

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

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MAY 23 2018

Op. No. 2018-UP-085 (S.C. Ct. Appt. filed February 14, 2018) S.C. SUPREME COURT

Danny B. Crane,.....Petitioner,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier,..... Respondents.

APPENDIX

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

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

Danny B. Crane, Appellant,

v.

Raber's Discount Tire Rack, Employer, and South
Carolina Uninsured Employers Fund, Carrier,
Respondents.

Appellate Case No. 2015-002116

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-085
Submitted December 27, 2017 – Filed February 14, 2018

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Stephen Benjamin Samuels, of Samuels Law Firm, LLC,
of Columbia, and R. Steven Chandler, of R. Steven
Chandler, LLC, of Bamberg, for Appellant.

Matthew Joseph Story and Leslie Brenna Boodry, both of
Clawson & Staubes, LLC, of Charleston, for Respondent
South Carolina Uninsured Employers Fund.

PER CURIAM: In this workers' compensation case, Danny B. Crane argues the Appellate Panel of the Workers' Compensation Commission (the Appellate Panel) erred in finding he (1) reached maximum medical improvement (MMI) on March 31, 2014; (2) was not entitled to future medical care; (3) was not a credible witness; (4) suffered no permanency from the injury; and (5) was not entitled to an award of total temporary disability benefits (TTD).

We affirm the Appellate Panel's findings regarding MMI, future medical care, Crane's credibility, and permanency because these findings were supported by substantial evidence in the record. See *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 384, 769 S.E.2d 1, 2 (2015) ("On appeal from [the Appellate Panel], this [c]ourt can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record."); *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 85, 681 S.E.2d 595, 600 (Ct. App. 2009) ("[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." (alteration in original) (quoting *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984))); *Ross v. Am. Red Cross*, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989) ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the [Appellate Panel]."); *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 290, 599 S.E.2d 604, 611 (Ct. App. 2004) ("Whe[n] there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive.").

However, we reverse the Appellate Panel's denial of TTD because it was not supported by substantial evidence. In its order, the Appellate Panel based the denial of TTD on its belief that there were "no work excuse notes in the record entitling [Crane] to such benefits." However, the record contained a work excuse note from Carolina ENT indicating Crane was under treatment from March 6, 2014, to April 1, 2014, and would be able to return to work on April 1, 2014. Although the work excuse from Carolina ENT did not state that Crane could not perform his job duties because of the work-related injury, Carolina ENT physician Dr. John F. Ansley treated Crane for the work-related injury. In fact, Dr. Ansley saw Crane for the second Pure Tone Audiogram test on March 6, 2014, and instructed Crane to obtain more objective testing at the Medical University of South Carolina. Because Carolina ENT treated Crane for the compensable injury and provided a work excuse for Crane, we believe substantial evidence in the record does not support the Appellate Panel's finding that Crane was not entitled to TTD for the period of March 6, 2014, to the date he reached MMI. However, we note there is some evidence in the record that Crane returned to work after the

accident. Therefore, we reverse the Appellate Panel's order regarding TTD and remand to the Appellate Panel to determine whether Crane was out of work as a result of the accident and whether he was entitled to TTD.

Accordingly, the order of the Appellate Panel is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.¹

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

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

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-002116

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SC Court of Appeals

Danny B. Crane, ... Appellant,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier, ... Respondents.

PETITION FOR REHEARING

Appellant, by and through his undersigned attorneys, hereby files this Petition for Rehearing. On February 14, 2018, this Court issued an opinion affirming in part, reversing in part, and remanding the Decision and Order of the South Carolina Workers' Compensation Commission. Crane v. Raber's Discount Tire Rack, Op. No. 2018-UP-085 (S.C.Ct.App. filed February 14, 2018).

As grounds for granting his Petition, Appellant would respectfully show the Court may have overlooked or misapprehended the evidence, law and arguments raised on the issues of (1) whether Appellant reached maximum medical improvement (MMI) on March 31, 2014; (2) whether Appellant is entitled to future medical care; (3) whether Appellant was a credible witness; (4) whether Appellant suffered no permanency from the injury; and (5) whether Appellant was entitled to an award of total temporary disability benefits (TTD) after March 31, 2014.

ARGUMENT

1. Danny Crane did not reach Maximum Medical Improvement for his hearing loss on March 31, 2014.

The Court affirmed the Appellate Panel's finding that Crane had reached maximum medical improvement (MMI) on March 31, 2014, holding this finding was supported by substantial evidence in the record. Appellant respectfully argues that the Court may have overlooked or misapprehended the evidence in the record – which does not support the Appellate Panel's MMI finding.

The Appellate Panel found "Claimant reached maximum medical improvement on March 31, 2014." [R.p. 16, Finding of Fact 39]. The date corresponds with the evaluation for a rib injury by Dr. Mol Ky. [R.p. 95-99]. The Appellate Panel seems to have concluded – despite a complete lack of supporting evidence in the record itself¹ – that this visit was also for hearing loss, as they ordered "Claimant is entitled to receive reimbursement for the medical treatment he received through (and including) the March 31, 2014 visit, with the exception of the March 26, 2014 Emergency Room visit for the unrelated rib injury." Surely if the emergency room visit is unrelated, then so necessarily must the follow up visit for "RIGHT RIB PAIN." [R.p. 95 (all capital letters in original)]. A medical evaluation for an unrelated condition cannot be substantial evidence supporting a finding that the employee reached MMI with no impairment for a compensable injury.

The flaw in the Appellate Panel's reasoning arises from the Commission's failure to separate genuine medical treatment notes from boilerplate default notations inherent in electronic medical

¹Further confirmation that Dr. Ky's evaluation was limited to addressing rib pain is found in the Commission's remarkable statement that "Strikingly absent are any references to hearing loss (Claimant's tympanic membranes are 'clear and mobile'), memory loss, headaches, dizziness, bleeding, or psychological difficulty." [R. P. 48, Finding of Fact 10(b)]. Illogically, the Commission places great reliance on a medical record wholly unrelated to the compensable hearing loss.

records. It is obvious the March 26th emergency room visit and the March 31st visit with Dr. Ky had nothing to do with hearing loss. Crane specifically went to those providers solely for rib pain from a fall in the bathroom. It is not possible to discern why the single commissioner developed such a negative impression of Crane, but the choice of March 31st as an MMI date seems chosen to punish him for bringing a claim the single commissioner felt was "questionable."

There is one easy way to determine what is boiler plate and what is new. Consider Dr. Koukos's report from February 25, 2014. Under History of Present Illness, the report states: "The patient is a 37 year old male who presents with hearing loss. Additional reason for visit: Dizziness." The report goes on to state under Physical Exam:

UNABLE TO HEAR FOLLOWING AIR LINE EXPLOSION. HAD HEARING
TEST BY ENT WORKS IN TIRE SHOP UNABLE TO HEAR AUTO'S IN SHOP

SOME DIZZINESS.

RIGHT EAR CLEAR

RIGHT SIDE HEADACHE

WILL DO CT BRAIN DX SUBDURAL
[R. P. 39 (all capital letters in original)].

We know this language from the report is not boilerplate because the history matches up with the purpose of the visit. As to the physical examination related to the hearing loss, dizziness and headache, the actual examination is in all capital letters.

The rest of the physical examination reported in the medical record is boilerplate. We know this because under Neurologic, the report includes the notation "normal hearing." [R. P. 108]. In reality, Crane's hearing was not normal, as we know from Dr. Ansley's reports and testing. Five days earlier on February 20, 2014, Dr. Ansley diagnosed Crane with "Severe sensorineural hearing

loss.” [R. P. 89-90]. And nine days after Dr. Koukos saw Crane for hearing loss, Dr. Ansley reevaluated Crane. On March 6, 2014, Dr. Ansley wrote “He is still having difficulty hearing.” He sent him to MUSC for an ABR to “Rule out sensorineral hearing loss.” [R. P. 92]. The hearing loss was confirmed by the second audiogram on the same day. [R. P. 93].

Applying the same analysis to Dr. Ky’s March 31, 2014 report, we can see the History of Present Illness has no mention of hearing loss, headaches or dizziness. The history is entirely devoted to “[t]he patient is a 37 year old male who presents with a complaint of RIGHT RIB PAIN.” [R.p. 98 (all capital letters in original)]. Similarly, the physical examination is entirely normal except for “*Tenderness noted to palp over right rib. No edema, erythema or lacerations noted to abdomen.*” [R.p. 99 (italics in original)].

A medical report from a primary care doctor addressing an entirely unrelated medical condition is not substantial evidence that the work-related hearing loss had resolved or returned to baseline and that the patient had reached MMI. This is particularly so when, as here, later records from *specialists in hearing loss* confirm with objective testing that “severe” and “profound” hearing loss is still present many months later. See Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012)(reversing commission’s factual finding because “rank speculation” is not substantial evidence); Doe v. South Carolina Dept. of Disabilities and Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008)(reversing Commission for relying on other factors when “The only evidence of causation is that Claimant’s [injury was caused by her work activities as] stated by [her doctor]”).

Interestingly, the Appellate Panel notes Dr. Rogers “found Claimant to be at maximum medical improvement;” yet disregarded his opinion as unreliable – perhaps because Dr. Rogers found “It is my medical opinion beyond a reasonable degree of medical certainty that Mr. Crane’s

profound bilateral hearing loss is permanent and that hearing acuity cannot be restored by natural means.” [R.p. 51]. The Appellate Panel seems to have relied on the single commissioner’s internet research and personal medical opinions rather than the actual medical evidence in the record.² See, Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)(“the medical opinion of the single commissioner, adopted by the Commission,” is not evidence and cannot form the basis of a finding); Marbury v. Sullivan, 957 F.2d 837, 840-41 (11th Cir. 1992) (Johnson, J., concurring)(hearing officer “may not arbitrarily substitute his own hunch or intuition for the diagnoses of a medical professional.”).

The two medical records from the unrelated rib injury are not substantial evidence to support the Appellate Panel’s finding that Crane reached MMI on March 31, 2014 with full recovery of his hearing. The Panel’s guess that Crane’s hearing loss must have somehow resolved because it was not mentioned one way or the other is pure speculation. The Panel arbitrarily ignored and misread the later reports from Dr. Rogers and Dr. Cassone finding it permanent. [R. p. 51, 164-165]. As such, rehearing should be granted, and this case should be reversed and remanded for a proper finding of MMI and determination of permanent hearing loss.

²Rather than rely on the medical evidence in the record, the Commission went outside the record and did its own research on the internet. Of particular note is the Commission’s statement that “Although not dispositive in this case, perforations [of the eardrum] rarely cause permanent hearing loss, *according to these websites*.” [R.p. 54, Finding of Fact 54 (emphasis added)]. The trier of fact, whether the Commission, a judge or a jury, cannot base its findings of fact on independent research. It must rely on the evidence presented. Cf. State v. Harris, 530 S.E.2d 626, 340 S.C. 59 (2000)(“courts should stress to jurors that they may not conduct independent research or investigation, but must rely solely on the judge’s instruction for the law and the evidence presented in court for the facts.”). In this case, the records from audiologist Ronald Lunn, and Drs. Rogers, Ansley and Cassone all document hearing loss, with Mr. Lunn, Dr. Rogers and Dr. Cassone finding it permanent. [R. p. 51, 164-165].

2. Danny Crane requires additional treatment for his hearing loss as additional testing and cochlear implants will tend to lessen his period of disability.

The Commission's finding that Crane is not entitled to additional medical treatment is entirely based on the erroneous finding that his hearing loss resolved and he reached MMI on March 31, 2014. The evidence shows otherwise. Appellant believes the Court may have overlooked or misapprehended the medical evidence in the record.

On August 19, 2014, Dr. Cassone stated "He was sent for audiogram and this showed a profound hearing loss in each ear." Dr. Cassone added "He may be a candidate for a cochlear implantation and this should be considered. He should be considered disabled because of this" [R.p. 165]. Despite this unmistakably clear pronouncement from Dr. Cassone (Dr. Ansley's partner), the Appellate Panel inexplicably and arbitrarily found "that the new evidence does not serve to help Claimant's cause." [R.p. 57, Finding of Fact 42].

The Appellate Panel erred in substituting its own medical opinion for the medical opinions of the treating and examining doctors. See, Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012) ("the medical opinion of the single commissioner, adopted by the Commission," is not evidence and cannot form the basis of a finding.). There were no medical opinions contradicting or disagreeing with Dr. Koukas, Mr. Lunn, Dr. Ansley, Dr. Rogers and Dr. Cassone. See, Doe v. South Carolina Dept. of Disabilities and Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008) (reversing Commission for relying on other factors when "The only evidence of causation is that Claimant's [injury was caused by her work activities as] stated by [her doctor]"). Whether the Appellate Panel was relying on its own internet research or on records from the unrelated rib injury, there is no substantial evidence supporting the Appellate Panel's finding limiting medical treatment

to March 31, 2014. Indeed, it is quintessentially arbitrary to make Defendants pay for medical treatment unrelated to the work-related injury.

Respectfully, Appellant believes the Court overlooked the fact that the rib injury records are unrelated to the compensable hearing loss. As treatment for a rib injury can have no bearing on whether Crane requires more treatment for his hearing loss (nor can internet research), Appellant requests rehearing be granted and additional medical treatment be ordered.

3. The Appellate Panel arbitrarily found Crane not credible based on its own misreading of the evidence and use of "sit and squirm jurisprudence."

The Court affirmed the Appellate Panel's finding that Crane was not a credible witness. From the outset, Appellant acknowledges that South Carolina traditionally holds a determination of credibility is solely for the Appellate Panel and could not be reversed by the appellate courts. However, in the instant case, the finding of credibility is the product of the single commissioner's "hunch or intuition." See Marbury v. Sullivan, 957 F.2d 837, 840-41 (11th Cir. 1992) (Johnson, J., concurring)(hearing officer "may not arbitrarily substitute his own hunch or intuition for the diagnoses of a medical professional."). This puts the Court in a difficult position. Either the credibility finding must be reversed or, as this Court did in Burnette, the underlying case must be reversed on the medical evidence, thus obviating a need to address the credibility findings. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)(declining to address credibility issue because Appellate Panel's factual findings were based on the single commissioner's own medical opinion unsupported by medical evidence in the record). Appellant requests that the Court grant rehearing to either address and reverse the credibility finding or to reverse on other grounds as it did in Burnette.

4. The Court overlooked or misapprehended the unrefuted evidence that Crane has suffered “profound” hearing loss and should be considered “disabled.”

The Appellate Panel found “Claimant has not proven any permanency, as Dr. Rogers’ report is unreliable. More importantly, Claimant’s own family doctor found Claimant’s hearing normal after the accident, and offered no opinion to the contrary.” [R.p. 56, Finding of Fact 39]. As noted earlier in this Petition, the Appellate Panel appears to base this finding on a report from a medical examination which the Commission found to be for an unrelated rib injury. And as the Appellate Panel found, “Strikingly absent are any references to hearing loss . . .” [R. P. 48, Finding of Fact 10(b)]. *Nowhere* in this report is there any statement that Crane’s hearing was normal – nor is there a statement that his hearing was abnormal. The report never mentions hearing loss one way or the other because the doctor was seeing the patient solely for a rib injury. See Therrell v. Jerry’s Inc., 633 S.E.2d 893, 370 S.C. 22 (2006) (“Though the workers’ compensation commission carries the duty to determine how an injury is compensable, the commission makes this decision based on submitted evidence, not out of thin air.”). Furthermore, the report is not from “Claimant’s own family doctor.” The report is from Dr. Mol Ky; not Dr. Koukos. [R.p. 95-100]. Dr. Koukos is Crane’s family doctor. [R.p. 221, lines 11-16].

Conversely, every doctor and audiologist who actually saw Crane for hearing loss after Dr. Ky saw him for the rib injury opined he had severe to profound hearing loss as shown by the Pure Tone Audiogram. Dr. Rogers opined to “a reasonable degree of medical certainty that Mr. Crane’s profound bilateral hearing loss is permanent and cannot be restored by natural means.” [R. pp. 115-120]. Audiology testing on August 19, 2014 “suggested a right profound hearing loss, while the left ear suggests a profound to severe hearing loss.” [R. p. 164, lines 4-6]. After reviewing the

audiologist's report and examining Crane, Dr. Cassone wrote:

Danny Crane is referred by Disability Determination services. The patient has a long standing hearing loss following a sudden injury to his ears when a container blew up in a work related injury. There was an extremely amount of noise and he had sudden ringing in his ears and hearing loss. He has had previous audiometric evaluations. He has had balance problems ever since and has significant difficulty being able to work because of both the hearing loss and the dizziness.

Dr. Cassone added "He should be considered disabled because of this." [R. p. 165, lines 23-25].

Even if the Commission can wholly reject Dr. Rogers' opinion as unreliable, it cannot also reject the opinion of Dr. Cassone. Our law allows the Commission some leeway as the trier of fact in weighing evidence. It does not permit the Commission to simply ignore uncontradicted medical evidence—especially when there are consistent opinions from multiple providers. Nor does it permit the Commission to make its own medical opinions without evidentiary support. Yet, that is exactly what the Appellate Panel did here. The finding that Crane suffered no permanent hearing loss is entirely speculative and should be reversed by this Court.

5. Temporary Total Disability should be paid on a running award.

The Court correctly reversed the Appellate Panel's finding that Crane was not entitled to temporary total disability. However, in limiting the period of compensation to the Appellate Panel's unsupported MMI date, the Court may have overlooked that Crane was not actually at MMI. Appellant recognizes that this argument rests on a reversal of the MMI finding argued in Section 1 of this Petition.

"The term 'maximum medical improvement' means a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. Hall v. United Rentals, Inc., 371 S.C. 69, 89, 636 S.E.2d 876, 887 (Ct.App.2006). Notably, Dr.

Cassone opined "He may be a candidate for a cochlear implant and this should be considered." [R. P. 165].

Appellant requests that the Court reverse the finding on MMI and find that Crane should be paid temporary compensation until he reaches MMI. Curiel v. Env. Management Services, 655 S.E.2d 482, 376 S.C. 23 (2007)(" temporary total disability benefits are available from the date of injury through the date of maximum medical improvement"). The case should be remanded to the Commission to determine if Crane is at MMI based on Dr. Rogers' opinion or Dr. Cassone's opinion. Alternatively, if Crane is at MMI, then an award of permanent disability should be entered. Curiel.

CONCLUSION

For the foregoing reasons, the Court should affirm in part and reverse in part. The Court should affirm the findings that Crane was an employee who suffered a work-related injury. The Court should reverse the denial of medical treatment and the finding of MMI on March 31, 2014. Crane should be provided medical testing and treatment, along with temporary total disability compensation on a running award. Alternatively, Crane could be found at MMI with permanent hearing loss and disability May 19, 2014 (per Dr. Rogers) or on August 14, 2014 (Dr. Cassone).

Respectfully Submitted,



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March 1, 2018
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The South Carolina Court of Appeals

Danny B. Crane, Appellant,

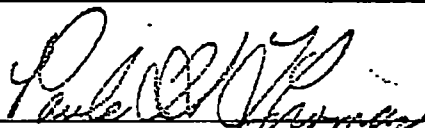
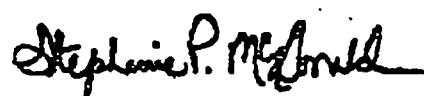
v.

Raber's Discount Tire Rack, Employer, and South
Carolina Uninsured Employers Fund, Carrier,
Respondents.

Appellate Case No. 2015-002116

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	J.
	J.
	J.

Columbia, South Carolina

cc: Stephen Benjamin Samuels, Esquire
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Matthew Joseph Story, Esquire

FILED

April 26, 2018

Leslie Brenna Boodry, Esquire
Raber's Discount Tire Rack

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RECORD ON APPEAL

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

WCC FILE NO.: 1403368

DANNY B. CRANE,

EMPLOYEE, CLAIMANT

vs.

**JAMES RABER d/b/a RABER'S DISCOUNT
TIRE RACK**

EMPLOYER AND

SC UNINSURED EMPLOYERS' FUND,

DEFENDANT

Hearing:

Held in Port Royal, SC on June 26, 2014

Appearances:

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Appeared on behalf of the Claimant, Danny B. Crane**

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Appeared on behalf of Employer, James Raber d/b/a
Raber's Discount Tire Rack**

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Charleston, SC 29492
Appeared on the behalf of the UEF**

Purpose of Hearing:

To determine compensability as set forth in the Form 50

Decision and Order:

Susan S. Barden, Commissioner

Filed:

April 30, 2015

APA SUBMISSIONS/EXHIBITS

Under the Administrative Procedures Act, the following records were submitted into evidence without objection:

A. Claimant's Submissions:

	NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORT(S)	NUMBER OF PAGES
1.	Barnwell County Hospital Records	02/19/2014 to 03/06/2014	1-20
2.	Carolina ENT Clinic Dr. Ansley	02/20/2014 to 03/06/2014	21-26
3.	Barnwell Family Practice	02/25/2014 to 03/31/2014	27-46
4.	Oaktree Medical Centre, PC Dr. David Rogers	05/19/2014	47-52
5.	Medical Bills	02/19/2014 to 05/19/2014	53-59
	EXHIBITS		
6.	Subpoenaed Responses from Raber's Tire	04/21/2014	60-109
7.	Subpoenaed Documents from Enterprise Bank	06/01/2013 to 02/28/2014	110-288
8.	Facebook messages from Raber's Tire	02/27/2014 to 03/18/2014	289-293
9.	Picture of time clock from Raber's Tire		294

B. Employer's Submissions:

NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE		DATE OF REPORT(S)	PAGE NUMBER
	EXHIBITS		
A.	Security video footage dated February 19, 2014		
B.	Audio Records		
C.	Payment Records		

Claimant objected to the report of Dr. Bettie (Coastal Neurology), as contained in Defendants' APA, pages 1-2, for the reason that Dr. Bettie (a) does not state his opinions to a reasonable degree of medical certainty, and (b) did not physically examine Claimant, and instead only reviewed Claimant's records. I considered Dr. Bettie's report, and agree with Claimant that the conclusions are not made to a reasonable degree of medical certainty; nonetheless, I find that reference to or reliance upon Dr. Bettie's report is wholly unnecessary to a decision in this case (I make no other citation to Dr. Bettie's report in this Order), and I can therefore disregard the report. However, Dr. Rogers' report is even less reliable than Dr. Bettie's report for the reasons stated herein. I therefore give the greatest weight to the treatment records in evidence on the date of the hearing, and to the testimony/presentation of Claimant at the hearing.

STIPULATIONS

At the call of the case, the attorneys representing Claimant and Defendants made the following stipulations:

1. The purpose of the hearing was to determine compensability as set forth in Forms 50 and 51;
2. Venue and jurisdiction are proper;
3. Notice was properly served on all parties; and
4. The APA submissions not objected to are properly in evidence before the undersigned, with the exception of self-serving declarations and unstipulated medical reports.

STATEMENT OF THE CASE

Claimant takes the position that on February 19, 2014, he suffered compensable injuries arising out of and during the course and scope of his employment when an air hose on a compressor exploded near his head. Claimant alleges (a) injuries to his head and brain, (b) bilateral hearing loss, (c) aggravation of a pre-existing psychological condition, and (d) a vestibular disturbance, including problems with dizziness and balance. Claimant alleges that he is unaware of the full extent of his brain injury, and requests additional evaluation/treatment. Claimant acknowledges that he did not lose consciousness as a result of the injury, but takes the position that he was dazed, and that the statutes and case law do not require a loss of consciousness to prove a brain injury.

Claimant contends that his hearing loss is confirmed by audiometric testing performed by the ear, nose, and throat specialist (Dr. Ansley) to whom Claimant was referred by providers at the Emergency Room. Claimant argues that the testing showed a complete loss of hearing in his right ear (the side on which the Commissioner was sitting

during the hearing), and a significant loss of hearing in the left ear. Both tests showed similar patterns of hearing loss. The left ear retains some hearing, specifically a >90% ability to distinguish and understand spoken words when amplified. Claimant states that he wears an amplifier in his left ear, which he purchased at Walgreen's. Claimant testified that wearing an amplifier allows him to hear spoken words well enough to testify, albeit with some difficulty. Although Claimant contends that he retains a very slight ability to hear, Claimant also contends that audiometric testing confirms an impairment of 100% bilaterally, as defined in Regulation 67-1102. Claimant's E.N.T. physician recommended more objective testing at MUSC, specifically an A.B.R. (auditory brainstem response) test which Claimant never underwent. However, Claimant's personal understanding is that the test was for consideration of cochlear implants. Claimant testified that he was unable to obtain the test, as he alleges that MUSC does not accept his insurance and he has no other means to pay for the objective test.

Claimant seeks temporary total disability benefits from the date of the accident and continuing, with Defendants to receive a credit for two partial days of employment since the date of the accident. Claimant also seeks reimbursement of the medical expenses he has incurred, as well as ongoing medical treatment with the doctors with whom he has already established a treatment relationship. Claimant also seeks a determination that he was an employee on the date of the accident and not an independent contractor, and that the characterization of Claimant as an independent contractor in the employment contract is not dispositive. Claimant contends that more compelling is the fact that Employer exercised sufficient control over Claimant to create an employer-employee relationship.

Defendants take the position that the claim should be denied. The UEF issued a general denial, and does not admit an accident or incident occurred without a finding by the Commission. Employer admits that an incident occurred when a hose separated from the tire changer when Claimant was standing near it, but denies that Claimant was struck by any object as a result of this incident. Employer also asserts that Claimant worked to re-attach the hose, and continued working shortly after this incident. Therefore, if there was any injury, it was mild. Employer and the UEF both take the position that there was no brain injury, as there was not a loss of consciousness; further, according to the Emergency Room records from the date of the accident, there was no blow to the head, no complaint of a head injury, and Claimant's head was documented as atraumatic. Nor was any complaint of dizziness or cognitive difficulty made/documented; nor was any brain diagnostic test ordered/undergone. Defendants contend that the first medical record containing a reference to a blow to the head occurred three months after the date of the accident--when Claimant was sent to an IME (Dr. Rogers) by his attorney. Even assuming Claimant was struck by an object in the accident, Defendants contend that the blow was insufficient to cause a brain injury. Defendants deny any alleged psychological aggravation on the basis that there is no evidence that Claimant's pre-existing psychological conditions are causally-related/were aggravated, other than by Claimant's self-serving statements to his IME physician three months after the date of the accident. Defendants also argue that no doctor has established the presence or aggravation of a vestibular disturbance other than through Claimant's self-serving statements to providers. As to alleged hearing loss, Defendants argue that Claimant could have undergone an objective hearing test, but Claimant failed to do so.

Therefore, Defendants contend that Claimant cannot establish any claim for hearing loss by credible evidence. Defendants also contend that Claimant was an independent contractor, based upon the terms of the contract itself and the fact that Defendant Raber did not exercise sufficient control over Claimant to establish an employer-employee relationship. Defendants also take the position that Claimant has not established that Employer regularly employed four or more employees on the date of this incident. Defendants take the position that if the case is found compensable, Claimant was offered and rejected light duty work; thus, Claimant would not be entitled to any temporary benefits. Finally, Defendants request the right to direct Claimant's treatment if the claim is found compensable.

At the hearing, Claimant objected to the admission of the report of Dr. Bettle of Coastal Neurology on the grounds that (a) Dr. Bettle failed to state his opinion to a reasonable degree of medical certainty, and (b) Dr. Bettle did not physically examine Claimant.

The UEF requested that if the claim is found compensable, Employer be found to be a non-qualified self-insurer subject to the Act.

EVIDENCE OF THE CASE

I. Claimant's testimony

A. Direct Examination

Claimant testified on direct examination that he is thirty-seven years old, and is married with six children. He is a high school graduate. On February 19, 2014, he was working at Raber's Tire. (Tr. P.19, 1.21-P.20, 1.15).

At Raber's, there are four bays. Claimant's boss was Raber, and Chad Williams was the shop foreman. Other employees included Marie in the office, "Little Man" Pernell, Red, Alfred (Alfie/Red), and Claimant. Claimant was paid \$9.00 per hour, and he typically worked from 7:00 a.m. to 6:00 p.m., but his work hours fluctuated; sometimes, Claimant would additionally work Sundays to finish something. Claimant worked full-time, and he was not paid time and a half when he worked more than forty hours. Claimant wore a uniform supplied by Raber, and Raber and Marie directed his work. Claimant used his own specialty tools, and believes it is normal for a mechanic to provide his own hand tools. In addition to tools, Claimant also used Raber's large tire changer, the balancer, the brake lays, the alignment rack, and the lift; all these items belonged to Raber. Claimant would not have been able to perform his work duties without using the equipment provided by Raber. Raber assigned Claimant his work at the shop. (Tr. P.21, 1.10-P.24, 1.14).

On the day of the accident in issue, Claimant was working with Chad, Alfie, and "Little Man." Claimant pulled a trailer that morning with his truck, and then he put new shocks on his truck because they were blown out. Before doing so, he asked Chad if it was ok; Chad told Claimant that since Claimant's truck was damaged while Claimant was towing the trailer for Raber's, Claimant could order the shocks through Raber's and install them. Alfie actually performed this work, and Claimant traded him some air tools for doing the work. (Tr. P.24, 1.15-P. 25, 1.21).

Claimant testified that he could not remember what he was working on at the time of the accident, but recalls hearing a loud hiss by the tire changer. Claimant and Alfie went over to the tire changer to try to find the location of the hiss, and he got down close to it.

When the hose popped loose, "it was like a bomb." Claimant testified that he had a bruise on his right forehead as a result of something striking him. (Tr. P.25, 1.22-P.28, 1.20). Claimant testified that he recalled being on his hands and knees holding his head and ears immediately after the incident; his head and ears were painful and his ears were ringing. Claimant testified that he was dazed, stunned, and slightly dizzy. (Tr. P.28, 1.9-22).

Claimant's wife took him to the Emergency Room on the date of the accident. Based upon Claimant's complaints of hearing loss and ringing in his ears, the Emergency Room physician referred Claimant to an ear, nose, and throat specialist (Dr. Ansley). Claimant testified that he was referred by Dr. Ansley to a hospital in Charleston for testing for cochlear implants, but he was unable to be seen there because they did not accept his wife's insurance. Claimant testified that he is willing to have that test or any other recommended treatment should the case be found compensable. (Tr. P.30, 1.16-P.31, 1.22). Claimant also saw an IME physician (Dr. Rogers), and Claimant testified that he spent approximately 2-2½ hours with Dr. Rogers. In fact, Claimant doubled the time spent with Dr. Rogers, as the actual time was one hour and 15 minutes. Dr. Rogers performed a lot of reflex tests and balance tests on Claimant, as well as memory tests. Claimant testified that he could not complete the balance tests because he almost fell. Claimant also had difficulty with one of the memory tests. Claimant would like Dr. Rogers named as the treating physician. (Tr. P.31, 1.23-P.34, 1.6).

Claimant testified that he tried to continue working after the incident, but he could only work half of two days. Claimant testified that he was wearing hearing aids, and the noises from the electric fans, the bright lights, and the noise from the lifts gave him a

headache. Claimant testified that his ears would also bleed at night onto his pillow. (Tr. P.28, 1.23-P.30, 1.8; P.56). Claimant believes he tried to work the day after the incident. Claimant also served as a volunteer fireman before this incident, but states that he is no longer allowed to assist in fighting fires. Claimant testified that he has to either stay at the fire house or sit in the truck at the scene. Claimant also testified that he has difficulty hearing his children when he is driving and they are in the back seat talking. (Tr. P.34, 1.15-P.35, 1.25).

B. Cross Examination by Raber

On cross examination by counsel for Defendant-Employer Raber, Claimant testified that when he began working for Raber, Claimant signed a contract stating that he was an independent contractor. Claimant did not have any set vacation, and was allowed to work and take off as needed. Claimant admitted that he used his own hand tools and his own air compressor tools, but that he did not buy his own floor jack. Claimant already knew how to work on cars when he was hired. Raber did not teach Claimant anything about how to work on vehicles. Claimant had to clock in and out, and had to check with someone before he could leave. If Raber was not there, Claimant had to check with Marie or Chad prior to leaving. (Tr. P.36, 1.9-P.38, 1.14).

On the day of the alleged accident in issue, Claimant pulled his truck into the garage at approximately 2:30 p.m. Alfie performed the work on the truck. Claimant believes that Claimant is a better mechanic than Alfie at some things, but Alfie can install shocks, which was the work to be performed. Claimant ordered the shocks on Raber's account with Chad's permission, but acknowledged that he never asked Raber permission before doing so.

Claimant testified that he does not remember working on his own truck just before the accident. Claimant believes he was by the alignment rack, but alleges that he cannot remember what he was doing. It would not have taken long to change the shocks on his truck, as it was only a few bolts, and Claimant states that he does not know how long the truck was on the rack. Claimant testified that he cannot remember whether he worked on his truck on the day of the accident. (Tr. P.38, 119-P.41, 124).

Claimant testified that he does not recall that he worked on the tire changer shortly after the hose detached, and that he does not recall much after the accident. He claims that he reported memory loss to the Emergency Room staff on the day of the accident, even though the Emergency Room records are devoid of such a complaint. Claimant also testified that he was also experiencing ear and head pain, and that he had a bruise on his head. However, the Emergency Room records state that Claimant's head was atraumatic with no head bruise noted. Claimant alleges the doctors were more concerned with his ears than his head. (Tr. P.42, 110-P.44, 112; Tr. Page 43, lines 8-13 and 22).

After being seen in the Emergency Room on the date of the accident, Claimant underwent two hearing tests at Carolina E.N.T with Dr. Ansley. The first test was on February 20, 2014 (the day after the accident), and the second test was on March 6, 2014. Inexplicably, the tests showed that Claimant's hearing had gotten worse from February 20, 2014, to March 6, 2014, prompting Dr. Ansley to refer Claimant to MUSC for a "more objective" test. Claimant cannot explain why his hearing would have gotten worse between the two visits with Dr. Ansley. Claimant admitted that Dr. Ansley recommended a more objective test at MUSC, but Claimant claims MUSC would not accept his insurance. (Tr.

P.44, 1.13-P.46, 1.5). The A.B.R. test recommended by Dr. Ansley would more objectively determine any hearing loss. However, Claimant has never undergone this test to prove causally-related hearing loss. (Tr. P.53, 1.6-20).

Claimant was asked at the hearing if he had ever been diagnosed with depression, anxiety, and Bipolar disorder. Claimant testified that he takes a depression medication, but the reason he takes it is to keep his temper down. Claimant admitted that he had depression before the incident, and was taking medication for depression at the time of the incident. However, Claimant denied ever being previously diagnosed with anxiety or Bipolar disorder, when in fact Claimant has been diagnosed with both conditions (Bipolar disorder since 2007). When Claimant was asked if he told the Emergency Room providers if he had Bipolar disorder, he answered "Why would I tell them if I had Bipolar if I wasn't diagnosed with it?" (Tr. P.46, 1.25-P.49, 1.14). Although Claimant alleges that his depression is more severe after the accident in issue, Claimant's family physician—who treats Claimant for depression—did not render an opinion in this case that Claimant's pre-existing depression was aggravated. Claimant believes that his IME (Dr. Rogers) reviewed Claimant's records prior to rendering an opinion, but Dr. Koukos' records were not provided to Dr. Rogers (Claimant's APA #4, page 47, as to "Records Reviewed"). Claimant believes that he saw Dr. Rogers for 2½ hours, but Dr. Rogers' report indicates the visit was for 1 hour and 15 minutes. Claimant could not explain this discrepancy. (Tr.P.50, 1.15-P.53, 1.5; Tr. pages 52-53).

