that point you said that your pain was
3 up to eight (8) out of ten (10)?

4 A. Yes.

5 Q. Is that accurate?

6 A. Yes.

7 Q. Is that where your pain is today?

8 A. Yes.

9 Q. So, your pain has increased even since you saw Dr.
10 Grady in November?

11 A. Yes.

12 Q. Okay. At the time of your last hearing in 2009, you
13 were taking Darvocet for pain; do you take that any
14 more?

15 A. No, I don't.

16 Q. Why not?

17 A. It's off the market.

18 Q. Okay. What do you take now?

19 A. Tramadol.

20 Q. And, how often do you take Tramadol?

21 A. I take two (2) pills at night before I go to bed.

22 Q. Okay. Since you were not allowed to go back and see
23 the authorized treating physician for the medication;
24 who -- who prescribed the Tramadol for you?

25 Mr. Beard: Commissioner, I just -- I would object

1 Reporter --

2 Mr. Dantin: -- or would you like to keep it?

3 Commissioner Wilkerson: -- and let her mark it.

4 I'm sorry.

5 Mr. Dantin: Okay.

6 Commissioner Wilkerson: Because if not -- yes, it
7 just needs to be properly marked. I'm sorry.

8 Mr. Dantin: That's fine.

9 (Claimant's Exhibit Number One was marked for
10 identification).

11 Court Reporter: It's now marked C-1 for
12 Claimant's One.

13 Commissioner Wilkerson: And I'll make a note on
14 that.

15 Q. All right. And -- and -- I guess the point I was --
16 the only point I was making with that is, who
17 prescribed the medication, since Dr. Grady didn't?

18 A. Dr. Eric Cole.

19 Q. Okay, and, is that your family physician?

20 A. Yes.

21 Q. Okay. And is that medication handling your pain
22 adequately at this point?

23 A. No.

24 Q. Do you continue to do water aerobics?

25 A. Yes.

1 Q. Tell the Commissioner how much weight you've lost since
2 this summer.

3 A. Forty-eight (48) pounds.

4 Commissioner Wilkerson: Congratulations.

5 Mr. Dantin: By that -- it was forty-three (43)
6 pounds at the deposition; I'll bet you remember
7 that. She's lost a little bit more since then.

8 Q. Now, if you're having such a high level of pain in your
9 left knee why do you continue to do water aerobics?

10 A. I need to lose the weight and it's for health reasons.
11 I don't want to become a diabetic and losing the weight
12 would help with -- will help with that. And, taking
13 some of the weight off will take some of the pressure
14 off my knee.

15 Q. Do you think you're going to be able to continue with
16 water aerobics at this point?

17 A. I really -- I don't know. I hope so because this is
18 the only thing that I can do that will help my knee; if
19 not, I don't know what else I'm going to do.

20 Q. What do you want, in particular, at this point in time?

21 A. I just want the pain to stop.

22 Q. Now, Dr. Grady has stated that you will need to have
23 your left knee replaced at some point in the future.
24 And when that time comes would you be comfortable with
25 Dr. Grady performing that procedure?

1 for your knee was in January 2008, and that's twenty
2 (20) months; does that sound correct?

3 A. Yes.

4 Q. All right. So, you had not needed any medical
5 treatment from Dr. Grady for Twenty (20) months when
6 you went to that hearing; is that correct?

7 A. Correct.

8 Q. All right. Then the next time you went to Dr. Grady
9 from '09, would have been over a year later, correct?
10 You didn't go to Dr. Grady on your own, you -- you
11 didn't go back to Dr. Grady until Mr. Dantin,
12 apparently, sent you in November of 2010, over a year
13 later. So, now we're, literally, thirty-seven (37)
14 months down the road; is that right?

15 A. Yes.

16 Q. Okay. Or, excuse me, thirty-four (34) months down the
17 road. So, from January of '08 until November of 2010,
18 you never saw Dr. Grady for your left knee, correct?

19 A. Right.

20 Q. Now, he did treat you for another kind of injury that
21 you had that has nothing to do with the Workers Comp
22 claim, correct; you fractured your other ankle?

23 A. Correct.

24 Q. Okay. Now, when you fractured that ankle, I'm going to
25 assume, correct me if I'm wrong, that you were putting

1 a lot of weight on the other knee. You -- you had to
2 shift your weight back to that other leg; is that
3 correct?

4 A. No

5 Q. Okay. Well, how were you putting -- putting your
6 weight on your broken ankle?

7 A. I don't understand the question.

8 Q. Well, how were you -- how were you moving? When you
9 would move with a broken ankle how did you move?

10 A. In a wheelchair.

11 Q. Okay. So, you were wheelchair bound for how long?

12 A. About six (6) -- six (6) to eight (8) months, maybe.

13 Q. Okay. So, for six (6) to eight (8) months, you didn't
14 have to use your knee at all.

15 A. Yes, I did.

16 Q. Okay.

17 A. When I had to go to the restroom.

18 Q. All right. Essentially, you didn't have to use your
19 knee at all because you were in a wheelchair?

20 A. Correct.

21 Q. All right. And then you joined the gym; is that
22 correct?

23 A. Yes.

24 Q. And that's when your knee started hurting; is that
25 correct?

1 A. Yes, sir.

2 Q. Do you deny under oath that you do any other working
3 out at that gym other than water aerobics? Do you ever
4 work out on treadmills? Do you ever get on elliptical
5 machines?

6 A. No.

7 Q. Do you ever get on -- never?

8 A. No.

9 Q. That's your testimony?

10 A. I don't --

11 Q. Do you ever walk on the track?

12 A. No.

13 Q. Okay. All you do is do water aerobics?

14 A. Yes, that's all I do now.

15 Q. All right. Now, you weren't doing water aerobics
16 before this accident or, excuse me, before the last
17 hearing, were you?

18 A. No --

19 Q. Okay.

20 A. -- I wasn't doing anything.

21 Q. Right. And so, now, you're able to do water aerobics?
22 so, that's different and, in fact, that's something you
23 can do that you weren't doing before, correct?

24 A. Yes.

25 Q. Okay. All right. Now, you testified, just now to the

1 Lost forty-eight (48) pounds; is that correct? If you
2 weigh two hundred and fifty (250) now that means you're
3 saying you weighed two hundred and ninety-eight (298)
4 when you started losing weight?

5 A. Exactly.

6 Q. But you testified in your deposition -- the first
7 deposition in September of '09, that you weighed two
8 hundred and thirty-eight (238) pounds then. So, you
9 gained sixty (60) pounds after that deposition before
10 you lost fifty (50) pounds?

11 A. Yes, I did.

12 Q. Okay. So, after the hearing, which was only the next
13 month in October of '09, you gained fifty (50) pounds
14 before -- or sixty (60) pounds before you lost
15 forty-eight (48) pounds?

16 A. Yes.

17 Q. Okay. All right. Now, at the last hearing, which
18 again, was in October -- October 15th of '09, you
19 testified that you had pain every single day in your
20 left knee then; is that correct?

21 A. Yes.

22 Q. It hasn't changed has it; you still have pain every
23 day?

24 A. Yes, I do.

25 Q. Okay. You testified -- and I'm quoting at page nine

1 (9) of the hearing transcript. "It's iust an
2 uncomfortable throbbing feeling; the more I work during
3 the day the more it hurts". That was a quote from you.
4 Do you recall saying that in October of '09?

5 A. Yes.

6 Q. Has that changed?

7 A. No.

8 Q. Okay. "I have pain every single day". That was in
9 October of '09; has that changed?

10 A. No.

11 Q. Okay. "It hurts me every single night and, in fact, I
12 cannot sleep without being prescribed medication".

13 A. Correct.

14 Q. Has that changed?

15 A. No.

16 Q. Okay. "Had problems walking long distances" at the
17 hearing in October of '09; has that changed?

18 A. No.

19 Q. "Cannot walk more than about ten (10) minutes before it
20 really begins to bother you"; is that still the same?

21 A. Yes, it is.

22 Q. Okay. And here's the difference, at the last hearing
23 you actually had to use a cane, correct?

24 A. Yes.

25 Q. You don't use one anymore, do you?

1 A. Rarely.

2 Q. Okay. So, you're better to the point of you don't even
3 have to use a cane now?

4 A. No.

5 Mr. Dantin: Objection.

6 A. No, I'm not better.

7 Q. But, you don't use a cane anymore?

8 A. Rarely.

9 Q. You rarely use a cane. Before you used a cane all the
10 time, correct?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. So, you use the cane less now, rather than more now,
15 correct?

16 A. Yes.

17 Q. Okay. And you testified at the prior hearing that you
18 used the cane every day on daily basis for support
19 because you were afraid your knee was going to give
20 out; is that correct?

21 A. Yes.

22 Q. You apparently aren't afraid of that anymore because
23 you don't use your cane every day, correct?

24 A. I've adjusted to it.

25 Q. Okay. So, you're not afraid of it anymore like you

1 were at the last hearing, correct?

2 A. Sometimes.

3 Q. Okay. Not like you were at the last hearing.

4 A. No.

5 Q. Okay. At the last hearing you testified you could not
6 kneel at all, anymore?

7 A. Correct.

8 Q. It's still the same?

9 A. Yes.

10 Q. But, you took Zumba dance classes at the Trinity. Now,
11 you have to do some kneeling to do that Zumba dance
12 class, don't you?

13 Mr. Dantin: Objection.

14 A. I didn't kneel.

15 Mr. Dantin: Hold on, let me get my objection out.
16 She just testified that she didn't do any kneeling
17 or any dancing at the Zumba dance class.

18 Mr. Beard: Well, this is cross, Commissioner, and
19 I -- I can actually go into all those things and
20 that's what I'm doing; I'm -- I'm -- because I
21 know what Zumba is and it does require you to do
22 those things and I'm just trying to find out.

23 Mr. Dantin: Mis-characterizing testimony is an
24 objection.

25 Commissioner Wilkerson: Oh, I understand. You

1 can ask about the Zumba class --

2 Mr. Beard: Yes..

3 Commissioner Wilkerson: -- but yes?

4 Q. Tell us what a Zumba class requires you to do.

5 A. It's different types of dancing, different styles of
6 dancing.

7 Q. Like what? Ballroom?

8 A. Somewhat. Indian type dancing, hip-hop dancing, old
9 Charleston type dancing; It's just different types.

10 Q. Okay. All those types of dancing require you to use
11 your left knee a pretty good bit and your right knee a
12 pretty good bit, correct?