Claimant admitted that he had a history of migraines prior to the accident in issue, but insisted that "everybody" has migraines. Claimant admitted that he was diagnosed with

migraines prior to the accident, and had been prescribed migraine medication. Claimant alleges increased headaches as a result of the accident. (Tr. P.49, 1.20-P.50, 1.14).

Claimant believes that a metal clamp hit him in the head at the time of the accident, because he saw the clamp by his hat when he picked up his hat a few minutes after the accident; however, Claimant told Dr. Rogers that he was in fact hit in the head with the clamp. Claimant testified that he remembered seeing the clamp, but claims he has no recollection of working on the tire changer after the incident. (Tr. P.54, 1.2-P.55, 1.20; See Claimant's APA #4, page 47).

Claimant testified that he tried to return to work after the incident, but he was only able to work two half-days. Claimant admitted that his hearing aid was removable, and he could adjust the volume of it. He again testified that the noises in the shop were too loud. He could not turn the volume down enough to solve the problem. He testified that he cannot remove the hearing aid either, because then he states he cannot hear at all. (Tr. P.56, 1.11-P.59, 1.23).

Claimant was shown the surveillance video of the incident in issue, and Claimant admits that Chad, the shop foreman, was talking to him right after the incident. Claimant cannot recall what Chad said to him. Afterward, Claimant texted his wife to come get him. Claimant testified that he remembers talking to Chad and texting his wife, but he does not remember working to repair the tire changer. He testified that he recalls telling Chad he could not hear. Claimant testified that he told everybody in the shop he could not hear. The video shows Claimant talking to "Little Man" shortly after the accident, and asking "Little Man" to do something to help him repair the tire changer. Claimant testified that he does

not remember working on the machine. He testified that he could not hear anything, but that he was still trying to repair the tire changer within five minutes of the incident because he has six children to feed. (Tr. P.60, 122-P.65, 118).

C. Cross Examination by the UEF

On cross-examination by counsel for the UEF, Claimant testified that his hat was on the ground in front of him immediately after the incident; however, earlier in his testimony, Claimant inconsistently testified that his hat was blown off his head behind him during the incident. Claimant again testified that his hat was blown behind him, but he acknowledged that on the video, this was not actually the case. (Tr. P.66, 114-P.67, 121).

Claimant testified that he was the best mechanic in the shop at the time, and no one directed him on how to do his work. Raber would approve things based on what Claimant told him a car needed. Claimant used both his own tools and Raber's tools for the work. Claimant was expected to give the customers a result by fixing the car. (Tr. P.67, 122-P.71, 123).

Claimant moved a trailer full of used tires from one side of the shop to the other on the day of the accident, and he damaged the shocks in his truck while he was performing this act for Employer. Claimant received Chad's permission to order shocks through the shop because Claimant damaged his truck while moving the trailer for Raber. The shocks came in the same day Claimant ordered them, and Alfie put them on. (Tr. P.71, 124-P.73, 18).

Claimant admitted that he signed the independent contractor document. Claimant tried to read this document prior to signing it, but states that he has difficulty reading because he is dyslexic. (Tr. P.73, 19-P.76, 116).

Claimant continues to work as a volunteer fire fighter. Prior to the accident, Claimant worked approximately 6 house fires and 10-13 brush fires over the years. After the accident, there have been ten house fires in four months, and he testified that he could not assist with these fires. (Tr. P.79, 1.20-P.81, 1.14).

D. Redirect Examination

On redirect, Claimant testified that he had been working for Raber a few weeks when Claimant signed the independent contractor agreement, and had already received several pay checks. He was moving Raber's trailer at the time he damaged the shocks on his truck. Claimant testified that Dr. Rogers was nice to him, but Claimant left feeling bad because he could not do a lot of the things Dr. Rogers asked him to do. (Tr. P.82, 1.3-P.83, 1.1).

E. Medical Evidence

The APA submissions in this case contrast sharply with Claimant's testimony. Contrary to Claimant's testimony regarding his condition after the accident, the records from Barnwell County Hospital on the date of the accident provide that Claimant was affirmatively found to be alert and oriented x 3 with a normal mood/affect. There is no documentation of a complaint or observation of head trauma, headache, cognitive difficulty, dizziness, bleeding from either ear, or memory loss. Nor was any diagnostic study of Claimant's head ordered or recommended. Claimant reported that a tire changer caused his injuries, and complained of ringing in his ears, difficulty hearing, and right ear/right side facial pain. Claimant's head was noted to be atraumatic, and a "disoriented" option was not checked or marked. Claimant indicated that he had a history of depression, and was currently taking Ambien and Effexor. Claimant is also Bipolar, as he was diagnosed with

such condition in 2007 (Claimant's APA #1, pages 1-9; Claimant's APA #3, pages 27 and 43-46).

Based upon his complaints of hearing loss, Claimant was seen the day after the accident by Dr. Ansley of Carolina E.N.T on February 20, 2014. During this visit, Claimant reported that "a machine [blew] up in his face a couple days ago and he is having some difficulty hearing." The note does not contain any mention or complaint of a head trauma, headaches, dizziness, balance problems, bleeding from the ears, cognitive difficulty, or loss of memory. Dr. Ansley diagnosed bilateral tympanic membrane perforations, and performed an audiogram which showed severe hearing loss in both ears. The right ear showed profound hearing loss and the left ear showed severe hearing loss. Dr. Ansley recommended a CT scan of Claimant's temporal bones, which was performed on February 25, 2014 (6 days after the incident); the CT scan indicated that Claimant had normal auditory canals, normal ossicles, and normal tympanic cavities. The report suggested that if Claimant had sensorineural hearing loss, a brain MRI could be performed as a follow-up. The CT scan also showed chronic sinusitis with mucosal thickening. Dr. Ansley scheduled Claimant for a follow-up visit, and expected Claimant's hearing thresholds to improve in the interim (Claimant's APA #1, pages 10-11; Claimant's APA #2, pages 21-23).

Claimant was seen by his family doctor, Dr. Koukos at Barnwell Family Medicine, on February 25, 2014, complaining of hearing loss, right sided headache, and dizziness. Dizziness and headaches are mentioned for the very first time even though Claimant was previously seen at the Emergency Room on the date of the accident and by Dr. Ansley on February 20, 2014. Claimant has pre-existing migraine headaches. Notwithstanding

Claimant's complaints, his hearing was documented as "normal." The neurological exam was completely normal, with Claimant "alert and oriented x3, with no impairment of recent or remote memory, normal attention span and ability to concentrate, able to name objects and repeat phrases, and appropriate fund of knowledge. I give this record great weight (Claimant's APA #3, pages 39-42).

Claimant returned to E.N.T. Dr. Ansley on March 6, 2014, for the follow-up visit for hearing loss. At this visit, Claimant complained of continued hearing difficulty. This treatment note contains no mention whatsoever of any complaint of head trauma, headaches, dizziness, balance problems, bleeding from the ears, cognitive problem, or loss of memory. Whereas Dr. Ansley expected improvement in audiogram testing on this date, he was surprised to see a downward shift on audiogram. The left ear test showed profound hearing loss, and Claimant's score on the left ear speech test dropped from 80 to 40, but his word discrimination score improved from 92% to 96%. Dr. Ansley referred Claimant for an A.B.R. at MUSC "to obtain [a] more objective measure of his hearing," and this testing was scheduled for Claimant. Dr. Ansley's assessment was "rule out sensorineural hearing loss," and Dr. Ansley was to see Claimant again once the A.B.R. test was completed. Claimant never underwent this more objective-test, and never returned to see Dr. Ansley as instructed. Claimant claims he or his wife called Dr. Ansley's practice and informed the practice that MUSC would not accept Claimant's insurance, but there is no documentation of this communication/occurrence in any record from Dr. Ansley. Dr. Ansley's last record contains the referral for the A.B.R., and there is no further treatment annotation. Even

though Dr. Ansley is Claimant's treating E.N.T., Claimant did not submit a causation opinion from Dr. Ansley (Claimant's APA #2, pages 24-26).

On March 14, 2014, Claimant underwent a CT scan of his head at Aiken Regional Medical Center for his complaints of constant headaches and hearing loss. This scan was normal (Claimant's APA #3, page 38).

On March 26, 2014, Claimant was seen at the Barnwell County Hospital Emergency Room for a rib injury sustained when he got out of the bath tub, tripped, and fell. There is no mention of any dizziness or balance problem as a causative factor—or otherwise—in the entirety of these records, and Claimant was treated solely for a right rib fracture—nothing else. Under "location of pain," the only body part marked was "chest." Under "Clinical Impression," the only thing noted is "right rib contusion." Under "chief complaint," the only thing written is "right rib." Although there were opportunities for providers to mark "memory impairment," "head," and "face," these body parts/conditions were not marked. Claimant's ENT exam is documented as "normal," because of the "normal" findings during the ENT exam, because the only complaint was the rib, and because Claimant's hearing was "normal" on February 25, 2014, and without issue on March 31, 2014, I find that the "hearing loss" reference on Claimant's APA #1, page 17, appears to be a reference to Claimant's earlier visit at the hospital on the date of the accident. Nor did Claimant complain of any headache or dizziness as he had before in previous medical visits. These Emergency Room records indicate that Claimant reported a prior history of migraines and depression, but he reported no present problem with either at this visit. Nor is there any documentation of any bleeding from the ears or loss of memory—past or present. Claimant

followed up for his rib injury with his family doctor at Barnwell Family Medicine on March 31, 2014. Claimant had no complaints of hearing loss, headache, cognitive difficulty, dizziness, memory loss, or bleeding. His only complaints were the rib injury and wheezing for which Claimant was prescribed an antibiotic. An examination of Claimant's ears revealed "normal external auditory canals with tympanic membranes clear and mobile." This record is Claimant's last treatment record as submitted on the date of the hearing (Claimant's APA #1, pages 12-20; Claimant's APA #3, pages 27--37).

Claimant underwent no further treatment until his May 19, 2014, independent medical evaluation with Dr. Rogers at Oaktree Medical Centre Department of Neurology. During this one-time IME visit, Claimant told Dr. Rogers that a hose clamp struck him in the right temporal aspect of his head. At this visit (3 months after the date of the accident), Claimant complained of a head injury for the very first time to a medical provider; it is the very first record where Claimant reported that he was struck by an object when the accident occurred. Claimant complained to Dr. Rogers that Employer "did not even call 911," but Claimant did not tell Dr. Rogers that immediately after the incident, Claimant continued to work by repairing the tire changer. While none of Claimant's other treatment records mention any falls from being off balance, Claimant reported to Dr. Rogers that he had several falls from being off balance, including the fall leading to the rib fracture. By contrast, the rib injury records from the Emergency Room and from Claimant's family doctor do not mention any balance issue causing the fall. Claimant also told his IME physician that he has bleeding from his right ear when exposed to loud noises. This is the very first mention in any medical record of alleged bleeding from Claimant's ears. Claimant reported to Dr.

Rogers that he experienced headaches 18 of the past 30 days, but Dr. Rogers fails to mention in his report that Claimant has pre-existing migraine headaches. Claimant also admitted in his testimony that he had been prescribed headache medication before this incident, but Dr. Rogers' report does not indicate that Claimant told him about the pre-existing migraine medications. Claimant reported "a lot" of dizziness to Dr. Rogers. However, neither the March 26, 2014, Emergency Room record for the rib injury nor the March 31, 2014, family doctor follow-up visit for the rib injury contains any complaint of or reference to dizziness. Additionally, the February 25, 2014, evaluation showed that Claimant had normal hearing, a record which either Dr. Rogers was not given or did not review; the March 31, 2014, record documents no problems other than Claimant's rib and wheezing, and this record is likewise notably absent from the list of records Dr. Rogers reviewed. Claimant reported insomnia problems to Dr. Rogers, but Claimant was already taking Ambien prior to the accident. For the very first time (to any medical provider), Claimant reported cognitive and memory difficulties to Dr. Rogers. In previous records, Claimant's memory, concentration, and cognition are all noted to be normal (Claimant's APA #3, page 40). Claimant also reported to Dr. Rogers that he was experiencing irritability and anxiety, but Claimant admitted at the hearing that he was already on medication for his temper before the accident in issue. Dr. Rogers' notes state "[Claimant himself] reports a history of depression, anxiety, and Bipolar affective disorder," at the hearing just one month later, however, Claimant denied to the undersigned any prior history of anxiety or Bipolar disorder. Claimant reported to Dr. Rogers, "I sit at home now but that is all. I was a volunteer fireman, but now I cannot hear," and that Claimant no longer works as a volunteer

fireman. During the hearing, however, Claimant testified that he continues to work as a volunteer firefighter, but that he cannot fight fires and must sit in the truck or at the station. Dr. Rogers noted an "apparent healed 60% tear of the right tympanic membrane. More complete approximately 80% tear in the left tympanic membrane." Dr. Rogers does not account for the inconsistency of these findings with Claimant's other medical records. Dr. Rogers also fails to address how Claimant's hearing would worsen from one test to the next with no increased or subsequent trauma. Dr. Rogers additionally fails to address Claimant's failure to undergo the objective hearing test recommended by E.N.T. Dr. Ansley. Even though Claimant never underwent the objective testing recommended by Dr. Ansley, Dr. Rogers assigns permanent impairments just 3 months after the date of the accident, including an impairment for a "closed head injury with resultant post-concussive syndrome" (Claimant's APA #4).

Impressions of the Undersigned Commissioner

Claimant's conduct/presentation at the hearing (including prior to opening the record) was more revealing than the substance of his actual testimony. This is a hearing that needed to be videotaped/audiotaped. Prior to opening the record, I asked Claimant about his ability/inability to hear me, and Claimant asked me to raise my voice in order for him to hear me. However, as an audio/video tape would show, Claimant was inconsistently able to answer questions asked by a defense attorney--at a normal volume--while Claimant's back was to the attorney (*i.e.*, Claimant was not in a position to lip read). Claimant was wildly inconsistent at the hearing. Lip reading would certainly be plausible, but at times Claimant either looked at his hands while answering questions, or had his back to the questioner.

Further, Claimant's counsel was slightly farther away from Claimant than I was, and spoke in a voice/tone softer than my normal speaking voice that Claimant was able to hear and understand. Additionally, when defense counsel for Raber was approximately 10 feet away from Claimant, and was crouching down to deal with the video footage, I could barely hear this attorney, yet Claimant heard and answered the questions posed to him. It did not reflect well upon Claimant to "need" me to speak loudly, but then to inconsistently be able to answer questions posed (a) in a softer tone than my regular speaking voice, and (b) when Claimant's back was turned to the person asking the question.

Claimant testified that he told his co-workers at Employer's shop that he could not hear, but the surveillance video shows Claimant holding his ears momentarily after the incident, then asking a co-worker for a part within five minutes of the incident to repair the tire changer. Claimant testified that he did not even remember subsequently working on the tire changer—that he has memory loss—but he is able to remember picking up a hose clamp by his hat right after the incident which he now states hit him in the head (according to Dr. Rogers' report). Inconsistently, Claimant told every treating doctor exactly what happened to cause his accident, but none of the descriptions make reference to a hose clamp. Further, not until three months after the accident did Claimant raise memory issues notwithstanding all the prior treatment records which contain no reference to a memory problem. At prior treatment venues, Claimant was alert and oriented, and passed memory tests administered by treating physicians. Inconsistently, Claimant claims a brain injury. Claimant states that he drives and listens to the radio so loudly that his mother-in-law complained, but Claimant

inconsistently says he cannot work because it is too loud at Employer's shop and it causes his head to hurt.

POST-TRIAL MOTION AND REPLY TO THE MOTION

After the hearing, Claimant filed a Motion to Submit Additional Evidence. In order to determine whether or not I would consider this new evidence, I necessarily had to review it. Claimant submitted (a) records for visits occurring after the date of the hearing, and (b) an Affidavit stating that Claimant has applied for (*i.e.*, not received) Social Security Disability benefits. The application for Social Security Disability is premised upon an August 2014 record (dated 2 months after the date of the hearing) from a physician who states that Claimant reported that Claimant has had balance issues "ever since" the accident, and that Claimant "reads lips." This physician: (a) could have verified the "ever since" statement if he had reviewed three months of records after the date of accident; (b) apparently did not review the post-accident record from Claimant's own family physician stating that Claimant's hearing is "normal;" and (c) could have personally verified the "reads lips" statement had he attended the hearing where Claimant answered questions with Claimant's back turned to the questioner. Even more striking than this physician's record is the fact that Claimant then later (September 2014) underwent another audiological evaluation with another provider (*i.e.*, not Dr. Ansley). In the September 2014 report, audiologist Lunn noted and specified inconsistencies in Claimant's testing, such that Lunn—just like Dr. Ansley had earlier—recommended [in a letter to Disability Determination Services] that Claimant

undergo the A.B.R. testing as a means "for obtaining more objective measures of [Claimant's] hearing" and for determining "a true estimate of [Claimant's] hearing. Further recommendations *should be postponed until such time*" as the ABR test has been undergone [emphasis added]. This additional evidence not only does not change my conclusions, it also confirms them. This evidence actually hurts Claimant's case more than it helps.

FINDINGS OF FACT

Based upon the evidence submitted by the parties pursuant to the Administrative Procedures Act, the evidence presented at the hearing, and the Commission's file relative to this claim, the undersigned Commissioner finds the following facts, based upon a preponderance of the evidence:

1. An incident/accident does not always equate to or result in a permanent injury. Claimant's "display" and evasiveness at the hearing (among other problematic issues) make me seriously question whether or not there was an actual injury. One cannot help but question that if Claimant had legitimate, causally-related hearing loss, he would have felt no need to "perform" at the hearing. However, because there was an incident (captured by video) and for which Claimant went to the Emergency Room, I find that Claimant sustained an injury to his ears on the date of the accident.

2. Claimant has pre-existing migraine headaches, anxiety, depression, and "chronic sinusitis." Claimant was also diagnosed in 2007 as Bipolar. He also sustained a coma from a

motor vehicle accident in 1990, which left 2 scars on the left temporal side of his head (medical evidence in its entirety).

3. Prior to the accident, Claimant served as a volunteer fire fighter. As of the date of the hearing, Claimant continues to serve as a fire fighter. Claimant, who has the burden of proof, did not offer any testimony as to whether or not he has worn or wears hearing protection while serving as a fire fighter.

4. In the accident in issue, Claimant alleges that he was struck in the head on the right temporal side of his head with a hose clamp (at least this is what Claimant told Dr. Rogers three months after the date of the accident), and that he has sustained a brain injury, bilateral hearing loss, dizziness, cognitive difficulties, memory loss, headaches, bleeding from his ears, and an aggravation of his pre-existing psychological condition.

5. The Emergency Room records on the date of the accident state that Claimant's head was "atraumatic;" the forehead bruise Claimant described at the hearing is not described in any of these records. Although Claimant reported hearing loss and ear pain after the work accident, he reported no dizziness, memory loss, cognitive issues, bleeding, or headaches to Emergency Room providers (Claimant's APA #1, pages 1-9; Claimant's APA #3, pages 43-46; Hearing Transcript, page 27).

6. This is a hearing that begged to be videotaped/audiotaped from the moment I introduced myself to Claimant prior to opening the record. Claimant's inconsistent performance at the hearing as to what he can allegedly hear/not hear is the most persuasive evidence of all. The undersigned paid close attention to Claimant's ability to hear and respond to questions of different volumes, and observed when Claimant was directly facing

or turned away from the questioner. What Claimant could hear/purportedly not hear had no modicum of consistency at the hearing. Prior to the opening of the record, I asked Claimant if he would be able to hear me (*i.e.*, to determine whether I and others would need to raise our voices accordingly), and Claimant indicated that I would need to raise my voice from its normal level. Although I strained to raise my voice sufficiently (at an uncomfortable level), Claimant, during questioning, answered questions of his attorney (slightly farther away from Claimant than I was) who spoke in a normal tone—softer than my regular voice—without forced amplification. Further, while Claimant watched a video of the incident with his back turned to Defendant's counsel (*i.e.*, Claimant could not read lips with his back turned), Claimant answered questions posed to him in normal tones with no request for amplification. It was very poor acting, and I therefore necessarily must find that Claimant is not credible. I also find it unconvincing that if Claimant could not hear anything, as he claims he could not after the incident, he would then continue to work to repair the tire changer, including telling other people to get him things.

7. Claimant contended at the hearing that he could not remember the accident or its aftermath, but proceeded to testify otherwise. He remembered exactly what he texted his wife ("come get me"), he remembers finding a metal hose clamp by his hat shortly after the accident, he remembers telling his co-workers that he could not hear; however, Claimant alleges that he does not remember that he continued to work on the tire changer after the accident occurred. Claimant acknowledged that he appears in the video to tell "Little Man" to get a part to repair the tire changer on the video, but Claimant also claims he could not hear at this time. Notwithstanding Claimant's claim of memory loss regarding the accident,

Claimant also described to IME physician Dr. Rogers exactly how the accident occurred. Similarly, Claimant told other providers how the accident occurred. Very important is the fact that Dr. Koukos (Claimant's own family doctor) does not document a memory issue after the accident, and instead found "no impairment of recent or remote memory" (Claimant's APA #3, page 40). Dr. Koukos' impression is supported by the fact that at the hearing, Claimant—by memory—recounted the specific distance to a provider of exactly 77.2 miles. I give this evidence great weight, as this statement does not show a memory problem (in fact, it shows the opposite), and is more persuasive than Claimant's later statements to Dr. Rogers—3 months after the date of the accident—that Claimant has memory/cognitive problems. Claimant's subjective statements to Dr. Rogers are just that: statements, which are not supported by any treatment record pre-dating the Rogers' one-time appointment. I find that Claimant did not suffer memory loss as a result of the accident, based on the greater weight of the evidence. Nor do the Emergency Room records contain any documentation of a head injury (Tr. P.60, 1.22-P.65, 1.18; P. 79; medical evidence, e.g., Claimant's APA #1, pages 1-10; Claimant's APA #3, pages 43-46; Claimant's APA #4, page 47).

8. In addition to Claimant's presentation at the hearing (which unavoidably leads the undersigned to question Claimant's motivations regarding this claim), the two most compelling records in this case are (a) a March 26, 2014, Emergency Room visit for a trip and fall rib injury—one month after the date of the accident; and (b) the follow-up visit for the rib injury with Claimant's family doctor 5 days later on March 31, 2014:

(a) at the Emergency Room visit on March 26, 2014, Claimant complained of rib pain only; these records are devoid of any other complaint, including headaches. Nor is there any description of dizziness or loss of balance. In fact, the record states that Claimant tripped and fell. The only "clinical impression" in this record is the right rib condition--the only condition Claimant complained of. Additionally, and very importantly, under "Past History," the accident in issue (which occurred just one month earlier) and any of its alleged sequelae are notably absent. I find this striking, considering that Claimant alleges significant injuries including but not limited to a brain injury. It speaks for itself that Claimant did not think enough of the significance of the injury in issue to mention it; nor did Claimant mention any problem with memory loss, bleeding, headaches, etc. By contrast, under "Past History," Claimant reported his 1990 coma, prior leg injury, and other pre-existing conditions as detailed in this ER record. It does not stand to reason that Claimant would not include such recent and allegedly significant conditions as he pleads and as he testified to at the hearing. As Claimant has pre-existing migraine headaches, I find that any alleged causally-related headaches resolved or returned to baseline. Claimant's complaint of "constant headaches" after the accident is refuted by these records. As Claimant has pre-existing migraines and is not credible, I cannot find that there was an aggravation of a pre-existing condition, notwithstanding Claimant's testimony or statements to

Dr. Rogers to the contrary (Claimant's APA #1, pages 12-20; Claimant's APA #3, pages 32-37);

(b) at the follow up visit with his family doctor on March 31, 2014 for the rib injury, Claimant reported continued rib pain and wheezing for which Claimant was prescribed an antibiotic (Cipro). Strikingly absent are any references to hearing loss (Claimant's tympanic membranes are "clear and mobile"), memory loss, headaches, dizziness, bleeding, or psychological difficulty. For these reasons, I find that any injury Claimant sustained in the accident in issue resolved by March 31, 2014.

9. Claimant is entitled to receive reimbursement for the medical treatment he received through (and including) the March 31, 2014, visit, with the exception of the March 26, 2014, Emergency Room visit for the unrelated rib injury.

10. As to more temporal records, Claimant was referred to E.N.T. Dr. Ansley the day after the accident because of Claimant's complaints of hearing loss. Absent in the records from these two visits with Dr. Ansley (February 20, 2014 and March 6, 2014) are any reference to headache, head injury, dizziness, memory loss, psychological difficulty, cognitive difficulty, or bleeding from the ears. When there was a downward shift in the two sequential tests, Dr. Ansley found it not only remarkable enough to mention (Dr. Ansley thought Claimant's hearing would improve), he also referred Claimant to MUSC for a "more objective" test. Claimant never underwent the objective test, and never returned to Dr. Ansley. Notwithstanding Claimant's explanation at the hearing that he and/or his wife called Dr. Ansley's office staff to inform them that the MUSC test was not covered by

insurance, Dr. Ansley's records are devoid of such an entry (Claimant's APA #2, pages 21-22 and 24-26).

11. On February 25, 2014 (in between the two Ansley visits), Claimant reported headaches, dizziness, and hearing loss to his family doctor. However, Claimant's neurologic exam on this date showed "normal" hearing, and Claimant's ENT exam did not note any problems with Claimant's tympanic membranes. Because of Claimant's complaints, a CT scan was ordered (Claimant's APA #3, pages 39-42).

12. Claimant's February 25, 2014, temporal bones CT scan (as referenced in the preceding finding of fact) shows only "chronic sinusitis" (Claimant's APA #1, pages 10-11).

13. Another CT scan of the brain (March 14, 2014), ordered because of Claimant's "constant headaches" and hearing loss, was normal--except for Claimant's chronic sinusitis (Claimant's APA #3, page 38).

14. Because the video indeed shows an incident/accident, my first inclination might have been to order the more objective test that Claimant, for a reason now abundantly clear to me, has avoided. However, Claimant's audiogram testing shows inconsistencies, and Claimant—not Defendants—has the burden of proof. Even putting aside (a) the significant credibility problems relating to the "performance" at the hearing, (b) Claimant's outright denial at the hearing of pre-existing conditions he had just admitted to Dr. Rogers just one month prior, and (c) the fact that the records from the intervening accident and its follow-up visit tell a different story from the one Claimant alleges, the March 31, 2014, visit as

referenced *supra* show that any injuries Claimant sustained on the date of the accident resolved.

15. Claimant has the burden of proof; it does not lie with Defendants. Although I do not doubt that Claimant may have some ongoing hearing loss (whether from his exposure to sirens as a firefighter, (b) chronic sinusitis, and/or (c) his prior head injury resulting in a coma), Claimant's own physician found that Claimant has "normal" post-accident hearing. I find it most telling that Claimant's family physician offered no opinions in this case; nor did Dr. Ansley (Claimant's E.N.T.), offer an opinion, as Claimant never returned to Dr. Ansley and never underwent the objective test Dr. Ansley ordered.

16. Claimant is not required to prove a brain injury through objective means, and I do not hold him to such a standard. The objective testing can be completely disregarded, which still leaves the undersigned with (a) Claimant's inconsistent presentation at the hearing, (b) no mention of a head injury in the Emergency Room records, and (c) Claimant's evasiveness at the hearing regarding prior/pre-existing conditions. Finally, Claimant's head was specifically found to be "atraumatic" on the date of the accident (Claimant's APA #1, pages 1-11; Claimant's APA #3, pages 38 and 43-46; Claimant's APA #4).

17. Although Claimant told the undersigned at the hearing that he did not have anxiety or a Bipolar condition prior to the accident in issue, Claimant's medical records (including but not limited to his pre-existing, ongoing prescription of Effexor "to keep calm") refute Claimant's testimony. What is more problematic is that Claimant himself had just reported these prior/pre-existing conditions to Dr. Rogers one month prior to the date of the hearing. One cannot help but question Claimant's motivation. Further, Claimant told Dr.

Rogers that he formerly worked as a volunteer firefighter, but now just sits at home; at the hearing, Claimant inconsistently testified that he still works as a volunteer firefighter, but he has to wait in the truck on calls. Claimant testified he cannot work because it is too loud and causes him to develop headaches and that he cannot hear his children talking in the back seat when he is driving; by contrast, Claimant admitted to going on fire calls and listening in the radio so loudly in his car with his kids that his mother-in-law complained and his ears bled. This self-serving testimony and evasiveness damage Claimant's credibility, and call into questions the veracity of the remainder of Claimant's testimony (medical evidence in its entirety; Tr. P.28, 1.23-P.30, 1.8; Tr. P.34, 1.15-P.35, 1.25; Tr.P29, 1.20-P.30, 1.14).

18. Claimant's testimony that he has bleeding from his ears is unsupported by any medical treatment record. Simply telling Dr. Rogers that there is bleeding from the ears does not make it so. There is no ER treatment record documenting any bleeding, no family doctor treatment record as to any bleeding, and no other treatment record documenting any bleeding. Even Dr. Rogers found "no evidence of blood" in Claimant's ears (Claimant's APA #4, page 50).

19. Claimant has pre-existing migraine headaches, which I find wax and wane, and which were not aggravated by the accident in issue. I base this finding on the fact that there was no brain injury and, according to the temporal medical evidence, no head trauma. Claimant's self-serving testimony and statements to Dr. Rogers are not persuasive in this regard. At the hearing, Claimant attempted to downplay his pre-existing migraines when he testified that "everybody has migraines." Dr. Rogers' report does not serve to help Claimant's case, as Dr. Rogers was apparently not made aware of Claimant's pre-existing migraines; the report

does not concede or acknowledge that Claimant already had migraines headaches. Either Claimant withheld the information from Dr. Rogers, or Dr. Rogers' report is outcome determinative; nonetheless, the report shows that the medical information on which Dr. Rogers based his opinions is incomplete and unreliable. Finally, by late March 2014, Claimant reported no headaches to two separate providers (Claimant's APA #4).

20. Claimant complained to Dr. Rogers about alleged insomnia, presumably as a result of the accident; however, Claimant in fact was already taking Ambien on the date of the accident, and there is no evidence that the prescription dosage has been increased. Interestingly, Dr. Rogers mentions this prescription in his report under "current" medications, and therefore may not be aware that Ambien is in fact a pre-existing prescription. This omission further renders Dr. Rogers' report incomplete and unreliable (Claimant's APA #4).

21. Claimant did not present any evidence that his dosage of pre-existing psychotropic medications have increased, in order to support a finding of aggravation. Dr. Koukos—Claimant's treating physician for depression—offered no opinion on Claimant's behalf.

22. I give greater weight to the medical note of Dr. Koukos (Claimant's family doctor) documenting no memory problems than I give to Claimant's statement to Dr. Rogers (as contained in Dr. Rogers' report) to the contrary. I also give greater weight to the fact that Claimant drives his children around, than I give to Claimant's self-serving statement to Dr. Rogers that Claimant has cognitive, thinking, and planning difficulties (Claimant's APA #4, page 48; Cf. Claimant's APA #3, page 40).

23. Claimant's testimony regarding his inability to hear what people in the back seat of a car say to him is not believable. When Claimant turned his back at the hearing to look at the video, he answered a question asked at a normal speaking tone while his back was to the questioner. This observation is in sharp contrast to Claimant's other inconsistent conduct at the hearing.

24. Dr. Rogers' report does not explain the reason for the inconsistent audiograms.

25. Interestingly, Claimant's "chief complaint" to Dr. Rogers is ear pain. By contrast, at the hearing, Claimant did not mention any ongoing ear pain at the hearing.

26. If Claimant is dizzy, and has cognitive, planning and thinking difficulties (per his self-serving statement to Dr. Rogers), I find it inconsistent that Claimant drives, including driving his children around. His statements in this regard are not credible. Nonetheless, by March 31, 2014, Claimant no longer reported any dizziness, the source of which is unknown to the undersigned.

27. IME physician Dr. Rogers' statement that Claimant had "post-concussive" syndrome is not supported by the greater weight of the evidence. In fact, the Emergency Room records from the date of the accident state that Claimant's head was atraumatic, Claimant was alert and oriented x 3, and Claimant described what happened at the time of the accident. Claimant also had a normal neurologic exam at Barnwell Family Medicine on February 25, 2014, medical evidence which further refutes Dr. Rogers' report.

28. I find that Claimant's IME from Dr. Rogers is generally and wholly unreliable, and I therefore give it no weight. There are too many inaccuracies and omissions in order to lend the report any credence. Further, even though Claimant has not ever undergone the more

objective hearing test that Dr. Rogers, by virtue of reading the records, is well aware has been recommended, Dr. Rogers has already "decided" that Claimant's (inconsistent) hearing loss is valid and permanent. Dr. Rogers also fails to explain why Claimant's hearing would be worse on the March 6, 2014, audiogram than it was on the February 20, 2014, audiogram, even though Claimant denied any further injuries. For reasons unknown to the undersigned, Dr. Rogers was not provided the Barnwell Family Medicine record of March 31, 2014, which contains the documented "normal" neurological evaluation and the "normal"-looking tympanic membrane exams. Dr. Rogers also fails to explain the long list of symptoms Claimant presented to him that are not noted in any of the other previous records/reports. Further, Claimant's presentation at the hearing trumps anything in Dr. Rogers' report.

29. Claimant continued to work after the incident, as shown on the video in evidence.

30. Although not dispositive, and even unnecessary to the conclusions I reach, according to websites from the Mayo Clinic and the National Institute of Health, perforated eardrums are often caused by infections/an accumulation of fluid in the ear. Air travel is another cause. Loud sounds/noises can certainly cause them. Foreign items such as Q-tips can cause them. Severe head injury such as a skull fracture can cause them. Claimant did not suffer a severe head injury in this case, but in 1990, sustained a head injury leaving him in a coma; Claimant also has "chronic sinusitis." These websites also state that perforated eardrums generally heal on their own within a few weeks or months. If they do not heal, surgery or a patch is recommended. Dr. Rogers reported that Claimant's right tympanic membrane tear appeared healed (Claimant's APA #4, page.51). Interestingly, no provider has recommended either patch or surgical procedure. Although not dispositive in this case,

perforations rarely cause permanent hearing loss, according to these websites. This information does dovetail with Claimant's presentation in late March 2014, (intervening rib fracture accident) during which Claimant presented with no ear, hearing, headache, or other problems; Claimant's eardrums looked normal, and he had normal hearing. Even assuming and finding that Claimant had some causally-related hearing loss from the accident (because of the loud noise, a potential cause of perforations, as discussed in this finding). I find that Claimant's condition resolved as of March 31, 2014, per the records of Claimant's family physician.

31. Dr. Rogers' 100% bilateral hearing loss assessment is refuted by Claimant's ability to answer questions posed in a low, soft tone at the hearing while Claimant looked at his hands and while his back was turned to the questioner. Dr. Rogers' "assessment," therefore, is given no weight, as Claimant's presentation at the hearing refutes the assessment.

32. As to the employment relationship, I find by the greater weight of the evidence that Claimant was an employee on the date of the accident because (a) he wore Raber uniforms, (b) he was paid by the hour; and (c) the most significant equipment used to perform the job was Raber's (Claimant's APA, pages 289 and 293—"we are hiring").

33. An "independent contract" purporting to establish the nature of the work relationship is not dispositive in a workers' compensation case. In this particular case, the contract's designation is not persuasive (Claimant's APA, pages 108-109).

34. Four or more individuals were regularly employed on the date of the accident. I base this finding the evidence as a whole.

35. I do find this entire claim questionable, as Claimant is untruthful, evasive, and inconsistent, which behavior inevitably leads to doubt. However, credible medical sources (as referenced above) state that exposure to loud noises can cause perforations, and perforations were in fact diagnosed by Dr. Ansley on February 20, 2014. Defendants are therefore responsible for reimbursement of the ER visit on the date of the accident; Dr. Ansley's visits of February 20, 2014, and March 6, 2014; the CT scans of February 25, 2014 and March 14, 2014 (and associated visits); and the March 31, 2014 visit, showing that any alleged injury resolved or returned to baseline, as Claimant had no complaints other than his rib injury and wheezing.

36. If all complaints to providers (including but not limited to Dr. Rogers) were dispositive, there would be no need for a hearing or for Commission involvement. Claimant's performance at the hearing and lack of credibility speak more loudly than his statements to providers about the origin of his alleged problems. It is frankly difficult to discern when the truth starts and stops with this claimant. Legitimate, ongoing hearing loss issues are not borne out by the (a) "selective hearing" displayed at the hearing, (b) inconsistencies in the medical records, and (c) denial of prior conditions which Claimant pleads as causally-related conditions. However, Claimant's motivations in this case are not for the undersigned to ponder.

37. Claimant reached maximum medical improvement on March 31, 2014. Even Claimant's IME found Claimant to be at maximum medical improvement. However, I find that Claimant has not proven any permanency, as Dr. Rogers' report is unreliable. More importantly, Claimant's own family doctor found Claimant's hearing normal after the date of

the accident, and offered no opinion to the contrary. Claimant's ongoing complaints and pleading of a brain injury are questionable.

38. Claimant is not entitled to receive any temporary benefits, as there are no work excuse notes in the record entitling Claimant to such benefits.

39. After the hearing on June 26, 2014, the undersigned's office served Order Instructions on the parties on July 10, 2014, which were not objected to by any party. The undersigned received the draft Order on October 30, 2014. On the same date (October 30, 2014), Claimant's counsel advised the undersigned that he was filing a Motion regarding the submission of additional evidence. Claimant's Motion was received by the Commission on December 19, 2014. Defendants' Reply to Claimant's Motion was received by the Commission on December 29, 2014. At that point, the undersigned re-viewed all the evidence, reconsidered her rulings, and re-wrote/revised the Decision and Order.

40. As to Claimant's Motion served December 19, 2014, the undersigned finds, for the reasons stated elsewhere in this Order, that the new evidence does not serve to help Claimant's case. The physician's statements are not borne out by the other evidence, including that from Claimant's own family physician, or by the fact that Claimant heard and understood normal speaking voices with his back turned during the hearing. Claimant does not have to "read lips" in order to hear.

41. I find it compelling that there are no causation statements in evidence from Claimant's two treating providers (Drs. Koukos and Ansley). Instead, Claimant traveled by car approximately 3 hours to Greenville to obtain the IME opinion from Dr. Rogers (Hearing Transcript, pages 78-79).

42. Claimant's average weekly wage is \$541, yielding compensation rate of \$360.68.

CONCLUSIONS OF LAW

In view of these Findings of Facts, I conclude as matters of law:

1. Employer did regularly employ four or more employees on the date of the accident, and therefore is subject to the Act pursuant to SC Code Ann. §42-1-360.
2. Claimant was an employee pursuant to Section 42-1-130, and not an independent contractor.
3. Claimant failed to prove by the greater weight of the evidence any ongoing medical problems which would entitle him to medical treatment beyond the March 31, 2014, visit with his family doctor, during which visit Claimant had no complaints or problems other than his unrelated rib injury and wheezing.
4. Claimant failed to prove any permanent disability by the greater weight of the evidence that would entitle him to any award pursuant to SC Code Ann. §42-9-10, 20, or 30, as any injury resolved or returned to baseline.
5. Claimant did not prove by the greater weight of the evidence that he was unable to work, and he is therefore not entitled to any temporary total disability payments pursuant to SC Code Ann. §42-9-260.

AWARD

Based upon the foregoing, it is hereby:

ORDERED, ADJUDICATED, AND DECREED that Employer is subject to the Act.

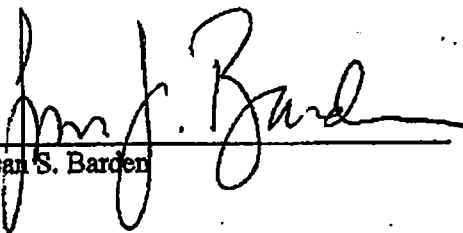
IT IS FURTHER ORDERED that Claimant is entitled to be reimbursed for the Emergency Room visit on the date of the accident, the CT scans and associated visits, the two visits with Dr. Ansley, and the February 25, 2014, and March 31, 2014, visits to Barnwell Family Practice.

IT IS FURTHER ORDERED that Claimant is not entitled to any future medical or psychological benefits.

IT IS FURTHER ORDERED that Claimant is not entitled to any temporary total disability payments as a result of the incident.

IT IS FURTHER ORDERED that Claimant is not entitled to any permanent impairment as a result of the incident as any injuries resolved or returned to baseline.

AND IT IS SO ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

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

April 30, 2015

By: Kristi Love, Administrative Assistant to Commissioner Barden

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1403368

Danny B. Crane,

Claimant,

v.

Raber's Discount Tire Rack,

Employer,

and

South Carolina Uninsured Employers
Fund,

Carrier.

APPELLATE DECISION AND ORDER

APPEARANCES:

Claimant is represented by Steve Chandler of Law Office of R. Steven Chandler, LLC.

Raber's Discount Tire Rack is represented by O. Edwards Lipfert, II.

South Carolina Uninsured Employers Fund is represented by Matthew J. Story.

HEARING:

July 21, 2015

STATEMENT OF THE CASE

The parties were heard by Commissioner Barden on June 26, 2014 in Port Royal, South Carolina. On April 30, 2015 Commissioner Barden issued an Order finding that Raber's Discount Tire Rack was subject to the Workers' Compensation Act, that Claimant sustained an injury to his ears on the date of the accident and ordered that Mr. Crane be reimbursed for his Emergency Room visit on February 19, 2014 his CT scan and associated visits, his two visits to Dr. Ansley, his treating ENT, and his follow-up

visit to Barnwell Family Practice. The Commissioner denied compensation for any future medical benefit, temporary total disability payments, and any permanent impairment as a result of the incident.

Within the statutory period, counsel for claimant filed an application for review in this case, setting forth their reasons for review, prior to oral arguments presented to the Appellate Panel on July 21, 2015. All proper testimony has been taken. All proffered testimony, together with all documentary evidence, has been delivered by oral argument to individual members of the Full Commission and has since been under study and consideration. In appeal, the claimant respectfully submits the following:

1. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant did not suffer from hearing loss in the accident when substantial hearing loss was shown by three objective hearing tests using the "pure tone audiogram" required by Regulations 67-1102.
2. Whether the Single Commissioner erred as a matter of fact and law in failing to order an auditory brainstem response test (ABR) with follow up treatment to determine whether the hearing loss resulted from inner ear damage or from brain injury, and whether Claimant should undergo a cochlear implant.
3. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant had not proven his case when the medical evidence and refuted testimony proved Claimant suffered from hearing loss related to the accident.
4. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant was not credible regarding his hearing loss when the

"inconsistencies" in his ability to hear are actually confirmation of profound hearing loss in his right ear and substantial hearing loss in his left ear.

5. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant was not entitled to temporary total disability compensation when the evidence showed he was unable to work in a tire store due to the hearing loss.

6. Whether the Single Commissioner erred as a matter of fact and law in finding that if Claimant had reached MMI, then failing to make a disability award for hearing loss under Regulation 67-1102.

7. Whether the Single Commissioner erred as a matter of fact and law in relying on boilerplate default entries in electronic medical records.

In an appellate review, the panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the award, weigh the evidence as presented at the initial hearing, and if good grounds be shown therefor, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Hearing Commissioner. After carefully reviewing the case, the Commission, by unanimous vote, has determined all of the Hearing Commissioner's findings of fact and conclusions of law are correctly stated. Accordingly, these shall become and hereby are, the law of the case and:

Therefore, the Order is **AFFIRMED** in its entirety.

FINDINGS OF FACT

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.

2. Jurisdiction, venue and sufficiency of notice are proper.

3. An incident/accident does not always equate to or result in a permanent injury. Claimant's "display" and evasiveness at the hearing (among other problematic issues) make us seriously question whether or not there was an actual injury. One cannot help but question if Claimant had legitimate, causally-related hearing loss, he would have felt no need to perform at the hearing. However, because there was an incident (captured by video) and for which Claimant went to the Emergency Room, we find Claimant sustained an injury to his ears on the date of the accident.

4. Claimant has pre-existing migraine headaches, anxiety, depression, and chronic sinusitis. Claimant was also diagnosed in 2007 as Bipolar. He also sustained a coma from a motor vehicle accident in 1990 which left 2 scars on the left temporal side of his head (medical evidence in its entirety).

5. Prior to the accident, Claimant served as a volunteer fire fighter. As of the date of the hearing, Claimant continues to serve as a fire fighter. Claimant, who has the burden of proof, did not offer any testimony as to whether or not he has worn or wears hearing protection while serving as a fire fighter.

6. In the accident at issue, Claimant alleges he was struck in the head on the right temporal side of his head with a hose clamp (at least this is what Claimant told Dr. Rogers three months after the date of the accident), and that he has sustained a brain injury, bilateral hearing loss, dizziness, cognitive difficulties, memory loss, headaches, bleeding from his ears, and an aggravation of his pre-existing psychological condition.

7. The Emergency Room records on the date of the accident state that Claimant's head was "atraumatic;" the forehead bruise Claimant describes at the hearing is not described in any of these records. Although Claimant reported hearing

loss and ear pain after the work accident, he reported no dizziness, memory loss, cognitive issues, bleeding, or headaches to Emergency Room providers (Claimant's APA #1, pages 1-0; Claimant's APA #3, pages 43-36; Hearing Transcript, page 27).

8. Claimant's inconsistent performance at the hearing as to what he can allegedly hear/not hear is the most persuasive evidence of all. The Single Commissioner paid close attention to Claimant's ability to hear and respond to different questions of different volumes, and observed when Claimant was directly facing or turned away from the questioner. What Claimant could hear/purportedly not hear had no modicum of consistency at the hearing. Prior to the opening of the record, the Single Commissioner asked Claimant if he would be able to hear her (i.e. to determine whether those speaking would need to raise their voices accordingly), and Claimant indicated that the Single Commissioner would need to raise her voice from its normal level. Although the Single Commissioner raised her voice, Claimant during questioning, answered questions of his attorney who spoke in a normal tone without forced amplification. Further, while Claimant watched a video of the incident with his back turned to Defendant's counsel, Claimant answered questions posed to him in normal tones with no request for amplification. We find that Claimant is not credible. We also find it unconvincing that if Claimant could not hear anything, as he claims he could not after the incident, he would then continue to work to repair the tire changer, including telling other to get him things.

9. Claimant contended at the hearing that he could not remember that accident or its aftermath, but proceeded to testify otherwise. He remembered exactly what he texted his wife ("come get me"), he remembers finding a metal hose clamp by

his hat shortly after the accident, he remembers telling everyone he worked with that he could not hear; however, Claimant alleges he does not remember that he continued to work on the tire changer after the accident occurred. Claimant acknowledged that he appears to tell "Little Man" to get a part to fix the tire changer on the video, but Claimant also claims he could not hear at this time. Notwithstanding Claimant's claim of memory loss regarding the accident, Claimant also described to IME physician Dr. Rogers exactly how the accident occurred. Very important is the fact that Dr. Koukos (Claimant's own family doctor) does not document a memory issue after the accident, and instead found "no impairment of recent or remote memory" (Claimant's APA #3, page 40). Dr. Koukos' impression is supported by the fact that at the hearing, Claimant – by memory- recounted the specific distance to a provider of exactly 77.2 miles. We give this evidence great weight, as this statement does not show a memory problem, and is more persuasive than Claimant's later statements to Dr. Rogers – 3 months after the date of the accident – that Claimant has memory/cognitive problems. Claimant's subjective statements to Dr. Rogers are just that: statements, which are not supported by any treatment record pre-dating the Rogers' one-time appointment. I find that Claimant did not suffer memory loss as a result of the accident, based on the greater weight of the evidence. Nor do the Emergency Room records contain any documentation of a head injury. (Tr. P.60, 1.22-P.65, 1.17; P.79; medical evidence, e.g. Claimant's APA #1, pages 1-10; Claimant's APA #3, pages 43-46; Claimant's APA #4, page 47).

10. In addition to Claimant's presentation at the hearing, the two most compelling records in this case are (a) a March 26, 2014 Emergency Room visit for a

trip and fall rib injury -- one month after the date of the accident; and (b) the follow-up visit for the rib injury with Claimant's family doctor 5 days later on March 31, 2014:

(a) at the Emergency Room visit on March 26, 2014, Claimant complained of rib pain only; these records are devoid of any other complaint, including headaches. Nor is there any description of dizziness or loss of balance. In fact, the record states that Claimant tripped and fell. The only clinical impression in this record is the right rib condition -- the only condition Claimant complained of. Additionally, and very importantly, under "Past History," the accident in issue (which occurred just one month earlier) and any of its alleged sequelae are notably absent. We find this striking, considering that Claimant alleges significant injuries, including, but not limited to, a brain injury. It speaks for itself that Claimant did not think enough of the significance of the injury at issue to mention it; nor did Claimant mention any problem with memory loss, bleeding, headaches, etc. By contrast, under "Past History," Claimant reported his 1990 coma, prior leg injury, and other pre-existing conditions as detailed in this ER record. It does not stand to reason that Claimant would not include such recent and allegedly significant conditions as he pleads and as he testified to at the hearing. As Claimant has pre-existing migraine headaches, I find that any alleged causally-related headaches resolved or returned to baseline. Claimant's complaint of "constant headaches" after the accident is refuted by these records. As Claimant has pre-existing migraines and is not credible, I cannot find that there was an aggravation of a pre-existing

condition, notwithstanding Claimant's testimony or statements to Dr. Rogers to the contrary (Claimant's APA #1, pages 12-20; Claimant's APA #3, pages 32-37);

(b) at the follow up visit with his family doctor on March 31, 2014 for the rib injury, Claimant reported continued rib pain and wheezing for which Claimant was prescribed an antibiotic. Strikingly absent are any references to hearing loss (Claimant's tympanic membranes are "clear and mobile"), memory loss, headaches, dizziness, bleeding, or psychological difficulty. For these reasons, we find that any injury Claimant sustained in the accident at issue resolved by March 31, 2014.

11. Claimant is entitled to receive reimbursement for the medical treatment he received through (and including) the March 31, 2014 visit, with the exception of the March 26, 2014 Emergency Room visit for the unrelated rib injury.

12. As to the more temporal records, Claimant was referred to E.N.T. Dr. Ansley the day after the accident because of Claimant's Complaints of hearing loss. Absent in the records from these two visits with Dr. Ansley (February 20, 2014 and March 6, 2014) are any reference to headache, head injury, dizziness, memory loss, psychological difficulty, cognitive difficulty, or bleeding from the ears. When there was a downward shift in the two sequential tests, Dr. Ansley found it not only remarkable enough to mention (Dr. Ansley thought Claimant's hearing would improve), he also referred Claimant to MUSC for a "more objective" test. Claimant never underwent the objective test, and never returned to Dr. Ansley. Notwithstanding Claimant's explanation at the hearing that he and/or his wife called Dr. Ansley's office staff to inform them that

the MUSC test was not covered by insurance, Dr. Ansley's records are devoid of any such entry (Claimant's APA #2, pages 21- 22 and 24-26).

13. On February 25, 2014 (in between the two Ansley visits), Claimant reported headaches, dizziness, and hearing loss to his family doctor. However, Claimant's neurologic exam on this date showed "normal" hearing, and Claimant's ENT exam did not note any problems with Claimant's tympanic membranes. Because of Claimant's complaints, a CT scan was ordered (Claimant's APA #3, pages 39-42).

14. Claimant's February 25, 2014 temporal bones CT scan (as referenced in the preceding finding of fact) shows only "chronic sinusitis" (Claimant's APA #1, pages 10-11).

15. Another CT scan of the brain (March 14, 2014), ordered because of Claimant's "constant headaches" and hearing loss, was normal – except for Claimant's chronic sinusitis (Claimant's APA #3, page 38).

16. Because the video indeed shows an incident/accident, we might have ordered the more objective test that Claimant, for a reason now abundantly clear, has avoided. However, Claimant's audiogram testing shows inconsistencies, and Claimant – not Defendants – has the burden of proof. Even putting aside (a) the significant credibility problems relating to the "performance" at the hearing, (b) Claimant's outright denial at the hearing of pre-existing conditions he had just admitted to Dr. Rogers just one month prior, and (c) the fact that the records from the intervening accident and its follow-up visit tell a different story from the one Claimant alleges, the March 31, 2014 visit, as referenced *supra*, shows that any injuries Claimant sustained on the date of the accident resolved.

17. Claimant has the burden of proof; it does not lie with the Defendants. Although I do not doubt that Claimant may have some ongoing hearing loss (whether from (a) his exposure to sirens as a firefighters, (b) chronic sinusitis, and/or (c) his prior head injury resulting in a coma), Claimant's own physician found that Claimant has "normal" post-accident hearing. I find it most telling that Claimant's family physician offered no opinions in this case; nor did Dr. Ansley (Claimant's E.N.T.) offer an opinion, as Claimant never returned to Dr. Ansley and never underwent the objective test Dr. Ansley ordered.

18. Claimant is not required to prove a brain injury through objective means, and I do not hold him to such a standard. The objective testing can be completely disregarded, which still leaves the undersigned with (a) Claimant's inconsistent presentation at the hearing, (b) no mention of a head injury in the Emergency Room records, and (c) Claimant's evasiveness at the hearing regarding prior/pre-existing conditions. Finally, Claimant's head was specifically found to be "atraumatic" on the date of the accident (Claimant's APA #1, pages 1-11; Claimant's APA #3, pages 38 and 43-46; Claimant's APA #4).

19. Although Claimant told the Single Commissioner at the hearing that he did not have anxiety or a Bipolar condition prior to the accident at issue, Claimant's medical records (including, but not limited to, his pre-existing, ongoing prescription of Effexor "to keep calm") refute Claimant's testimony. What is more problematic is that Claimant himself had just reported these prior/pre-existing conditions to Dr. Rogers one month prior to the date of the hearing. One cannot help but question Claimant's motivation. Further, Claimant told Dr. Rogers that he formerly worked as a volunteer firefighter, but

now just sits at home. At the hearing, Claimant inconsistently testified that he still works as a volunteer firefighter, but he has to wait in the truck on calls. Claimant testified he cannot work because it is too loud and causes him to develop headaches and that he cannot hear his children talking in the back seat when he is driving; by contract, Claimant admitted to going on fire calls and listening to the radio so loudly in his car with his kids tha this mother-in-law complained and his ears bled. This self-serving testimony and evasiveness damage Claimant's credibility, and call into question the veracity of the remainder of Claimant's testimony (medical evidence in its entirety; Tr. P. 28, 1.23-P.30, 1.8; Tr. P.34, 1.15;-P.35, 1.25; Tr. P.29, 1.20-P.30, 1.14).

20. Claimant's testimony that he has bleeding from his ears is unsupported by any medical treatment record. Simply telling Dr. Rogers that there is bleeding from the ears does not make it so. There is no ER treatment record documenting any bleeding, no family doctor treatment record as to any bleeding, and no other treatment record documenting any bleeding. Even Dr. Rogers found "no evidence of blood" in Claimant's ears (Claimant's APA #4, page 50).

21. Claimant has pre-existing migraine headaches, which I find wax and wane, and which were not aggravated by the accident at issue. I base this finding on the fact that there was no brain injury and, according to the temporal medical evidence, no head trauma. Claimant's self-serving testimony and statements to Dr. Rogers are not persuasive in this regard. At the hearing, Claimant attempted to downplay his pre-existing migraines when he testified that "everybody has migraines." Dr. Rogers' report does not serve to help Claimant's case, as Dr. Rogers was apparently not made aware of Claimant's pre-existing migraines, the report does not concede or acknowledge that

Claimant already had migraine headaches. Either Claimant withheld the information from Dr. Rogers, or Dr. Rogers' report is outcome determinative; nonetheless, the report shows that the medical information on which Dr. Rogers based his opinions is incomplete and unreliable. Finally, by late March 2014, Claimant reported no headaches to two separate providers (Claimant's APA #4).

23. Claimant did not present any evidence that his dosage of pre-existing psychotropic medications have increased, in order to support a finding of aggravation. Dr. Koukos -- Claimant's treating physician for depression -- offered no opinion on Claimant's behalf.

24. We give greater weight to the medical note of Dr. Koukos (Claimant's family doctor) documenting no memory problems than we give to Claimant's self-serving statement to Dr. Rogers that Claimant has cognitive, thinking, and planning difficulties (Claimant's APA #4, page 48; Cf. Claimant's APA #3, page 40)>

25. Claimant's testimony regarding his inability to hear what people in the back seat of a car say to him is not believable. When Claimant turned his back at the hearing to look at the video, he answered a question asked at a normal speaking tone while he his back was to the questioner. This observation is in sharp contrast to Claimant's other inconsistent conduct at the hearing.

26. Dr. Rogers' report does not explain the reason for the inconsistent audiograms.

27. Interestingly, Claimant's "chief complaint" to Dr. Rogers is ear pain. By contrast, at the hearing, Claimant did not mention any ongoing ear pain.

28. If Claimant is dizzy, and has cognitive, planning, and thinking difficulties (per his self-serving statement to Dr. Rogers), I find it inconsistent that Claimant drives, including driving his children around. His statements in this regard are not credible. Nonetheless, by March 31, 2014, Claimant no longer reported any dizziness, the source of which is unknown to the undersigned.

29. IME physician Dr. Rogers' statement that Claimant had "post-concussive" syndrome is not supported by the greater weight of the evidence. In fact, the Emergency Room records from the date of the accident state that Claimant's head was atraumatic, Claimant was alert and oriented x3, and Claimant described what happened at the time of the accident. Claimant also had a normal neurologic exam at Barnwell Family Medicine on February 25, 2014 – medical evidence which further refutes Dr. Rogers' report.

30. We find Claimant's IME from Dr. Rogers is generally and wholly unreliable, and therefore, give it no weight. There are too many inconsistencies and omissions in order to lend the report any credence. Further, even though Claimant has not ever undergone the more objective hearing test that Dr. Rogers, by virtue of reading the records, is well aware has been recommended, Dr. Rogers has already "decided" that Claimant's (inconsistent) hearing loss is valid and permanent. Dr. Rogers also fails to explain why Claimant's hearing would be worse on the March 6, 2014 audiogram than it was on the February 20, 2014 audiogram, even though Claimant denied any further injuries. For reasons unknown to the undersigned, Dr. Rogers was not provided the Barnwell Family Medicine record of March 31, 2014 which contained the documented "normal" neurological evaluation and the "normal"-looking tympanic

membrane exams. Dr. Rogers also fails to explain the long list of symptoms Claimant presented to him that are not noted in any of the other previous records/reports. Further, Claimant's presentation at the hearing trumps anything in Dr. Rogers' report.

31. Claimant continued to work after the incident, as shown on the video in evidence.

32. Although not dispositive, and even unnecessary to the conclusions we reach, according to websites from the Mayo Clinic and the National Institute of Health, perforated eardrums are often caused by infections/an accumulation of fluid in the ear. Air travel is another cause. Loud sounds can certainly cause them. Foreign items such as q-tips can cause them. Severe head injury such as a skull fracture can cause them. Claimant did not suffer a severe head injury in this case, but in 1990, sustained a head injury leaving him in a coma; Claimant also has "chronic sinusitis." These websites also state that perforated eardrums generally heal on their own within a few weeks or months. If they do not heal, surgery or a patch is recommended. Dr. Rogers reported that the Claimant's right tympanic membrane tear appeared healed. (Claimant's APA #4, P.51). Interestingly, no provider has recommended either patch or surgical procedure. Although not dispositive in this case, perforations rarely cause permanent hearing loss, according to these websites. This information does dovetail with Claimant's presentation in late March 2014 (Intervening rib fracture incident), during which he presented with no ear, hearing, headache, or other problems; Claimant's eardrums looked normal, and he had normal hearing. Even assuming and finding that Claimant had some causally-related hearing loss from the accident (because of the loud noise, a potential cause of perforations, as discussed in this find), we find that

Claimant's condition resolved as of March 31, 2014, per the records of Claimant's family physician.

33. Dr. Rogers' 100% bilateral hearing loss assessment is refuted by Claimant's ability to answer a question posed in a low, soft tone at the hearing while Claimant looked at his hands and while his back was turned to the questioner. Dr. Rogers' "assessment," therefore, is given no weight, as Claimant's presentation at the hearing refutes the assessment.

34. As to the employment relationship, I find by the greater weight of the evidence that Claimant was an employee on the date of the accident because (a) he wore Raber uniforms; (b) he was paid by the hours; and (c) the most significant equipment used to perform the job was Raber's (Claimant's APA, pages 289 and 293 – "we are hiring").

35. An "independent contract" purporting to establish the nature of the work relationship is not dispositive in a workers' compensation case. In this particular case, the contract's designation is not persuasive (Claimant's APA, pages 108-109).

36. Four or more individuals were regularly employed on the date of the accident. We base this finding on the evidence as a whole.

37. We do find this entire claim questionable, as Claimant is untruthful, evasive, and inconsistent, which behavior inevitably leads to doubt. However, credible medical sources (as referenced above) state that exposure to loud noises can cause perforations, and perforations were in fact diagnosed by Dr. Ansley of February 20, 2014. Defendants are therefore responsible for reimbursement of the ER visit on the date of the accident; Dr. Ansley's visits of February 20, 2014, and March 6, 2014; the

CT scans of February 25, 2014 and March 14, 2014 (and associated visits); and the March 31, 2014 visit, showing that any alleged injury resolved or returned to baseline, as Claimant had no complaints other than his rib injury and wheezing.

38. If all complaints to providers (including, but not limited to Dr. Rogers) were dispositive, there would be no need for a hearing or for Commission involvement. Claimant's performance at the hearing and lack of credibility speak more loudly than his statements to providers about the origin of his alleged problems. It is frankly difficult to discern when the truth starts and stops with this claimant. Legitimate, ongoing hearing loss issues are not borne out by the (a) "selective hearing" displayed at the hearing, (b) inconsistencies in the medical records, and (c) denial of prior conditions which Claimant pleads as causally-related conditions. However, Claimant's motivations in this case are not for the undersigned to ponder.

39. Claimant reached maximum medical improvement on March 31, 2014. Even Claimant's IME found Claimant to be at maximum medical improvement. However, I find that Claimant has not proven any permanency, as Dr. Rogers' report is unreliable. More importantly, Claimant's own family doctor found Claimant's hearing normal after the date of the accident, and offered no opinion to the contrary. Claimant's ongoing complaints and pleading of a brain injury are questionable.

40. Claimant is not entitled to receive any temporary benefits, as there are no work excuse notes in the record entitling Claimant to such benefits.

41. After the hearing on June 26, 2014, the Single Commissioner's office served Order Instructions on the parties on July 10, 2014, which were not objected to by any party. The undersigned received the draft Order on October 30, 2014. On the same

date (October 30, 2014), Claimant's counsel advised the undersigned that he was filing a Motion regarding the submission of additional evidence. Claimant's Motion was received by the Commission on December 19, 2014. Defendants' Reply to Claimant's Motion was received by the Commission on December 29, 2014. At that point, the Single Commissioner reviewed all the evidence, reconsidered her rulings, and re-wrote/revised the Decision and Order.

42. As to Claimant's Motion served December 19, 2014, the undersigned finds, for the reasons stated elsewhere in this Order, that the new evidence does not serve to help Claimant's case. The physician's statements are not borne out by other evidence, including that from Claimant's own family physician, or by the fact that Claimant heard and understood normal speaking voices with his back turned during the hearing. Claimant does not have to "read lips" in order to hear.

43. We find it compelling that there are no causation statements in evidence from Claimant's two treating providers (Drs. Koukos and Ansley). Instead, Claimant travelled approximately 3 hours to Greenville to obtain the IME opinion from Dr. Rogers (Hearing Transcript, page 78-79).

44. Claimant's average weekly wage is \$541, yielding compensation rate of \$360.68.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and under the laws of South Carolina as provided in the South Carolina Workers' Compensation Act, the undersigned makes the following conclusions of law:

1. The Employer did regularly employ four or more employees on the date of the accident , and therefore is subject to the Act pursuant to SC Code Ann. §42-1-360.

2. Claimant was an employee pursuant to Section 42-1-130, and not an independent contractor.

3. The Claimant failed to prove by the greater weight of the evidence any ongoing medical problems which would entitle him to medical treatment beyond the March 31, 2014 visit with his family doctor, during which visit Claimant had no complaints or problems other than his unrelated rib injury and wheezing.

4. Claimant failed to prove any permanent disability by the greater weight of the evidence that would entitle him to any award pursuant to SC Code Ann. §42-9-10, 20, or 30, as any injury resolved or returned to baseline.

5. Claimant did not prove by the greater weight of the evidence that he was unable to work, and he is therefore not entitled to any temporary total disability payments pursuant to SC Code Ann. §42-9-260.

ORDER

IT IS HEREBY ORDERED that Employer is subject to the Act.

IT IS FURTHER ORDERED the Claimant is entitled to be reimbursed for the emergency room visit on the date of the accident, the CT scans and associated visits, the two visits with Dr. Ansley, and the February 25, 2014 and March 31, 2014 visits to Barnwell Family Practice.

IT IS FURTHER ORDERED the Claimant is not entitled to any temporary total disability payments as a result of the incident.

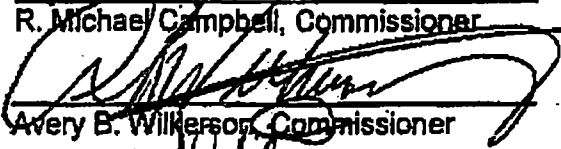
IT IS FURTHER ORDERED the Claimant is not entitled to any permanent impairment as a result of the incident as any injuries resolved or returned to baseline.

AND IT IS SO ORDERED.

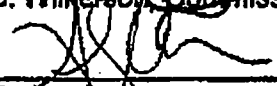
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**



R. Michael Campbell, Commissioner



Avery B. Wilkerson, Commissioner



Aisha Taylor, Commissioner

CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on October 1, 2015

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



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

Claimant's Name: Danny B. Crane, Jr. SSN: _____ Employer's Name: Rabar's Tire
Address: _____ Address: _____
City: _____ State: SC Zip: 29853 City: Barnwell State: SC Zip: 29812
Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
Preparer's Name: R. Steven Chandler Law Firm: R. Steven Chandler Preparer's Phone #: 803-245-1800

- A claim for workers' compensation benefits is made based on the following grounds: _____ Date of Injury or Illness: 2/19/2014
- ☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
1. The claimant sustained an injury to Head/brain, Ears (hearing) and face (Part(s) of Body Injured) on 2/19/2014 (Month/Day/Year) in Barnwell county, state of SC. Body part(s) affected are: Head/brain, Ears (hearing) and face.
2. Briefly describe how the accident occurred. Tire changer's airline ruptured into claimant's ears and clasp holding airline hit him in the head.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 2/19/2014 (Month/Day/Year) in the following manner:
In person
- ☒ 7. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: Head Injury and hearing loss to both ears; vertigo.
☒ (b) additional medical examination and treatment for: Head Injury and hearing loss to both ears; vertigo.
- ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
02/19/2014 and continuing.
- ☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
- ☐ 9a. ☒ A determination of permanent disability is premature at this time.
- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$550.00, 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:
Rabar's Tire 10090 Dunbarton Blvd. Barnwell, South Carolina 29812
11. Further grounds or unusual aspects of claim:
Total loss of hearing in right ear and more than 80 percent loss of hearing in left ear.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See attached list.
- 11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: none
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 90 minutes
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
- ☐ Mediation
- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
- Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Rabar's Tire 10090 Dunbarton Rd
address Barnwell SC on the 11 day of March 2014 by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature: R. Steven Chandler Attorney: Steve@BambergLaw.com March 11, 2014
Title: _____ Email: _____ Date: _____

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

WCC Form # 50
Revised 7/13

50

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

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739 www.wcc.sc.gov



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

Claimant's Name: Danny B. Crane, Jr. SSN: _____ Employer's Name: Raber's Tire
Address: _____ Address: _____
City: Williston State: SC Zip: 29853 City: Barnwell State: SC Zip: 29812
Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
Date of Injury: February 19, 2014
Preparer's Name: Lisa C. Glover Law Firm: SCWCUEF Preparer's Phone #: (803) 898-5898

Date of Injury or Illness: 2/19/2014

Estimated time for hearing: _____

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
General; there has been no proof.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1 above.
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1 above.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1 above.
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
See No. 1 above.
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1 above.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of : _____
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1 above.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
See attachment.

☐ Mediation

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

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

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

Lisa C. Glover
Preparer's Signature

Deputy General Counsel
Title

lglover@scf.sc.gov
Email

3-24-14
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 07/13

51

Employer's Answer to Request for Hearing

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

All affirmative and specific defenses (see Reg. 67-603), including but not limited to Section 42-9-60, Section 42-15-20, Section 42-15-40, Section 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

Fund files this Answer in response to Claimant's Form 50, Request for Hearing dated March 11, 2014.

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not an agent for the uninsured employer, nor a carrier for the uninsured employer.



P82



Claimant's Name: Danny B. Crane Employer's Name: Raber's Tire
Address: _____ Address: _____
City: _____ State: SC Zip: 29853 City: _____ State: SC Zip: 29812
Home Phone: _____ Work Phone: () - _____ Carrier: None
Preparer's Name: R. Steven Chandler Preparer's Phone #: (803) 245-1800

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 360.68 2. AWW: \$541.00 Date of Injury: 02/19/2014
3. Type of injury and body part(s): Head/brain, Ears (hearing) and face. Psychological overlay.
4. Facts in controversy: See attachment.
5. Legal issues involved: See attachment.
6. Unusual aspects: Claimant reserves right to amend brief after receiving brief from defendants and any additional discovery.
7. Witnesses (designate if expert):* See attachment
8. Exhibits: Medical bills and records, bank records of Defendant; Payments from Defendant to Claimant; Claimant reserves the right to amended brief. Additionally documents subpoenaed from Defendants. Claimant reserves the right to submit additional exhibits at the hearing.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
Pursuant to APA submissions.
10. Name, address, and specialty, if any, of the treating physician: Dr. John F. Ansley Carolina ENT, Cook Road, Orangeburg, SC 29118
David S. Rogers MD, CIME - Oaktree Medical Centre, 115 Brushy Creek Rd, Easley, SC 29642
Barnwell Family Medicine 85 Wren Street, Barnwell, South Carolina 29812
11. Impairment rating(s); body part(s); physician and date of opinion: See 5/19/2014 Report of Dr. David Rogers.
12. I am amending my Form 50/51 in the following manner: Psychological overlay.

☐ Mediation

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See Attached Certificate of Service

address _____ on the 3rd day of June 2014 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: R. Steven Chandler Email: Stephen@Samuelslawfirm.net
Date of hearing: June 26, 2014 Time needed for hearing: 2.5

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

ATTACHMENT TO PRE-HEARING BRIEF (WCC FORM #58)

Claimant: Danny Crane
WCC File No.: 1403368

Facts in Controversy:

1. Whether Crane is an employee or an Independent contractor;
2. Whether Raber Tire employs 4 or more persons.
3. Average weekly wage and compensation rate.
4. Body parts injured in the accident (ears – severe hearing loss; head/brain with cognitive and vestibular symptoms; psychological overlay).
5. Medical treatment, including designation of Dr. David Rogers as the authorized treating neurologist.
6. Temporary total disability from March 19, 2014 and continuing on a running award.
7. Permanency is premature as Crane is not at MMI for his closed head injury.