13 A. Yes, it does.

14 Q. Okay. And, you took that class for how long?

15 A. About three (3) times.

16 Q. Okay. At the hearing in October of '09, you testified
17 you could not maneuver stairs without support?

18 A. Correct.

19 Q. Is that still the same?

20 A. Yes, it is.

21 Q. You also testified at that hearing that you could only
22 take one (1) step at a time, meaning you'd go up one
23 (1) step, bring your other foot up, go up, bring your
24 other foot up; is that still the same?

25 A. Yes, it is.

1 Mr. Dantin: -- I do have a few follow-up
2 questions.

3 Commissioner Wilkerson: Sure.

4 Mr. Dantin: And if you need to you can stay
5 standing up.

6 Witness: Yes.

7 REDIRECT EXAMINATION

8 By Mr. Dantin:

9 Q. You discussed with --

10 Mr. Dantin: -- and I was about to call you Mr.
11 Grady because I was thinking of Dr. Grady. Now
12 you've poisoned me.

13 Q. You discussed with Mr. Beard that you had pain every
14 day then, you have pain every day now, you were worse
15 at the end of the day then, you're worse at the end of
16 every day now. But is the pain that you have, the pain
17 level that you have, worse now than it was back in
18 2009?

19 A. Absolutely.

20 Q. Okay. Let's talk about some of the things that Dr.
21 Grady noted in his report as differences between how
22 you are as when he saw you in November 2010, versus
23 when he last saw you before your 2009 hearing. He
24 noted in 2010, that you're positive for Crepitus on
25 flexion extension; that means --

1 Mr. Dantin: -- and I hope you don't mind me doing
2 this, Grady --

3 Q. -- when you bend and extend your leg that there's a
4 crunching sound; do you have that now?

5 A. Yes.

6 Q. Did you have that back in 2009?

7 A. Not as much.

8 Q. Okay. So, it's worse now?

9 A. Yes.

10 Q. He noted that you had lost range of motion in your left
11 knee before he -- when he last saw you he noted your
12 range of motion from being from zero (0) to a hundred
13 and twenty (120) degrees and now he rated your range of
14 motion was zero (0) to eighty-two (82) degrees. Can
15 you flex your leg and bend your leg as much as you
16 could back in 2009?

17 A. No.

18 Q. When he saw in you 2010, he mentioned that you had
19 fluid on your left knee. There was no mention of fluid
20 or swelling when he saw you prior to 2009. Were you
21 having problems with fluid on your knee in 2009?

22 A. No.

23 Q. And you had -- it's -- I mean, you were obviously
24 confused or it appears to me that you were confused
25 about this level of pain that you reported to Dr.

1 ~~Grady. You -- you direct -- you testified to this on-~~
2 direct when I was questioning you. You said that your
3 pain was a five (5) out of ten (10) on average when you
4 saw him in November but it spiked as high as a six (6)
5 or seven (7) out of ten (10); is that accurate?

6 A. Yes.

7 Q. Okay. And now, it's an eight (8) out of ten (10)?

8 A. Yes.

9 Q. Okay.

10 Mr. Dantin: No further questions.

11 Mr. Beard: Commissioner, and -- and just, I need
12 to do the same objection that Jeremy made that
13 misstates what she just said on cross examination.

14 Commissioner Wilkerson: I understand.

15 RE-CROSS-EXAMINATION

16 By Mr. Beard:

17 Q. My -- my last question to you, ma'am, is, did you
18 attend the deposition of Dr. Grady?

19 A. No.

20 Q. Were you aware that he testified at page 36 of his
21 deposition that -- and this is a question from Nick
22 Haigler, who took the deposition, "Doctor, did her pain
23 actually increase that much in between the two and a
24 half (2 ½) year period or was it about the same"? His
25 answer was, "It was close to the same." Dr. Grady says

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER - 0622179

JACQUELINE Y. CARTER,)
)
CLAIMANT,) SINGLE COMMISSION HEARING
)
VS.) BEFORE
)
VERIZON WIRELESS,) COMMISSIONER SUSAN S. BARDEN
)
EMPLOYER,)
)
AMERICAN HOME ASSURANCE,)
)
DEFENDANTS.)
_____)

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE SARA L. QUATTLEBAUM, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
12:48 PM ON THURSDAY, OCTOBER 15, 2009, COUNTY SQUARE,
301 UNIVERSITY BUILDING, SUITE 5100, EAST WING,
GREENVILLE, SOUTH CAROLINA.

SARA QUATTLEBAUM, Independent Court Reporter
148 LAKE HARBOR DRIVE
LEXINGTON, SC 29072
(803)447-0272

1 conference.

2 ~~It is the position of the Claimant that she has~~
3 significant permanent partial disability with regard
4 to her left knee. And that is the only body part that
5 is being adjudicated today, that is the left knee that
6 is admitted. There are no other body parts for
7 adjudication or for adjudication for the permanency of
8 any other body parts.

9 The Claimant's right hip was originally injured
10 in the accident, but both parties agree and stipulate
11 that the only body part with residual permanency and
12 subject of this hearing would be the left knee.

13 It is the Claimant's position that her residual
14 problems are significant. She underwent surgery. She
15 has had injections. She has had pain management. And
16 she would like an order requiring the Defendants to
17 continue to provide her Dodge medicals as recommended
18 by the authorized treating physician to include but
19 not be limited to injections and pain medication.

20 Conversely, it is the position of the Defendants
21 that the rating is an accurate and reflective
22 indicator of the Claimant's current condition or
23 perhaps even less than that, that the Claimant's
24 residual problems are not significant and that the
25 rating is a fair indicator of her residual condition.

1 The Defendants finally would deny that the
2 ~~Claimant is entitled to any Dodge medicals.~~

3 All right, gentlemen, is that a fair summary of
4 your positions or is there anything that either of you
5 would like to add or correct? I will hear from you
6 now.

7 MR. DANTIN: No, I think that does it. Thank
8 you.

9 MR. HAIGLER: No, ma'am.

10 THE COURT: Thank you both. All right. And
11 Mr. Haigler, you're relying on the medicals, I
12 understand; the right to cross examine Ms. Carter and
13 the right to present any rebuttal witnesses; is that
14 right?

15 MR. HAIGLER: That is correct, Your Honor.

16 THE COURT: All right. And Mr. Dantin, your
17 first and only witness is Ms. Carter?

18 MR. DANTIN: That is correct.

19 THE COURT: All right. Ms. Carter, if you will
20 raise your right hand, please.

21 JACQUELINE YVONNE CARTER,
22 having been first duly sworn, testified as follows:

23 THE COURT: Please state your full name for the
24 record.

25 THE WITNESS: Jacqueline Yvonne Carter.

1 Q Okay. And then are you not working 30 at this point?

~~2 A No, now I work 20 hours.~~

3 Q Okay. And why did you decrease that period?

4 A To help take care of my dad.

5 Q So that had nothing to do with your injury, correct?

6 A No.

7 Q Okay. And while you're currently working there you
8 are able to do that -

9 THE COURT: Yes, that's correct? Or no, it
10 didn't have anything to do with the injury? Just to
11 make sure the record is right.

12 THE WITNESS: It didn't have anything to do with
13 the injury.

14 THE COURT: Thank you.

15 BY MR HAIGLER:

16 Q That was simply because you were taking care of your
17 dad?

18 A I was taking care of my daddy, yes.

19 Q And your left knee did not hinder you from working at
20 Bank of America; is that correct?

21 A Correct.

22 Q It does not?

23 A It doesn't hinder me.

24 Q Okay. Sorry. And you're currently taking Darvocet;
25 is that right?

1 A Correct.

2 ~~Q You testified to that?~~

3 A Yes.

4 Q And in February of this year did you also sustain a
5 right-ankle fracture?

6 A Yes, I did.

7 Q Okay. And are you currently treating with Dr. Grady
8 for that right-ankle fracture?

9 A No, I've been released.

10 Q Okay. But during the past several months you have
11 been treating with him; is that correct?

12 A Correct.

13 Q And did he prescribe Darvocet to you for your right
14 ankle; as well?

15 A It ended up with Darvocet, yes.

16 Q Okay. So it's true that you're taking Darvocet for
17 your right ankle as well as your left leg?

18 A Well, yes, now. I'm taking them for both really.

19 Q Okay. All right. You testified a few minutes ago
20 that you were having trouble walking and that's why
21 you use the cane. Dr. Grady told you to use the cane,
22 correct?

23 A Yes.

24 Q With regard to your left leg?

25 A Yes.

1 Q But you've also, like you just testified to, you had
2 ~~a right-ankle fracture -~~

3 A Yes.

4 Q - a few months ago. Did that also keep you from - you
5 know, hinder your ability to walk?

6 A No.

7 Q It does not?

8 A No.

9 Q It's fully healed?

10 A Yes.

11 Q Okay. When was the last time you treated for your
12 left leg, had any treatment for your left leg
13 whatsoever?

14 A I don't remember. It's been over a year.

15 Q Okay. And you don't think you need any further
16 medical treatment; do you?

17 A I don't know.

18 Q Okay. Do you have health insurance through Bank of
19 America?

20 A Yes, I do.

21 Q Okay. If you thought you needed medical treatment you
22 would pursue it through your personal health
23 insurance; would you not have?

24 A No, not through my personal insurance, no.

25 Q Okay.

1 MR. HAIGLER: I don't have anything else,
2 Commissioner.

3 THE COURT: Anything else, Mr. Dantin?

4 MR. DANTIN: Just a quick follow-up really
5 quickly.

6 REDIRECT EXAMINATION

7 BY MR. DANTIN:

8 Q You were taking the Darvocet from Dr. Grady for your
9 left knee for about a year and a half before you had
10 your right-ankle injury, correct?

11 A Correct.

12 Q Okay.

13 MR. DANTIN: Nothing further.

14 THE COURT: That concludes this proceeding.

15 (The hearing concluded at 12:59 PM.)

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

COLUMBIA, SOUTH CAROLINA

SCWCC NO. 0622179

Jacqueline Carter,

Claimant,

vs.

Verizon Wireless

Southeast,

Employer,

American Home

Assurance Company,

Carrier/Defendants.

Deposition of WALTER GRADY, D.O.

Pursuant to notice of hearing issued by the South Carolina Workers' Compensation Commission in the above-entitled case, a deposition was taken on the 3rd of February 2011, commencing at approximately 5:15 p.m., attended by counsel as follows:

WALTER GRADY, D.O.