Procedural History and Statement of the Case:

This hearing is set on a Form 50 filed by the Claimant, Danny Crane. The Employer, Raber Tire, is uninsured. Crane was injured when working for Raber Tire when an air-compressor exploded. Crane suffered head/brain injuries¹; severe hearing loss; and psychological overlay.

The Employer is James Raber dba Raber's Discount Tire and Auto. Employer operates an automobile service center in Barnwell, SC. The location has 4 service bays enabling them to service at least 4 vehicles at a time.

Raber regularly employs more than four people. As of this writing, Employer has not provided complete pay records. However, the limited records received show the following employees in September 2013:

1. Danny Crane.
2. Michael Myers
3. Marie Brown
4. Pennel Gill
5. Chad Williams

¹As Crane is not at MMI, a determination of physical brain damage is premature and not before the Commission at this hearing.

6. Eric Johnson
7. Ruben Brunson

Raber contends Crane and other mechanics were independent contractors rather than employees. Raber required his mechanics to sign a document purporting to make them independent contractors. However, the terms of the document itself confirm that Raber exercised sufficient control that they were in fact employees.

Raber provided equipment and uniforms. Crane was paid \$9.00 per hour.² He was required to clock in using a time clock. A photograph of the time clock shows at least 4 time cards.

This case arises out of a work-related accident which occurred on February 19, 2014. Claimant Danny Crane was working on an air-powered tire changer when a high-pressure 3" diameter hose exploded near his face. Crane was hit in the head with a metal clamp from the hose and suffered injury from the shock wave. Both ear drums were ruptured.

Crane taken to the emergency room. He was referred to an ENT for his hearing loss. After testing showed severe, persistent hearing loss, the ENT referred Crane to MUSC for additional testing - specifically a brain stem test.

Crane has been evaluated by Dr. David Rogers, a Greenville neurologist. Dr. Rogers made several diagnoses and has offered a plan of treatment, including enrollment in a traumatic brain injury program.

Since the injury, Crane has suffered from severe hearing loss as shown by audiometric testing. Although he retains a very slight ability to hear, objective testing confirms Crane's hearing impairment is 100% bilaterally as defined in Regulation 67-1102.

Crane also suffers from depression, balance problems (resulting in falls), and cognitive issues - all of which are causally related to the accident and require further treatment.

²Raber did not pay overtime for work over 40 hours - despite Crane regularly working a 52-hour work week. As the Fair Labor Standards Act requires time and a half to be paid, Crane requests his average weekly wage be based on the FLSA requirement. This results in an average weekly wage of \$541.00 with a compensation rate of \$360.68.

Danny Crane

Average Weekly Wage Calculations

Date	Amount					
07/12/13	\$513.00	57.00	-40.00	17.00	\$4.50	\$76.50
07/19/13	\$492.75	54.75	-40.00	14.75	\$4.50	\$68.38
07/26/13	\$528.75	58.75	-40.00	18.75	\$4.50	\$84.38
08/02/13	\$508.00	56.44	-40.00	16.44	\$4.50	\$74.00
08/09/13	\$506.70	56.30	-40.00	16.30	\$4.50	\$73.35
08/16/13	\$549.00	61.00	-40.00	21.00	\$4.50	\$94.50
08/23/13	\$558.00	62.00	-40.00	22.00	\$4.50	\$99.00
08/30/13	\$531.00	59.00	-40.00	19.00	\$4.50	\$85.50
09/06/13	\$441.00	49.00	-40.00	9.00	\$4.50	\$40.50
09/13/13	\$550.00	61.11	-40.00	21.11	\$4.50	\$95.00
09/20/13	\$544.00	60.44	-40.00	20.44	\$4.50	\$92.00
09/27/13	\$185.00	20.56		19.00	\$4.50	\$85.50
09/27/13	\$348.00	38.44				
10/04/13	\$626.50	69.61	-40.00	29.61	\$4.50	\$133.25
10/11/13	\$489.50	52.17	-40.00	12.17	\$4.50	\$54.75
10/18/13	\$594.00	66.00	-40.00	26.00	\$4.50	\$117.00
10/25/13	\$590.00	65.56	-40.00	25.56	\$4.50	\$115.00
11/01/13	\$542.25	60.25	-40.00	20.25	\$4.50	\$91.13
11/08/13	\$595.00	66.11	-40.00	26.11	\$4.50	\$117.50
11/15/13	\$481.50	53.50	-40.00	13.50	\$4.50	\$60.75
11/22/13	\$522.00	58.00	-40.00	18.00	\$4.50	\$81.00
11/29/13	\$354.00	39.33		8.33	\$4.50	\$37.49
11/29/13	\$81.00	9.00				
12/06/13	\$570.00	63.33	-40.00	23.33	\$4.50	\$105.00
12/13/13	\$502.00	55.78	-40.00	15.78	\$4.50	\$71.00
12/20/13	\$472.00	52.44	-40.00	12.44	\$4.50	\$56.00
12/23/13	\$100.00	11.11		0.00		
12/26/13	\$324.00	36.00		0.00		
01/03/14	\$54.54	6.06		0.00		
01/03/14	\$185.46	20.61		0.00		
01/10/14	\$354.00	39.33		0.00		
01/15/14	\$150.00	16.67		0.00		
01/17/14	\$258.00	28.44		0.00		
01/23/14	\$240.00	26.67		0.00		
01/31/14	\$328.12	36.46		0.00		
02/07/14	\$320.39	35.60		0.00		
02/14/14	\$340.00	37.78		0.00		

\$15,305.46

\$2,006.46
\$17,311.92

Weeks 32

AWW \$478.30
CR \$318.88

\$541.00
\$360.68

CRANE: DANIEL B

404306-733476

02/19/14

LEWIS BLACKMAN PATIENT SAFETY ACT HOSPITAL INFORMATION

Dear Patient:

Thank you for choosing Barnwell County Hospital for your care. We want to provide you with the best care during your stay with us.

You will be receiving services provided by many persons within Barnwell County Hospital. For your comfort, we want to inform you about these people. Examples of these people are nursing students, medical students, consulting physicians, and other medical trainees. These clinical staff members may participate in direct patient care and are under the supervision of a properly appointed hospital approved person.

If you are to stay in the hospital, you will be admitted by a doctor considered to be your "attending physician." If this physician is unable to see you on a particular day, he or she will designate another doctor to see you in order to help cover your care. Your doctor may also ask other physicians to help with your care. Please ask your physician or nurse to explain to you who other persons involved in your care are, if you are not sure.

All staff members, people in training, as well as doctors on the medical staff, will be wearing a badge clearly showing their name, department, and job title. We do this to assist you in knowing who is involved in your personal care, treatment decisions, or surgical procedures.

The nursing staff is frequently in contact with the physicians and others involved in your care. If at any time you have questions, please contact your nurse/clinical staff member. The nurse or clinical staff member will promptly provide a means allowing you to independently access a physician, clinical supervisor, and/or a member of administration. If you want your nurse or clinical staff member to contact the attending physician or any other physician helping with your care, they will promptly access them on your behalf if requested.

Barnwell County Hospital thanks you for allowing us the opportunity to assist with your medical care needs.

I have received Barnwell County Hospital's Lewis Blackman Patient Safety Act Information Sheet, which includes patient's rights as defined in the Lewis Blackman Patient Safety Act of 2005.


Patient Representative


BCH Witness

Date: 4/23

Time: 1:15

Date: 4/23

Time: 1:15

☐ Patient is medically unable to sign the Lewis Blackman Safety Act of 2005.

Crane 0003

CRANE, DANIEL E. 04/19/24
 BY 113424
 MR. [REDACTED]
 WITH: [REDACTED]
 FROM: [REDACTED]

EMERGENCY DEPARTMENT MEDICAL SCREENING

DATE: 04/24/2014 TIME: 10:55 AM
 NAME: CRANE, DANIEL E.
 DOB: 04/19/24
 MR. [REDACTED]
 WITH: [REDACTED]
 FROM: [REDACTED]

ALLERGIES: [REDACTED]
 MEDICATIONS: [REDACTED]
 PHYSICAL EXAM: [REDACTED]
 VITALS: [REDACTED]

SYSTEM	FUNCTION	STATUS	TESTS	RESULTS	COMMENTS
HEENT	HEENT	Normal	None	Normal	
HEENT	HEENT	Normal	None	Normal	
HEENT	HEENT	Normal	None	Normal	
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HEENT	HEENT	Normal	None	Normal	
HEENT	HEENT	Normal	None	Normal	

ADDITIONAL INFORMATION: [REDACTED]
 PHYSICIAN: [REDACTED]
 NURSE: [REDACTED]
 DATE: 04/24/2014
 TIME: 10:55 AM

Dr. David L. Cowan, M.D.
 Medical Director
EMERGENCY PHYSICIAN RECORD
 Box 1000000

CRANE, DANIEL H. 02/19/24
V 782474 M 175 M 604285
ER
ATTN: KASSAMUN, ABER, D:
PCP: KODKUB, DEAN

NAME: JOHN J. GORMAN DOB: 1904-6 SEX: M
 ALIEN STATUS: NR RACE: WHITE
 AGE: 52 HEIGHT: 5'11" WEIGHT: 161 HAIR: BRN
 EYES: BLU COMPLETED BY: 10/1/54

SOCIAL HX *none* **Group**
social (group) therapy occurring **Present**

FAMILY HX *none* **Present**

[illegible][illegible]

RECEIVED BY COURIER

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ASTEX

Inspection

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PAINECK **Newsletters**

DATE: 11/11/2011 TIME: 11:11 AM

1. <u>NAME</u> 2. <u>ADDRESS</u> 3. <u>CITY</u> 4. <u>STATE</u> 5. <u>ZIP</u> 6. <u>PHONE</u> 7. <u>TELETYPE</u> 8. <u>TELEFAX</u> 9. <u>TELEMAIL</u> 10. <u>TELEFAX</u> 11. <u>TELEMAIL</u> 12. <u>TELEFAX</u> 13. <u>TELEMAIL</u> 14. <u>TELEFAX</u> 15. <u>TELEMAIL</u> 16. <u>TELEFAX</u> 17. <u>TELEMAIL</u> 18. <u>TELEFAX</u> 19. <u>TELEMAIL</u> 20. <u>TELEFAX</u> 21. <u>TELEMAIL</u> 22. <u>TELEFAX</u> 23. <u>TELEMAIL</u> 24. <u>TELEFAX</u> 25. <u>TELEMAIL</u> 26. <u>TELEFAX</u> 27. <u>TELEMAIL</u> 28. <u>TELEFAX</u> 29. <u>TELEMAIL</u> 30. <u>TELEFAX</u> 31. <u>TELEMAIL</u> 32. <u>TELEFAX</u> 33. <u>TELEMAIL</u> 34. <u>TELEFAX</u> 35. <u>TELEMAIL</u> 36. <u>TELEFAX</u> 37. <u>TELEMAIL</u> 38. <u>TELEFAX</u> 39. <u>TELEMAIL</u> 40. <u>TELEFAX</u> 41. <u>TELEMAIL</u> 42. <u>TELEFAX</u> 43. <u>TELEMAIL</u> 44. <u>TELEFAX</u> 45. <u>TELEMAIL</u> 46. <u>TELEFAX</u> 47. <u>TELEMAIL</u> 48. <u>TELEFAX</u> 49. <u>TELEMAIL</u> 50. <u>TELEFAX</u> 51. <u>TELEMAIL</u> 52. <u>TELEFAX</u> 53. <u>TELEMAIL</u> 54. <u>TELEFAX</u> 55. <u>TELEMAIL</u> 56. <u>TELEFAX</u> 57. <u>TELEMAIL</u> 58. <u>TELEFAX</u> 59. <u>TELEMAIL</u> 60. <u>TELEFAX</u> 61. <u>TELEMAIL</u> 62. <u>TELEFAX</u> 63. <u>TELEMAIL</u> 64. <u>TELEFAX</u> 65. <u>TELEMAIL</u> 66. <u>TELEFAX</u> 67. <u>TELEMAIL</u> 68. <u>TELEFAX</u> 69. <u>TELEMAIL</u> 70. <u>TELEFAX</u> 71. <u>TELEMAIL</u> 72. <u>TELEFAX</u> 73. <u>TELEMAIL</u> 74. <u>TELEFAX</u> 75. <u>TELEMAIL</u> 76. <u>TELEFAX</u> 77. <u>TELEMAIL</u> 78. <u>TELEFAX</u> 79. <u>TELEMAIL</u> 80. <u>TELEFAX</u> 81. <u>TELEMAIL</u> 82. <u>TELEFAX</u> 83. <u>TELEMAIL</u> 84. <u>TELEFAX</u> 85. <u>TELEMAIL</u> 86. <u>TELEFAX</u> 87. <u>TELEMAIL</u> 88. <u>TELEFAX</u> 89. <u>TELEMAIL</u> 90. <u>TELEFAX</u> 91. <u>TELEMAIL</u> 92. <u>TELEFAX</u> 93. <u>TELEMAIL</u> 94. <u>TELEFAX</u> 95. <u>TELEMAIL</u> 96. <u>TELEFAX</u> 97. <u>TELEMAIL</u> 98. <u>TELEFAX</u> 99. <u>TELEMAIL</u> 100. <u>TELEFAX</u>	1. <u>NAME</u> 2. <u>ADDRESS</u> 3. <u>CITY</u> 4. <u>STATE</u> 5. <u>ZIP</u> 6. <u>PHONE</u> 7. <u>TELETYPE</u> 8. <u>TELEFAX</u> 9. <u>TELEMAIL</u> 10. <u>TELEFAX</u> 11. <u>TELEMAIL</u> 12. <u>TELEFAX</u> 13. <u>TELEMAIL</u> 14. <u>TELEFAX</u> 15. <u>TELEMAIL</u> 16. <u>TELEFAX</u> 17. <u>TELEMAIL</u> 18. <u>TELEFAX</u> 19. <u>TELEMAIL</u> 20. <u>TELEFAX</u> 21. <u>TELEMAIL</u> 22. <u>TELEFAX</u> 23. <u>TELEMAIL</u> 24. <u>TELEFAX</u> 25. <u>TELEMAIL</u> 26. <u>TELEFAX</u> 27. <u>TELEMAIL</u> 28. <u>TELEFAX</u> 29. <u>TELEMAIL</u> 30. <u>TELEFAX</u> 31. <u>TELEMAIL</u> 32. <u>TELEFAX</u> 33. <u>TELEMAIL</u> 34. <u>TELEFAX</u> 35. <u>TELEMAIL</u> 36. <u>TELEFAX</u> 37. <u>TELEMAIL</u> 38. <u>TELEFAX</u> 39. <u>TELEMAIL</u> 40. <u>TELEFAX</u> 41. <u>TELEMAIL</u> 42. <u>TELEFAX</u> 43. <u>TELEMAIL</u> 44. <u>TELEFAX</u> 45. <u>TELEMAIL</u> 46. <u>TELEFAX</u> 47. <u>TELEMAIL</u> 48. <u>TELEFAX</u> 49. <u>TELEMAIL</u> 50. <u>TELEFAX</u> 51. <u>TELEMAIL</u> 52. <u>TELEFAX</u> 53. <u>TELEMAIL</u> 54. <u>TELEFAX</u> 55. <u>TELEMAIL</u> 56. <u>TELEFAX</u> 57. <u>TELEMAIL</u> 58. <u>TELEFAX</u> 59. <u>TELEMAIL</u> 60. <u>TELEFAX</u> 61. <u>TELEMAIL</u> 62. <u>TELEFAX</u> 63. <u>TELEMAIL</u> 64. <u>TELEFAX</u> 65. <u>TELEMAIL</u> 66. <u>TELEFAX</u> 67. <u>TELEMAIL</u> 68. <u>TELEFAX</u> 69. <u>TELEMAIL</u> 70. <u>TELEFAX</u> 71. <u>TELEMAIL</u> 72. <u>TELEFAX</u> 73. <u>TELEMAIL</u> 74. <u>TELEFAX</u> 75. <u>TELEMAIL</u> 76. <u>TELEFAX</u> 77. <u>TELEMAIL</u> 78. <u>TELEFAX</u> 79. <u>TELEMAIL</u> 80. <u>TELEFAX</u> 81. <u>TELEMAIL</u> 82. <u>TELEFAX</u> 83. <u>TELEMAIL</u> 84. <u>TELEFAX</u> 85. <u>TELEMAIL</u> 86. <u>TELEFAX</u> 87. <u>TELEMAIL</u> 88. <u>TELEFAX</u> 89. <u>TELEMAIL</u> 90. <u>TELEFAX</u> 91. <u>TELEMAIL</u> 92. <u>TELEFAX</u> 93. <u>TELEMAIL</u> 94. <u>TELEFAX</u> 95. <u>TELEMAIL</u> 96. <u>TELEFAX</u> 97. <u>TELEMAIL</u> 98. <u>TELEFAX</u> 99. <u>TELEMAIL</u> 100. <u>TELEFAX</u>

NEW! NEW! NEW!

1991年12月15日 星期日
 第10000号
 1991年12月15日 星期日
 第10000号

EYES
 CHEMILUMINESCENCE
 PSEUDOCOLOR

RESPONSE	NUMBER OF STUDENTS
Strongly Agree	1
Agree	1
Disagree	0
Strongly Disagree	0
Don't know/no opinion	0

ABDOMEN _____
 THROAT _____
 GENITALS _____

[illegible]

NEURO/PSYCH ~~OS/STATS~~ ~~PSYCH/PSYCHIA~~
~~OS/STATS~~ ~~PSYCH/PSYCHIA~~
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~~OS/STATS~~ ~~PSYCH/PSYCHIA~~ ~~OS/STATS~~

LABS		CHEMISTRIES	
CEC	NA/NO	CEC	NA/NO
WBC	HAEMOGLOBIN	HAEMOGLOBIN	CEC
RBC	PLATELETS	PLATELETS	CEC
ESR	URIC ACID	URIC ACID	CEC
PROTEIN			

[illegible]

PROGRESSING CASE - ALIEN - AFTER 0
 Date: 1-1-68 TO: XOS DEAN

[illegible]

CLINICAL IMPRESSION

Orbicularis oculi - R/L	Foregut/Heart/Intestine - R/L
Heart/Lung/Colon - R/L	Paracardiac EM - R/L
Cardiac/Heart/Colon - R/L	Cardiac/Heart/Colon - R/L
Myocardial/Heart	Paracardiac/Heart
Orbicularis oculi - R/L	Upper Respiratory Tract - R/L
Myocardial/Heart - R/L	EM/Spinal Cord
Impaired Conduction - R/L	

☐ POSITION: ☐ TIME: ☐ TIME/STK: _____
☐ NAME: POA: 22000000 (11.100)
☐ CATEGORY: ☐ BANDWIDTH: ☐ POWER: _____
☐ EST/ALARM: ☐ MODE: ☐ EST/ALARM: _____

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Template # _____ Date: _____ Addendum # _____ Template # _____

Exicare Patient Information - Daniel Crane - ID# 733474 - MR# A04800

Exicare Patient Information
 111 Reynolds Road
 Danville, VA 24040
 800-233-1188

PATIENT CARE INSTRUCTIONS Provided by EXICARE

Patient Information:

Patient ID: 733474	Exicare Medical Facility Number: A04800
Patient Name: Daniel Crane	Patient Address: 807 S. 5th St. Waco, TX 76786
Patient Age: 40	Patient Email:
Patient Weight: 185 lbs	Patient Height: 6'11"
Patient DOB: [REDACTED]	Patient Gender: M
Patient Phone Number: (800) 308-3732	

Via Information:

Via Sent Date: 2/10/2014	Department: ED
Delivered Date/Time: 2/10/2014 5:58:45 PM	Diagnosis: CONDUCTIVE HEARING LOSS MIDDLE EAR (w/)
Primary: Catherine Kassahun, ABCCP	ICD-9-CM: 359.03
	Hearing Loss (Hearing loss)

Primary Referring: J. Kassahun, ABCCP, GARNETT COUNTY HOSPITAL (0000000000)

User Information:

Exicare ID:	User Name:	Device ID:

Exicare Hearing Loss Center - (800) 308-3732 - ADDC OF F&S OF S&S

Additional Notes:

FOLLOW UP WITH ENT IN AM, USE EAR DROPS AS ORDERED

Signature: I acknowledge that Patient and/or Guardian has received these instructions and understands them.

Exicare Patient Signature: [Signature] Time/Date: [Signature] Witnessed & Instructed By: [Signature] Date: 2/10/2014

96-52X
 8-21A

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Exicare, LLC - 2/10/2014 - 5:58:50 PM

RMC Barnwell Healthcare, Inc.
 811 Reynolds Rd, Barnwell SC 29812
 803-249-1000 Emergency Center

PATIENT: CRANE, DANIEL Date: 02-19-2014 Time: 10:00:21 Page: 1

Instructions for CRANE, DANIEL

Date: 02-19-2014 Your care provider was: DR KASSABUN

Antibiotic ear drops

You've been given a prescription for antibiotic ear drops. These drops will help clear the ear. They are used for outer ear infection or for a middle ear infection when there is a hole or tube in the eardrum. These drops do not contain steroids.

Your ear drops won't do much good if they don't get all the way in. To help the ear drops penetrate all the way to the eardrum, use the following technique. If you have other problems of any kind, notify the physician.

- Lay your head sideways on a pillow so the ear getting the medicine is up.
- Place the dropper tip just barely inside the ear canal, almost touching the bottom side of the canal. The liquid is released better on the bottom of the canal.
- Squeeze out the appropriate amount of medicine, and remove the dropper.
- Grab the back of the ear (just behind the ear canal) between your index finger and thumb.
- Tug up, then let the ear drop back. Repeat several times. This pulls the medicine down.
- Wait two minutes, then place a cotton ball in the ear canal to catch and hold the medicine.

I have received a copy of these instructions and have read and understood them. My questions have been answered. (Cmexcc estab insruccncey de rechid opia de elias)

Patient (or representative)

Witness

Name: Crane Daniel
 Patient ID: 404006
 Account Number: 733715
 History:
 Date Of Birth:
 Study: CT FACIAL W/O CONTR
 Facility: Barnwell County Hospital
 Physician: 133398
 Date Of Service: 02/25/2014 10:00:00

STUDY: CT TEMPORAL BONES WITHOUT CONTRAST

REASON FOR EXAM: Male, 37 years old. Sudden hearing loss. Patient states he had a tire changer with 250 PSI blow up in his face last week, with loss of hearing both ears.

RADIATION DOSAGE (If Supplied By Facility): CTDIvol = () mGy, DLP = () mGycm

TECHNIQUE: The patient was scanned in a multi detector CT scanner. Transaxial imaging was performed without the administration of intravenous contrast material. Sagittal and coronal images were reconstructed.

COMPARISON: None.

FINDINGS:

RIGHT TEMPORAL BONE:

Normal right osseous internal auditory canal.

Normal visualized ossicles and tympanic cavity. Normal right cochlea and semicircular canals. Normal vestibular aqueduct.

Normal aditus ad antrum and mastoid air cells. Normal petrous apex. Normal carotid canal. Normal jugular fossa.

Normal right external auditory canal with intact scutum.

LEFT TEMPORAL BONE:

Normal left osseous internal auditory canal.

Normal visualized ossicles and tympanic cavity. Normal left cochlea and semicircular canals. Normal vestibular aqueduct.

Normal aditus ad antrum and mastoid air cells. Normal petrous apex. Normal carotid canal. Normal jugular fossa, larger on the left than the right, compatible with dominant left jugular bulb.

Normal left external auditory canal with intact scutum.

ADDITIONAL:

Chronic sinusitis, with mucosal thickening most significantly involving the left maxillary sinus.

IMPRESSION:

Normal appearance of bilateral temporal bone structures on unenhanced temporal bone CT. If the patient has sensorineural hearing loss, consider further evaluation with MRI brain and internal auditory canals.

Chronic sinusitis.

Electronically Signed:

Diane R. Newton, M.D.

2014/02/25 at 12:07 EST

Tel 216-956-8534, Service support 888-557-3517, Fax 216-255-5701

BARNWELL COUNTY HOSPITAL 811 Reynolds Road Barnwell, SC 29812

ACCOUNT NO. 715456

ADMIT DATE 11/24/11 TIME 11:37

MEDICAL RECORD NO. 401006

PATIENT INFORMATION

NAME CRANE DANIEL B

ADDRESS

PHONE

SSN

DOB

DIS DATE

DOWAGE 11/11/10 1:37

SEX M

RACE W

RELIGION BAPTIST

MARRIAGE STATUS MARRIED

PATIENT TYPE PR

SERVICE LOCATION EMERGENCY

ROOMED

ADM SOURCE

PREV ADM DATE 03/21/11

EMPLOYER INFORMATION

NAME AND EMPLOYER

ADDRESS

PHONE

SSN

RELATION

PHYSICIAN INFORMATION

ADMITTING DR. DR. PAUL

ATTENDING DR. DR. PAUL

FAMILY DR. DR. PAUL

OFFICE

NEXT OF KIN

NAME LOVE, KIMBERLY

ADDRESS

PHONE

WORK

RELATION WIFE

GUARANTOR INFORMATION

NAME CRANE DANIEL B

ADDRESS

PHONE

SSN

RELATION

EMPLOYER SELF EMPLOYED

ADDRESS

PHONE

SSN

RELATION

PERSON TO NOTIFY

NAME LOVE, KIMBERLY

ADDRESS

PHONE

WORK

RELATION WIFE

INSURANCE INFORMATION

PRIMARY WILLIAMS HEALTH PLANS, INC.

ADDRESS CLAIMS DEPARTMENT

PHONE

POLICY# 1061213007

GROUP#

COV#

AUTH#

SUBSCRIBER CRANE, DANIEL B

REASON FOR VISIT

SECONDARY SELF PAY/OTHER INSURANCE

ADDRESS

PHONE

POLICY# 03018407

GROUP#

AUTH#

SUBSCRIBER CRANE, DANIEL B

TERTIARY

ADDRESS

PHONE

POLICY#

GROUP#

AUTH#

SUBSCRIBER

COMMENTS

Past History/Current Presence of MRSA?

CODING

DISCHARGE DISPOSITION

TRANSFER TO

FACILITY

Patient verifies that all information is correct

ADMIT CLERK WILSON

Patient Signature

Date

Time

CRANE, DANIEL R 03/26/12
V 735456 M 37Y M 40006
BA 28
ATN: ORA 10000
PCP: ROUNDE DEAN

EMERGENCY DEPARTMENT PHYSICIAN ORDERS
SOUTHERN BAURETTO HOSPITAL

Room	HEMATOLOGY	Pharmacy	Phy.	Chemist	Ther.	GASTRO	Pharm.	Phy.	Pharm.
	BLEED/DIT CBC					GIEN	SPENT		
	INFLUENZA					ADDERIN			
	MONO					CLIN			
	PT PTT QP					Without CONTRAST or			
	REV					CONTRAST PO IV XRD			
	RAYB STREET					Ultrasound			
	SEBRATE								
	SERUM FOG (G.M.M.)								
	TAX FOG UNIT/REGA					CARDIORESPIRATORY			
	CHEMISTRIES					ENG			
	AMYLASE LIPASE					OXYGEN L/M			
	GMP CUP					ABC			
	RIN					VENESCHIM TV RR			
	CARDIACENZYMES					MISCELLANEOUS TREATMENTS			
	DEXTRASTEX					CARDIO MONITOR			
	MAGNESIUM TSH					POLEY GATHETER			
	ETOH					NEED WOUNDS IRRIGATION			
	EVULSHER					IN LINE DISSECTION CANALS			
						DRESSING CHANGE			
						SUTURE REMOVAL			
	URINE					DIAPHRAGM			
	UA (REF) LDS UNCG					Physician consultation			
	MICROBIOLOGY					Low Enhancement Notification of MS x50			
	ALZACER VITC					Mental Health Counselor			
	ROH					Psych Evaluation via Telecon			
	VETERINA					ANG 2 CONSULT NURSING HAVE patient at home			
	GLANDY/NEONOMA					DSS Material			
	HEMOLOGY					Forest Central Consultation			
	CAS OF					IV Therapy (Nurse Administered) (Nurse Trained)			

ORTHOSTATICS (seated)		INTV	QFE	SIZE
Time ()	Time ()	INTV	QFE	SIZE
P	P			
P	P			
P	P			

MEDICATION ALLERGIES	No Known Drug Allergies

Time Order	Medication/Treatment	Reference # (Date) TV 114-114 14 30 10	Result	Start/Stop/Time	Time	Pain (1-10)
11:40	Penicillin 600,000	100	100	1832		100
11:40	Tylenol 325 mg	100	100	1837		100
11:40	Penicillin 500,000 x 2 = 1000	100	100	1938		100
	Patient Discharge					

My	8:55	18 ²	✓ See all Michael's and Blue's and 2nd year WebCollaps
Phyllis Sanders	Date	Time	Drawn 5/23/13 JK

ExitCare® Patient Information: Daniel Crane - ID# 235456 - MR# 404008

Madison County Hospital
 811 Kentucky Road
 Danville, NC 29112
 813-235-1100

PATIENT CARE INSTRUCTIONS Provided by EXITCARE®

Patient Information:

Patient ID: 235456

Patient Name: Daniel Crane

Responsible Adult:

Patient Weight: 185 lbs / 6'2"

Patient DOB:

Patient Phone Number:

Patient Medical Record Number: 454008

Patient Address:

Patient Email:

Patient Height: 5ft 11in

Patient Gender: M

Visit Information:

Visit Start Date: 3/20/2014

Discharge Date/Time: 3/28/2014 7:47:53 PM

Primary Care/Ref: Drago, Paul

Department: ED

diag. CONDUCTIVE HEARING LOSS MIDDLE EAR (from
 60938903)

FAIL FROM COMMODE TOILET (from 60938903)

Fracture Rib (Fractures, Rib)

Primary Follow-up Info: KOLKOS, DEAN (0091000-0000)

User Information:

Login ID:

UserName:

Dept: ED

>>> Rib Fracture, Easy-to-Read - English - (A62312AB-4609-4F9A-88B6-F8B0053CB032)

Additional Notes:

DISCHARGED HOME

RIGHT RIB FRACTURE #7

TAKE MOTRIN/TYLENOL FOR PAIN AS NEEDED

TAKE MEDICATION AS PRESCRIBED PERCOCET

FOLLOW UP WITH PRIMARY CARE PHYSICIAN

Signature acknowledges that Patient and/or Guardian has received these instructions and understands them

[Signature]
 Patient or Guardian Signature

Time/Date:

[Signature]
 Witnessed & Instructed by

3-28-14
 Time/Date

978
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 84 9990

1/1 ©2014 ExitCare, LLC 3/26/2014 7:49:16 PM

Crane 0017



RMC Barnwell Healthcare, Inc.
811 Reynolds Rd, Barnwell SC 29812
803-259-1000 Emergency Center

Patient: CRANE, DANIEL Date: 03-26-2014 Time: 19:50:11 Page: 1

Instructions for CRANE, DANIEL

Date: 03-26-2014 Your care provider was: DR. DRAGO

Oral narcotic medication:

You have been given a prescription for pain control. This medication is a narcotic. It's best taken with food, as nausea can result if taken on an empty stomach.

Don't operate machinery or drive within six hours of taking this medication. Do not combine this medicine with alcohol or with any medication which can cause sedation (such as cold tablets or sleeping pills) unless you get permission from the physician.

Narcotics tend to cause constipation. If possible, drink plenty of fluids and eat a diet high in fiber and fruits.

I have received a copy of these instructions and have had an opportunity to discuss them. My questions have been answered. (Recibí estas instrucciones y he recibido copia de ellas.)



Patient (or representative)

Witness

Name: Crane Daniel
Patient ID: 404006
Account Number: 735456
History:
Date Of Birth: _____
Study: CT CHEST W/O CONTR
Facility: Barnwell County Hospital
Physician: 148835
Date Of Service: 03/26/2014 17:57:00

STUDY: CT CHEST WITHOUT CONTRAST

REASON FOR EXAM: Male, 37 years old. Fell this morning. Right-sided chest pain.

RADIATION DOSAGE (If Supplied By Facility): CTDIvol = () mGy, DLP = () mGycm

TECHNIQUE: High resolution transaxial imaging was performed without the administration of intravenous contrast material. Sagittal and coronal reconstruction.

COMPARISON: None.

FINDINGS:

The lungs are well expanded and clear. No pneumothorax. No pleural effusions.

Normal heart and pericardium.

Normal mediastinum. Normal hilar regions. Normal unenhanced pulmonary arteries. Normal aorta arch and descending thoracic aorta.

There is an acute nondisplaced fracture of the right anterior seventh rib series 3/92, series 401/19. There is only minimal adjacent edema. No other rib fractures. There are minimal degenerative changes in the spine. The bony structures are otherwise unremarkable.

There is no demonstrated abnormality of the visualized upper abdomen.

IMPRESSION:

Acute nondisplaced transverse fracture of the anterior right seventh rib.

Otherwise normal unenhanced CT Chest examination.

Electronically Signed:

Peter Fitzer, M.D.

2014/03/26 at 19:38 EDT

Tel 216-816-8159, Service support 888-557-3617, Fax 216-255-5701

Name: Crane Daniel
Patient ID: 404006
Account Number: 735456
History:
Date Of Birth: _____
Study: CT CHEST W/O CONTR
Facility: Barnwell County Hospital
Physician: 148835
Date Of Service: 03/26/2014 17:57:00

STUDY: CT CHEST WITHOUT CONTRAST

REASON FOR EXAM: Male, 37 years old. Fell this morning. Right-sided chest pain.

RADIATION DOSAGE (If Supplied By Facility): CTDIvol = () mGy, DLP = () mGycm

TECHNIQUE: High resolution transaxial imaging was performed without the administration of intravenous contrast material. Sagittal and coronal reconstruction.

COMPARISON: None.

FINDINGS:

The lungs are well expanded and clear. No pneumothorax. No pleural effusions.

Normal heart and pericardium.

Normal mediastinum. Normal hilar regions. Normal unenhanced pulmonary arteries. Normal aorta arch and descending thoracic aorta.

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There is no demonstrated abnormality of the visualized upper abdomen.

IMPRESSION:

Acute nondisplaced transverse fracture of the anterior right seventh rib.

Otherwise normal unenhanced CT Chest examination.

Electronically Signed:

Peter Fitzer, M.D.

2014/03/26 at 19:38 EDT

Tel 216-816-8159, Service support 888-557-3617, Fax 216-255-5701

RETURN 3/10 @ 10:00 WJ
WVCH Hospital

PATIENT: Danny Crane, Jr.
CHART # 87634
DATE: 2/20/14

HISTORY OF PRESENT ILLNESS: Danny Crane comes in for evaluation of his hearing. He had a machine blow up in his face a couple days ago and he is having some difficulty hearing.

PHYSICAL EXAMINATION

HEAD: Normocephalic.

EYES: PERRLA, full EOM.

EARS: Bilateral tympanic membrane perforations.

AUDIO: He does seem to be having difficulty hearing. He was sent for an audiogram which showed a severe sensorineural hearing loss in bilateral ears.

NOSE: Unremarkable.

OROPHARYNX: Unremarkable.

NECK: Supple.

LARYNX: Normal.

ASSESSMENT: Severe sensorineural hearing loss

PLAN: I would like to get a CT scan of his temporal bones. I would like to see him back in a couple of weeks. Hopefully his thresholds will improve.

John F. Ansley, M.D.
JFA/sb

3-6-14 audid + N

Crane 0021

CAROLINA ENT CLINIC

832 Cook Road

Orangeburg, SC 29118

(803)536-5511

Date 12/20/14

Patient Name CANE, JR, DANNY

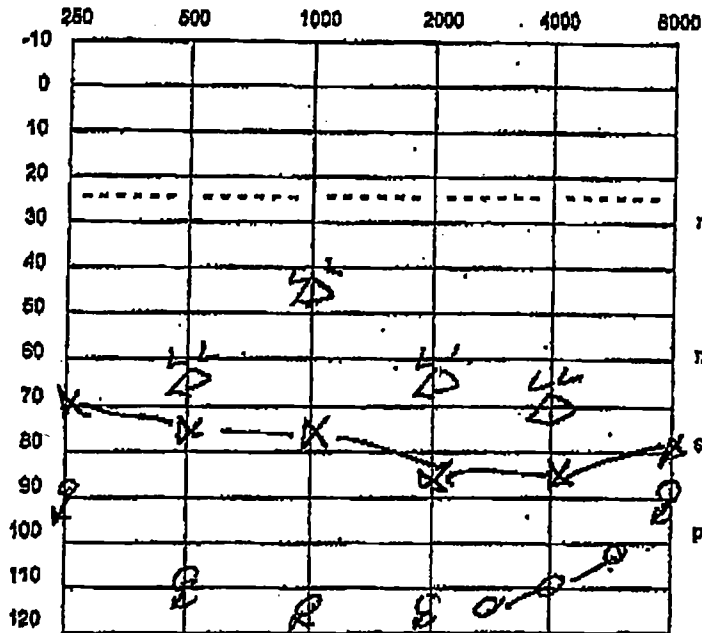
DOB/Age

Pure Tone Audiogram

Frequency in Hz

earphone / insert earphone / sound field

Test Reliability/ Validity



Speech Scores (dB)		
	Right	Left
SRT/SAT	11.0	8.0
Word Discrimination (five voice)	100%	92%
MCL		10.5
UCL		

	R (red)	L (blue)
Air Conduction	O	X
With masking	Δ	□
Bone Conduction	<	>
With masking	[	]
NO RESPONSE	✓	✗

Immittance Right Ear			
Volume	Pressure	Compliance	

Immittance Left Ear			
Volume	Pressure	Compliance	

Acoustic Reflex Thresholds						
Hz	500	1000	2000	4000	Reflex Decay	
RI					500	1000
RO						
LI					500	1000
LC						

Comments Repeat AFR in few days -- possible TTS

Audiologist Signature
G6161 Clinical Audiometer

BARNWELL COUNTY HOSPITAL

87634

Name: Crane Daniel
Patient ID: 404006
Account Number: 733715

History: REASON FOR EXAM: sudden hearing loss. pt states he had a tire changer with 150 psi blow up in his face last week and he lost hearing in both ears

Date of Birth: [REDACTED]

Study: CT - Temporal Bones, CT Temporal Bones W/O Contrast

Facility: Barnwell County Hospital

Physician: CASSONE, ROCCO

Date of Service: 02/25/2014 10:0232

STUDY: CT TEMPORAL BONES WITHOUT CONTRAST

REASON FOR EXAM: Male, 37 years old, Sudden hearing loss. Patient states he had a tire changer with 150 PSI blow up in his face last week, with loss of hearing both ears.

RADIATION DOSAGE (if supplied by facility): OTDival = () mGy, DLP = () mGycm

TECHNIQUE: The patient was scanned in a multi detector CT scanner. Transaxial imaging was performed without the administration of intravenous contrast material. Sagittal and coronal images were reconstructed.

COMPARISON: None.

FINDINGS:

RIGHT TEMPORAL BONE:

Normal right osseous internal auditory canal.

Normal visualized ossicles and tympanic cavity. Normal right cochlea and semicircular canals. Normal vestibular aqueduct.

Normal aditus ad antrum and mastoid air cells. Normal petrous apex. Normal carotid canal. Normal jugular fossa.

Normal right external auditory canal with intact scutum.

LEFT TEMPORAL BONE:

Normal left osseous internal auditory canal.

Normal visualized ossicles and tympanic cavity. Normal left cochlea and semicircular canals. Normal vestibular aqueduct.

Normal aditus ad antrum and mastoid air cells. Normal petrous apex. Normal carotid canal. Normal jugular fossa, larger on the left than the right, compatible with dominant left jugular bulb.

Normal left external auditory canal with intact scutum.

ADDITIONAL:

Chronic sinusitis, with mucosal thickening most significantly involving the left maxillary sinus.

IMPRESSION:

Normal appearance of bilateral temporal bone structures on unenhanced temporal bone CT. If the patient has sensorineural hearing loss, consider further evaluation with MRI brain and internal auditory canals.

Chronic sinusitis.

Electronically signed:

404006 / Crane Daniel

2014-02-25 12:08:02 1 of 2

Case 167371453

Crane 0023

PAGE 08/09
Page 1 of 2
TO: 91803336036 63636

CAROLINA ENT CLINIC

0035414387
From: BCH Radispheres Dept

0836368636 11:29 04/10/2014

P61

P110

PATIENT: Danny Crane
CHART # 87634
DATE: 3/6/14

HISTORY OF PRESENT ILLNESS: Danny Crane comes in for evaluation of his ears.
He is still having difficulty hearing.

PHYSICAL EXAMINATION

HEAD: Normocephalic.

EYES: PERKLA, full EOM.

EARS: Clear.

AUDIO: He actually had a shift downward on audiogram.

NOSE: Unremarkable.

OROPHARYNX: Unremarkable.

NECK: Supple.

LARYNX: Normal.

ASSESSMENT: Rule out sensorineural hearing loss.

PLAN: He is scheduled for an ABR down at MUSC. I will see him back after completion of this.

John F. Ansley, M.D.
JFA/sb

3-14-14 note to Samuels Law Firm
3-22-14 note to SCVRA

Crane 0024

CAROLINA ENT CLINIC

832 Cook Road

Orangeburg, SC 29118

(803)536-5511

Date 8/6/14

Patient Name CRASIE, RANVY

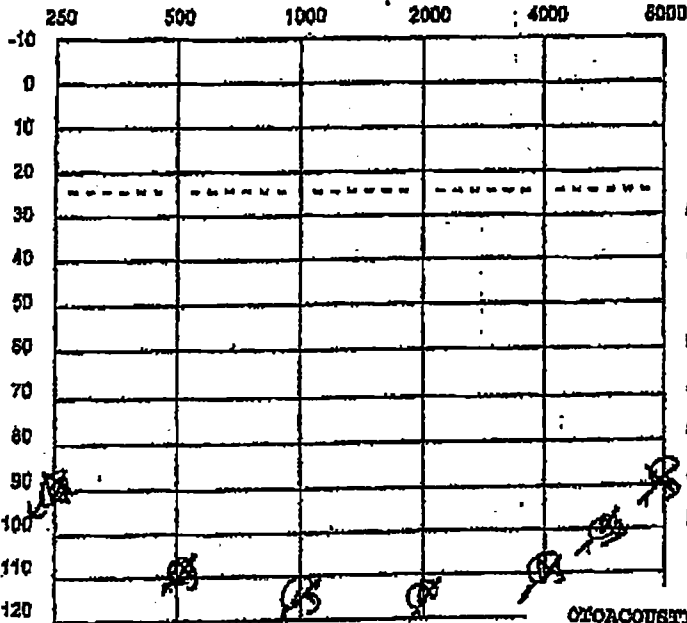
DOB/Age 1.1

Pure Tone Audiogram

Frequency in Hz

earphone / insert earphone / sound field

Test Reliability/ Validity _____



Speech Scores (dB)		
	Right	Left
SRT/SAT	10/10	40
Word Discrimination (live voice)	0% @ 1/2	96% @ 30
MCL	1	
UCL		

	R (red)	L (blue)
Air Conduction	O	X
With masking	Δ	□
Bone Conduction	<	>
With masking	I	I

OTOACOUSTIC EMISSION (OAE) TEST RESULTS

Name: _____ Ear: RIGHT Result: PASS
 ID#: _____ Test#: 6271 Tester: _____
 Date: 08/06/14 12:27:09 Protocol: AJ

Freq.	Result	DP	HF	DP-HF
8000	PASS	-5	-20	14
4000	PASS	2	-20	22
3000	PASS	-6	-20	14

OTOACOUSTIC EMISSION (OAE) TEST RESULTS

Name: _____ Ear: LEFT Result: PASS
 ID#: _____ Test#: 6270 Tester: _____
 Date: 08/06/14 12:30:26 Protocol: AJ

Freq.	Result	DP	HF	DP-HF
8000	PASS	-3	-20	17
4000	REFER	-7	-19	12
3000	PASS	-8	-18	10
2000	PASS	1	-12	13

Immittance Right Ear			
Volume	Pressure	Compliance	
1	8	15	15

Immittance Left Ear			
Volume	Pressure	Compliance	
1	17	-20	14

Comments Refused for ABR study to obtain more objective measures of hearing.

[Signature]
 Audiologist Signature
 GSI 61 Clinical Audiometer

Crane 0025



CAROLINA EAR, NOSE AND THROAT CLINIC

Medical Arts Center, 1175 Cook Road, Suite 230, Orangeburg, SC 29118

803-536-5511

Fax: 803-536-0686

Otolaryngology

Allergy

Facial Plastic Surgery

ROCCO D. GASSONE, M.D., FACS
Diplomat American Board
of Otolaryngology

JOHN F. ANSLEY, M.D.
Diplomat American Board
of Otolaryngology

RONALD LUNN, M.A., CCC-A
Audiologist

OUTGOING REFERRAL FORM

DATE: 3.10.14

PATIENT'S NAME: Danny Crane Jr.

PATIENT'S PHONE NUMBER: _____

PATIENT'S ADDRESS: _____

REFERRING PHYSICIAN: Dr. Ansley

REASON FOR REFERRAL: ABR testing

PATIENT REFERRED TO: Dr.

APPOINTMENT DATE AND TIME: _____

COMMENTS: 1-800-922-5250 Opt #2

- First Choice / ATCC / ~~ATCC~~

Crane 0026



Barnwell Family Medicine

85 Wren Street
Barnwell, SC 29812
Phone: (803) 259-5762
Fax: (803) 259-3050

Daniel(danny) B Crane Jr

Patient #: 3001883

DOB: [REDACTED]

Date of Encounter: 03/31/2014 01:40 PM

History of Present Illness

Med Ky, DO 04/23/2014 09:02 AM

Patient words: Fell last Tuesday morning getting out of bath. Was seen in ER and given oxycodone for pain management but now out of medication. Patient is now in pain on right side. Patient did not hit head when fell. Having some trouble obtaining a full breath. Stopped smoking early last week.

The patient is a 37 year old male who presents with a complaint of RIGHT RIB PAIN.

History

Med Ky, DO 03/31/2014 02:13 PM

Allergy

No Known Drug Allergies (02/08/2012)

Past Medical

Constipation (564.0) (02/06/2007)

Polyuria (788.42) (05/24/2007)

Bipolar affective disorder, manic (296.40) (05/24/2007)

Polydipsia (783.5) (05/24/2007)

Review of Systems

Med Ky, DO 03/31/2014 02:03 PM

General: Not Present- Night Sweats, Appetite Loss, Fatigue, Fever, Weight Gain > 10lbs. and Weight Loss > 10lbs..

Respiratory: Not Present- Cough.

Cardiovascular: Not Present- Shortness of Breath and Swelling of Extremities.

Psychiatric: Present- Anxiety and Easily Irritated. Not Present- Depression.

See HPI

Vital Signs

Date:	03/31/2014 01:40 PM	Height:	71 in	Note:
Temperature:	98.4 °F	Weight:	199 lb	
Pulse:	81	Waist:		
Respirations:	20	BMI:	27.75 kg/m²	
Peak Flow:		BSA:	2.13 m²	
Blood Pressure:	140/95			
Reading Type:	Manual			

Physical Exam

Mel Ky, DO, 03/31/2014 02:28 PM

General

General Appearance - Cooperative and Well groomed. Not in acute distress or Sickly. **Build & Nutrition** - Well nourished. **Posture** - Normal posture. **Gait** - Normal. **Hydration** - Well hydrated.

Eye

Sclera/Conjunctiva - Bilateral - Normal. **Pupil** - Bilateral - Accommodating, Direct reaction to light normal and Equal.

ENMT**Global Assessment:**

Upon examination of the ears, nose, mouth and throat - normal pinnae with no scars, masses or lesions, otoscopic exam reveals normal external auditory canals, with tympanic membranes clear and mobile, on external inspection of the nose, there are no scars, lesions or bony deformities, internal examination of the nose reveals midline septum and pink nasal mucosa with normal turbinates, examination of the oral cavity reveals normal lips, teeth, gums and oral mucosa and hard and soft palates, tongue, tonsils and posterior pharynx are moist and symmetric without lesions.

Mouth and Throat

Salivary Glands: Parotid Glands - Bilateral - normal.

Chest and Lung Exam

Inspection: Shape - Symmetric. **Movements** - Symmetrical. **Accessory muscles** - No use of accessory muscles in breathing.

Percussion:

Quality and Intensity: - Percussion normal.

Palpation: - Palpation normal.

Auscultation:

Adventitious sounds: Inspiratory wheeze - Note: inspiratory wheezing bilaterally

Cardiovascular

Inspection: Carotid artery - Bilateral - Inspection Normal.

Palpation/Percussion: Examination by palpation and percussion reveals - No Thrills.

Cardiac Borders - Normal.

Auscultation: Rhythm - Regular. **Heart Sounds** - Normal heart sounds, S1 WNL and S2 WNL.

Murmurs & Other Heart Sounds: Auscultation of the heart reveals - No Murmurs.

Peripheral Vascular

Lower Extremity: Inspection - Bilateral - No Varicose veins.

Palpation: Edema - Bilateral - No edema.

Musculoskeletal

Tenderness noted to palp over right rib. No edema, erythema or lacerations noted to abdomen.

Assessments & Plans

Mel Ky, DO, 03/31/2014 02:34 PM

Rib fracture (807.00)**Medications**

Started Flonase 50MCG/ACT, 2 (two) spray each, 1 Patch, 03/31/2014, Ref: x12.

Started CIPRO 500MG, 1 (one) Tablet two times daily, #20, 03/31/2014. No Refill.

Sinusitis, acute (461.9)**Medications**

Started Hydrocodone-Acetaminophen 5-325MG, 1 (one) Tablet every 4-6 hrs prn pain, #120, 03/31/2014, No Refill.

Nicotine addiction (305.1)

Bipolar affective disorder, manic (296.40)

Medications

Continued Venlafaxine HCl 50MG, 1 Tablet TID. #90, 03/31/2014, Ref. x3.

Signed Electronically by Mol Ky DO03/31/2014 01:40 PM (04/25/2014)

Daniel (danny) B Crane Jr

03/31/2014 01:40 PM

Location: Barnwell Family Medicine

Patient #: 2001993

DOB: [REDACTED]

Marital status: Married / Language: English / Race: White / Ethnicity: Not Hispanic or Latino

Gender: Male

History of Present Illness (HPI) (HPI DO: 04/28/2014 09:02 AM)

Patient words: Fell last Tuesday morning getting out of bath. Was seen in ER and given oxycodon for pain management but now out of medication. Patient is now in pain on right side. Patient did not hit head when fell. Having some trouble obtaining a full breath. Stopped smoking early last week.

The patient is a 37 year old male who presents with a complaint of RIGHT RIB PAIN .

Allergies (HPI) (HPI DO: 03/31/2014 02:13 PM)

No Known Drug Allergies 02/08/2012

Past Medical History (HPI) (HPI DO: 03/31/2014 02:13 PM)

Constipation (564.0) (02/06/2007)

Polyuria (788.42) (05/24/2007)

Bipolar affective disorder, manic (296.40) (05/24/2007)

Polydipsia (783.5) (05/24/2007)

Review of Systems (HPI) (HPI DO: 03/31/2014 02:13 PM)**General:** Not Present- Night Sweats, Appetite Loss, Fatigue, Fever, Weight Gain > 10lbs. and Weight Loss > 10lbs..**Respiratory:** Not Present- Cough.**Cardiovascular:** Not Present- Shortness of Breath and Swelling of Extremities.**Psychiatric:** Present- Anxiety and Easily Irritated. Not Present- Depression.*See HPI***Vitals (SHEILA CRANE: 03/31/2014 01:40 PM)**

03/31/2014 01:40 PM

Weight: 199 lb Height: 71 in

Body Surface Area: 2.13 m² Body Mass Index: 27.75 kg/m²

Temp.: 98.4 °F (Oral) Pulse: 81 (Regular) Resp.: 20 (Unlabored)

BP: 140/95 Manual (Sitting, Left Arm, Standard)

Physical Exam (HPI) (HPI DO: 03/31/2014 02:25 PM)

The physical exam findings are as follows:

General

General Appearance - Cooperative and Well groomed. Not in acute distress or Sickly. **Build & Nutrition** - Well nourished. **Posture** - Normal posture. **Gait** - Normal. **Hydration** - Well hydrated.

Eye

Sclera/Conjunctiva - Bilateral - Normal. **Pupil** - Bilateral - Accommodating, Direct reaction to light normal and Equal.

ENMT**Global Assessment:**

Upon examination of the ears, nose, mouth and throat - normal pinnae with no scars, masses or lesions, otoscopic exam reveals normal external auditory canals, with tympanic membranes clear and mobile, on external inspection of the nose, there are no scars, lesions or bony deformities, internal examination of the nose reveals midline septum and pink nasal mucosa with normal turbinates, examination of the oral cavity reveals normal lips, teeth, gums and oral mucosa and hard and soft palates, tongue, tonsils and posterior pharynx are moist and symmetric without lesions.

Mouth and Throat:

Salivary Glands: Parotid Glands - Bilateral - normal.

Chest and Lung Exam

Inspection: Shape - Symmetric. **Movements** - Symmetrical. **Accessory muscles** - No use of accessory muscles in

Barnwell Family Medicine, <http://www.lowcountryhealthcaresystem.com/>

breathing.

Percussion:

Quality and Intensity: - Percussion normal.

Palpation: - Palpation normal.

Auscultation:

Adventitious sounds: Inspiratory wheeze - Note: Inspiratory wheezing bilaterally

Cardiovascular

Inspection: Carotid artery - Bilateral - Inspection Normal.

Palpation/Percussion: Examination by palpation and percussion reveals - No Thrills.

Cardiac Borders: - Normal.

Auscultation: Rhythm - Regular. **Heart Sounds:** - Normal heart sounds, S1 WNL and S2 WNL.

Murmurs & Other Heart Sounds: Auscultation of the heart reveals - No Murmurs.

Peripheral Vascular

Lower Extremity: Inspection - Bilateral - No Varicose veins.

Palpation: Edema - Bilateral - No edema.

Musculoskeletal

Tenderness noted to palp over right rib. No edema, erythema or lacerations noted to abdomen.

Assessment & Plan (Med K), DO: 03/31/2014 02:34 PM

Rib fracture (807.00)

Current Plans:

- Started Flonase 50MCG/ACT, 2 (two) spray each, 1 Patch, 03/31/2014, Ref. x12.
- Started CIPRO 500MG, 1 (one) Tablet two times daily, #20, 03/31/2014, No Refill.

Sinusitis, acute (461.9)

Current Plans:

- Started Hydrocodone-Acetaminophen 5-325MG, 1 (one) Tablet every 4-6 hrs prn pain, #120, 03/31/2014, No Refill.

Nicotine addiction (305.1)

Current Plans:

Bipolar affective disorder, manic (296.40) Onset: 05/24/2007

Current Plans:

- Continued Venlafaxine HCl 50MG, 1 Tablet TID, #90, 03/31/2014, Ref. x3.

BARNWELL COUNTY HOSPITAL

Name: Crane, Daniel
 Patient ID: 404000
 Account: 795456
 History: REASON FOR EXAM: FALL PATIENT FELL, THIS AM. COMPLAINS OF PAIN TO RIGHT SIDE OF CHEST
 Date of Birth: 01-01-1957, M. Chest High Resolution W/O Contrast
 Facility: Barnwell County Hospital
 Physician: Dragg, Paul
 Date of Service: 03/28/2014 16:41:01

STUDY: CT CHEST WITHOUT CONTRAST

REASON FOR EXAM: Male, 57 years old. Fell this morning. Right-sided chest pain.

RADIATION DOSEAGE (If Supplied By Facility): CT DIAP = (I mGy, DLP = () mGy cm)

TECHNIQUE: High resolution transaxial imaging was performed without the administration of intravenous contrast material. Sagittal and coronal reconstruction.

COMPARISON: None.

FINDINGS:

The lungs are well expanded and clear. No pleural effusion. No pleural emphysema.

Normal heart and pericardium.

Normal mediastinum. Normal hilar regions. Normal unenhanced pulmonary arteries. Normal aortic arch and descending thoracic aorta.

There is an acute nondisplaced fracture of the right anterior seventh rib, series 3702, series 401/16. There is only minimal adjacent edema. No pleural fractures. There are minimal degenerative changes in the spine. The bony structures are otherwise unremarkable.

There is no demonstrable abnormality of the visualized upper abdomen.

IMPRESSION:

Acute nondisplaced transverse fracture of the anterior right seventh rib.

Otherwise normal unenhanced CT chest examination.

Electronically Signed:


 Paul Dragg, M.D.
 2014/03/28 at 16:38 EDT
 Tel 216-816-3159, Service Support 888-587-3814, Fax 216-266-5701

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404000 / Daniel Crane

2014-03-28 22:59:53 1:07:11

Crane 1652059R

NOV 27 2013 03:43 From: Scott, Daniel P. 174100 893.541.4179

To: 893.541.4179

Page: 19/13

BARNWELL COUNTY HOSPITAL 811 Reynolds Road, Barnwell, SC 29812		
ACCOUNT NO: 73456	ADMIT DATE: 12/26/11	MEDICAL RECORD NO: 404606
PATIENT INFORMATION NAME: CRANE, DANIEL B. ADDRESS: [REDACTED] PHONE: [REDACTED] DOB: [REDACTED] SEX: M RACE: W RELIGION: BAPTIST MARITAL STATUS: MARRIED		PATIENT TYPE: EX SERVICE LOCATION: MEMBERSHIP ROOMED: ACM SOURCE: PREV ADMIT DATE: 10/27/11
EMPLOYER INFORMATION NAME: [REDACTED] ADDRESS: [REDACTED] PHONE: [REDACTED] SPOUSE EMP: [REDACTED]		PHYSICIAN INFORMATION NAME: DR. DAVID D. [REDACTED] ADDRESS: [REDACTED] PHONE: [REDACTED] RELATION: WIFE
GUARANTOR INFORMATION NAME: CRANE, DANIEL B. ADDRESS: [REDACTED] PHONE: [REDACTED] RELATION: [REDACTED]		NEXT OF KIN NAME: LOVE, KENNEDY ADDRESS: [REDACTED] PHONE: [REDACTED] RELATION: WIFE
INSURANCE INFORMATION PRIMARY POLICY: [REDACTED] ADDRESS: [REDACTED] PHONE: [REDACTED] POLICY #: [REDACTED] GROUP #: [REDACTED] SUBSCRIBER: CRANE, DANIEL B. RELATION: FATHER		SECONDARY SELF-PAY/OTHER INSURANCE NAME: [REDACTED] ADDRESS: [REDACTED] PHONE: [REDACTED] POLICY #: [REDACTED] GROUP #: [REDACTED] SUBSCRIBER: CRANE, DANIEL B.
TERTIARY NAME: [REDACTED] ADDRESS: [REDACTED] PHONE: [REDACTED] POLICY #: [REDACTED] GROUP #: [REDACTED] SUBSCRIBER: [REDACTED]		COMMENTS: [REDACTED]
PHYSICIAN HISTORY/PHYSICIAN PRESENT: [REDACTED]		
DISCHARGE/ADMISSION: [REDACTED]		
Patient verifies that all information is correct.		
Physician Signature: [REDACTED]		

198-27-2014 03:44 from Southern Palmetto

803 541 4175

To: 85555555

Page: 11/13

198-27-2014 03:44 from Southern Palmetto

Barnwell County Hospital
Medical Screening Record
EMERGENCY PHYSICIAN RECORD
 Patient Name: Paul, Diego
 Room: 100

TIME: 10:00 ROOM: 100
 HISTORY: fall from roof
 AGE: 30 RACE: M
 SEX: M EXAMINER: Dr. [Signature]
 HPI: fall from roof

Chief Complaint: Fall from roof
History of Present Illness: Patient fell from roof of building at work. He was working on the roof when he lost his footing and fell approximately 20 feet. He landed on his back and neck. He was unable to move and was taken to the hospital by ambulance. He was diagnosed with a cervical fracture and a lumbar fracture. He is currently in the hospital and is being treated with surgery and pain management.
Physical Exam: Neck: tender, ROM limited. Back: tender, ROM limited.
Neurological Exam: Strength: 5/5. Reflexes: 2+.
Sensorium: Alert and oriented.

ROS: Cardiovascular: normal. Respiratory: normal. Gastrointestinal: normal. Musculoskeletal: normal. Endocrine: normal. Hematological: normal. Urinary: normal. Reproductive: normal. Skin: normal. Neurological: normal.

PAST HX: None.

SOCIAL HX: None.

FAMILY HX: None.

DATE: 10/26/14
 TIME: 10:00
 NAME: Paul, Diego
 ROOM: 100

PHYSICAL EXAM:
 General: Well appearing.
 Head: Normal.
 Neck: Tender.
 Chest: Clear.
 Abdomen: Normal.
 Extremities: Normal.
 Neurological: Normal.

Neurological Exam:
 Strength: 5/5.
 Reflexes: 2+.
 Sensation: Normal.
 Gait: Normal.

Neck Exam:
 ROM: Limited.
 Tenderness: Yes.

Back Exam:
 ROM: Limited.
 Tenderness: Yes.

Neurological Exam:
 Strength: 5/5.
 Reflexes: 2+.
 Sensation: Normal.
 Gait: Normal.

Neck Exam:
 ROM: Limited.
 Tenderness: Yes.

Back Exam:
 ROM: Limited.
 Tenderness: Yes.

Neurological Exam:
 Strength: 5/5.
 Reflexes: 2+.
 Sensation: Normal.
 Gait: Normal.

Neck Exam:
 ROM: Limited.
 Tenderness: Yes.

Back Exam:
 ROM: Limited.
 Tenderness: Yes.

Neurological Exam:
 Strength: 5/5.
 Reflexes: 2+.
 Sensation: Normal.
 Gait: Normal.

Neck Exam:
 ROM: Limited.
 Tenderness: Yes.

Back Exam:
 ROM: Limited.
 Tenderness: Yes.

MAN-27-2014-0344-Francoisbueno Palmeiro

T4: 92590250

ॐ नमो भगवते वासुदेवाय

CRANE, DANIEL A. 02/26/14
NY 725456 16 175 M 104005

ER,
WOM: PRAGE: 390L
RIG: KOUQE: 224

EMERGENCY DEPARTMENT PHYSICIAN ORDERS
SOUTHERN PALMETTO HOSPITAL

[illegible]

MAR 27-2014 03:43 From: Southern Palmetto

003 541, 4178

Tel: 525-3353

Page: 13/13

From: Radhargh

Wed 26 Mar 2014 07:07:14 PM EDT

Page 1 of 1

BARNWELL COUNTY HOSPITAL

Name: Chappin, Daniel
 Patient ID: 404046
 Account Number: 135584
 Reason for Exam: FALL PATIENT FELL THIS AM COMPLAINS OF PAIN TO RIGHT SIDE OF CHEST
 Date of Birth: 01-01-1971
 Study: CT - CHEST High Resolution W/O Contrast
 Facility: Barnwell County Hospital
 Physician: N. J. Smith
 Date of Service: 03/26/2014 11:41:03

STUDY: CT CHEST WITHOUT CONTRAST

REASON FOR EXAM: Male, 47 years old. Fell this morning. Right side chest pain.

ADDITIONAL HISTORY: (Supplied by Facility) CT DUE TO (TINNY, D.F.W.) (MISYON)

TECHNIQUE: High resolution unenhanced CT scan was performed without the administration of intravenous contrast material. Sagittal and coronal reconstructions.

COMPARISON: None.

FINDINGS:

The lungs are well expanded and clear. No pleural effusion. No pleural thickening.

No mediastinal and pericardial enlargement.

Normal mediastinal and hilar contours. Normal unenhanced pulmonary arteries. Normal aorta, arch and descending thoracic aorta.

There is an acute non-displaced fracture of the right anterior rib, 10th rib, 10th rib, 10th rib. There is no rib fracture. No other rib fractures. There are minimal degenerative changes in the spine. The soft tissues are otherwise unremarkable.

There is no abnormality of the visualized upper abdomen.

IMPRESSION:

Acute non-displaced fracture of the anterior right seventh rib.

Otherwise normal unenhanced CT chest examination.

Exam completed by:

N. J. Smith

Physician's Note:

2014/03/26 at 10:38 EDT

Tel: 215-815-1133, Service Support: 800-557-8877, Fax: 215-225-8771

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JUN 07 2014

2014/06/06 10:38 EDT

003 541, 4178

Page 1 of 1

Albany Regional Medical Center
Albany, NY 12201-3307
(518) 447-5000

Patient: CRANE, DANNY
Ordering Physician: Kousko, D.O. Dean T
Attending Physician: Kousko, Dean T

Patient Type: Outpatient

Date of Birth: [REDACTED]
Patient Location: ALC 510

PROCEDURE
CT Head w/ Brain w/o Contrast

EXAM DATE/TIME
03/14/2014 14:54 EDT

CT Brain

Indications: Constant headache, hearing loss.

Technique: From axial images acquired through the brain without contrast.

Contrast Agent: None.

Findings: No acute intracranial hemorrhage is seen in any major vascular territory. No large parenchymal abnormalities are identified. There are no extra-axial fluid collections. The brain is normal in morphology. No midline shift is noted. The visualized paranasal sinuses are clear. The ventricles are non-dilated. There is mucopericardial thickening versus a small pericardial effusion best in the bilateral axillary sinuses.

Technician:

Normal intracranial CT.

Reviewed by: ANTHONY TOOMEY, MD
PID 45448

03/14/2014 15:34:25 7000 20 11140962 1/03/14/2014 15:29:53/10:03/14/2014 15:34:20 4800
03/14/2014 15:34:20
END

This document was electronically signed by ANTHONY TOOMEY, MD on
03/14/2014 15:34:25.

Dictated by: [REDACTED] MD, ANTHONY
Transcribed by: ALT

03/14/2014 15:34:25 PM
Transcribed by: ALT 03/14/2014 3:34 pm

MRN: A1K25186

FUNG: A1K000D149B5120

Accession Number: 55-CT-14-003734

Page 1 of 1



Barnwell Family Medicine

85 Wren Street
Barnwell, SC 29812
Phone: (803) 259-5762
Fax: (803) 259-3050

Daniel(danny) B Crane Jr

Patient #: 3001883

DOB: [REDACTED]

Date of Encounter: 02/25/2014 02:05 PM

History of Present Illness

NELSA NOBLES 02/25/2014 02:06 PM

The patient is a 37 year old male who presents with hearing loss.

Additional reason for visit:

Dizziness

History

NELSA NOBLES 02/25/2014 02:05 PM

Allergy

No Known Drug Allergies (02/08/2012)

Vital Signs

Date:	02/25/2014 02:05 PM	Height:	71 in	Note: -
Temperature:	98.6 °F	Weight:	196 lb	
Pulse:	86	Waist:		
Respirations:	20	BMI:	27.34 kg/m ²	
Peak Flow:		BSA:	2.11 m ²	
Blood Pressure:	126/83			
Reading Type:	Manual			

Physical Exam

Dean T Kookos, DO, 02/25/2014 02:36 PM

UNABLE TO HEAR FOLLOWING AIR LINE EXPLOSION HAD HEARING TEST BY ENT WORKS IN TIRE SHOP
UNABLE TO HEAR AUTO'S IN SHOP

SOME DIZZINESS.

RIGHT EAR CLEAR

RIGHT SIDE HEADACHE

WILL DO CT BRAIN DX SUBDURAL

General

Mental Status - Alert. General Appearance - Not in acute distress.

Head and Neck

Neck

Global Assessment - no lymphadenopathy.

Trachea - midline.

Thyroid

Gland Characteristics - normal size and consistency.

Eyes

Cornea - Bilateral - Normal. Lens - Bilateral - Clear. Fundi - Bilateral - Normal. Pupil - Bilateral - Normal,
Equal, Regular and Round.

ENMT

Ears

Otoscope Exam: Middle Ear - Bilateral - no effusion noted. Tympanic Membrane - Bilateral - tympanic
membrane is amber in appearance, no decreased movement observed and no purulent effusion observed.

Nose and Sinuses

Barnwell Family Medicine, <http://www.lowcountryhealthcaresystem.com/>

Crane 0039

Nasal Mucosa - Bilateral - no congestion observed.

Mouth and Throat

Nasopharynx - no discharge present and no exudate observed.

Chest and Lung Exam

Chest and lung exam reveals - normal excursion with symmetric chest walls, quiet, even and easy respiratory effort with no use of accessory muscles and on auscultation, normal breath sounds, no adventitious sounds and normal vocal resonance.

Cardiovascular

Cardiovascular examination reveals - on palpation PMI is normal in location and amplitude, no palpable S3 or S4. Normal cardiac borders, normal heart sounds, regular rate and rhythm with no murmurs, carotid auscultation reveals no bruits and no digital clubbing, cyanosis, edema; increased warmth or tenderness.

Abdomen - Did not examine.

Neurologic

Neurologic evaluation reveals - alert and oriented x 3 with no impairment of recent or remote memory, normal attention span and ability to concentrate, able to name objects and repeat phrases, appropriate fund of knowledge, normal visual acuity, pupils equal and reactive to light and accommodation, normal sensation of trigeminal nerves, symmetrical functioning of facial nerves, normal hearing, normal gag reflex, symmetrical functioning of accessory nerves, symmetrical functioning of hypoglossal nerve, normal sensation, normal coordination and upper and lower extremity deep tendon reflexes intact bilaterally.

Assessments & Plans

Dean T Koukos, DO, 02/25/2014 02:36 PM

Head ache (784.0)

Medications

Started Fioricet 50-300-40MG, 1 (one) Capsule ONE Q4H PRN HEADACHE, #30, 02/25/2014, Ref. x1.
Continued Ambien 10MG, 1 (one) Tablet ONE AT HS PRN SLEEP, #15, 02/25/2014, Ref. x3.
Continued Feldene 20MG, 1 (one) Capsule ONE DAILY WITH FOOD, #30, 02/25/2014, Ref. x3.
Continued Venlafaxine HCl 50MG, 1 Tablet TID, #90, 02/25/2014, Ref. x3.

Subdural hematoma (432.1)

Signed Electronically by Dean T Koukos DO 02/25/2014 02:05 PM (02/25/2014)

Daniel(danny) B Crane Jr

02/25/2014 02:05 PM

Location: Barnwell Family Medicine

Patient #: 3001883

DOB:

Marital status: Married / Language: English / Race: White / Ethnicity: Not Hispanic or Latino

Gender: Male

History of Present Illness (NELSA NOBLES 02/25/2014 02:05 PM)

The patient is a 37 year old male who presents with hearing loss.