6

1 ~~Q. That you had seen her for her left knee?~~

2 A. That's correct.

3 Q. And you'd seen her for her left knee?

4 A. That's correct.

5 Q. And you had seen her in the interim for some other
6 ankle-related problems; is that accurate?

7 A. That is correct.

8 Q. During those treatments or those periods of those
9 visits, did you at all examine her left knee at
10 all, or was that -- or was it you just focused on
11 the right ankle during that period of time?

12 A. I am not sure.

13 Q. Let's just assume -- is it fair to say that your
14 last appointment that you saw her focusing on the
15 left knee was January the 3rd, 2008?

16 A. That is correct.

17 Q. At that point in time, where was she at, from a
18 left knee standpoint? Where would you -- I mean,
19 as far as the physical -- the physical examination
20 of her, what would that have showed at that point
21 in time?

22 A. That's January 3rd, 2008?

23 Q. Correct. And I don't really need you to read the
24 entire report. Just kind of read where she --
25 where you appreciate her to be at that point in

WALTER GRADY, D.O.

1 A. Considering the fact of the natural progression
2 that's expected, off and on, yes.

3 Q. Is there any way for you to tell whether the
4 condition her knee is in right now, or not right
5 now, but as of this November report, is there any
6 way for you to tell whether that condition was
7 present on October 15th, 2009?

8 A. It is not, since I don't have that -- I didn't have
9 the opportunity to examine her in that interval of
10 time.

11 Q. Is there any way for you to tell whether the
12 condition that her knee is in as of when you saw
13 her in November was caused by events after October
14 15th, 2009 or before -- during the 20-month period
15 before October 15, 2009? Is there any way for you
16 to know whether the condition that her knee was in
17 when you saw her in November is that period after
18 the hearing or that period -- that long period
19 before the hearing? Is there any way for you to
20 know to a reasonable degree of medical certainty
21 whether that's the case?

22 BY MR. DANTIN:

23 I'm going to object. And honestly, my objection is

24 I didn't understand that.

25 BY MR. HAIGLER:

1 Yeah.

2 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

3 Q. Would you like me to break it down again?

4 A. Yes, please.

5 Q. There is a period of time, the 20-month period of
6 time from when you saw her in January of 2008 until
7 her hearing, when she came into the hearing with
8 the cane in October of 2009 ---

9 A. Correct.

10 Q. --- there's no way for you to know how her knee was
11 doing during that period of time, is there?

12 A. No.

13 Q. Is that fair?

14 A. That's fair.

15 Q. Because you didn't see her?

16 A. That's correct.

17 Q. And then you didn't see her between October of 2009
18 until November of 2010?

19 A. That is correct.

20 Q. And then that's when she came in with this -- with
21 the problems that you've noted in your report; is
22 that correct?

23 A. That's correct.

24 Q. Is there any way for you to tell whether those
25 problems are related to the period after the

1 hearing or the period before the hearing? Can you

2 state to a reasonable degree of medical certainty

3 whether those problems were caused by that period

4 or that period? Is there any way for you to tell

5 that?

6 A. I don't think there's any way for me to tell that.

7 And I have to keep referencing back to my expected

8 outcome, as far as the natural progression stemming

9 from the time that I did surgery and noted those

10 changes. Certainly I cannot -- it's difficult for

11 me to really answer that question totally. It

12 really is.

13 Q. Is it ---

14 A. I think overall the progression from when I

15 initially did her surgery to the point where I saw

16 her -- where I noted the changes here, I think that

17 was expected and I think that's the best answer I

18 can give for that question.

19 Q. Would you have been surprised if her knee had

20 progressed to this point by the hearing in October

21 of 2009? I mean, would that have been an expected

22 progression or would that have been a little bit

23 fast?

24 A. I would have thought that would have been a little

25 bit fast.

WALTER GRADY, D.O.

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1 July; did you know that?

2 A. I did not.

3 Q. How about exercise of however -- whatever level of
4 vigorousness you want to give it, but how would
5 that affect a patient with that type of injury?

6 BY MR. DANTIN:

7 Let me just object to the extent that we have no
8 information what type of exercises she was
9 precisely doing. All we know is that she was in a
10 pool doing something called water aerobics.

11 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

12 Q. Doctor, did she indeed testify under oath that her
13 knee started hurting after she started doing water
14 aerobics?

15 A. Yes.

16 Q. Would that have been important, the actual nature
17 of her exercise, would that have been important for
18 her to disclose to you when you saw her in
19 November, as to maybe what the cause of her
20 material worsening of her knee, what the cause of
21 that was? Would that have been important for you
22 to know?

23 A. Yes.

24 Q. Why is that?

25 A. I would like to know what's going on with patients.

WALTER GRADY, D.O.

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1 degree of medical certainty whether the condition
2 that her knee was in on November 4th was a natural
3 progression that you would have expected from
4 January of 2008 or whether it was accelerated by
5 her exercising?

6 A. It's my professional medical opinion within a
7 reasonable degree of medical certainty that the
8 patient per my examination, history, physical, etc.
9 had a natural progression of her disease process
10 from the time that I did surgery on her until the
11 time that I saw her on November 4th, 2010.

12 Q. And your opinion is -- that's your opinion
13 regardless of whether -- well, let me ask you this,
14 did -- was there any acceleration though of her
15 condition by the fact that she was exercising 55
16 times in the interim?

17 A. It's difficult for me to totally answer that
18 question. All I can is that it is possible that it
19 accelerated it, but I believe within a reasonable
20 degree of medical certainty, that we are going to
21 arrive at the same end result whether it would have
22 been six months later, eight months later, or 12
23 months later, as we did when I saw her on
24 November 4.

25 Q. Correct. And I don't -- that's not the question

1 Same objection.

2 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

3 Q. Are we there faster because of that? Regardless of
4 whether we would have been there at some point down
5 the road, are we there quicker because of that?

6 A. I do not know.

7 Q. Even though she testified that her knee was not
8 hurting before she started and then it started
9 hurting after she started doing water aerobics?

10 A. Again, it's a difficult question to answer. I'm
11 not trying to be evasive, but I do know that
12 exercising of any type could have caused her knee
13 pain. It didn't have to necessarily be water
14 aerobics. And because they had the knee pain, are
15 they, when they reach this next stage, are they
16 there as the result of the knee pain they
17 experienced from exercising? Again, I would have
18 to say it's possible.

19 Q. Well, I'm not asking if she's there because of the
20 exercise.

21 A. Yeah.

22 Q. I'm not asking if she is where she is now because
23 of the exercise. I'm asking is she there faster
24 because of the exercise. Did it accelerate where
25 she is?

WALTER GRADY, D.O.

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1 A. ~~Which report?~~

2 Q. Your November 2 -- I'm sorry, your November 4th,
3 2010 report. I'm just asking about the DJD.

4 A. The patellofemoral joint osteophytes inferior and
5 superior articular surfaces of the patella. I
6 believe that would be essentially unchanged.

7 Q. And so is it fair to say that -- or is there any --
8 the only difference in between the two reports the
9 last time you saw her and this recent report the
10 millimeters?

11 A. That's correct.

12 Q. That's it?

13 A. That's correct. And the radiographic report.

14 Q. What about pain? Was she in any more pain?
15 Because I believe you testified earlier that she
16 was having five out of ten when you last saw her
17 and she testified that -- it looks like your pain
18 score rating on November 4th was also five out of
19 ten?

20 A. Yes. It was a five.

21 Q. Is that correct?

22 A. In terms of a pain score rating, that is correct.

23 BY MR. DANTIN:

24 Let me enter an objection. That's actually, as I
25 read it, it says, five out of ten, it goes up to

WALTER GRADY, D.O.

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1 A. That is correct.

2 Q. Are we at that point now with regards to pain?

3 A. She is -- I tell patients typically if you are
4 constantly above a level five and it just does not
5 recede from that level, then you need to start
6 thinking about knee replacement. If it is
7 constantly a five or above.

8 Q. And is she at that point, as of November the 4th?
9 Was she at constantly a five or above? Or did you
10 say -- is it constantly above a five or
11 constantly ---

12 A. Constantly a five or above.

13 Q. So she was at that point way back in '08?

14 A. Uh-huh (affirmative response).

15 Q. That she could have had a total knee arthroplasty?

16 A. Uh-huh (affirmative response).

17 Q. But you didn't recommend that then?

18 A. But again, she's 49 years of age and we try and
19 stretch it out. And I tell patients, you will
20 know, okay, when it's the time. I don't have to
21 twist their arms. I always tell patients that
22 basically when they reach that point, they know
23 better than anybody.

24 Q. And Doctor, it is your opinion that -- to a
25 reasonable degree of medical certainty that she had

1 sustained a material worsening of her left knee?

2 A. That's correct.

3 Q. And is that since the last time you saw her in
4 January of 2008?

5 A. Yes.

6 Q. Is that material worsening something that would
7 have been acute in nature, or is that more of a
8 degenerative problem?

9 A. I believe it's more ---

10 Q. Or could it be either one?

11 A. I think it's more of a degenerative insidious, slow
12 problem.

13 Q. Correct me if I'm wrong, but are you able to
14 testify to a reasonable degree of medical certainty
15 as to whether the two-millimeter decrease in
16 spacing was there prior to October 15 of 2009? Are
17 you able to state that to a reasonable degree of
18 medical certainty?

19 A. I am not.

20 Q. Are you able to state whether it occurred since
21 October 15th 2009?

22 A. I can state to a reasonable degree of medical
23 certainty that it is -- I cannot state that.

24 Q. You just know where it is now?

25 A. Now, that's correct.

WALTER GRADY, D.O.

40

1- extremity impairment. And that page would be 537,

2 Table 17-10, less than 110 degrees, 10 percent
3 lower extremity impairment.

4 Q. Okay.

5 A. Going to the combined values table following
6 that ---

7 Q. And that's on page what?

8 A. 604.

9 Q. Okay.

10 A. Twenty-five plus 13 is 35, 35 plus 10 is 42
11 percent.

12 Q. So Doctor -- and I appreciate you explaining that
13 to me. So the two millimeter lowering of her joint
14 space ---

15 A. Yes.

16 Q. --- caused that much additional impairment?

17 A. Yes, sir. I just go strictly by the book. That's
18 all I do when I calculate these.

19 Q. Doctor, do you have any recommendation as far as --
20 with regard to what additional medical treatment
21 she needs at this time? You mentioned injections
22 and things of that nature. Where do you want to go
23 from here?

24 A. The plan and recommendation on November 4, 2010, I
25 had indicated that -- and we did accomplish that,

1 the x-rays, and I mentioned also that I expected
2 that she would have chronic pain and she will
3 require analgesic medications and non-steroidal
4 anti-inflammatory medications.