Additional reason for visit:

Dizziness

Allergies (NELSA NOBLES 02/25/2014 02:05 PM)

No Known Drug Allergies 02/08/2012

Vitals (NELSA NOBLES 02/25/2014 02:05 PM)

02/25/2014 02:05 PM

Weight: 196 lb Height: 71 in

Body Surface Area: 2.11 m² Body Mass Index: 27.34 kg/m²

Temp.: 98.6 °F Pulse: 86 (Regular) Resp.: 20 (Unlabored)

BP: 126/83 Manual (Sitting, Left Arm, Standard)

Physical Exam (JENN T KOUKOS, DO: 02/25/2014 02:36 PM)

The physical exam findings are as follows:

UNABLE TO HEAR FOLLOWING AIR LINE EXPLOSION HAD HEARING TEST BY ENT WORKS IN TIRE SHOP
UNABLE TO HEAR AUTO'S IN SHOP

SOME DIZZINESS.

RIGHT EAR CLEAR

RIGHT SIDE HEADACHE

WILL DO CT BRAIN DX SUBDURAL

General

Mental Status - Alert. General Appearance - Not in acute distress.

Head and Neck

Neck

Global Assessment - no lymphadenopathy.

Trachea - midline.

Thyroid

Gland Characteristics - normal size and consistency.

Eye

Cornea - Bilateral - Normal. Lens - Bilateral - Clear. Fundi - Bilateral - Normal. Pupil - Bilateral - Normal, Equal, Regular and Round.

ENMT

Ears

Otoscopic Exam: Middle Ear - Bilateral - no effusion noted, Tympanic Membrane - Bilateral - tympanic membrane is amber in appearance, no decreased movement observed and no purulent effusion observed.

Nose and Sinuses

Nasal Mucosa - Bilateral - no congestion observed.

Mouth and Throat

Nasopharynx - no discharge present and no exudate observed.

Chest and Lung Exam

Chest and lung exam reveals - normal excursion with symmetric chest walls, quiet, even and easy respiratory effort with no use of accessory muscles and on auscultation, normal breath sounds, no adventitious sounds and normal vocal resonance.

Cardiovascular

Cardiovascular examination reveals - on palpation PMI is normal in location and amplitude, no palpable S3 or S4. Normal cardiac borders, normal heart sounds, regular rate and rhythm with no murmurs, carotid auscultation reveals no bruits and no digital clubbing, cyanosis, edema, increased warmth or tenderness.

Abdomen - Did not examine.

Neurologic

Neurologic evaluation reveals - alert and oriented x 3 with no impairment of recent or remote memory, normal attention span and ability to concentrate, able to name objects and repeat phrases. Appropriate fund of knowledge, normal visual acuity, pupils equal and reactive to light and accommodation, normal sensation of trigeminal nerves, symmetrical functioning of facial nerves, normal hearing, normal gag reflex, symmetrical functioning of accessory nerves, symmetrical functioning of hypoglossal nerve, normal sensation, normal coordination and upper and lower extremity deep tendon reflexes intact bilaterally.

Assessment & Plan (Dean T Koutas, DO; 02/25/2014 02:36 PM)

Head ache (784.0)**Current Plans:**

- Started Fioricet 50-300-40MG, 1 (one) Capsule ONE Q4H PRN HEADACHE, #30, 02/25/2014, Ref. x1.
- Continued Ambien 10MG, 1 (one) Tablet ONE AT HS PRN SLEEP, #15, 02/25/2014, Ref. x3.
- Continued Feldene 20MG, 1 (one) Capsule ONE DAILY WITH FOOD, #30, 02/25/2014, Ref. x3.
- Continued Venlafaxine HCl 50MG, 1 Tablet TID, #90, 02/25/2014, Ref. x3.

Subdural hematoma (432.1)**Current Plans:**

FEB-28-2014 04:00 From
 To: 92583658
 Page: 1/12

BARNWELL COUNTY HOSPITAL 811 Reynolds Road, Barnwell, SC 29812
 ACCOUNT NO. 733474 ADMITTED BY: [blank] DATE: 1/29/14 MEDICAL RECORD NO. 424100

PATIENT INFORMATION NAME: CRANE, DANIEL M ADDRESS: [blank] PHONE: [blank] SSN: [blank]		DOB: 01/29/1974 SEX: M RACE: W RELIGION: [blank] MARITAL STATUS: MARRIED		ADMISSION TYPE: [blank] SERVICE LOCATION: EMERGENCY ROOM NO.: [blank] ADR POLICE: [blank] PREV ADMIT DATE: 12/10/13	
EMPLOYER INFORMATION NAME: SELF EMPLOYED ADDRESS: [blank] PHONE: [blank] EMPLOYER: [blank]		PHYSICIAN INFORMATION NAME: KATHELYN, ANNE D ADDRESS: [blank] PHONE: [blank] RELATIONSHIP: [blank]		NEXT OF KIN NAME: LOVE, KARENLY ADDRESS: [blank] PHONE: [blank] RELATIONSHIP: [blank]	
GUARANTOR INFORMATION NAME: KATHELYN, ANNE D ADDRESS: [blank] PHONE: [blank] RELATIONSHIP: [blank]		EMPLOYER/SELF EMPLOYED ADDRESS: [blank] PHONE: [blank] RELATIONSHIP: [blank]		PERSON TO NOTIFY NAME: LOVE, KARENLY ADDRESS: [blank] PHONE: [blank] RELATIONSHIP: [blank]	
INSURANCE INFORMATION PRIMARY HEALTH CARE HEALTH PLAN: [blank] ADDRESS: [blank] PHONE: [blank] POLICY #: [blank] GROUP #: [blank] AUTH #: [blank] SUBSCRIBER: CRANE, DANIEL M REASON FOR VED: [blank]		SECONDARY SELF PAY HEALTH INSURANCE ADDRESS: [blank] PHONE: [blank] POLICY #: [blank] GROUP #: [blank] AUTH #: [blank] SUBSCRIBER: CRANE, DANIEL M		TERTIARY ADDRESS: [blank] PHONE: [blank] POLICY #: [blank] GROUP #: [blank] AUTH #: [blank] SUBSCRIBER: [blank]	
COMMENTS: [blank]					
RECEIVED FEB 10 2014 BY: [blank]					
TRANSFERRED TO: [blank]					
Patient verifies that all information is correct Date: [blank] Time: [blank]					

OAKTREE MEDICAL CENTRE, P.C.**DEPARTMENT OF NEUROLOGY**

PATIENT'S NAME: Darryl B. Crane
DATE OF BIRTH: [REDACTED]
MRN: 247458
DATE OF SERVICE: 05/19/2014
REFERRING PARTY: Samuel Law, M.D.

INDEPENDENT MEDICAL EVALUATION**RECORDS REVIEWED:**

- Barnwell County Hospital emergency department records of February 19, 2014 and March 26, 2014.
- Barnwell County Hospital CT scan of temporal bones bilaterally from February 25, 2014.
- Carolina ENT office records of John F. Ansley, M.D. from February 20, 2014 and March 6, 2014.

HISTORY OF PRESENT ILLNESS:

Mr. Crane is a 37-year-old male who presents for an independent medical examination. Mr. Crane states that he was in a normal state of health until he was involved in a work-related injury occurring February 19, 2014. At the time of his injury, Mr. Crane states that he was employed by Raber Tires as a mechanic. Mr. Crane states that he was working on a tire changer when he noticed a hissing noise coming from a 3-inch high pressure hose. Mr. Crane states that he bent forward to inspect the hose when the hose "exploded". Mr. Crane states that the hose clamp struck him in the right temporal aspect of his head. There was no reported loss of consciousness. Mr. Crane reported abrupt and immediate ear pain with loss of hearing. Mr. Crane states that his wife came to transport him to Barnwell County Hospital emergency department. Mr. Crane stated, "My work did not even call 911."

Emergency department records documented Mr. Crane's injury stating, "Air tank exploded. Raber Tires, not able to hear. Pain with right ear and right side of face. Happened approximately 30 minutes ago. Right elbow pain." Records stated, "Had tire blow...now has difficulty of hearing on both ears." Mr. Crane was diagnosed with inductive hearing loss, middle ear, hearing loss, and was subsequently provided an appointment to follow up with ENT.

On February 20, 2014, Mr. Crane presented to Carolina ENT clinic and was evaluated by John F. Ansley, M.D. who documented Mr. Crane's work-related injury stating, "He had a machine blow up in his face a couple days ago and he is having some difficulty hearing." On examination, Dr. Ansley documented bilateral tympanic membrane perforations and stated, "He does seem to be having difficulty hearing." He was sent for an audiogram which showed a severe sensorineural hearing loss in bilateral ears. Dr. Ansley then diagnosed Mr. Crane with severe sensorineural hearing loss and ordered a CT scan of bilateral temporal bones to be obtained.
Continued...

Crane 0047

P135

P136

~~Darby B. Crane, Jr. (M) (S) (P) 05/19/2014 10:16 PM 137-1113-004 Page 11~~

PATIENT PROFILE (Cont'd):

Patient denies any homicidal ideation. Patient reports difficulty falling asleep stating, "It takes me until 2 A.M. to get to sleep and then I am up and down all night." When asked if he obtains restorative sleep, Mr. Crane states that when he awakens, he is not rested. Mr. Crane stated, "It is just hard to sleep. I have so much stuff running through my mind." Mr. Crane states he will supplement his sleep with daytime naps.

PHYSICAL EXAMINATION:

Temp: Afebrile P: 91 and regular BP: 122/84 Ht: 5' 10" Wt: 197 lbs

General: This is a well-nourished, well-developed, right-hand dominant, Caucasian male in no apparent physical distress.

HEENT: Head: Patient demonstrates some hypopigmented, normotrophic 2 cm and 1.5 cm laceration scars in the left temporoparietal area secondary to motor vehicle accident in 1990. There appears to be no depression of the skull at this site. Head was normocephalic. Eyes PERLA, EOMI, Visual acuity was 20/20 OD, OS, and OU without correction. The funduscopic examination revealed sharp disc margins bilaterally. There is no obvious retinopathy. ENT: Patient demonstrates apparent healed 60% tear of right tympanic membrane. More complete approximately 80% tear in the left tympanic membrane. Both TMAs were injected, left being affected more greatly than right. No evidence of blood in the EACs bilaterally. Percussion of bilateral frontal and maxillary sinuses produced no discomfort. There is no jaw crepitus or temporalis tenderness.

Neck: The patient demonstrated essential FROM. There are no carotid bruits detected.

Lungs: CTA bilaterally.

Heart: Heart was RRR, negative RMG.

Skin, Spine, and Extremities: Patient demonstrated a hyperpigmented, hypertrophic surgical scar along the ventral midline secondary to exploratory surgery. Patient has tenderness to palpation of the right lateral epicondyle.

Neurological/ Mental Status: Mental status: The patient was alert and oriented to person and purpose. Patient completed a Folstein Mini Mental Status Examination with a score of 26/30. Patient was 8/10 orientation, 3/3 registration, 4/5 attention and calculation, 2/3 recall at 3 minutes. Mr. Crane's sentence was, "It a nice day; the sun is out and heat is cool." Mood appeared depressed; affect was flat. Patient demonstrated no overt pain behavior throughout the interview and examination. Affect appeared to be somewhat labile as the patient easily became frustrated and tearful throughout the interview. Patient remained pleasant and cooperative, however, throughout the interview and examination.

Continued...

Crane 0050

~~Danny B. Crane, M.D. 05/19/2014 10:17 AM Page: 15~~

PHYSICAL EXAMINATION (Cont'd):

Cranial nerves: Visual fields appeared full to confrontation. Eyes FERRLA, EOMI. There is no gross facial asymmetry. Air conduction was greater than bone conduction on left. Bone conduction was greater than air conduction on right. Weber lateralized to the left. Tongue and uvula appeared midline. Shoulder shrug was equal bilaterally.

Motor Strength: The patient demonstrated grip strength of 55, 54, and 55 pounds on the right compared to 110, 110, and 110 pounds on the left utilizing a JAMAR Dynamometer at the 4 cm setting. DTRs were 2 throughout upper and lower extremities. Negative Hoffman sign.

Sensory: Revealed no focal deficits to thermal or vibratory perception. Coordination FTN and RAM were performed with some mild dysmetria, right being affected more greatly than left. There is no significant tremor. The patient has 2 to 3 beats of horizontal nystagmus bilaterally. Vestibulo-ocular reflex stable bilaterally.

MEDICAL ASSESSMENT:

Medical records, medical history, and current neurological findings are consistent with a work-related injury occurring on February 19, 2014, resulting in bilateral tympanic membrane ruptures and subsequent profound sensorineural hearing loss in addition to closed head injury with significant affective, cognitive, and somatic symptomatology consistent with post-concussive syndrome (*Behavioral Neurology* by Orin Devinsky, M.D. table 70.1 page 265). It is my medical opinion beyond a reasonable degree of medical certainty that Mr. Crane's profound bilateral hearing loss is permanent and that hearing acuity cannot be restored by natural means. Therefore, Mr. Crane, in my opinion, has met maximum medical improvement with regard to this injury and therefore can be provided an impairment rating.

1. **HEARING ACUITY LOSS.** Utilizing tables 11-1 page 247, table 11-2 page 248, and table 11-3 page 250 of *The Guides to the Evaluation of Permanent Impairment, Fifth Edition*, hearing acuity loss measured at 500, 1000, 2000, and 3000 decibels results in 100% hearing loss bilaterally. Per table 11-3 page 250 of *The Guides to the Evaluation of Permanent Impairment, Fifth Edition*, this equates to a 35% whole person impairment.
2. **VESTIBULAR DISORDER, GRADE II.** Per table 11-4 page 253 of *The Guides to the Evaluation of Permanent Impairment, Fifth Edition*, a class II vestibular disorder may be awarded a 10% whole person impairment.
3. **STATUS POST CLOSED HEAD INJURY WITH RESULTANT POST-CONCUSSIVE SYNDROME.** This has resulted in cognitive as well as behavioral/emotional dysfunction. Given the Folstein Mini Mental Status Examination score of 25/30, I would consider this a class I cognitive impairment. Per table 13-5 and 13-6 page 320 of *The Guides to the Evaluation of Permanent Impairment, Fifth Edition*, this would constitute a class I impairment, which may be awarded 14% whole person impairment.

Continued...

Crane 0051

~~Danny B. Crane 0052 Date: 05/19/2014 Page: 16~~

MEDICAL ASSESSMENT (Cont'd):

With regard to behavioral/emotional dysfunction, a Beck's Depression Inventory score of 47 indicates a moderate-to-severe level of behavioral/emotional dysfunction. A Mood Disorder Questionnaire demonstrating positive features of bipolar affective disorder suggests pre-existing bipolar affective disorder. Per table 13-8 page 325 of *The Guides to the Evaluation of Permanent Impairment, Fifth Edition*, a class II behavioral/emotional impairment may be awarded 29% whole person impairment, whereas a class III behavioral/emotional impairment may be awarded up to 69% whole person impairment. Neuropsychological testing would help to clarify pre-existing pathology from post-traumatic dysfunction.

Per page 271 of *Behavioral Neurology* by Orrin Devinsky, M.D., "Behavioral consequences are among the most common and devastating effects of a moderate-to-severe head trauma, but are difficult to quantify and treat. These disorders range from subtle personality changes to paranoid psychoses...furthermore, the behavioral disorders may emerge and will progress as the patient recovers motor and cognitive functions and they frequently persist; one study found personality disorders in more than half of patients 10 years after severe head trauma...post-traumatic affective disorders are common and result from both organic and psychogenic factors. Depression is common after moderate-to-severe head trauma, affecting more than half of patients...psychogenic factors are also a major cause of post-traumatic depression. Patients react to their motor, cognitive, and social losses with feelings of helplessness and worthlessness, withdrawing from their family and their passions. This reactive depression may be exacerbated by organic factors. As with all post-traumatic behavioral disorders, a multi-disciplinary team approach—including psychologists, neurologists, therapists, nurses, and social workers—is critical to identifying relevant pathogenic factors...pre-morbid personality has been alleged to determine the presence or form of post-traumatic behavioral disorders, but this connection has not been clearly demonstrated. Lishman (1987) found an association between emotional instability prior to head trauma and development of post-traumatic psychiatric disorders."

Furthermore, it is my medical opinion beyond a reasonable degree of medical certainty that Mr. Crane will require continued medical management to include but not be limited to routine office visits, medications, psychological counseling and therapy (cognitive behavioral therapy) as well as probable vestibular rehabilitation. Such a multi-disciplinary program would be best afforded by a traumatic brain injury program and I strongly endorse Mr. Crane's evaluation in such a program for potential outpatient therapy.

Total time spent with the patient was 1 hour and 15 minutes. Interview and examination was chaperoned by C.E.

Continued...

04/16/2014
2:01:42 pm

Demand Bill From History

Page: 1

**BARNWELL COUNTY HOSPITAL
811 REYNOLDS ROAD
BARNWELL, SC 298121573
803-259-1000**

**MR# / Adm #: 404006 / 735456
Guarantor #: 404006
Doctor #: 978
Ins Codes: 04 10**

**CRANE, DANIEL B
CRANE, DANIEL B
DRAGO, PAUL
Bed#: Patient Type: 25**

**Admission Date: 03/26/2014
Discharge Date: 03/26/2014
Patient Age: 37
DRG #: LOS: 0**

Charge Date	Date Ent	Date Pst	Charge #	Description	Rev Cpt	Qty	Unit Price	Charge Amt
03/26/14	03/26/14	03/28/14	3300023	INJCT THER DX SUBCU	450 96372	1	96.00	96.00
03/26/14	03/26/14	03/28/14	3300045	ER VISIT LEVEL 3	450 99283	1	358.00	358.00
EMERGENCY ROOM				Dept Total		2		454.00
03/26/14	03/26/14	03/28/14	3310022	ER VST E&M MOD SEVER	981 99283	1	168.00	168.00
ER PHYSICIAN				Dept Total		1		168.00
03/26/14	03/26/14	03/28/14	4120008	CT CHEST W O CON	352 71250	1	1,139.00	1,139.00
CT				Dept Total		1		1,139.00
03/26/14	03/26/14	03/28/14	4253011	ACETAMINOPHEN TAB [5	257	2	0.00	0.00
03/26/14	03/26/14	03/28/14	4253619	KETOROLAC INJ [60 MG	636 J1885	1	19.00	19.00
03/26/14	03/26/14	03/28/14	4253852	OXYCODONE/ ACET TAB	259	2	12.00	24.00
PHARMACY				Dept Total		5		43.00
Patient Total								1,804.00
Payments Received								1,636.00
Balance Due								168.00

02/25/14

CASH PAYMENT RECEIPT

PAGE : 1

BARNWELL COUNTY HOSPITAL
811 REYNOLDS ROAD
BARNWELL, SC 298121573
803-259-1000

RECEIPT NUMBER : 16847 RECEIVED BY : CE

PAT # /ADM #	PATIENT NAME	TOTAL CHARGE BALANCE
404006/ 733715	CRANE, DANIEL B	.00

PAY DATE	CYCLE #	CHECK #	REF #	TYPE	DESCRIPTION	PAY AMT
02/25/14	0001			10	CASH PMT	3.40
					TOTAL PAYMENTS	3.40
					REMAINING BALANCE	-3.40

Return To Work/School

Name: Danny Crane Jr.has been under my care from 3/16/14 to 4/11/14
and may be able to return to work/school on 4/11/14

Limitations/Remarks:

Carolina ENT Clinic

832 Cook Rd

Dr. Orangeburg, SC 29118

803-536-5511

Address

Date

AveioX
moxifloxacin HCl tabletsAveioX i.v.
moxifloxacin HCl in NaCl inject

EXHIBIT A

EXHIBIT C

Register:
From 06/0
Sorted by:
Date

07/05/2013

07/05/2013

07/05/2013

07/05/2013

07/05/2013

07/05/2013

07/05/2013

07/05/2013 4938

Chad E Williams

Contract labor

482.50 X

07/05/2013 4939

Danny Crane

Contract labor

262.35 X

07/05/2013 4940

Jody Chavis

Contract labor

490.88 X

07/05/2013 4941

Pernell Gill

Contract labor

243.60 X

07/05/2013 4942

Marie Brown

Contract labor

200.00 X

07/05/2013

07/06/2013

07/07/2013

07/08/2013

07/08/2013

07/08/2013

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RECEIVED
JUN 09 2014

BY: 1161-001

Register - List

From 06/01/7

Sorted by: D:

Date

07/12/2013

07/12/2013

07/12/2013

07/12/2013

07/12/2013

07/12/2013 4950

07/12/2013 4957

Danny Crane

Contract labor

513.00 X

07/12/2013 4958

Jody Chavis

Contract labor

658.85 X

07/12/2013 4960

Marie Brown

Contract labor

400.00 X

07/12/2013 5099

07/13/2013

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X

07/13/2013 4961

Chad Williams

Contract labor

607.00 X

07/13/2013 4962

Pernell Gill

Contract labor

333.60 X

07/13/2013 4963

07/13/2013 4964

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07/15/2013 4965

07/15/2013 4966

07/15/2013 4968

07/15/2013 5098

07/16/2013

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07/26/2013	5007	Marie Brown	Contract labor	392.00	X
07/26/2013	5008	Pernnel Gill	Contract labor	318.00	X
07/26/2013	5009	Chad Williams	Contract labor	593.50	X
07/26/2013	5010	Jody Chevis	Contract labor	549.68	X
					X
07/26/2013	5012	Danny Crane	Contract labor	528.75	X
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08/09/2013	5029	Danny Crane	Contract labor	506.70	X
08/09/2013	5030	Permel Gill	Contract labor	459.20	X
08/09/2013	5031	Marie Brown	Contract labor	394.00	X
08/09/2013	5032	Chad Williams	Contract labor	537.63	X
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08/16/2013	5045	Marie Brown	Contract labor	436.00	X
08/16/2013	5046	Pernel Gill	Contract labor	326.00	X
08/16/2013	5047	Danny Crane	Contract labor	549.00	X
08/16/2013	5048	Chad Williams	Contract labor	509.00	X
08/17/2013			Undeposited Funds	Deposit CCA...	X
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08/23/2013	5064	Chad Williams	Contract labor	598.25	X
08/23/2013	5065	Pernnel Gill	Contract labor	400.00	X
08/23/2013	5066	Danny Crane	Contract labor	558.00	X
08/23/2013	5067	Mar Brown	Contract labor	400.00	X
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From 06/01/2013 through 06/02/2014

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08/30/2013	5075	Marie Brown	Contract labor		440.00	X
08/30/2013	5076	Pernnel Gill	Contract labor		464.00	X
08/30/2013	5077	Chad Williams	Contract labor		481.50	X
08/30/2013	5078	Danny Crane	Contract labor		531.00	X
08/31/2013			-split-	Deposit cc fir/ ...		X
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09/06/2013	5101	Danny Crane	Contract labor	441.00	X
09/06/2013	5102	Marie Brown	Contract labor	412.00	X
09/06/2013	5103	Pernell Gill	Contract labor	438.00	X
09/06/2013	5104	Chad Williams	Contract labor	609.00	X
09/07/2013		split	Deposit for and		X
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09/13/2013	5127	Marie Brown	Contract labor	400.00	X
09/13/2013	5128	Danny Crane	Contract labor	550.00	X
09/13/2013	5129	Chad Williams	Contract labor	630.50	X
09/13/2013	5130	Perniel Gill	Contract labor	478.00	X

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09/27/2013	5165	Danny Crane	Contract labor	185.00	X
09/27/2013	5166	Danny Crane	Contract labor	346.00	X
09/27/2013	5167	Pernnel Gill	Contract labor	466.00	X
09/27/2013	5168	Chad Williams	Contract labor	605.00	X
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10/18/2013	5219	Marie Brown	Contract labor	436.00	X
10/18/2013	5220	Danny Crane	Contract labor	594.00	X
10/18/2013	5221	Chad Williams	Contract labor	511.50	X
10/18/2013	5222	Pernnel Gill	Contract labor	448.00	X
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10/25/2013	5244	Marie Brown	Contract labor	440.00	X
10/25/2013	5245	Fernnel Gill	Contract labor	420.00	X
10/25/2013	5246	Danny Crane	Contract labor	590.00	X
10/25/2013	5247	Chad Williams	Contract labor	519.50	X
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11/01/2013	5270	Marie Brown	Contract labor	400.00	X

11/01/2013	5271	Pemeli Gill	Contract labor	322.00	X

11/01/2013	5272	Chad Williams	Contract labor	590.50	X

11/01/2013	5273	Cody Still	Contract labor	436.00	X

11/01/2013	5274	Danny Crane	Contract labor	542.25	X

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11/08/2013	5289	Pemell Gill	Contract labor
11/08/2013	5290	Chad Williams	Contract labor
11/08/2013	5291	Cody Still	Contract labor
11/08/2013	5292	Marie Brown	Contract labor
11/08/2013	5293	Danny Crane	Contract labor
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11/15/2013	5310	Danny Crane	Contract labor	481.50 X
11/15/2013	5311	Ched Williams	Contract labor	351.00 X
11/15/2013	5312	Permel Gill	Contract labor	434.00 X
11/15/2013	5313	Marie Brown	Contract labor	408.00 X
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11/22/2013	5331	Danny Crane	Contract labor	522.00	X
11/22/2013	5332	Chad Williams	Contract labor	338.85	X
11/22/2013	5333	Pernel Gill	Contract labor	345.00	X
11/22/2013	5334	Marie Brown	Contract labor	345.00	X

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11/29/2013	3680	Chad Williams	Contract labor		X
11/29/2013	3681	Danny Crane	Contract labor	402.00	X
11/29/2013	3682	Chad Williams	Contract labor	354.00	X
11/29/2013	3683	Danny Crane	Contract labor	lab balnce	X
11/29/2013				66.00	X
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11/29/2013				81.00	X
11/29/2013					X
11/29/2013					X
11/29/2013					X
11/29/2013	5347	Pamnel Gill	Contract labor		X
11/29/2013	5348	Marie Brown	Contract labor	232.24	X
11/30/2013				354.24	X
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12/06/2013	5366	Danny Crane	Contract labor		570.00	X
12/06/2013	5367	Chad Williams	Contract labor		547.00	X
12/06/2013	5368	Pernnel Gill	Contract labor		291.68	X
12/06/2013	5369	Cohen Williams	Contract labor		451.28	X
12/06/2013	5370	Marie Brown	Contract labor		429.68	X
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Date	Number	Payee	Account	Memo	Payment C

12/13/2013	5389	Chad Williams	Contract labor	383.00	X
12/13/2013	5390	Danny Crane	Contract labor	502.00	X
12/13/2013	5391	Pernel Gill	Contract labor	392.00	X
12/13/2013	5392	Marie Brown	Contract labor	400.00	X

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389.20 X
336.00 X
265.20 X
472.00 X
320.00 X

From 06/01/2013 to

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12/26/2013 5423 Chris Williams Contract labor

12/26/2013 5424 Pennel Gill Contract labor

12/26/2013 5425 Marie Brown split

12/26/2013 5426 Danny Crane Contract labor

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01/03/2014	5443	Danny Crane	Contract labor		54.54	X
01/03/2014	5444	Pernal Gill	Contract labor		222.00	X
01/03/2014	5445	Marie Brown	Contract labor		394.00	X
01/03/2014	5446	Chad Williams	Contract labor		505.00	X
01/03/2014	5447	Danny Crane	Contract labor	Danny loan	185.46	X

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Sorted by: Date, Type, Number/Ref

Sorted by: Date, Type, Number/Ref					Memo	Payment	C
Date	Number	Payee	Account				
01/13/2014							
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01/15/2014							
01/15/2014	5491	Danny Crane	Contract labor	2 part check	150.00	X	
01/15/2014	5493	Marie Brown	Contract labor		402.00	X	
01/15/2014	5494	Chad Williams	Contract labor	2 part check	473.00	X	
01/15/2014	5495	Alfy Williams	Contract labor		416.52	X	
01/15/2014	5496	Pemnel Gill	Contract labor	3 part check	80.00	X	
01/15/2014							
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Date

01/24/2014

From 06/01:

Sorted by: E

Date

01/24/2014					
01/24/2014					
01/24/2014	5521	Marie Brown	Contract labor	387.60	X
01/24/2014	5522	Alfy Williams	Contract labor	427.14	X
01/24/2014	5524	Chad Williams	Contract labor	483.74	X
01/24/2014					
01/25/2014					
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01/31/2014					
01/31/2014	5541*	Marie Brown	Contract labor	272.48	X
01/31/2014	5542*	Alfy Williams	Contract labor	230.22	X
01/31/2014	5543*	Pernnet Gill	Contract labor	220.64	X
01/31/2014	5544*	Chad Williams	Contract labor	473.69	X
01/31/2014	5545*	Danny Crane	Contract labor	328.12	X
02/01/2014	*	-split-	Deposit		X
02/03/2014	*	-split-	Deposit cc		X

Page 38

From 06/01/2013 through 06/02/2014

Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment C
02/03/2014	*		-split-	Deposit cc	X
02/03/2014	*				
02/03/2014	*				
02/03/2014	*				
02/03/2014	*				
02/03/2014	card*				
02/03/2014	card*				
02/03/2014	card*				
02/03/2014	draft*				
02/03/2014	5508*				
02/03/2014	5546*				
02/04/2014	*				
02/04/2014	*				
02/04/2014	*				
02/04/2014	auto*				
02/04/2014	CARD*				
02/04/2014	DRAFT*				
02/04/2014	5537*				
02/04/2014	5538				
02/04/2014	5539*				
02/05/2014	*				
02/05/2014	*				
02/05/2014	*				
02/05/2014	*				
02/05/2014	*				
02/05/2014	ACH*				
02/05/2014	DRAFT*				
02/05/2014	DRAFT*				
02/06/2014	*				
02/06/2014	*				
02/06/2014	*				
02/06/2014	DRAFT*				
02/06/2014	5519*				
02/06/2014	5549*				
02/06/2014	5551*				
02/06/2014	5552*				
02/07/2014	*				
02/07/2014	*				
02/07/2014	*				

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From 06/01

Sorted by: I

Date

02/07/2014					
02/07/2014					
02/07/2014					
02/07/2014					
02/07/2014	5563*	Chad Williams	Contract labor	461.80	X
02/07/2014	5564*	Alfy Williams	Contract labor	428.04	X
02/07/2014	5565*	Danny Crane	Contract labor	327.39	X
02/07/2014	5566*	Marie Brown	Contract labor	365.84	X
02/10/2014	*		crash deposit		X
02/10/2014	*				
02/10/2014	*				
02/10/2014	*				
02/10/2014	5547*				
02/10/2014	5553*				
02/10/2014	5555*				
02/10/2014	5556*				
02/10/2014	5567*				
02/10/2014	5568*				
02/10/2014	5569*				
02/10/2014	5570*				
02/11/2014	*				
02/11/2014	*				
02/11/2014	DRAFT*				
02/11/2014	DRAFT*				
02/11/2014	5531*				
02/11/2014	5557*				
02/11/2014	5559*				
02/11/2014	5562*				
02/11/2014	5571*				
02/11/2014	5575*				
02/12/2014	*				
02/12/2014	DRAFT*				
02/13/2014	*				
02/13/2014	*				
02/13/2014	5497*				
02/13/2014	5550*				
02/14/2014	5578*				
02/14/2014	5580*				
02/14/2014	5581*				

Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment C

[illegible]

From 06/0

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02/21/2014
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 02/25/2014 5599*
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 02/26/2014 *
 02/26/2014 *
 02/26/2014 5598*
 02/26/2014 5600
 02/26/2014 5601
 02/26/2014 5602*
 02/26/2014 5603

Amy Williams

Danny Crane

Marie Brown

Pennel Gill

Chad Williams

Contract labor

Contract labor

Contract labor

Contract labor

Contract labor

Counter check ...

Counter check ...

Counter check ...

Counter check ...

Counter check ...

515.79 X

190.00 X

504.90 X

413.60 X

622.00 X

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1403368

Danny B. Crane, Jr.,

Claimant,

-vs-

James Raber d/b/a as Raber's Discount Tire
Rack,

Employer,

and

SC Uninsured Employers' Fund,

Carrier,

Defendants,

**MOTION TO SUBMIT
ADDITIONAL EVIDENCE**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, O. EDWORTH LIPFERT, III, ESQUIRE, ATTORNEY FOR THE DEFENDANT, and MATTHEW J. STORY, ESQUIRE, ATTORNEY FOR UEF:

Claimant, by and through his undersigned attorney, hereby moves to submit additional evidence pursuant to Regulations 67-613 and 67-707. The additional evidence to submit would include correspondence signed by Ronald Lunn, M.A., CCC-A on September 15, 2014, a medical note and report from Carolina Ear, Nose and Throat Clinic, performed by Dr. Rocco D. Cassone on August 19, 2014, which were all received by Claimant on October 29, 2014. As grounds for this Motion, Claimant would show the following:

1. This case was heard before Commissioner Susan S. Barden in Port Royal, SC on June 26, 2014, wherein each party presented all evidence known to the Claimant at the time of the hearing.

2. At the conclusion of the hearing, the Commissioner held that the Claimant failed to prove evidence of any ongoing medical problems and any permanent disability that would entitle him to any award. Furthermore, the Commissioner held that the Claimant did not prove he was unable to work, therefore he is not entitled to any temporary total disability payments.

Following the hearing before Commissioner Barden, the Claimant has sought and applied for Social Security Disability benefits. In doing so, and as a course of the application process the Claimant has been sent by Disability Determination services to undertake additional evaluation and medical treatment. On August 19, 2014 he was seen at Carolina Ear, Nose, and Throat Clinic for an evaluation of his long standing hearing loss and correspondence and a report were produced.

3. Claimant hereby moves for leave to submit the additional evidence under Regulation 67-613. The evidence was not known to the moving party at the time of the hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

4. The evidence from Carolina Ear, Nose and Throat Clinic is an essential element in the proof of the case. Dr. Cassone opines to a reasonable degree of medical certainty that Claimant had profound hearing loss in each ear and that he should be considered disabled as a result of the injury. This proof was not originally obtained and submitted as Claimant had not been evaluated by Dr. Cassone at the time of the hearing. Submission of Dr. Cassone's opinion into evidence is essential to preserve Claimant's due process rights. See Morgan v. JPS Automotives, 467 S.E.2d 457, 321 S.C. 201 (Ct. App. 1996)

5. Alternatively, Claimant moves to submit the additional evidence to the Appellate Panel under Regulation 67-707 in that the additional evidence is necessary for completion of the record.

THEREFORE, Claimant moves for leave to submit the September 15, 2014 correspondence of Audiologist Ronald Lunn and the August 19, 2014 evaluation records of Dr. Rocco Cassone.

Respectfully Submitted,



Stephen B. Samuels
Samuels Law Firm, LLC
1320 Richland St.
Columbia, SC 29201
(803) 779-4000

Columbia, South Carolina
December 16, 2014



CAROLINA EAR, NOSE AND THROAT CLINIC

882 Cook Road, Orangeburg, SC 29118
803-536-5511 Fax: 803-536-0536

Otolaryngology

Allergy

Facial Plastic Surgery

ROCCO D. CARSONE, M.D., FACS
Diplomat American Board
of Otolaryngology

JOHN F. ANSLEY, M.D.
Diplomat American Board
of Otolaryngology

September 15, 2014

Ms. Felicia Ward
Disability Determination Services
SC Vocational Rehabilitation Department
Charleston Regional Office
PO Box 190029
North Charleston, SC 29419

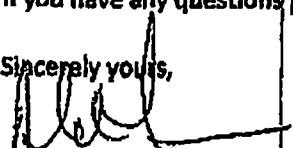
Dear Ms. Ward,

Danny Crane, age (DOB:), was seen for an audiological evaluation on August 19, 2014. He was seen on several previous occasions for purposes of audiological assessment with findings demonstrating inter-, and intra-test inconsistencies, with recommendations made for auditory brainstem response studies, as a means for obtaining more objective measures of his hearing, so as to obtain a true estimate of his hearing. Findings of the assessment conducted on August 19, 2014, suggest a right profound hearing loss, while the left ear suggests a profound to severe hearing loss. Air-bone gaps did not exist, bilaterally, to equipment limits. A Speech Reception Threshold at the left ear did not appear to be consistent with the pure tone audiometrics, while an SRT or SAT could not be obtained to equipment limits upon right ear stimulation. Mr. Crane obtained a speech discrimination score of 82%, while the right ear was not measured.