5 Q. Is that similar to what she is currently using?

6 A. That's correct.

7 Q. So change as far as treatment at this point in
8 time?

9 A. No change as far as treatment at this point in
10 time.

11 Q. Just additional impairment?

12 A. That's correct.

13 Q. And at whatever time, if it even occurs that her
14 pain becomes a constantly -- or whatever time she
15 wants to do a knee replacement, is that something
16 you're going to do?

17 A. Yes.

18 Q. And is that up to her completely?

19 A. It's up to her completely.

20 Q. So she's in the window at this point in time?

21 A. She is.

22 Q. And in fact she was in the window in January of
23 2008?

24 A. Yes.

25 Q. Was there a reason you didn't recommend it then or

1 A. Well, the only thing that I can attest to is that
2 when I saw her again on November 4th, she had the
3 joint space narrowing and collapse of the medial
4 tibial femoral joint compartment or the inner
5 aspect of the knee joint. That constitutes a
6 material worsening. The other thing that
7 constitutes material worsening is pain. And she
8 established that her pain was about a five, but it
9 goes up to a six or a seven out of ten. Those
10 are -- that's primarily it. If I have objective
11 findings of diminution or decrease in range of
12 motion, worsening of the patient's knee joint as
13 far as the narrowing and increased pain, that's
14 material worsening.

15 BY MR. HAIGLER:

16 I don't have any other questions for you, Doctor.

17 Thank you.

18 CROSS EXAMINATION BY MR. DANTIN:

19 Q. Doctor, I have just a few. And I will try to
20 hustle through this. If you had a knee problem,
21 even a worsening knee problem, would you expect
22 that the symptoms of pain or other problems would
23 show up as you began to use that particular body
24 part more?

25 A. Yes.

1 ~~I understand you correctly, is going to do nothing~~

2 but help her?

3 A. That's correct.

4 Q. We were talking a lot about pain and the level of
5 pain that she has had and we've already looked at
6 her deposition a couple of times. And I just want
7 to pull this out one more time to show you, again
8 her deposition was taken the 20th of January, so
9 this would have been almost three months after you
10 had seen her. And I'll help this along.

11 BY MR. DANTIN:

12 I hope you don't mind me paraphrasing here, Nick.

13 CROSS EXAMINATION RESUMED BY MR. DANTIN:

14 Q. On Page 16, if you look down to around line 21,
15 she's talking about her pain level and she says,
16 "It's constantly an eight now." And actually she
17 was asked, you know, "Back on November 4th when you
18 saw the doctor," which is you, "you stated that
19 your pain was five out of ten and goes up to a six
20 or seven." And she says, "Could have been right
21 that day." So now, you know, her testimony is, you
22 know, three months after she saw you, her pain is
23 constantly at an eight. And again, I just want to
24 make sure that's clear for the record. And in your
25 mind, knowing that there has been that kind of

1 ~~increase in pain, does that further solidify your~~
2 opinion that there has been a change or a worsening
3 of her condition?

4 A. Yes, it does.

5 Q. One other thing, Doctor, the order in this case was
6 actually based upon your 18 percent rating, and
7 that's the rating that you assigned back in 2008.
8 Is it your opinion, again, that she is worse now
9 than she was when you made that 18 percent rating
10 that the order was based on?

11 A. Yes.

12 BY MR. DANTIN:

13 No further questions.

14 BY MR. HAIGLER:

15 I don't have anything else.

16 (There being no further questions, this deposition was
17 concluded at approximately 5:55 p.m.)
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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
~~WCC FILE NO: 0622179~~

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Jacqueline Carter,
Claimant,
vs.
Verizon Wireless Southeast
Employer,
and
American Home Assurance Company,
Carrier.

DEPOSITION OF JACQUELINE CARTER

Pursuant to Notice of Deposition and/or agreement
in the above-entitled case, the above deposition was
taken on the 20th day of January 2011, commencing at
9:45 a.m.

COPY

DEPOSITIONS AND..., INC.

(864) 585-0642

1 BY MR. DANTIN:

~~2 Okay.~~

3 BY MS. HENDRICKS:

4 Q. What was your understanding of the resolution of
5 your previous claim?

6 A. That I could go to the doctor as needed.

7 Q. Okay.

8 A. And they would cover my medication.

9 Q. Okay. And you would have -- you did receive a
10 payment; is that correct?

11 A. Yeah.

12 Q. Then you signed a form stating you received that
13 payment on or around January 21st of 2010; is
14 that correct?

15 A. Yeah.

16 Q. Remember that?

17 A. Yeah.

18 Q. After January 2010 when you signed that form,
19 when was the first time that you noticed you
20 needed to go back to the doctor?

21 A. The summer. During the summer.

22 Q. Do you remember which month it was?

23 A. It was about July.

24 Q. What happened in July?

25 A. Well, I started working out and just noticed

1 that my knee was starting to feel a little
2 ~~uneasy like it was going to go in different~~
3 directions. It wasn't stable at all. Swelling.
4 A lot of sharp pain. It keeps me up at night.

5 Q. Okay.

6 A. My pain level is like around -- more around an
7 eight now.

8 Q. Is it consistently around an eight? Is there a
9 better time -- is it better in the morning or
10 better at night?

11 A. No, not lately, it's constant.

12 Q. Consistent?

13 A. Yes.

14 Q. Did you tell anyone in July about your knee?

15 A. Yes.

16 Q. Who did you tell?

17 A. I called here.

18 Q. You called the law firm?

19 A. Right.

20 Q. Okay. What happened after that?

21 A. I'd have to wait to get authorization to go see
22 Dr. Grady.

23 Q. So you called here in July?

24 A. July, yes.

25 Q. They instructed you you had to wait to get

1 authorization to go back to Dr. Grady?

2 ~~A. Yeah.~~

3 BY MR. DANTIN:

4 Hold on. She's not going to talk about
5 anything we instructed her to do. I mean that
6 question is probably better asked to me than to
7 her.

8 BY MS. HENDRICKS:

9 She brought it up and I followed it.

10 DIRECT EXAMINATION RESUMED BY MS. HENDRICKS.

11 Q. You waited to get authorization?

12 A. Yes, ma'am.

13 Q. What gym do you attend?

14 A. Trinity Health & Fitness.

15 Q. And I read that you lost forty pounds.

16 Congratulations.

17 A. Forty-three.

18 BY MR. DANTIN:

19 She's lost forty-three now. She told me that
20 this morning.

21 BY MS. HENDRICKS:

22 Q. That's commendable.

23 It's Trinity Health & Fitness. How often
24 to go to the gym? When did you start going to
25 the gym?

1 A. I started around July when they first opened.

2 Q. ~~So they just opened Trinity?~~

3 A. Yeah.

4 Q. Okay. So you started around July.

5 How often did you go?

6 A. I was going five days a week before I started
7 working.

8 Q. How long were your workouts?

9 A. The class usually lasts about an hour.

10 Q. You said classes. What --

11 A. Water aerobics.

12 Q. Okay. Is that most of what your workout
13 consisted of?

14 A. That's all it consists of.

15 Q. You just did water aerobics?

16 A. Yeah, nothing on the floor.

17 Q. Wow. Okay. And you did that five days a week?

18 A. Yes.

19 Q. For one hour. So you didn't have a personal
20 trainer or anything like that?

21 A. No, it was a class.

22 Q. And over what period of time, I guess, would you
23 say that you lost the forty pounds, how long?

24 A. Forty-three.

25 Q. Forty-three, I'm sorry. Let me write a note to

1 until November; is that correct? Is that right?

2 ~~Do you know when you went to Dr. Grady?~~

3 November 4th is the date that we have. Does
4 that sound right?

5 A. Yes.

6 Q. Okay.

7 BY MR. DANTIN:

8 Just to clarify. We sent her to see Dr. Grady.
9 It was never authorized.

10 BY MS. HENDRICKS:

11 Q. Oh, never authorized. But he was the authorized
12 doctor or physician on your previous claim; is
13 that right?

14 A. Yes.

15 Q. He had seen you before?

16 A. Yes.

17 Q. For the same problem?

18 A. Yes.

19 Q. When you went to him what were your complaints
20 in November? What was the problem then?

21 A. The swelling, the lack of -- the feeling
22 unstable, the pain level.

23 Q. Back then was it an eight at that time or --

24 A. It's constantly an eight now.

25 Q. All right. Let's see. On the November 4th

1 doctor's notes he says that you stated at that
2 ~~time your pain level was a five out of ten;~~
3 however, it goes up to six or seven.

4 Does that sound right?

5 A. That day -- it could have been right that day,
6 yes.

7 Q. You said your complaints at that time were
8 swelling, lack of stability and pain level
9 consistent of --

10 A. It feels full. It feels heavy.

11 Q. The knee itself?

12 A. Yes.

13 Q. Did he -- what was your -- what was Dr. Grady's
14 evaluation? What did he tell you at that time
15 about your knee?

16 A. I didn't get any information. It was forwarded
17 to Jeremy.

18 Q. So he didn't discuss with you his findings of
19 his examination at all?

20 A. No.

21 Q. Then he just forwarded the info to your
22 attorney?

23 BY MR. DANTIN:

24 Let me just interject. I think he did an x-ray
25 that day as well. That was probably one of the

- 1 A. About fifteen.
- 2 ~~Q. About fifteen hours. How is that scheduled?~~
- 3 A. I work Monday, Wednesday and Friday.
- 4 Q. I guess for five hours?
- 5 A. About four or five. It depends on how busy we
- 6 are.
- 7 Q. Okay. Then as you're sitting here today can you
- 8 tell me about your pain level, about your knee,
- 9 what does it feel like right now?
- 10 A. About an eight and a half right now.
- 11 Q. What does that pain feel like?
- 12 A. Very uncomfortable.
- 13 Q. Sharp, throbbing. You describe it to me?
- 14 A. It feels full and it's achy and throbbing and I
- 15 get sharp pains.
- 16 Q. Okay.
- 17 A. Sometimes it will feel hot, then it will cool
- 18 down. It grinds a lot.
- 19 Q. Okay. And for pain relief I think you did tell
- 20 me -- did you tell me moist heat; is that right?
- 21 What do you do for your pain in your knee?
- 22 A. Ice pack.
- 23 Q. Are you on medication or anything?
- 24 A. Yes, I do.
- 25 Q. What's your medication?

Grady Orthopaedics

Walter Grady, DO

480 Floyd Road Spartanburg, SC 29307

(864)582-2115 fax: (864)582-2117

Toll Free (877)582-2115 Toll Free Fax (866)583-2117

PatientID: WC02557

Patient Name: JACQUELINE Y CARTER

Date of Birth: 11/11/1960

Date of Service: 01/03/2008

CHIEF COMPLAINT:

KNEE: Jacqueline Carter is a 47 y old established patient seen in our office today. The patient is here for follow-up of the left knee.

PAIN SCALE: The severity of pain is a 5 on a scale of 0-10.

HISTORY OF PRESENT ILLNESS: She is post Supartz injection series. She states that her knee feels better now than it did before the surgery. The tendinitis in her right ankle, however, is still giving her problems. She does understand that tendon problems are much worse than even broken bones and that it takes a long period of time to heal.

PAST MEDICAL HISTORY:

Hypertension.

Breast reduction.

CURRENT ALLERGY LIST:

NO KNOWN DRUG ALLERGY

CURRENT MEDICATION LIST:

MAXZIDE ORAL TABLET 75-50 MG,

LOTREL ORAL CAPSULE CONVENTIONAL 10-20 MG,

PRILOSEC ORAL CAPSULE DELAYED RELEASE 10 MG,

DARVOCET-N 100 ORAL TABLET 100-650 MG, 1 Q6-8H P.R.N.

CURRENT PROBLEM LIST:

FAMILY HISTORY:

Positive history of DIABETES (non-specific), POSITIVE FOR CEREBROVASCULAR ACCIDENT.

SOCIAL HISTORY:

TOBACCO USE Patient uses Tobacco.

ALCOHOL PATIENT OCCASIONALLY HAS ALCOHOL.

HISTORY:

GENERAL: No complaints of weakness, fatigue, fever, or significant weight loss or gain.

SKIN: No rashes, skin lumps, itching, excessive dryness, localized skin discoloration, or changes in hair or nails.

HEAD: No headaches or head injuries.

EYES: No glasses or contacts, pain, redness, excessive tearing, double vision, glaucoma, or cataracts.

EARS: No hearing loss, dizziness, earaches, ear infection, ear drainage.

NOSE: No nosebleed, hayfever, frequent cold.

THROAT/MOUTH: No bleeding gums, dental problems, hoarseness, frequent sore throats.

NECK: No lumps, swollen glands, goiter, or neck pain.

BREAST: No lumps in breast, breast pain, or nipple drainage.

RESPIRATORY/BREATHING: Patient denies cough, secretions, wheezing, shortness of breath,

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coughing up blood, asthma, pneumonia, tuberculosis, bronchitis, or emphysema.

VASCULAR:

No leg cramps, varicose veins, phlebitis.

HEART: HIGH BLOOD PRESSURE.

URINARY: Patient denies frequent urination, painful urination, blood in urine, pus in urine, infections, loss of control, kidney stones, awaked at night to urinate.

GASTROINTESTINAL/STOMACH: HAS FREQUENT HEARTBURN.

PSYCHIATRIC: No nervousness, tension, or depression.

ENDOCRINE: No thyroid problem, diabetes, excessive thirst, excessive hunger, excessive urination, excessive sweating.

NEUROLOGICAL: Patient denies fainting, "black-outs", seizures, paralysis, weakness, numbness, tingling, memory loss, or shaking.

MUSCULOSKELETAL: Patient denies arthritis, gout, backache, joint pain or stiffness, muscle cramps or spasms.

PHYSICAL EXAM:

MUSCULOSKELETAL & SKIN EXAMS:

LOWER EXTREMITIES:

LEFT KNEE: She does have some mild tenderness in the medial compartment of the knee to palpation. ROM of the left knee is from about 0 degrees to approximately 120 degrees. The knee examination was otherwise stable demonstrating a negative Drawer's test, negative Lachman's test and negative medial and lateral McMurray's test. Again, the knee is warm to touch and not hot to touch and demonstrates no signs of infection.

She is tender over the region of the medial aspect of the ankle in the area of the deltoid ligament. The ankle is otherwise stable on examination.

XRAY REPORT: Review of xrays from the office this date 1-3-08 compared to films dated 9-24-07 reveals excellent joint space interval without joint space collapse to any appreciable degree. Some subtle tibial spine osteophytosis is noted. This is subtle at best. The tibial spine osteophytosis in the right knee appears to be a little greater than in the left knee. This is especially about the medially placed tibial spine. Films are viewed in the standing weight bearing view projections only today.

IMPRESSION/PLAN: 1) Advanced Grade DJD left knee.

2) Status post Supartz injections, left knee with a reasonably good functional result.

3) Osteochondritis dissecans lesion/grade 4 medial femoral condyle involving 100% of the weight bearing surface area and posterior medial segment of the tibial plateau.

4) Grade IV DJD patella, left knee.

PLAN: Associated with the patient's operative report, we did accomplish, in summary, arthroscopic partial medial meniscectomy, left knee along with microfracture abrasion arthroplasty, left knee medial femoral condyle

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Date of Service: 01/03/2008

and medial tibial plateau. I do feel that she has done a good job of rehab and healing from that.

I would recommend that she continue with the Mobic 15 mg, one po daily with food. A prescription is written for Darvocet N 100, #30, one po q 8 to 12 h prn pain. She should continue with the home exercise therapy routine also.

Jacqueline's job involves sedentary duties primarily. She states that she will return to work on Monday.

Since her job requires sitting only, I do feel that it would be fine for her to resume her regular duty occupation on Monday's date. The only recommendation would be that she utilize her cane as needed.

I will go ahead and plan on setting forth the impairment rating or calculating the impairment rating for her. Patient also indicates that she does have an attorney in this case.

She will see me back in a month, if needed, otherwise she is released to regular duty. Again, she informed me that her duties are sedentary.

WG:ch

Electronically Signed by: Walter Grady, DO on Monday, January 07, 2008

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Walter Grady, DO

480 Floyd Road Spartanburg, SC 29307

(864)582-2115 fax: (864)582-2117

Toll Free (877)582-2115 Toll Free Fax (866)583-2117

PatientID: WC02557

Patient Name: JACQUELINE Y CARTER

Date of Birth: 11/11/1960

Date of Service: 03/03/2008

CHIEF COMPLAINT: IMPAIRMENT RATING

CURRENT ALLERGY LIST:

NO KNOWN DRUG ALLERGY

CURRENT MEDICATION LIST:

MAXZIDE ORAL TABLET 75-50 MG,

LOTREL ORAL CAPSULE CONVENTIONAL 10-20 MG,

PRILOSEC ORAL CAPSULE DELAYED RELEASE 10 MG,

DARVOCET-N 100 ORAL TABLET 100-650 MG, 1 Q6-8H P.R.N.

CURRENT PROBLEM LIST:

PLAN: Using the AMA Guide to Permanent Impairment, 5th Edition, I would rate her right lower extremity at 0% impairment and 18% impairment to the left lower extremity.

WG:ch

Electronically Signed by: Walter Grady, DO on Thursday, March 13, 2008

Shirt size 3X
 Paid in full while 6/19/10
 Wants us to ~~draft~~ ~~every~~ ~~thing~~ ~~at once~~

Trinity Health & Fitness LLC
 Confidential Electronic Funds Transfer Form

I, Jackie Carter, hereby authorize TRINITY HEALTH & FITNESS LLC of 1650 Skylyn Drive Suite 100, Spartanburg, SC 29307, to initiate debit entries in the amount of \$ 33 per month, for the term of the contract, using the information below. I realize that my first debit will include the enrollment fee.

I understand that no funds will be debited from my account until Trinity Health and Fitness opens. Once Trinity Health & Fitness opens for business, my account will be debited on the opening date. Then my account will be debited on or around the same date for each following month during the term of the contract. I understand that this authorization will remain in full force for at least one year and then is extended for another year unless cancelled. Also, the term will continue to renew until written cancellation is given. I understand that in the event of a returned check or a returned bank draft, there will be a \$20 charge. Initials JC

Customer's Right to Cancel:
 (a) You have the right to cancel if not 100% satisfied. In order to cancel, you must attend Trinity Health & Fitness for at least three days per week for no less than two months. After this two-month period, you may cancel your membership within the following week to avoid any further charges.

If you wish to cancel your membership at the end of any one-year term, you may send a certified letter to the address above to arrive by the 15th day of the eleventh month of the one-year contract.

(b) In addition, you or your estate may cancel the contract at any time by written notice to the address above if one of the following circumstances occurs:

- (1) Your death
- (2) Substantial physical disability, certified by a physician, which makes it permanently impossible for you to use the facility's services.
- (3) Your permanent relocation to a residence more than 50 miles distant from an outlet operated by the center, if the center is unable to arrange for the customer's use of another center with equivalent major facilities and services.

Client Signature: [Signature]

Client Information

Name: Jackie Carter Phone #: 864-266-8687
 Address: 106 Kensington Dr #102 Date: 3-3-10
 City: Spartanburg SC Zip: 29306 Start Date For Draft: 4-1-10

Account Information

Institution Name: _____
 Routing Number: _____
 Account Number: _____

draft 200 then 295.8

WAIVER FORM

PLEASE FILL OUT IN FULL:

Name: Jackie Carter
Address: 176 Kensington Dr. #102
City, Zip Code: Spartanburg SC 29306
Home #: 864-266-8687
Cell #: Same as above
Work #: _____

IN CASE OF EMERGENCY CONTACT: Jessie Carter
CONTACT PHONE #: 864-574-9358
E-Mail Address: Cjacobs90@yahoo.com
Date of Birth: 11/11/60

GENERAL STATEMENT OF PROGRAM OBJECTIVES AND PROCEDURES:
I understand that this physical fitness program includes exercise to build the cardio respiratory system (heart & lungs), the musculoskeletal system (muscle endurance, strength, and flexibility), and to improve body composition (decrease of body fat in individuals needing to lose fat, with an increase of weight of muscle or bone). Exercise may include aerobic activities (treadmill, walking, running, bicycle riding, rowing machine exercise, group aerobic activity, swimming, and other aerobic activities), calisthenics exercises, and weight lifting to improve muscular endurance, and flexibility exercises to improve joint range of motion.