It is recommended that Mr. Crane be seen for the administration of auditory brainstem response studies, as a means for obtaining more object measures of his hearing and permit a truer estimate of his hearing. Further recommendations should be postponed until such time that these measures can be obtained.

If you have any questions please feel free to contact me at your earliest convenience.

Sincerely yours,


Ronald Lunn, M.A., C.C.C.-A
Audiologist

Orangeburg • Barnwell • Varnville
Toll Free: 1-800-848-6601

PATIENT: Danny Crane
CHART # 87634
DATE: 8/19/14

HISTORY: Danny Crane is referred by Disability Determination services. The patient has a long standing hearing loss following a sudden injury to his ears when a container blew up in a work related injury. There was an extremely amount of noise and he had sudden ringing in his ears and hearing loss. He has had previous audiometric evaluations. He has had balance problems ever since and has significant difficulty being able to work because of both the hearing loss and the dizziness. He is a pleasant man who is in no acute distress.

PHYSICAL EXAMINATION

HEAD: Normocephalic.

EYES: Unremarkable.

EARS: Tympanic membranes are gray and mobile.

AUDIO: He was sent for audiogram and this showed a profound hearing loss in each ear.

NOSE: Mild rhinitis.

OROPHARYNX: Unremarkable

NECK: Supple

LARYNX: Normal.

IMPRESSION/RECOMMENDATION: He reads lips. He may be a candidate for a cochlear implantation and this should be considered. He should probably have yearly audiometric evaluations. He should be consider disabled because of this.

Rocco D. Cassone, M.D., FACS
RDC/sb

CC: SC Vocational Rehabilitation
North Charleston, SC

CAROLINA ENT CLINIC

832 Cook Road

Orangeburg, SC 29118

(803)536-5511

Date 8/19/14

Patient Name Cheryl Brown

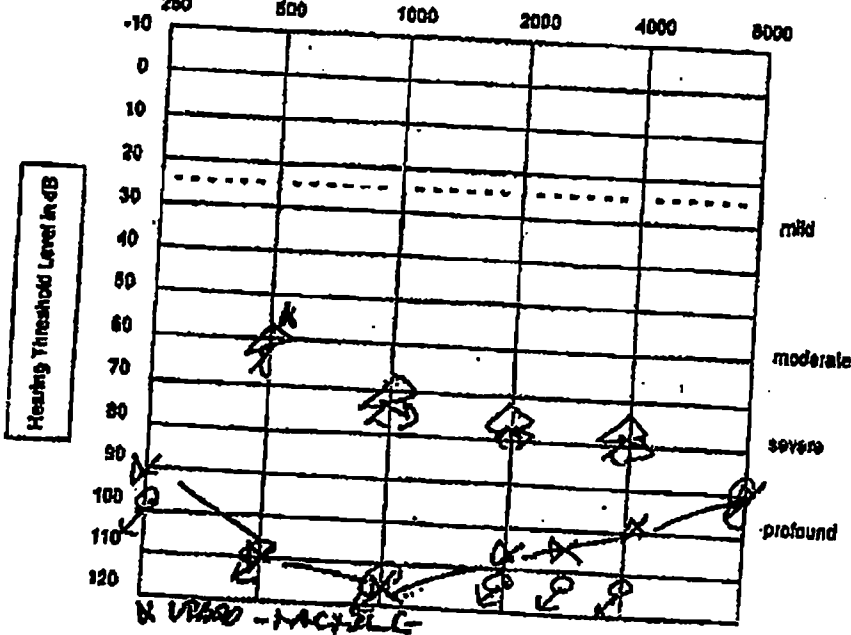
DOB/Age

Pure Tone Audiogram

Frequency in Hz

earphone / insert earphone / sound field

Test Reliability/ Validity



Speech Scores (dB)		
	Right	Left
SRT/SAT	24	24
Word Discrimination (live voice)	82%	82%
MCL	10	10
UCL		

	R (red)	L (blue)
Air Conduction	O	X
With masking	Δ	□
Bone Conduction	<	>
With masking		
NO RESPONSE	✓	✓

Immittance Right Ear			
Volume	Pressure	Compliance	

Immittance Left Ear			
Volume	Pressure	Compliance	

Acoustic Reflex Thresholds						
Hz	500	1000	2000	4000	Reflex Decay	
RI					500	1000
RC						
LI					500	1000
LC						

Comments

Audiologist Signature
GSI #1 Clinical Audiometer

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1403368

Danny B. Crane, Jr.,

Claimant,

-vs-

James Raber d/b/a as Raber's Discount Tire
Rack,

Employer,

and

SC Uninsured Employers' Fund,

Carrier,

Defendants,

AFFIDAVIT

The undersigned, being duly sworn, makes the following representations:

My name is Stephen Samuels. I am an attorney in good standing and admitted to practice in the State of South Carolina. I was admitted to the South Carolina Bar on May 11, 1997. My primary area of practice is worker's compensation. I represent Danny B. Crane, Jr., in the above-referenced case.

This case was heard before Commissioner Susan S. Barden in Port Royal, SC on June 26, 2014, wherein each party presented all evidence known to the Claimant at the time of the hearing.

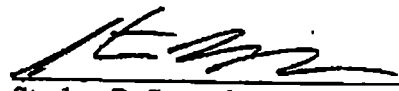
At the conclusion of the hearing, the Commissioner held that the Claimant failed to prove evidence of any ongoing medical problems and any permanent disability that would entitle him to any award. Furthermore, the Commissioner held that the Claimant did not prove he was unable to work, therefore he is not entitled to any temporary total disability payments.

Following the hearing before Commissioner Barden, the Claimant has sought and applied for Social Security Disability benefits. In doing so, and as a course of the application process the Claimant has been sent by Disability Determination services to undertake additional evaluation and medical treatment. On August 19, 2014 he was seen at Carolina Ear, Nose, and Throat Clinic for

an evaluation of his long standing hearing loss and correspondence and a report were produced.

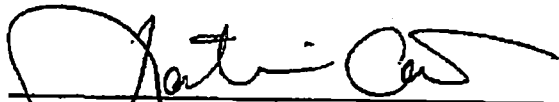
Claimant hereby moves for leave to submit the additional evidence under Regulation 67-613. The evidence was not known to the moving party at the time of the hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

The evidence from Carolina Ear, Nose and Throat Clinic is an essential element in the proof of the case. Dr. Cassone opines to a reasonable degree of medical certainty that Claimant had profound hearing loss in each ear and that he should be considered disabled as a result of the injury. This proof was not originally obtained and submitted as Claimant had not been evaluated by Dr. Cassone at the time of the hearing. Submission of Dr. Cassone's opinion into evidence is essential to preserve Claimant's due process rights. See Morgan v. JPS Automotives, 467 S.E.2d 457, 321 S.C. 201 (Ct. App. 1996). Additionally, had the information been known to the Commission and the parties there is a reasonable likelihood the result would have been different.


Stephen B. Samuels

SWORN to before me this 16th

day of December, 2014.


Notary Public

My Commission Expires: 2/17/19

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



WCC File #: **1403368**
Carrier File #: **NRNR20140414**
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Danny B. Crane SSN: _____ Employer's Name: Raber's Tire
Address: _____ Address: _____
City: _____ State: SC Zip: _____ City: _____ State: SC Zip: 29812
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: None
Preparer's Name: Stephen B. Samuels Law Firm: Samuels Law Firm Preparer's Phone #: (803) 779-4000

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 02/19/2014

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

Please see Attachment to Form 30.

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

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the 12th day of May 2015, by ☒ first class postage ☐ certified mail ☐ personal service.

[Signature]
Preparer's Signature

Attorney for Claimant
Title

Stephen@samuelslawfirm.net
Email

March 26, 2015
Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO FORM 30

Danny B. Crane v. James Raber d/b/a Raber's Discount Tire Rack and South Carolina Uninsured Employer's Fund.

WCC File No. 1403368

Grounds of Appeal:

1. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant did not suffer from hearing loss in the accident when substantial hearing loss was shown by three objective hearing tests using the "pure tone audiogram" required by Regulation 67-1102.
2. Whether the Single Commissioner erred as a matter of fact and law in failing to order an auditory brainstem response test (ABR) with follow up treatment to determine whether the hearing loss resulted from inner ear damage or from brain injury, and whether Claimant should undergo a cochlear implant.
3. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant had not proven his case when the medical evidence and unrefuted testimony proved Claimant suffered from hearing loss related to the accident.
4. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant was not credible regarding his hearing loss when the "inconsistencies" in his ability to hear are actually confirmation of profound hearing loss in his right ear and substantial hearing loss in his left ear.
5. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant was not entitled to temporary total disability compensation when the evidence showed he was unable to work in a tire store due to the hearing loss.
6. Whether the Single Commissioner erred as a matter of fact and law in admitting the Dr. Bettel report into evidence.
7. Whether the Single Commissioner erred as a matter of fact and law in finding that if Claimant had reached MMI, then failing to make a disability award for hearing loss under Regulation 67-1102.
8. Whether the Single Commissioner erred as a matter of fact and law in relying on boilerplate default entries in electronic medical records.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1403368

EMPLOYEE/CLAIMANT: DANNY B. CRANE

EMPLOYER: JAMES RABER D.B.A RABER'S DISCOUNT TIRE RACK

INSURER: SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 26TH DAY OF
JUNE, 2014, COMMENCING AT THE HOUR OF 12:06 P.M., IN
PORT ROYAL, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN S. BARDEN,
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

 COPY

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

STEPHEN BENJAMIN SAMUELS, ESQUIRE, OF THE FIRM
SAMUELS LAW FIRM, L.L.C.
1320 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201
stephen@samuelslawfirm.net

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

OTTO EDWORTH LIIPFERT, III, ESQUIRE, OF THE FIRM
GRIFFITH SADLER & SHARP, P.A.
600 MONSOON STREET
BEAUFORT, SOUTH CAROLINA 29202
wliipfert@griffithsadlerssharp.com

ATTORNEY FOR THE EMPLOYER,

MATTHEW JOSEPH STORY, ESQUIRE, OF THE FIRM
CLAWSON & STAUBES, L.L.C.
126 SEVEN FARMS DRIVE, SUITE 200
CHARLESTON, SOUTH CAROLINA 29492
story@clawsonandstaubes.com

ATTORNEY FOR S.C. UNINSURED EMPLOYERS' FUND.

ALSO ATTENDING:

DANNY B. CRANE
SHEILA LAVENITS
JAMES RABER

I N D E X

PAGE

DANNY B. CRANE:

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CROSS EXAMINATION BY MR. LIIPFERT.....	36
CROSS EXAMINATION BY MR. STORY.....	66
RE-DIRECT EXAMINATION BY MR. SAMUELS.....	82
CERTIFICATE OF NOTARY PUBLIC.....	84

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

5 * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS JUNE 26TH, 2014. THIS IS SOUTH
8 CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1403368. THIS IS THE CASE OF THE CLAIMANT
10 MR. DANNY CRANE WHO IS PRESENT TODAY AND REPRESENTED
11 BY ATTORNEY STEPHEN SAMUELS VERSUS THE EMPLOYER
12 JAMES RABER DOING BUSINESS AS RABER'S DISCOUNT TIRE
13 RACK. THE -- THERE IS NO -- WE HAVE ATTORNEY --
14 EXCUSE ME -- WORTH LIIPFERT REPRESENTING THE
15 EMPLOYER. THERE IS NO CARRIER, SO WE HAVE ATTORNEY
16 MATT STORY REPRESENTING THE U.E.F. THE PARTIES DO
17 AGREE AND STIPULATE THAT THE -- THAT RABER'S TIRE AS
18 -- I'M NOT SURE EXACTLY HOW THE COMMISSION
19 ESTABLISHED THE DEFENDANTS NAMED AS RABER'S TIRE
20 SHOULD MORE APPROPRIATELY BE JAMES RABER DOING
21 BUSINESS AS RABER'S DISCOUNT TIRE RACK. THE PURPOSE
22 OF TODAY'S HEARING IS TO DETERMINE ISSUES RAISED IN
23 FORMS 50 AND 51. THIS IS A DENIED CLAIM. NOR DO
24 THE PARTIES AGREE ON THE CORRECT FIGURES FOR AVERAGE
25 WEEKLY WAGE AND COMPENSATION RATE, IT IS THE

1 CLAIMANT'S POSITION THAT BASED ON \$9 AN HOUR AND AS
2 WELL AS THE OVERTIME THAT THE CLAIMANT WORKED THAT
3 HIS AVERAGE WEEKLY WAGE IS \$541. YIELDING A
4 COMPENSATION RATE OF \$360.68. THE U.E.F. TAKES NO
5 POSITION AS TO AVERAGE WEEKLY WAGE AND COMPENSATION
6 RATE. IT'S THE EMPLOYER'S POSITION THAT THE
7 CLAIMANT IS NOT OR WAS NOT AN EMPLOYEE ON THE DATE
8 OF THE ACCIDENT AND RATHER AN INDEPENDENT
9 CONTRACTOR. AND BUT THE EMPLOYER BELIEVES THAT AN
10 AVERAGE WEEKLY WAGE SHOULD BE CALCULATED AS \$395.54,
11 YIELDING A COMPENSATION RATE OF \$263.70. AND THE
12 DATE OF THIS ALLEGED ACCIDENT WAS FEBRUARY 19TH,
13 2014. BEFORE I ASK IF THERE ARE ANY OBJECTIONS, I
14 AM GOING TO PREEMPT MR. SAMUELS BECAUSE HE DOES IN
15 FACT HAVE AN OBJECTION, AND HIS OBJECTION IS TO THE
16 REPORT OF DR. BETLA OR BETTLE. I'M NOT REALLY SURE
17 HOW HE PRONOUNCES THAT, IT'S B-E-T-T-L-E, OF COASTAL
18 NEUROLOGY IN PORT ROYAL. IT'S MR. SAMUEL'S
19 OBJECTION ON BEHALF OF HIS CLIENT THAT THE REPORT IS
20 NOT MADE TO A REASONABLE DEGREE OF MEDICAL
21 CERTAINTY. I HAVE NOT READ THE REPORT. I'VE
22 SKIMMED IT. BUT THAT OBJECTION RATHER IS GOING TO
23 BE HELD IN ABEYANCE. BUT MR. SAMUELS ON BEHALF OF
24 HIS CLIENT HAS A RUNNING OBJECTION TO THAT REPORT
25 AND ANY TESTIMONY RELATING TO IT, AND I WILL ADDRESS

1 THAT ISSUE IN MY ORDER INSTRUCTIONS. ARE THERE ANY
2 FURTHER OBJECTIONS TO APAS, JURISDICTION, VENUE, OR
3 ANY OTHER ITEMS?

4 BY MR. SAMUELS:

5 REGARDING THE OTHER OBJECTIONS, YOU KNOW, YOUR
6 HONOR, I DID WANT TO JUST MAKE SURE ON THE RECORD
7 WITH DR. BETTLE'S REPORT WE'RE OBJECTING ALSO ON
8 TIMELINESS AND LACK OF FOUNDATION BECAUSE THERE WAS
9 NO ACTUAL EVALUATION.

10 BY COMMISSIONER BARDEN:

11 TIMELINESS? NOW, I DIDN'T KNOW THAT THERE WAS
12 A -- I SEE. I SEE NOW IT'S DATED -- WELL, IT'S JUNE
13 6TH -- AND I DON'T KNOW WHEN YOU'VE GOT -- ARE YOU
14 SAYING WHEN YOU GOT IT, WHEN YOU RECEIVED IT?

15 BY MR. LIIPFERT:

16 HE GOT IT BY E-MAIL JUNE 16TH.

17 BY MR. SAMUELS:

18 I'M -- HE'S CORRECT. I -- YEAH. I WITHDRAW.
19 I WITHDRAW THAT ---

20 BY COMMISSIONER BARDEN:

21 OKAY.

22 BY MR. SAMUELS:

23 --- OBJECTION. HE'S CORRECT THIS TIME.

24 BY COMMISSIONER BARDEN:

25 AND I KNOW YOU HAVE THE -- AS FAR AS THE WEIGHT

1 IS CONCERNED, YOU TOLD ME THE IN THE PRE-HEARING
2 CONFERENCE THAT BECAUSE DR. BETTLE DIDN'T EXAMINE
3 THE CLAIMANT YOU WANTED ME TO OBVIOUSLY KEEP THAT IN
4 MIND AS WELL.

5 BY MR. SAMUELS:

6 YES, SIR. BUT THERE IS NO ---

7 BY COMMISSIONER BARDEN:

8 BUT THAT ---

9 BY MR. SAMUELS:

10 --- FOUNDATION. IT'S NOT CREDIBLE. IT'S -- IT
11 IS -- IT IS ENTIRELY SPECULATION, CLEARLY AN ATTEMPT
12 TO SIMPLY OPPOSE THE EVALUATION BY THE NEUROLOGIST
13 WHO ACTUALLY SAW HIM, MR. CRANE.

14 BY COMMISSIONER BARDEN:

15 OKAY. WELL, YOUR OBJECTION IS HELD IN
16 ABEYANCE. ARE THERE ANY FURTHER OBJECTIONS TO APAS,
17 JURISDICTION, VENUE OR ANY OTHER ITEMS?

18 BY MR. SAMUELS:

19 NONE FROM THE CLAIMANT.

20 BY COMMISSIONER BARDEN:

21 MR. STORY?

22 BY MR. STORY:

23 NONE, COMMISSIONER. NO.

24 BY COMMISSIONER BARDEN:

25 MR. LIIPFERT?

1 BY MR. LIIPFERT:

2 NO.

3 BY COMMISSIONER BARDEN:

4 THANK YOU. WITHOUT FURTHER OBJECTION, THE
5 COMMISSION FILE BECOMES A PART OF THE RECORD WITH
6 THE EXCEPTION OF SELF SERVING DECLARATIONS AND
7 UNSTIPULATED MEDICAL REPORTS.

8 PRIOR TO GOING ON THE RECORD, WE HELD A PRE-
9 HEARING CONFERENCE. IT'S THE POSITION OF THE
10 CLAIMANT THAT HE SUFFERED A COMPENSABLE INJURY BY
11 ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE
12 OF HIS EMPLOYMENT ON FEBRUARY 19TH, 2014, ON WHICH
13 DATE HE INJURED HIS HEAD AND HIS BRAIN. HE ALSO
14 INJURED HIS HEARING FUNCTION SUCH THAT HE HAS
15 BILATERAL HEARING LOSS. IT'S HIS POSITION THAT HE
16 AGGRAVATED A PRE-EXISTING PSYCHOLOGICAL CONDITION,
17 AND THAT HE ALSO HAS EITHER SUSTAINED OR AGGRAVATE -
18 - SUSTAINED A VESTIBULAR DISTURBANCE, I.E. DIZZINESS
19 OR -- AND PERHAPS OTHER BALANCE ISSUES, I'M NOT
20 REALLY SURE YET. THAT WILL BE EXPLORED THROUGH THE
21 MEDICAL RECORDS AND THE TESTIMONY. AND IF HE
22 ALREADY HAD ANY KIND OF VESTIBULAR DISTURBANCE, IT
23 WAS CERTAINLY AGGRAVATED. THE CLAIMANT WOULD
24 CONCEDE THAT AT THIS JUNCTURE HE DOES NOT KNOW THE
25 EXTENT OF HIS BRAIN INJURY. HE ADMITS THAT HE DID

1 NOT SUFFER A LOSS OF CONSCIOUSNESS, THAT HE WAS
2 DAZED. HOWEVER, AND THAT HE WOULD POINT TO MY
3 ATTENTION THE FACT THAT NO STATUTE OR CASE REQUIRES
4 THAT A CLAIMANT HAVE LOST CONSCIOUSNESS PRIOR TO
5 THERE BEING A FINDING OF A BRAIN INJURY. SO THE
6 CLAIMANT WOULD CONTEND THAT HE'S STILL TREATING. HE
7 DOES NOT KNOW THE EXTENT OF HIS INJURIES WITH REGARD
8 TO THE HEAD AND THE BRAIN. AS FAR AS BILATERAL
9 HEARING LOSS IS CONCERNED, HE DOES ADMIT THAT THERE
10 WAS ANOTHER -- A TEST. BUT BECAUSE THIS IS A DENIED
11 CLAIM, HE IS LOOKING FOR A FINDING OF
12 COMPENSABILITY, AND THEN HE WILL UNDERGO WHATEVER
13 TESTS THAT HIS TREATING PHYSICIAN HAS RECOMMENDED.
14 THE CLAIMANT IS LOOKING FOR TEMPORARY TOTAL
15 DISABILITY BENEFITS AND SEEKS AN ORDER REQUIRING THE
16 DEFENDANTS TO PROVIDE HIM WITH TEMPORARY TOTAL
17 DISABILITY BENEFITS FROM THE DATE OF THE ACCIDENT,
18 FEBRUARY 19TH, 2014, TO THE PRESENT AND CONTINUING
19 WITH THE DEFENDANTS TO RECEIVE CREDIT FOR ONE
20 PARTIAL DAY WORK. THE CLAIMANT SEEKS REIMBURSEMENT
21 FOR THOSE EXPENSES HE'S INCURRED THUS FAR WITH
22 REGARD TO THE EVALUATION AND TREATMENT OF HIS
23 INJURIES. HE SEEKS AN ORDER REQUIRING THE
24 DEFENDANTS TO PROVIDE HIM WITH MEDICAL TREATMENT.
25 HE HAS ESTABLISHED AN ONGOING TREATING RELATIONSHIP

1 WITH CAROLINA E.N.T., AND HE WISHES THAT THAT
2 TREATMENT RELATIONSHIP NOT BE DISTURBED, ALTHOUGH HE
3 UNDERSTANDS THAT THE DEFENDANTS ORDINARILY GET --
4 HAVE THE RIGHT TO DIRECT TREATMENT. BUT THE
5 CLAIMANT STRONGLY CONTENTS THAT AN EXCEPTION SHOULD
6 BE MADE IN THIS INSTANCE AS THERE IS AN ONGOING
7 TREATING RELATIONSHIP REGARDING THE HEARING LOSS.
8 THE CLAIMANT ALSO WOULD REQUEST THAT DR. ROGERS BE
9 NAMED THE TREATING NEUROLOGIST AS DR. ROGERS HAS
10 EVALUATED THE CLAIMANT AND HAS RECOMMENDED CERTAIN
11 TREATMENT MODALITIES. AS MR. SAMUELS REFERRED TO
12 THE DEFENDANTS' REPORT FROM COASTAL NEUROLOGY, A
13 COMPETING REPORT DEALING WITH THE ABSENCE OF
14 EXISTENCE OF A BRAIN INJURY, AS MR. SAMUELS SAID,
15 DR. BETTLE DID NOT EXAMINE THE CLAIMANT. THE REPORT
16 IS SPECULATIVE ACCORDING THE CLAIMANT'S
17 INTERPRETATION OF THAT. AND ALSO OF COURSE,
18 PRIMARILY THE CLAIMANT WOULD CONTEND THAT THE REPORT
19 IS NOT MADE TO A REASONABLE DEGREE OF MEDICAL
20 CERTAINTY AND THEREFORE, SHOULD NOT BE ADMITTED
21 WHATSOEVER, NOT EVEN WHAT KIND OF WEIGHT SHOULD BE
22 ACCORDED TO THE REPORT BUT THAT IT SHOULD NOT BE
23 ADMITTED AT ALL. THE CLAIMANT WOULD POINT TO MY
24 ATTENTION THE FACT THAT HE -- WHILE HE MAY BE
25 PERHAPS DID NOT LOSE CONSCIOUSNESS, HE DID IN FACT

1 GO TO THE E.R. WHERE HE SOUGHT TREATMENT FOR THAT
2 DAY TO -- SOUGHT TREATMENT ON THAT DAY FOR HIS
3 MYRIAD INJURIES. AS FAR AS THE EMPLOYMENT
4 RELATIONSHIP, THE CLAIMANT WOULD POINT TO MY
5 ATTENTION THE FACT THAT NO DOCUMENT PURPORTING TO
6 ESTABLISH THE NATURE OF AN EMPLOYMENT RELATIONSHIP
7 OR LACK THEREOF IS DISPOSITIVE, AND THIS CASE WOULD
8 BE NO DIFFERENT. THE CLAIMANT WOULD CONTEND THAT
9 THE EMPLOYER EXERCISED SUFFICIENT CONTROL AND HAD A
10 RIGHT TO EXERCISE SUFFICIENT CONTROL OVER THE
11 CLAIMANT, THAT THE EMPLOYER PROVIDED UNIFORMS, AND
12 THAT THERE WERE CERTAINLY FOUR OR MORE EMPLOYEES
13 REGULARLY EMPLOYED ON THE DATE OF THE ACCIDENT. BUT
14 THE CLAIMANT WOULD CONTEND THAT THERE IS
15 JURISDICTION TO HEAR THE CLAIM AND THAT THE CLAIMANT
16 WAS IN FACT AN EMPLOYEE AND NOT AN INDEPENDENT
17 CONTRACTOR. AND OF COURSE, THOSE ISSUES WILL BE
18 EXPLORED THROUGH THE TESTIMONY, SO I'M NOT GOING TO
19 ELABORATE FURTHER.

20 CONVERSELY, IT IS THE POSITION OF BOTH
21 DEFENDANTS, THE U.E.F. AND THE EMPLOYER, THAT
22 BENEFITS UNDER THE ACT SHOULD BE DENIED. THE U.E.F.
23 HAS ISSUED A GENERAL DENIAL OF THE CLAIM IN GENERAL
24 AND DOES NOT ADMIT AT THIS JUNCTURE THAT THERE WAS
25 EVER EVEN AN INCIDENT THAT OCCURRED. THE EMPLOYER

1 DOES ADMIT THAT THERE WAS AN INCIDENT WHEN A HOSE
2 CAME OFF AT THE -- AT MR. RABER'S PLACE OF BUSINESS,
3 BUT THAT THE CLAIMANT MOVES BACK FROM THAT, AND THE
4 EMPLOYER DOES NOT BELIEVE THAT THE CLAIMANT WAS
5 STRUCK WITH ANYTHING, THAT THE CLAIMANT MOVED BACK
6 INITIALLY AND THEN EVENTUALLY WENT RIGHT BACK TO
7 WORK. SO THE EMPLOYER THINKS THERE WAS NO INJURY
8 WITH REGARD TO THIS CLAIM WHATSOEVER, BUT IF THERE
9 WERE ANY KIND OF INJURY, IT WOULD CERTAINLY HAVE
10 BEEN SOMETHING VERY MILD. THE EMPLOYER AND THE
11 U.E.F. BELIEVE THAT THERE WAS NO BRAIN INJURY, THERE
12 WAS NO LOSS OF CONSCIOUSNESS AND, THEREFORE, THERE
13 COULD BE NO BRAIN INJURY. BUT CERTAINLY IF THE
14 CLAIMANT INJURED HIS HEAD IT WAS SOMETHING VERY
15 MINOR AND RESOLVED. AS FAR AS THE PSYCHOLOGICAL
16 OVERLAY ISSUE IS CONCERNED, THE DEFENDANTS WOULD
17 POINT TO MY ATTENTION THE FACT THAT THE CLAIMANT HAD
18 PRIOR AND PRE-EXISTING BIPOLAR AND PSYCHOLOGICAL
19 DIFFICULTIES FOR WHICH HE WAS TAKING MEDICATIONS ON
20 THE DATE OF THE ACCIDENT AND THAT THERE IS NO
21 EVIDENCE OTHER THAN THE CLAIMANT'S SELF-SERVING
22 STATEMENTS TO DR. ROGERS THAT THESE CONDITIONS WERE
23 AGGRAVATED. IT WOULD BE THE DEFENDANTS' POSITION
24 THAT IF THESE CONDITIONS WERE AGGRAVATED IT WAS
25 CERTAINLY ON A TEMPORARY BASIS AND THOSE, ANY

1 AGGRAVATION, HAD RESOLVED. THE DEFENDANTS FURTHER
2 POINT TO MY ATTENTION THE FACT THAT NO DOCTOR HAS
3 ESTABLISHED THAT THERE HAS BEEN A VESTIBULAR
4 DISTURBANCE INJURY OR AN AGGRAVATION OTHER THAN
5 THROUGH THE CLAIMANT'S SELF-SERVING STATEMENTS. AS
6 FAR AS THE NATURE OF THE EMPLOYMENT RELATIONSHIP,
7 THE DEFENDANTS WOULD AS FAR AS -- LET'S START WITH
8 JURISDICTION, THE U.E.F. WOULD CONTEND THAT THERE
9 WERE NOT FOUR OR MORE -- WELL, THAT IT'S THE
10 CLAIMANT'S BURDEN TO PROVE THAT THERE WERE IN FACT
11 FOUR OR MORE EMPLOYEES REGULARLY EMPLOYED ON THE
12 DATE OF THE ACCIDENT. SO AT THIS JUNCTURE, THERE IS
13 NO JURISDICTION TO HEAR THE CLAIM UNTIL THE CLAIMANT
14 PROVES OTHERWISE. THE DEFENDANTS WOULD POINT TO MY
15 ATTENTION THE FACT THAT THE CLAIMANT SIGNED A
16 CONTRACT SAYING THAT HE WAS IN FACT AN INDEPENDENT
17 CONTRACTOR, AND THAT AS THE CLAIMANT SIGNED THAT
18 THAT GREAT WEIGHT SHOULD BE GIVEN TO THAT CONTRACT.
19 WHILE THOUGH PERHAPS NO CONTRACT IS DISPOSITIVE IN
20 THIS CASE, THE DEFENDANTS BELIEVE THAT THE CLAIMANT
21 DESCRIBED HIMSELF AS AN INDEPENDENT CONTRACTOR IN
22 THE CONTRACT AND SIGNED IT AND SO, THEREFORE, IT
23 SHOULD BE -- IT IS BINDING, AND IT SHOULD BE GIVEN
24 GREAT WEIGHT AS IT IS VALID. AS FAR AS CONTROL IS
25 CONCERNED, THE DEFENDANTS WOULD CONTEND THAT THE

1 CLAIMANT CAME AND WENT AS HE PLEASED, THAT HE WAS
2 NOT SUPERVISED, THAT HE BROUGHT A LOT OF HIS OWN
3 TOOLS, AND THEN IN FACT HE MAY HAVE BEEN AND WAS
4 PERHAPS AT LEAST THAT ONE DEFENDANT BELIEVES THAT HE
5 WAS WORKING ON HIS OWN VEHICLE, A WHITE TRUCK AT THE
6 EMPLOYER'S PLACE OF BUSINESS, THAT THE CLAIMANT WAS
7 USING PARTS THAT HE HAD PURCHASED UNDER MR. RABER'S
8 ACCOUNT. BUT THE DEFENDANTS PLEAD A WHOLE HOST OF
9 REASONS AS DEFENSES WHY THE CLAIM SHOULD BE DENIED.
10 IF, HOWEVER, I FIND THAT THIS CLAIM IN FACT IS
11 COMPENSABLE AND THE CLAIMANT WAS AN EMPLOYEE, THAT
12 THERE IS JURISDICTION AND THAT HE SUSTAINED SOME OR
13 MORE INJURIES, THE DEFENDANTS WOULD POINT TO MY
14 ATTENTION THE FACT, PARTICULARLY THE EMPLOYER, THAT
15 THE CLAIMANT DID IN FACT REJECT LIGHT DUTY AND SO,
16 THEREFORE, HE WOULD NOT BE ENTITLED TO ANY TEMPORARY
17 BENEFITS. AS FAR AS THE DIRECTING TREATMENT, THE
18 U.E.F. WOULD CONTEND THAT THE DEFENDANTS' RIGHT TO
19 DIRECT TREATMENT SHOULD BE RESPECTED AND COMPLIED
20 WITH, AND UNLESS THE U.E.F. WOULD AGREE TO CERTAIN
21 PROVIDERS THAT PERHAPS THE CLAIMANT HAS ALREADY
22 ESTABLISHED RELATIONSHIPS WITH OR SEEN. THE
23 EMPLOYER, IF THE CLAIM IS COMPENSABLE, DOES NOT HAVE
24 An OBJECTION TO CAROLINA E.N.T. BEING CONTINUED AS
25 THE AUTHORIZED-TREATING PHYSICIAN, BUT THE EMPLOYER

1 DOES OBJECT TO DR. ROGERS BEING MADE OR NAMED AS A
2 TREATING PHYSICIAN FOR THE REASON THAT DR. ROGERS
3 HAS PROVIDED AN EVALUATION ONLY, NO REAL TREATMENT,
4 AND FOR THE FACT THAT THE DEFENDANTS DO NOT BELIEVE,
5 OR THE EMPLOYER RATHER, DOES NOT BELIEVE THAT DR.
6 ROGER'S REPORT -- THAT THEY BELIEVE THAT THE ROGER'S
7 REPORT IS NOT CREDIBLE AND CERTAINLY SHOULD NOT BE
8 GIVEN ANY WEIGHT. IT'S NOT PERSUASIVE IN THAT THE
9 MEDICAL EVIDENCE DOES NOT SUPPORT A FINDING OF A
10 BRAIN INJURY. FOR ONE REASON, THE CLAIMANT DIDN'T
11 SUSTAIN A LOSS OF CONSCIOUSNESS, WAS NOT IN A COMA,
12 AND THE CLAIMANT'S GLASGOW SCORES WERE SUCH THAT
13 THEY SHOW NO COGNITIVE OR NEUROLOGICAL DIFFICULTIES.
14 AS FAR AS THE HEARING IS CONCERNED, THE DEFENDANTS
15 WOULD POINT TO MY ATTENTION THE FACT THAT THE
16 CLAIMANT COULD'VE UNDERGONE A TEST WHICH SHOWED --
17 WOULD SHOW OBJECTIVE HEARING LOSS, AND HE HAS NOT
18 HAD IT, NOT UNDERGONE THAT TEST WHEN HE COULD HAVE.
19 SO THE DEFENDANTS BELIEVE THAT THE CLAIMANT CANNOT
20 BY CREDIBLE EVIDENCE ESTABLISH A REAL HEARING LOSS.
21 OKAY. IF I HAVE -- BECAUSE I HAVE AS Y'ALL KNOW
22 JUST BEEN HANDED THESE APAs, IF I HAVE MISSTATED,
23 MISCHARACTERIZED, OMITTED, OVERSTATED ONE OF YOUR
24 POSITIONS, SOMETHING THAT YOU WANT TO CORRECT OR
25 CLARIFY, I CERTAINLY AM ALL EARS, AND I WILL MAKE

1 ANY NOTES TO CORRECT ANY MISSTATEMENTS I MAY HAVE
2 MADE. AND ALTERNATIVELY, IF YOU'RE SATISFIED WITH
3 THE SUMMARY, THAT'S FINE TOO. SO I'M GOING TO START
4 WITH MR. SAMUELS AS HE REPRESENTS THE MOVING PARTY.