DESCRIPTION OF POTENTIAL RISKS:
I understand that the reaction of the heart, lung and blood vessel system to exercise cannot always be predicted with accuracy. I know there is a risk of certain abnormal changes occurring during or following exercises which may include abnormalities of blood pressure or heart attacks. Use of the weight-lifting equipment and engaging in heavy body calisthenics may lead to musculoskeletal strains, pain and injury if adequate warm-up, gradual progression, and safety procedures are not followed. I understand that seller shall not be liable for any damages arising from personal injuries sustained by buyer while and during the PERSONAL TRAINING PROGRAM. Buyer using the exercise equipment during the PERSONAL TRAINING PROGRAM does so at his/her own risk. Buyer assumes full responsibility for any injuries or damages which may occur during the training.

I hereby fully and forever release and discharge seller, its assigns and agents from all claims, demands, damages, right of action, present and future therein.

I understand and warrant, release and agree that I am in good physical condition and that I have no disability, impairment or ailment preventing me from engaging in active or passive exercise that will be detrimental to heart, safety, comfort, or physical condition. If I engage or participate in other than those items fully discussed on health history form.

I state that I have had a recent physical checkup and have my personal physician's permission to engage in aerobic and/or anaerobic conditioning.

DESCRIPTION OF POTENTIAL BENEFITS:

I understand that a program of regular exercise for the heart, lungs, muscles and joints has many benefits associated with it. These may include a decrease in body fat, improvement in blood fats and blood pressure, improvement in physiological function, and decrease in risk of heart disease.

I have read and understand the foregoing information and understand it. Any questions which may have occurred to me have been answered to my satisfaction.

Signature of Participant: _____

Date: 3-3-10

Signature of Witness: _____

Date: 3-3-10

Trinity Health and Fitness POLICIES AND GUIDELINES

- Appropriate athletic shoes only. No street shoes, boots, or sandals are allowed in workout areas.
- Clothing allowed; shorts, sweat pants, T-shirts, tank-tops, and spandex clothing accessories deemed appropriate by management.
- Clean workout clothing is required. Any unsatisfactory hygiene condition will be addressed by management and corrective action may be required.
- All other clothing and shoes must be kept in shower rooms. Please keep all valuables at home. We are not responsible for any lost or stolen items.
- Please be courteous at all times.
- Rack all weights after each use.
- Please do not slam or drop weights.
- Allow others to work in during your rest periods.
- Keep hands and feet away from all moving parts and weight stacks.
- Do not attempt to repair or adjust any equipment that has malfunctioned.
- Report any equipment problem immediately to the staff.
- Use your workout towel or sanitary spray and paper towel to wipe off equipment and benches after each use.
- Derogatory remarks involving any other member or club personnel will not be permitted.
- If you have sweated heavily during a cardio workout, please clean up all sweat and change clothing before continuing your workout in other areas of the gym.
- All pool rules and regulations must be followed.

I have read the above and understand the Policies and Guidelines of Rock Solid Fitness & Beyond. I agree to follow all policies and guidelines stated above.

Sign: _____

Date: 3-3-10

Check-In Time	Mem#	Name	Member Type	Status
06/20/10 12:33P	652	Carter, Jackie	40Individual	OK
06/21/10 12:15P	652	Carter, Jackie	40Individual	OK
06/22/10 10:38A	652	Carter, Jackie	40Individual	OK
06/23/10 10:35A	652	Carter, Jackie	40Individual	OK
06/24/10 09:52A	652	Carter, Jackie	40Individual	OK
06/25/10 11:32A	652	Carter, Jackie	40Individual	OK
06/28/10 09:55A	652	Carter, Jackie	40Individual	OK
06/29/10 10:18A	652	Carter, Jackie	40Individual	OK
06/30/10 10:47A	652	Carter, Jackie	40Individual	OK

Jun 2010 Allowed: 9 Denied: 0 Duplicate: 0

07/01/10 09:24A	652	Carter, Jackie	40Individual	OK
07/08/10 09:59A	652	Carter, Jackie	40Individual	OK
07/09/10 10:12A	652	Carter, Jackie	40Individual	OK
07/12/10 10:03A	652	Carter, Jackie	40Individual	OK
07/13/10 10:05A	652	Carter, Jackie	40Individual	OK
07/15/10 12:45P	652	Carter, Jackie	40Individual	OK
07/16/10 10:08A	652	Carter, Jackie	40Individual	OK
07/19/10 10:14A	652	Carter, Jackie	40Individual	NO MONTHLY ADD-ON (Allowed)
07/20/10 10:49A	652	Carter, Jackie	40Individual	OK
07/21/10 10:17A	652	Carter, Jackie	40Individual	OK
07/21/10 10:20A	652	Carter, Jackie	40Individual	OK
07/26/10 10:43A	652	Carter, Jackie	40Individual	OK
07/27/10 01:45P	652	Carter, Jackie	40Individual	OK
07/28/10 10:52A	652	Carter, Jackie	40Individual	OK
07/29/10 10:48A	652	Carter, Jackie	40Individual	OK

Jul 2010 Allowed: 15 Denied: 0 Duplicate: 0

08/09/10 10:31A	652	Carter, Jackie	40Individual	OK
08/11/10 09:46A	652	Carter, Jackie	40Individual	OK
08/12/10 09:41A	652	Carter, Jackie	40Individual	OK
08/13/10 09:38A	652	Carter, Jackie	40Individual	OK
08/16/10 09:36A	652	Carter, Jackie	40Individual	NO MONTHLY ADD-ON (Allowed)
08/16/10 01:34P	652	Carter, Jackie	40Individual	OK
08/17/10 09:41A	652	Carter, Jackie	40Individual	OK
08/17/10 05:57P	652	Carter, Jackie	40Individual	OK
08/18/10 01:20P	652	Carter, Jackie	40Individual	ALERT
08/24/10 10:03A	652	Carter, Jackie	40Individual	OK
08/26/10 10:10A	652	Carter, Jackie	40Individual	OK
08/27/10 09:46A	652	Carter, Jackie	40Individual	OK

Aug 2010 Allowed: 11 Denied: 1 Duplicate: 0

09/01/10 10:09A	652	Carter, Jackie	40Individual	OK
09/02/10 09:55A	652	Carter, Jackie	40Individual	OK
09/03/10 09:46A	652	Carter, Jackie	40Individual	OK
09/06/10 01:00P	652	Carter, Jackie	40Individual	OK
09/08/10 09:49A	652	Carter, Jackie	40Individual	OK
09/09/10 05:13P	652	Carter, Jackie	40Individual	OK
09/10/10 01:24P	652	Carter, Jackie	40Individual	OK
09/14/10 09:50A	652	Carter, Jackie	40Individual	OK
09/15/10 01:18P	652	Carter, Jackie	40Individual	OK
09/22/10 05:38P	652	Carter, Jackie	40Individual	OK
09/23/10 10:40A	652	Carter, Jackie	40Individual	OK
09/23/10 10:42A	652	Carter, Jackie	40Individual	OK
09/24/10 10:44A	652	Carter, Jackie	40Individual	OK
09/28/10 09:36A	652	Carter, Jackie	40Individual	OK
09/30/10 10:24A	652	Carter, Jackie	40Individual	OK

Sep 2010 Allowed: 15 Denied: 0 Duplicate: 0

10/01/10 09:49A	652	Carter, Jackie	40Individual	OK
10/09/10 02:10P	652	Carter, Jackie	40Individual	OK
10/10/10 01:47P	652	Carter, Jackie	40Individual	OK
10/11/10 01:04P	652	Carter, Jackie	40Individual	OK
10/16/10 01:47P	652	Carter, Jackie	40Individual	OK
10/19/10 01:34P	652	Carter, Jackie	40Individual	OK
10/23/10 03:01P	652	Carter, Jackie	40Individual	OK
10/24/10 12:11P	652	Carter, Jackie	40Individual	OK
10/25/10 09:56A	652	Carter, Jackie	40Individual	OK
10/28/10 06:22P	652	Carter, Jackie	40Individual	OK

Oct 2010 Allowed: 10 Denied: 0 Duplicate: 0

11/01/10 05:47P	652	Carter, Jackie	40Individual	OK
11/02/10 04:10P	652	Carter, Jackie	40Individual	OK
11/04/10 05:35P	652	Carter, Jackie	40Individual	OK
11/04/10 07:42P	652	Carter, Jackie	40Individual	OK
11/06/10 11:50A	652	Carter, Jackie	40Individual	OK
11/08/10 05:51P	652	Carter, Jackie	40Individual	OK
11/09/10 10:35A	652	Carter, Jackie	40Individual	OK
11/11/10 09:59A	652	Carter, Jackie	40Individual	OK
11/11/10 12:33P	652	Carter, Jackie	40Individual	OK
11/11/10 07:36P	652	Carter, Jackie	40Individual	OK
11/13/10 09:00A	652	Carter, Jackie	40Individual	OK

Attendance
Record

11/15/10 06:00P	652	Carter, Jackie	40Individual	OK
11/17/10 10:34A	652	Carter, Jackie	40Individual	OK
11/18/10 05:42P	652	Carter, Jackie	40Individual	OK
11/18/10 08:01P	652	Carter, Jackie	40Individual	OK
11/19/10 10:13A	652	Carter, Jackie	40Individual	OK
11/22/10 05:59P	652	Carter, Jackie	40Individual	OK
11/24/10 06:25P	652	Carter, Jackie	40Individual	OK
11/27/10 08:59A	652	Carter, Jackie	40Individual	OK

Nov 2010 Allowed: 19 Denied: 0 Duplicate: 0

12/11/10 08:56A	652	Carter, Jackie	40Individual	OK
12/14/10 08:40A	652	Carter, Jackie	40Individual	OK
12/15/10 08:31A	652	Carter, Jackie	40Individual	OK
12/18/10 09:04A	652	Carter, Jackie	40Individual	OK
12/21/10 08:33A	652	Carter, Jackie	40Individual	OK
12/23/10 06:08P	652	Carter, Jackie	40Individual	OK
12/30/10 05:20P	652	Carter, Jackie	40Individual	OK
12/31/10 08:35A	652	Carter, Jackie	40Individual	OK

Dec 2010 Allowed: 8 Denied: 0 Duplicate: 0

01/03/11 06:07P	652	Carter, Jackie	40Individual	OK
01/07/11 08:37A	652	Carter, Jackie	40Individual	OK
01/08/11 09:06A	652	Carter, Jackie	40Individual	OK
01/17/11 05:56P	652	Carter, Jackie	40Individual	OK
01/21/11 08:30A	652	Carter, Jackie	40Individual	OK
01/22/11 08:59A	652	Carter, Jackie	40Individual	OK
01/24/11 08:38A	652	Carter, Jackie	40Individual	OK
01/24/11 06:28P	652	Carter, Jackie	40Individual	OK

Jan 2011 Allowed: 8 Denied: 0 Duplicate: 0

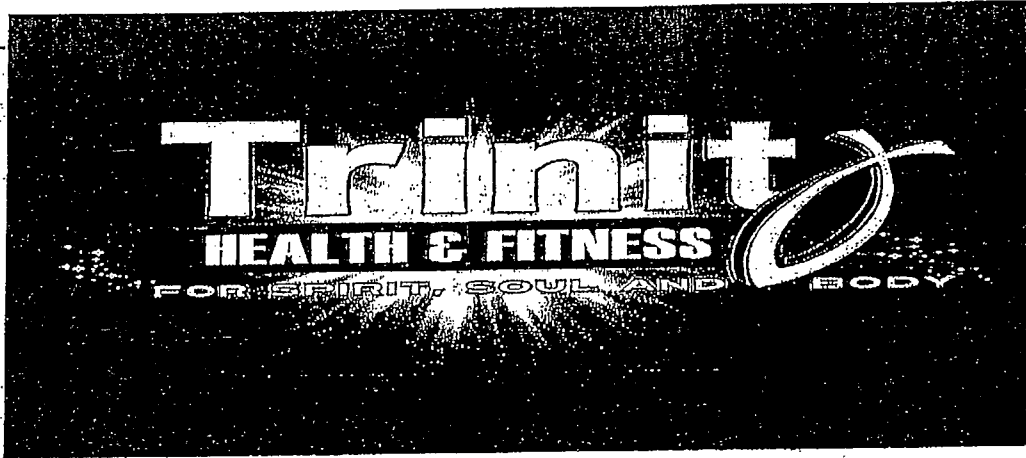
Date Range: 06/11/10 - 01/25/11

Total Visits Recorded: 96

Visits Allowed: 95

Visits Denied: 1

Duplicate Visits: 0



Dear Mrs./Ms. Robinson,

We do apologize for the inconvenience and any misunderstanding from our part. We are a brand new fitness facility and we were in the process of pre-selling memberships from February 6th, 2010 – the date we actually opened which was June 9th, 2010. Mr. Jackie Carter was a presold membership that signed up March 2010 but could not use our facility until we opened on June 9th, 2010. Ms. Jackie Carter's first date of actual attendance was June 18, 2010 @ 12:33 - p.m. Enclosed with this letter is also an updated copy of Ms. Carter's attendance records starting from the very beginning up until today's date of February 8th, 2011. If there are any further questions, please feel free to contact us at 864-285-0589 or our email at trinityhealthandfit@yahoo.com.

Sincerely,

Management

Check-In Time	Mem#	Name	Member Type	Status
06/18/10 12:33P	652	Carter, Jackie	40Individual	OK
06/21/10 12:15P	652	Carter, Jackie	40Individual	OK
06/22/10 10:30A	652	Carter, Jackie	40Individual	OK
06/23/10 10:35A	652	Carter, Jackie	40Individual	OK
06/24/10 09:52A	652	Carter, Jackie	40Individual	OK
06/25/10 11:32A	652	Carter, Jackie	40Individual	OK
06/28/10 09:55A	652	Carter, Jackie	40Individual	OK
06/29/10 10:18A	652	Carter, Jackie	40Individual	OK
06/30/10 10:47A	652	Carter, Jackie	40Individual	OK

Jun 2010	Allowed:	9	Denied:	0 Duplicate: 0

07/01/10 09:24A	652	Carter, Jackie	40Individual	OK
07/08/10 09:59A	652	Carter, Jackie	40Individual	OK
07/09/10 10:12A	652	Carter, Jackie	40Individual	OK
07/12/10 10:03A	652	Carter, Jackie	40Individual	OK
07/13/10 10:05A	652	Carter, Jackie	40Individual	OK
07/15/10 12:45P	652	Carter, Jackie	40Individual	OK
07/16/10 10:08A	652	Carter, Jackie	40Individual	OK
07/19/10 10:14A	652	Carter, Jackie	40Individual	NO MONTHLY ADD-ON (Allowed)
07/20/10 10:49A	652	Carter, Jackie	40Individual	OK
07/21/10 10:17A	652	Carter, Jackie	40Individual	OK
07/21/10 10:20A	652	Carter, Jackie	40Individual	OK
07/26/10 10:43A	652	Carter, Jackie	40Individual	OK
07/27/10 01:45P	652	Carter, Jackie	40Individual	OK
07/28/10 10:52A	652	Carter, Jackie	40Individual	OK
07/29/10 10:48A	652	Carter, Jackie	40Individual	OK

Jul 2010	Allowed:	15	Denied:	0 Duplicate: 0

08/09/10 10:31A	652	Carter, Jackie	40Individual	OK
08/11/10 09:46A	652	Carter, Jackie	40Individual	OK
08/12/10 09:41A	652	Carter, Jackie	40Individual	OK
08/13/10 09:38A	652	Carter, Jackie	40Individual	OK
08/16/10 09:36A	652	Carter, Jackie	40Individual	NO MONTHLY ADD-ON (Allowed)
08/16/10 01:34P	652	Carter, Jackie	40Individual	OK
08/17/10 09:41A	652	Carter, Jackie	40Individual	OK
08/17/10 05:57P	652	Carter, Jackie	40Individual	OK
08/18/10 01:20P	652	Carter, Jackie	40Individual	OK
08/24/10 10:03A	652	Carter, Jackie	40Individual	ALERT
08/26/10 10:10A	652	Carter, Jackie	40Individual	OK
08/27/10 09:46A	652	Carter, Jackie	40Individual	OK

Aug 2010	Allowed:	11	Denied:	1 Duplicate: 0

09/01/10 10:09A	652	Carter, Jackie	40Individual	OK
09/02/10 09:55A	652	Carter, Jackie	40Individual	OK
09/03/10 09:46A	652	Carter, Jackie	40Individual	OK
09/06/10 01:00P	652	Carter, Jackie	40Individual	OK
09/08/10 09:49A	652	Carter, Jackie	40Individual	OK
09/09/10 05:13P	652	Carter, Jackie	40Individual	OK
09/10/10 01:24P	652	Carter, Jackie	40Individual	OK
09/14/10 09:50A	652	Carter, Jackie	40Individual	OK
09/15/10 01:18P	652	Carter, Jackie	40Individual	OK
09/22/10 05:38P	652	Carter, Jackie	40Individual	OK
09/23/10 10:40A	652	Carter, Jackie	40Individual	OK
09/23/10 10:42A	652	Carter, Jackie	40Individual	OK
09/24/10 10:44A	652	Carter, Jackie	40Individual	OK
09/28/10 09:36A	652	Carter, Jackie	40Individual	OK
09/30/10 10:24A	652	Carter, Jackie	40Individual	OK

Sep 2010	Allowed:	15	Denied:	0 Duplicate: 0

10/01/10 09:49A	652	Carter, Jackie	40Individual	OK
10/09/10 02:10P	652	Carter, Jackie	40Individual	OK
10/10/10 01:47P	652	Carter, Jackie	40Individual	OK
10/11/10 01:04P	652	Carter, Jackie	40Individual	OK
10/16/10 01:47P	652	Carter, Jackie	40Individual	OK
10/19/10 01:34P	652	Carter, Jackie	40Individual	OK
10/23/10 03:01P	652	Carter, Jackie	40Individual	OK
10/24/10 12:11P	652	Carter, Jackie	40Individual	OK
10/25/10 09:56A	652	Carter, Jackie	40Individual	OK
10/28/10 06:22P	652	Carter, Jackie	40Individual	OK

Oct 2010	Allowed:	10	Denied:	0 Duplicate: 0

11/01/10 05:47P	652	Carter, Jackie	40Individual	OK
11/02/10 04:10P	652	Carter, Jackie	40Individual	OK
11/04/10 05:35P	652	Carter, Jackie	40Individual	OK
11/04/10 07:42P	652	Carter, Jackie	40Individual	OK
11/06/10 11:50A	652	Carter, Jackie	40Individual	OK
11/08/10 05:51P	652	Carter, Jackie	40Individual	OK
11/09/10 10:35A	652	Carter, Jackie	40Individual	OK
11/11/10 09:59A	652	Carter, Jackie	40Individual	OK
11/11/10 12:33P	652	Carter, Jackie	40Individual	OK
11/11/10 07:36P	652	Carter, Jackie	40Individual	OK
11/13/10 09:00A	652	Carter, Jackie	40Individual	OK

11/15/10 06:00P	652	Carter, Jackie	40Individual	OK
11/17/10 10:34A	652	Carter, Jackie	40Individual	OK
11/18/10 05:42P	652	Carter, Jackie	40Individual	OK
11/18/10 08:01P	652	Carter, Jackie	40Individual	OK
11/19/10 10:13A	652	Carter, Jackie	40Individual	OK
11/22/10 05:59P	652	Carter, Jackie	40Individual	OK
11/24/10 06:25P	652	Carter, Jackie	40Individual	OK
11/27/10 08:59A	652	Carter, Jackie	40Individual	OK

Nov 2010 Allowed: 19 Denied: 0 Duplicate: 0

12/11/10 08:56A	652	Carter, Jackie	40Individual	OK
12/14/10 08:40A	652	Carter, Jackie	40Individual	OK
12/15/10 08:31A	652	Carter, Jackie	40Individual	OK
12/18/10 09:04A	652	Carter, Jackie	40Individual	OK
12/21/10 08:33A	652	Carter, Jackie	40Individual	OK
12/23/10 06:08P	652	Carter, Jackie	40Individual	OK
12/30/10 05:20P	652	Carter, Jackie	40Individual	OK
12/31/10 08:35A	652	Carter, Jackie	40Individual	OK

Dec 2010 Allowed: 8 Denied: 0 Duplicate: 0

01/03/11 06:07P	652	Carter, Jackie	40Individual	OK
01/07/11 08:37A	652	Carter, Jackie	40Individual	OK
01/08/11 09:06A	652	Carter, Jackie	40Individual	OK
01/17/11 05:56P	652	Carter, Jackie	40Individual	OK
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01/24/11 06:28P	652	Carter, Jackie	40Individual	OK
01/26/11 08:26A	652	Carter, Jackie	40Individual	OK
01/27/11 06:26P	652	Carter, Jackie	40Individual	OK
01/28/11 08:36A	652	Carter, Jackie	40Individual	OK
01/31/11 05:43P	652	Carter, Jackie	40Individual	OK
01/31/11 05:44P	652	Carter, Jackie	40Individual	OK

Jan 2011 Allowed: 13 Denied: 0 Duplicate: 0

02/03/11 06:36P	652	Carter, Jackie	40Individual	OK
02/05/11 08:48A	652	Carter, Jackie	40Individual	OK
02/07/11 05:59P	652	Carter, Jackie	40Individual	OK
02/07/11 07:30P	652	Carter, Jackie	40Individual	OK

Feb 2011 Allowed: 4 Denied: 0 Duplicate: 0

Date Range: 06/11/10 - 02/08/11

Total Visits Recorded: 105

Visits Allowed: 104

Visits Denied: 1

Duplicate Visits: 0



Walter Grady, DO

November 4, 2010

CARTER, JACQUELINE

INDEPENDENT MEDICAL EVALUATION - CHANGE OF CONDITION

HISTORY OF PRESENT ILLNESS:

Ms. Carter is a very pleasant, 49 year old, left hand dominant female who has been a long standing patient of mine.

We did take her to surgery previously at Mary Black Memorial Hospital on 6-29-07.

The date of her last visit was 3-3-08 for a rating.

Historically, Jacqueline had a workman's compensation hearing on 11-09. The workman's comp commission rated her at 25% to her left lower extremity.

Jacqueline has been working at BB&T for a month as a part-time teller.

CHIEF COMPLAINT:

Jacqueline presents today with a chief complaint relative to her left knee as follows. She feels that she has a knot on the medial side of her left knee. She has developed a sharp, stabbing pain in the left knee and feels as if the left knee is going to hyper-extend on her. She also complains of crepitance in her left knee. She is positive for crepitus on flexion and extension of her left knee.

Jacqueline is very sensitive over the medial joint line region historically.

The patient indicates that she is allowed to sit and stand at will on her job.

PAIN SCORE RATING:

Jacqueline's pain score rating in her left knee would be a level 5 out of 10. It does, however, go up to about 6 or 7 out of 10. The thing that makes her pain the worst is walking, especially standing too long or sitting too long, etc. She states that her knee pretty much hurts all day long.

480 Floyd Road Spartanburg, SC 29307

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CARTER, JACQUELINE

PAGE TWO

NOVEMBER 4, 2010

SUMMARY STATEMENT OF SURGERY:

Again, we did take Jacqueline to surgery on the date of 6-29-07. Her post operative diagnosis was a radial tear, posterior horn medial meniscus, left knee. She also had a diagnosis of osteochondritis dessicans lesion/grade 4 change medial femoral condyle involving 100% of weight bearing surface area and posterior medial segment of the tibial plateau. She has grade IV DJD patella, left knee and anterior articular loose body, lateral compartment, left knee and synovitis, left knee. It was noted that she had osteoporosis of soft bone medial femoral condyle and medial tibial plateau.

We did accomplish, on the above noted date, arthroscopic partial medial meniscectomy, left knee and arthroscopic microfracture abrasion arthroplasty, left knee, medial femoral condyle and medial tibial plateau. Also accomplished was arthroscopic soft chondroplasty, patella, left knee and arthroscopic removal of intra-articular loose body, lateral compartment, left knee and arthroscopic tricompartmental synovectomy, left knee.

Jacqueline had an evaluation on the date of 1-3-08. That evaluation revealed findings consistent with range of motion of the left knee from about 0 degrees to 120 degrees. The examination was otherwise stable at that time. She was tender over the medial aspect of her ankle at that time over the deltoid ligament.

X-rays of her left knee, dated 1-3-08, compared to films dated 9-24-07, revealed an excellent joint space interval without joint space collapse to any appreciable degree. She had some subtle tibial spine osteophytosis. We noted, again, that these films were reviewed in the standing weight bearing view projection.

The impression, at that time, was advanced grade DJD, left knee as previously indicated. Also she was status post Supartz injection, left knee with a reasonably good functional result.

CLINICAL EXAMINATION - LEFT KNEE:

Inspection:

Inspection of her left knee today compared to her right knee, with her seated on the examination table, reveals two healed arthroscopic incisions, left knee. We also note the slight out-pouching along the lateral compartment predominantly and to a lesser extent the medial compartments of her knees. It is felt that this represent fluid.

CARTER, JACQUELINE
PAGE THREE
NOVEMBER 4, 2010

Applicable Measurements - Bilateral Lower Extremities:

Applicable measurements of the bilateral lower extremities, thighs and calves, in terms of circumference, reveals thigh circumference, on the right, to be approximately 63 cm and on the left 60 cm.

Calf circumference, 10 cm inferior to the patella, on the right is 44 cm and on the left 45 cm.

In summary, this represents a 3 cm deficit on the left lower extremity/thigh and 1 cm deficit in the calf.

X-ray Report:

Films dated 11-4-10 are consistent with advanced DJD, left knee with medial joint space collapse and approximately 1 mm joint space remaining in medial tibiofemoral compartment. (This represents a change from 3 mm in March of 2008.) Patellofemoral joint DJD osteophytes inferior and superior articular surfaces. Films were viewed in bilateral standing weight bearing view projections and static AP and lateral view x-rays, left knee. No acute pathology was noted. Patellofemoral joint narrowing was noted.

Palpatory Examination:

Palpatory examination of her left knee reveals her to have extreme tenderness in the medial compartment of the same. Lateral compartment tenderness is also appreciated. Jacqueline is tender over the vastus medialis obliquus insertion into the patella.

In terms of the pes anserine bursa, she complains of tenderness. In terms of the prepatella bursa, she complains of mild tenderness as well.

Range of motion Testing:

Range of motion testing of the left knee reveals her to have range of motion of 0 to approximately 82 degrees on the left compared to 0 to 120 degrees on the right. She can take it to 90 with passive assist but it does hurt her to take it to 90.

Strength Assessment Testing:

Strength assessment testing of the left knee reveals her to have 4 to 4+/5 extension strength and about 3/5 flexion strength. She complains bitterly of pain along the anterior aspect, lower segment of her left knee over the bilateral joint lines and patella tendon region primarily.

CARTER, JACQUELINE
PAGE FOUR
NOVEMBER 4, 2010

Provocative Testing:

Provocative testing of the left knee reveals her to have significant tenderness with external rotation in the medial compartment and internal rotation reveals tenderness across the region of the patella tendon as well as the medial and lateral joint line areas.

The medial McMurray's test reveals her to have a positive medial McMurray's test and the lateral McMurray's test is negative. She has tenderness primarily over the medial compartment of the left knee. The Drawer test is negative. The Lachman's test is negative.

Circulatory Evaluation:

Circulatory evaluation reveals her to have a palpable fibialis posterior pulse and a palpable dorsalis pedis pulse.

She has a +2 patella and +2 Achilles reflex on the left side.

Gait Analysis:

Gait analysis reveals her to have an antalgic gait with her favoring her left lower extremity.

She can heel walk in a shallow fashion relatively unassisted. She can tiptoe walk in a shallow fashion relatively unassisted.

ASSESSMENT:

- 1) Status post diagnostic and surgical arthroscopy, left knee, 6-29-07, with arthroscopic partial medial meniscectomy.
- 2) Per arthroscopy, post operative diagnosis of osteochondritis dessicans lesion grade 4 change medial femoral condyle involving 100% of the weight bearing surface area and posterior medial aspect of tibial plateau. Also an associated diagnosis, per arthroscopy of grade 4 DJD patella, left knee and intra-articular loose body, lateral compartment, left knee and synovitis, left knee with osteoporosis, soft bone medial femoral condyle and medial tibial plateau, left knee.
- 3) Clinical examination this date consistent with a possible medial meniscus tear (recurrent), left knee.
- 4) Clinical examination consistent with significant thigh muscle atrophy on the left compared to the right side.
- 5) Significant issue of chronic pain secondary to the DJD with presumptive interval progression of her arthritis considering the fact that some of the meniscus had to be

CARTER, JACQUELINE
PAGE FIVE
NOVEMBER 4, 2010

removed.

PLAN/RECOMMENDATION:

It is my recommendation that we accomplish weight bearing view x-rays along with a lateral view x-ray this date.

We will utilize those x-rays to calculate the joint space interval. As I previously mentioned, there is an issue of interval progression of arthritis when we have to remove some of the meniscus and the patient already has arthritis. That is expected over time. Eventually she will require total knee arthroplasty.

It is expected, again, that she will have chronic pain and she will require analgesic medications and nonsteroidal anti-inflammatory medications.

Point of clarification: The patient has joined Trinity gym and she is really focusing and conscious on weight loss to try and help or assist with her knee problem. She has lost 40 lbs through much effort and she is continuing to try to do that which is commendable.

Using the AMA Guide to Permanent Impairment, 5th Edition, I would rate her as having a 42% impairment of the left lower extremity which correlates to a 17% impairment to the whole person.

The opinions rendered in this case are the opinions of this evaluator. This evaluation has been conducted on the basis of the medical examiner and documentation as provided with the assumption that the material is true and correct. If more information becomes available at a later date, an additional service report, reconsideration may be requested. Such information may or may not change the opinions rendered in this evaluation. This opinion is based on a clinical assessment, examination and documentation. This opinion does not constitute, per se, a recommendation for specific claims or administrative functions be made or enforced. Any recommendations made during this examination are strictly recommendations as this is an independent medical evaluation and the examiner is not the treating physician.

Walter Grady, DO

WG:ch

Walter Grady, DO

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-23-7975
W.C.C. File No.: 0622179

Jacqueline Carter, Respondent,

v.

Verizon Wireless Southeast and
American Home Assurance Company, Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

SOWELL GRAY STEPP AND LAFFITTE, L.L.C.

By: 

Grady L. Beard, Esquire
Nicolas L. Haigler, Esquire
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Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Appellants

May 16, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-23-7975
W.C.C. File No.: 0622179

Jacqueline Carter, Respondent,

v.

Verizon Wireless Southeast and
American Home Assurance Company, Appellants.

PROOF OF SERVICE

I certify that I have served three copies of the Record on Appeal on Jacqueline Carter, by depositing a copy of same in the United States Mail, postage prepaid, on May 17, 2013, addressed to his attorneys of record, Jeremy A. Dantin, Esquire, Harrison, White, Smith & Coggins, P.A., 178 West Main Street, Post Office Box 3547, Spartanburg SC 29304.

SOWELL GRAY STEPP AND LAFFITTE, L.L.C.

By: 

Judith L. Putnam
Legal Assistant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Appellants

May 17, 2013

RECEIVED
MAY 17 2013

SC Court of Appeals

ORIGINAL