5 BY MR. SAMUELS:

6 I THINK YOU COVERED IT ALL, COMMISSIONER.

7 THANK YOU.

8 BY COMMISSIONER BARDEN:

9 ALL RIGHT. THANK YOU. MR. LIIPFERT:

10 BY MR. LIIPFERT:

11 I THINK YOU GOT IT. THANK YOU.

12 BY COMMISSIONER BARDEN:

13 MR. STORY, IS THERE ANYTHING THE U.E.F. WISHES
14 TO ADD?

15 BY MR. STORY:

16 THE ONLY THING I'D LIKE TO ADD ---

17 BY COMMISSIONER BARDEN:

18 YES, SIR.

19 BY MR. STORY:

20 --- COMMISSIONER, IS IF THIS CLAIM IS FOUND
21 COMPENSABLE THAT THERE BE A DETERMINATION THAT THE -
22 - THAT MR. RABER AND HIS ENTITY ARE DETERMINED AS A
23 NON-QUALIFIED SELF INSURER SUBJECT TO THE ACT, SO
24 THAT IF THE UNINSURED EMPLOYERS' FUND IS RESPONSIBLE
25 FOR BENEFITS THEY MAY RETAIN ALL OF THEIR RIGHTS

1 BACK AGAINST RABER IF YOU FIND HIM TO BE AN
2 EMPLOYER.

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT.

5 BY MR. STORY:

6 THANK YOU.

7 BY COMMISSIONER BARDEN:

8 THANK YOU, SIR. ALL RIGHT. MR. SAMUELS, YOUR
9 FIRST AND ONLY WITNESS IS MR. CRANE; IS THAT
10 CORRECT?

11 BY MR. SAMUELS:

12 THAT'S CORRECT, YOUR HONOR.

13 BY COMMISSIONER BARDEN:

14 ALL RIGHT. MR. CRANE, IF YOU'LL RAISE YOUR
15 RIGHT HAND, PLEASE. MR. CRANE, RAISE YOUR RIGHT
16 HAND, PLEASE.

17 * * * * *

18 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH,
19 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING
20 THE MATTER HEREIN:

21 * * * * *

22 DANNY CRANE

23 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

24 BY COMMISSIONER BARDEN:

25 NOW, YOU'VE GOT TO ANSWER THE QUESTIONS, OKAY?

1 NOW, I UNDERSTAND YOU CAN UNDERSTAND ME FROM MR.
2 SAMUELS SAYS YOU CAN HEAR ME; IS THAT CORRECT?

3 BY THE WITNESS:

4 IF I CAN GET YOU TO SPEAK A LITTLE LOUDER.

5 BY COMMISSIONER BARDEN:

6 OKAY. I'LL BE HAPPY TO. PLEASE STATE YOUR
7 FULL NAME FOR THE RECORD.

8 BY THE WITNESS:

9 DANNY B. CRANE, JUNIOR.

10 BY COMMISSIONER BARDEN:

11 THANK YOU. PLEASE ANSWER ANY QUESTIONS YOUR
12 LAWYER HAS.

13 NOW, MR. SAMUELS, LET'S FIGURE OUT A PLACE FOR
14 YOU TO -- CAN YOU PERHAPS MOVE YOUR CHAIR OVER THERE
15 (INDICATING) AND YOU CAN USE THE TABLE THIS WAY?

16 BY MR. SAMUELS:

17 AND THE CHAIR WHICHEVER.

18 BY COMMISSIONER BARDEN:

19 OR WHAT DO YOU WANT TO DO?

20 BY MR. SAMUELS:

21 THE OTHER SIDE?

22 BY COMMISSIONER BARDEN:

23 I JUST I KNOW YOU'VE GOT A NOTEBOOK AND YOU'RE
24 GOING TO NEED TO USE IT.

25 BY MR. SAMUELS:

1 IF I BRING ---

2 BY COMMISSIONER BARDEN:

3 IS THAT GOING TO BE ENOUGH ROOM FOR YOU?

4 BY MR. STORY:

5 YES, MA'AM.

6 BY COMMISSIONER BARDEN:

7 OKAY. ALL RIGHT.

8 BY MR. STORY:

9 BUT YEAH, I NEED TO SCOOT SOME OF MY STUFF A

10 VERY GOOD OUT OF THE WAY.

11 BY COMMISSIONER BARDEN:

12 AND YOU CAN HEAR OUT OF YOUR LEFT EAR; IS THAT

13 RIGHT; YOUR LEFT EAR YOU CAN HEAR OUT OF?

14 BY THE WITNESS:

15 MY LEFT, YES.

16 BY COMMISSIONER BARDEN:

17 OKAY. WHENEVER YOU'RE READY, SIR.

18 BY MR. SAMUELS:

19 THANK YOU, COMMISSIONER.

20 DIRECT EXAMINATION BY MR. SAMUELS:

21 Q. DANNY, HOW OLD ARE YOU?

22 A. THIRTY-SEVEN.

23 Q. WHAT'S YOUR MARITAL STATUS?

24 A. MARRIED.

25 Q. WHAT'S YOUR WIFE'S NAME?

1 A. KIMBERLY LOVE.

2 Q. HOW LONG HAVE YOU BEEN MARRIED?

3 A. ABOUT FIVE YEARS. WE'VE BEEN TOGETHER SINCE '95,
4 BUT WE'VE BEEN ACTUALLY MARRIED FIVE YEARS.

5 Q. HOW MANY CHILDREN DO YOU HAVE?

6 A. SIX.

7 Q. HOW OLD ARE THEY?

8 A. TOMIKA'S 15. FAWN IS 12. DANNY IS 11. KALEY, TEN.
9 BOSS IS EIGHT. AND GATOR'S SEVEN, I BELIEVE.

10 Q. DID YOU GRADUATE FROM HIGH SCHOOL?

11 A. YES..

12 Q. ON FEBRUARY 19TH, 2014, WHERE WERE YOU EMPLOYED?

13 A. RABER'S TIRE.

14 Q. WHAT'S THE LOCATION OF RABER'S TIRE?

15 A. IN BARNWELL OFF OF DUNBARTON BOULEVARD.

16 Q. I'M GOING TO SHOW YOU A PHOTOGRAPH. DO YOU
17 RECOGNIZE WHAT WE'RE LOOKING AT IN THIS PHOTOGRAPH?

18 A. RABER'S TIRE.

19 Q. IS THAT A TRUE AND ACCURATE REPRESENTATION OF
20 RABER'S TIRE?

21 A. YES.

22 BY MR. SAMUELS:

23 AND I'D MOVE TO SUBMIT THIS PHOTOGRAPH.

24 BY COMMISSIONER BARDEN:

25 AND OBJECTION?

1 BY MR. STORY:

2 NO, MA'AM.

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT. WITHOUT OBJECTION, CLAIMANT'S
5 NUMBER ONE. MR. SAMUELS, GIVE HER ONE SECOND TO
6 MARK THAT BEFORE YOU CONTINUE, PLEASE.

7 (COURT REPORTER MARKS PHOTOGRAPH CLAIMANT'S EXHIBIT ONE,
8 RETAINED IN THE COMMISSION FILE)

9 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

10 Q. DANNY, HOW MANY BAYS DO THEY HAVE AT RABER TIRE?

11 BY COMMISSIONER BARDEN:

12 WAIT A MINUTE. ONE SECOND. SHE HADN'T MARKED
13 IT YET. SHE JUST -- ONE SECOND. ALL RIGHT. AND GO
14 AHEAD, SIR. YOU ASKED HOW MANY BAYS THEY HAVE.

15 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

16 Q. HOW MANY BAYS DO THEY HAVE AT RABER TIRE?

17 A. FOUR.

18 Q. WHO'S YOUR BOSS?

19 A. MR. RABER.

20 Q. WAS THERE A SHOP FOREMAN?

21 A. CHAD WILLIAMS.

22 Q. WHO ELSE WORKED AT RABER TIRE?

23 A. THERE WAS MARIE THAT WORKED IN THE OFFICE.

24 BY COMMISSIONER BARDEN:

25 MARIE OR MARY? WHO'S HER NAME?

1 BY THE WITNESS:

2 MARIE.

3 BY COMMISSIONER BARDEN:

4 MARIE, OKAY. GO AHEAD.

5 THE WITNESS RESUMES ANSWER:

6 A. AND THEN THERE WAS CHAD THAT WAS THE FOREMAN.

7 LITTLE MAN PERNELL, RED, ALFRED OR ALFIE, AND ME,
8 AND JAMES HE IS ANYHOW.

9 Q. HOW WERE YOU PAID?

10 A. BY THE HOUR.

11 Q. HOW MUCH WERE YOU PAID PER HOUR?

12 A. NINE.

13 Q. ABOUT HOW MANY HOURS A WEEK DID YOU WORK?

14 A. IT DEPENDS. I MEAN, WE'D WORK FROM 7:00 IN THE
15 MORNING 'TIL, I MEAN, AT 6:00 AT NIGHT. SOMETIMES
16 WE'D STAY OVER. SOMETIMES WE'D SHUTS -- YOU KNOW,
17 SHUT DOWN AND COME BACK LATER TO FINISH SOMETHING OR
18 COME IN SUNDAY AND WORK THEN.

19 Q. DID YOU WORK FULL-TIME?

20 A. YES.

21 Q. DID YOU GET PAID TIME-AND-A-HALF WHEN YOU WORKED FOR
22 OVER 40 HOURS?

23 A. NO.

24 Q. DID YOU WEAR A UNIFORM?

25 A. YES.

1 Q. WHO SUPPLIED THE UNIFORM?

2 A. MR. JAMES.

3 Q. WHO DIRECTED YOUR WORK?

4 A. MR. JAMES AND MARIE.

5 Q. WHOSE TOOLS DID YOU USE?

6 A. MINE.

7 Q. WHICH TOOLS DID YOU HAVE THAT WERE YOURS?

8 A. I -- I HAD A BUNCH OF SPECIALTY TOOLS AND A WHOLE
9 CHEST OF DRAWER FULL OF TOOLS THAT WERE FROM MATCO
10 TOOL TRUCK.

11 BY COMMISSIONER BARDEN:

12 CAN YOU HEAR HIM? YOU'RE GOING TO HAVE TO
13 SPEAK UP, SIR. YOU'RE GOING TO HAVE TO SPEAK UP.

14 THE WITNESS RESUMES ANSWER:

15 A. THERE WAS A WHOLE CHEST OF DRAWER FULL OF TOOLS THAT
16 COME OFF OF THE MATCO TOOL TRUCK.

17 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

18 Q. IS THAT NORMAL AS A MECHANIC TO HAVE YOUR OWN HAND
19 TOOLS?

20 A. IN EVERY SHOP I'VE BEEN IN.

21 Q. THE OTHER MECHANICS HAVE THEIR OWN HAND TOOLS?

22 A. NOT AT HIS SHOP. THE REST OF THEM DID TIRE WORK,
23 AND THE ONLY MECHANIC AT THE TIME WAS ME. ALFIE DID
24 SOME WORK, AND HE HAD A LITTLE KIT THAT HE BROUGHT
25 IN, BUT HE USED MINE AND WHATEVER MR. RABER HAD.

- 1 Q. IN TERMS OF LARGER EQUIPMENT, WHAT LARGER EQUIPMENT
2 DID YOU USE AT THE JOB?
- 3 A. THE TIRE CHANGER, THE BALANCER, THE BRAKE LAYS, THE
4 ALIGNMENT RACK AND THE LIFT, THAT WAS ALL MR.
5 RABER'S.
- 6 Q. WOULD YOU HAVE BEEN ABLE TO DO YOUR WORK WITHOUT THE
7 EQUIPMENT PROVIDED BY MR. RABER?
- 8 A. NO.
- 9 Q. WOULD YOU BEEN -- WOULD YOU HAVE HAD ANY WORK TO DO
10 IF YOU WEREN'T IN RABER'S SHOP?
- 11 A. I'M NOT UNDERSTANDING.
- 12 Q. THE WORK -- YOU WERE GIVEN WORK TO DO. WHO ACTUALLY
13 GAVE YOU THE WORK TO DO?
- 14 A. MR. RABER.
- 15 Q. DO YOU REMEMBER HAVING AN ACCIDENT AT WORK?
- 16 A. YES.
- 17 Q. WHO WAS WORKING THAT DAY?
- 18 A. I THINK IT WAS CHAD, ME, ALFIE, AND LITTLE MAN.
19 JAMES AND MARIE WERE IN A CLASS OR TRAINING.
- 20 Q. WHAT WERE YOU WORKING ON ALL OF THAT DAY?
- 21 A. DIFFERENT THINGS. MR. RABER HAD A -- A PORTABLE
22 OFFICE THAT'S PEOPLE CAME TO GET. AND WE NEEDED TO
23 MOVE A TRAILER, SO I USED MY PICK-UP TO MOVE THE
24 TRAILER AROUND. I THINK WE DONE AN OIL CHANGE TOO.
25 I'M NOT ONE HUNDRED-PERCENT SURE, AND TIRE WORK,

1 CLEANING UP.

2 Q. DID YOU HAVE YOUR OWN TRUCK THERE THAT DAY?

3 A. YES.

4 Q. WAS IT PULLED INTO THE SHOP FOR ANYTHING?

5 A. YES.

6 Q. WHAT WAS DONE TO YOUR TRUCK?

7 A. I -- THE SHOCK ON THE REAR HAD BLOWN OUT, AND I
8 DISCUSSED WITH CHAD, AND CHAD SAID THAT, WELL, SINCE
9 YOU WERE USING IT TO PULL THE TIRE TRAILER FULL OF
10 TIRES AND WATER TO GO AHEAD AND ORDER THE SHOCKS AND
11 TO PUT THEM ON.

12 Q. AND WHO ACTUALLY PUT THE SHOCKS ON?

13 A. ALFIE. I SWAPPED HIM -- HE WANTED SOME AIR TOOLS,
14 AND I SAID LET'S -- I DON'T FEEL LIKE WORKING ON IT.
15 IF YOU PUT THE SHOCKS ON IT, I'LL GIVE YOU MY AIR
16 TOOLS.

17 Q. WHEN YOUR TRUCK WAS WORKED ON, WAS IT TAKEN UP ON A
18 LIFT INSIDE THE SHOP?

19 A. YES. AND I DO BELIEVE I WAS THE ONE THAT RACKED IT
20 BECAUSE ALFIE WAS SCARED TO ASSIST IN IT FOR IT TO
21 FALL.

22 Q. WHEN -- WHEN THE ACCIDENT HAPPENED, WHAT WERE YOU
23 ACTUALLY DOING?

24 A. I DON'T EXACTLY REMEMBER. I REMEMBER HEARING A LOUD
25 HISS, AND I WENT ACROSS TO THE TIRE CHANGER AND

1 ALFIE COME BEHIND ME, AND WE WAS LISTENING TO WHERE
2 IT WAS COMING FROM BECAUSE AT FIRST IT SOUNDED LIKE
3 IT WAS COMING FROM UP AROUND THE COUPLER AREA, AND
4 THEN AS I GOT DOWN LOWER AND GOT RIGHT DOWN ON TOP
5 OF IT, WHEN IT POPPED LOOSE, I MEAN, IT WAS -- WAS
6 LIKE A BOMB.

7 BY COMMISSIONER BARDEN:

8 SO WHAT DON'T YOU REMEMBER? YOU SAY YOU DON'T
9 REMEMBER THAT, BUT YOU REMEMBER IT WAS WITH THE TIRE
10 CHANGER?

11 BY THE WITNESS:

12 YES. I DON'T REMEMBER EXACTLY WHAT I WAS
13 WORKING ON. MY -- WHAT NOW?

14 BY COMMISSIONER BARDEN:

15 YOU SAID YOU WERE LISTENING TO WHERE THE SOUND
16 WAS COMING FROM?

17 BY THE WITNESS:

18 UH-HUH.

19 BY COMMISSIONER BARDEN:

20 IS THAT A YES?

21 BY THE WITNESS:

22 YES, MA'AM.

23 BY COMMISSIONER BARDEN:

24 OKAY. OKAY. SO THEN IT -- WHAT HAPPENED AT
25 THAT POINT?

1 BY THE WITNESS:

2 WHEN I WAS LISTENING FOR THE SOUND OF THE --
3 THAT THREE -- IT'S ABOUT A THREE INCH HOSE COME OFF
4 THE -- FROM THE BACK, IT WAS RIGHT UP INTO MY FACE
5 AND...

6 BY COMMISSIONER BARDEN:

7 SO YOU REMEMBER IT HITTING YOU IN THE FACE?
8 DID IT HIT YOU IN THE FACE? DID IT STRIKE YOU, OR
9 IT JUST CAME AT YOU?

10 BY THE WITNESS:

11 I MEAN, I -- I HAD A BRUISE HERE (INDICATING).

12 BY COMMISSIONER BARDEN:

13 OKAY. A BRUISE ON YOUR HEAD; IS THAT RIGHT?

14 BY THE WITNESS:

15 YES, MA'AM.

16 BY COMMISSIONER BARDEN:

17 ON YOUR RIGHT FOREHEAD? ON THE RIGHT SIDE OF
18 YOUR HEAD?

19 BY THE WITNESS:

20 YES, MA'AM.

21 BY COMMISSIONER BARDEN:

22 ALL RIGHT.

23 BY THE WITNESS:

24 AND AS IT COME UP, I WAS TURNING THIS WAY
25 (DEMONSTRATING) TOWARDS THE RIGHT.

1 BY COMMISSIONER BARDEN:

2 OKAY.

3 BY THE WITNESS:

4 AND I DO REMEMBER PUSHING, I THINK IT WAS
5 ALFRED, I PUSHED BACK BEHIND THE OTHER TIRE CHANGER.

6 BY COMMISSIONER BARDEN:

7 OKAY.

8 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

9 Q. ALL RIGHT. IMMEDIATELY AFTER IT HAPPENED, AFTER
10 WHAT YOU'VE JUST DESCRIBED, WHAT HAPPENED NEXT?

11 A. I DON'T KNOW. I WAS ON MY HANDS AND KNEES HOLDING
12 MY EARS 'CAUSE IT WAS RINGING, AND I MEAN IT WAS
13 PAINFUL.

14 Q. WHERE DID IT HURT?

15 A. MY HEAD, MY EARS.

16 Q. WERE YOU KNOCKED OUT?

17 A. NOT THAT I RECALL.

18 Q. AND HOW WERE YOU FEELING OVERALL FOR THE NEXT LITTLE
19 WHILE?

20 A. DAZED, STUNNED, YOU KNOW, SLIGHT DIZZIES. BUT UNTIL
21 THEY GOT A HOLD OF JAMES OR MY WIFE CAME I JUST KIND
22 OF FUMLED AROUND.

23 Q. DID YOU KEEP ON WORKING?

24 A. YES. I HAVE SIX KIDS TO SUPPORT. AND I TRIED TO
25 CONTINUE TO WORK AFTER, BUT I COULDN'T MAKE IT BUT

1 HALF-A-DAY. 'CAUSE WITH THE AMPLIFIER THAT THEY
2 TOLD ME TO, YOU KNOW, TO USE OR TO GET, THE NOISES
3 FROM THE ELECTRIC FANS OR THE BRIGHT LIGHTS OR THE
4 ELECTRIC PUMP FOR THE LIFT TO GO UP OR DOWN WOULD
5 GIVE ME A HEADACHE. I'D GO HOME AT NIGHT AND MY
6 EARS WOULD BE BLEEDING. I NEVER COULD MAKE IT PAST
7 HALF-A-DAY.

8 BY COMMISSIONER BARDEN:

9 YOUR EARS WOULD BLEED? BLEED?

10 BY THE WITNESS:

11 YES, MA'AM.

12 BY COMMISSIONER BARDEN:

13 ON THE INSIDE OUT?

14 BY THE WITNESS:

15 THEY WOULD, YES. IT WOULD BLEED OUT ONTO THE
16 PILLOWS AND...

17 BY COMMISSIONER BARDEN:

18 OKAY. ALL RIGHT.

19 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

20 Q. WHEN -- WHEN'S THE LAST TIME YOU HAD A PROBLEM WITH
21 YOUR EARS BLEEDING?

22 A. WHEN THEY PULL -- THE LAST DAY OF SCHOOL. BRINGING
23 THE KIDS HOME FROM SCHOOL, WE WAS TRYING TO LISTEN
24 TO THE RADIO AND I KEPT TURNING IT UP, KEPT TURNING
25 IT UP, KEPT TURNING, AND IT GOT SO LOUD THAT MY

1 MOTHER-IN-LAW WAS COMPLAINING WHEN I PULLED IN THE
2 YARD.

3 BY COMMISSIONER BARDEN:

4 SO YOU WERE DRIVING WHEN YOU PULLED IN?

5 BY THE WITNESS:

6 YES.

7 BY COMMISSIONER BARDEN:

8 YEAH. OKAY.

9 BY THE WITNESS:

10 BUT WHEN I PULLED INTO THE YARD, MY MOTHER-IN-
11 LAW WAS COMPLAINING OF HOW LOUD THE MUSIC WAS, BUT
12 THAT'S THE ONLY WAY I CAN HEAR IT IS HAVING IT THAT
13 LOUD OVER TOP OF THE ROAD NOISE AND THE -- THE TRUCK
14 ITSELF.

15 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

16 Q. GO BACK TO THE DAY OF THE ACCIDENT. DID YOU GO TO
17 THE HOSPITAL?

18 A. YES.

19 Q. WHO TOOK YOU TO THE HOSPITAL?

20 A. MY WIFE.

21 Q. AND AFTER YOU WERE SEEN AT THE HOSPITAL, WERE YOU
22 REFERRED ANYWHERE?

23 A. YES. I WAS REFERRED TO THE -- THE EAR NOSE AND
24 THROAT SPECIALIST, WHICH IS DR. ANSLEY, AND DR.
25 KOUKOS AT BARNWELL FAMILY MEDICINE.

1 Q. DO YOU HAVE A RELATIONSHIP WITH -- AND I GUESS DO
2 YOU -- DO YOU WANT TO GO BACK TO THE EAR NOSE AND
3 THROAT SPECIALIST?

4 A. YES.

5 Q. WERE YOU REFERRED ANYWHERE FOR ANY FURTHER TESTING
6 BY THE EAR NOSE AND THROAT SPECIALIST?

7 A. DOWN IN CHARLESTON AT M. SOMETHING, IT WAS FOR THE
8 COCHLEAR IMPLANTS, BUT THEY CAN'T GET ME IN BECAUSE
9 OF THE TYPE OF INSURANCE THAT MY WIFE'S GOT US ON;
10 THEY WON'T ACCEPT IT. SO THEY'RE IN THE PROCESS OF
11 TRYING TO SWITCH THE H.M.O, IS IT? I CAN'T REMEMBER
12 THE EXACT, BUT A CHANGE IN THE PLAN SO THAT THEY
13 WILL ACCEPT IT.

14 Q. IS THAT THE REASON WHY YOU HAVEN'T GONE FOR THAT
15 TEST?

16 A. YES.

17 Q. IF YOU WERE ABLE TO GO AND THAT WERE ARRANGED AND
18 PAID FOR AND SCHEDULED, WOULD YOU GO TO THAT TEST?

19 A. MOST DEFINITELY.

20 Q. WOULD YOU GO TO ANY TEST OR ANY TREATMENT THAT WOULD
21 HELP YOU?

22 A. YES.

23 Q. DID YOU ALSO SEE A DR. ROGERS?

24 A. YES.

25 Q. DO YOU REMEMBER SEEING DR. ROGERS?

1 A. THE ONE TOWARDS NORTH CAROLINA.

2 Q. HOW LONG DID YOU SPEND ACTUALLY WITH DR. ROGERS IN
3 THE ROOM WITH HIM?

4 A. ABOUT TWO HOURS, TWO AND -- SOMETHING LIKE THAT,
5 TWO-AND-A-HALF.

6 Q. AND WITHOUT SAYING WHAT HE ACTUALLY TOLD YOU, WOULD
7 YOU DESCRIBE WHAT HAPPENED ON THAT VISIT?

8 A. WELL, HE DONE A BUNCH OF THE REFLEX STUFF. AND LIKE
9 IF I WAS TO GET PULLED OVER BY A D.U.I., HOW THEY
10 MAKE YOU WALK AND STAND LIKE THIS (DEMONSTRATING), I
11 COULDN'T DO; I'D END UP FALLING.

12 Q. DID YOU TRY TO DO IT?

13 A. I TRIED.

14 Q. AND WHAT HAPPENED?

15 A. AND I ALMOST FELL.

16 BY COMMISSIONER BARDEN:

17 WHERE DID YOU ALMOST FALL? WHERE DID YOU
18 ALMOST FALL?

19 BY THE WITNESS:

20 AT DR. ROGERS.

21 BY COMMISSIONER BARDEN:

22 OKAY.

23 BY THE WITNESS:

24 I HAVE FELL OUT OF, YOU KNOW, TRYING TO GET OUT
25 OF THE TUB AND BROKE MY RIBS. IF IT COMES TO AN

1 UNEVEN STEPS LIKE THIS (DEMONSTRATING), OR UNEVEN
2 LIKE THAT, IF I GET JUST A SLIGHT BIT OFF BALANCE, I
3 CAN'T -- I'LL END UP FALLING.

4 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

5 Q. IS THAT STILL HAPPENING?

6 A. YES.

7 Q. WHAT KIND OF RELATIONSHIP DO YOU THINK YOU HAVE WITH
8 DR. ROGERS BASED ON YOUR TIME WITH HIM?

9 A. HE WAS A VERY NICE GUY, ALL -- ALL OF EXCEPT AND,
10 YOU KNOW, HE MADE ME FEEL LIKE AN IDIOT.

11 Q. WHAT DO YOU MEAN?

12 A. AND NOT BEING ABLE TO HEAR HIM, BEING OFF BALANCE
13 AND JUST SOME OF THE STUFF THAT HE'S DONE. AND IT'S
14 HARD FOR ME TO EXPLAIN, BUT I WAS AGGRAVATED A LOT.

15 Q. WHY WERE YOU AGGRAVATED?

16 A. BECAUSE I COULDN'T HEAR. SOME OF THE THINGS LIKE HE
17 SAID HE HAD THREE LETTERS. HE TALKED -- ME AND HIM
18 TALKED ABOUT AT THE BEGINNING. AND AT THE END, HE
19 ASKED ME ABOUT THE SAME THREE LETTERS, AND LIKE
20 APPLE AND, YOU KNOW, THREE -- JUST THREE LETTERS.
21 AND AT THE END OF THE MEETING WITH HIM, I COULDN'T
22 REMEMBER ALL THREE OF THEM.

23 Q. WOULD YOU LIKE DR. ROGERS TO BE YOUR DOCTOR?

24 A. YEAH. HE WAS -- HE'S LIKE DR. ANSLEY. YOU KNOW,
25 HE'S EASIER TO GET ALONG WITH.

1 BY COMMISSIONER BARDEN:

2 EASIER THAN WHAT? YOU SAID HE'S EASIER TO GET
3 ALONG WITH, I THOUGHT YOU SAID?

4 BY THE WITNESS:

5 YOU KNOW, LIKE LAID BACK. YOU KNOW, EASY TO
6 TALK TO AND NOT SO UPTIGHT FEELING AND...

7 DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

8 Q. HAVE YOU EVER BEEN SEEN BY A DR. BETTLE?

9 A. I DON'T REMEMBER THAT NAME.

10 Q. DID RABER TIRES OR THE INSURANCE COMPANY OR THE
11 UNINSURED EMPLOYERS' FUND SEND YOU TO SEE ANY
12 DOCTORS?

13 A. NO. IT WAS DR. ANSLEY AND THE OTHER DOCTOR UP NORTH
14 AND MY REGULAR FAMILY DOCTOR.

15 Q. WHEN YOU TRIED TO GO BACK TO WORK, WHAT HAPPENED
16 WHEN YOU WENT BACK TO WORK?

17 A. WITH THE AMPLIFIER THAT THEY PUT IN, WITH THE NOISES
18 FROM LIKE THE BRAKE LAYS, THAT ELECTRIC MOTOR
19 RUNNING AND THE LOUD SQUEALS THAT YOU CAN AMPLIFY
20 OFF OF THAT AXLE CUTTING OF BRAKE LAYS, THE ELECTRIC
21 MOTORS OF THE LIFTS GOING UP AND DOWN, THEY WOULD
22 GIVE ME A HEADACHE AND I COULDN'T -- I MEAN
23 SEVERELY.

24 Q. HOW -- HOW MUCH DID YOU WORK AFTER YOUR ACCIDENT AT
25 RABER? WAS IT THE NEXT DAY OR A WEEK, HOW -- HOW

1 FAR ALONG AFTER THE ACCIDENT WAS IT?
2 A. I BELIEVE I TRIED TO GO BACK THE NEXT DAY.
3 Q. DID YOU COMPLETE AN ENTIRE SHIFT?
4 A. NO. LIKE I SAID I HAD SIX, YOU KNOW, I HAVE SIX
5 KIDS. EVEN WHEN I CUT MY HAND AND WENT TO DR.
6 KOUKOS AND HAD IT SEWED UP, I HAD WENT RIGHT BACK TO
7 WORK.
8 Q. YOU'D CUT YOUR HAND AT WORK BEFORE THIS ACCIDENT?
9 A. YES.
10 Q. DO YOU ALSO SERVE AS A VOLUNTEER FIREMAN?
11 A. USED TO.
12 Q. UP UNTIL WHEN?
13 A. JUST WHEN THAT ACCIDENT HAPPENED.
14 Q. HOW MUCH TIME HAVE YOU SPENT AT THE FIREHOUSE?
15 A. A LOT.
16 Q. DO YOU GO ON CALLS AND FIGHT FIRES?
17 A. I LOVE IT. IT'S -- NOW THAT THIS HAS HAPPENED, THEY
18 WON'T LET ME. THEY MAKE ME STAY BACK OR RIDE AND
19 SIT, JUST SIT IN THE TRUCK. IT'S ---
20 Q. HOW DOES IT MAKE YOU FEEL, DANNY?
21 A. DEPRESSING. LIKE WHEN YOU GO ON THE TRIP WITH THE
22 KIDS AND THEY'RE TRYING TO TALK TO ME IN THE BACK, I
23 CAN'T HEAR THEM. WHEN THEY'RE IN THE BACK SEAT, I
24 CAN'T HEAR THEM, NOT WITH THE ROAD NOISE. SO
25 EVERYTHING GOING ON I CAN'T.

1 BY MR. SAMUELS:

2 THANK YOU, DANNY. PLEASE ANSWER ANY QUESTIONS
3 THE OTHER ATTORNEYS HAVE FOR YOU.

4 BY COMMISSIONER BARDEN:

5 MR. LIIPFERT.

6 BY MR. LIIPFERT:

7 THANK YOU, MA'AM.

8 CROSS EXAMINATION BY MR. LIIPFERT:

9 Q. MR. CRANE. MR. CRANE, WHEN YOU STARTED WORKING WITH
10 MR. RABER -- MY NAME IS WORTH LIIPFERT, AND I'M
11 REPRESENTING RABER'S TIRE. OKAY? WHEN YOU STARTED
12 WORKING WITH MR. RABER, YOU SIGNED AN AGREEMENT THAT
13 YOU WERE GOING TO BE AN INDEPENDENT CONTRACTOR,
14 RIGHT?

15 A. YES. I GOT LIKE A WEEK OR TWO AFTER I'D ALREADY
16 STARTED. WHAT WOULD YOU DO? WOULD YOU SIGN YOUR
17 CONTRACT?

18 BY COMMISSIONER BARDEN:

19 SIR, YOU DON'T GET TO ASK THE QUESTIONS. YOU
20 ONLY CAN ANSWER THEM.

21 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

22 Q. YOU DIDN'T HAVE ANY SET VACATION DID YOU? YOU WERE
23 ABLE TO WORK AND TAKE OFF AS YOU NEEDED, WEREN'T
24 YOU?

25 A. YES.

- 1 Q. YOU USED YOUR OWN TOOLS?
- 2 A. YES.
- 3 Q. YOU BROUGHT YOUR OWN -- DID YOU BRING YOUR OWN OR
- 4 BUY YOUR OWN TIRE JACK?
- 5 A. WELL, SAY THAT AGAIN.
- 6 Q. DID YOU BUY YOUR OWN FLOOR JACK?
- 7 A. NO.
- 8 Q. OKAY. YOU HAD AIR COMPRESSOR TOOLS TOO, DIDN'T YOU?
- 9 A. CORRECT.
- 10 Q. AND YOU ALREADY KNEW HOW TO DO ALL OF THE WORK ON
- 11 CARS WHEN YOU GOT THERE, DIDN'T YOU?
- 12 A. YES.
- 13 Q. MR. RABER DIDN'T TEACH YOU ANYTHING AT ALL WORKING
- 14 ON CARS, DID HE?
- 15 A. NO. NOT ON THE VEHICLES.
- 16 Q. YET YOU -- ARE YOU A BETTER MECHANIC THAN MR. RABER?
- 17 A. YES.
- 18 Q. AND YOU WERE FREE TO COME AND GO AS YOU PLEASE AS
- 19 FAR AS WORK, TIME FRAME AND EVERYTHING, WEREN'T YOU?
- 20 A. HE MADE ME CLOCK IN AND OUT.
- 21 Q. BUT YOU COULD DO THAT WHENEVER YOU WANTED TO,
- 22 COULDN'T YOU?
- 23 A. YOU STILL HAD TO CHECK WITH JAMES BEFORE YOU WENT
- 24 ANYWHERE.
- 25 Q. OKAY. WELL, WHEN HE WASN'T THERE, BUT COULD YOU

1 LEAVE?

2 A. I HAD TO CHECK WITH EITHER CHAD OR MARIE. IF THEY
3 SAID, NO, THEN -- THEN YOU WERE THERE.

4 Q. NOW ---

5 BY COMMISSIONER BARDEN:

6 YOU'RE GOING TO HAVE TO SPEAK UP, SIR. SHE
7 CAN'T HEAR YOU.

8 BY THE WITNESS:

9 OKAY.

10 BY COMMISSIONER BARDEN:

11 AND I CAN BARELY HEAR YOU.. JUST TURN UP THE
12 VOLUME. THANK YOU.

13 THE WITNESS RESUMES ANSWER:

14 A. IF THEY SAY, NO, THEN -- THEN YOU'RE THERE UNTIL ---

15 BY COMMISSIONER BARDEN:

16 YOU CAN LOOK AT ME. YOU DON'T NEED TO LOOK AT
17 HER. THANK YOU. GO AHEAD.

18 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

19 Q. AND YOU WERE -- AND IT LOOKS LIKE YOU -- YOUR TRUCK
20 IS A WHITE TRUCK, RIGHT?

21 A. YES.

22 Q. YOU PULLED A -- THERE'S A SURVEILLANCE VIDEO
23 FOOTAGE. HAVE YOU SEEN THAT?

24 A. I KNOW HE'S GOT SURVEILLANCE, YEAH.

25 Q. AND HAVE YOU SEEN THE FOOTAGE FROM THE DAY OF THIS

1 INCIDENT?

2 A. NO.

3 Q. OKAY. IT SHOWS THAT YOU PULLED YOUR TRUCK INTO THE
4 -- INTO THE GARAGE ABOUT 3:30; DOES THAT SOUND ABOUT
5 RIGHT TO YOU?

6 A. I THOUGHT IT WAS EARLIER THAN THAT.

7 Q. OKAY. SO IT MAY EVEN HAVE BEEN EARLIER THAN THAT?

8 A. YES.

9 Q. OKAY. ABOUT AROUND 2:30; DOES SOUND RIGHT?

10 A. PROBABLY.

11 Q. AND NOW ARE YOU TELLING ME THAT ALFIE DID THE WORK
12 ON YOUR TRUCK AND NOT YOU THAT DAY?

13 A. AS FAR AS I CAN REMEMBER, I DIDN'T DO ANYTHING TO IT
14 BUT PULLED IT IN AND SAT IT ON THE RACK.

15 Q. ALL RIGHT. AND WHO DO YOU THINK'S A BETTER
16 MECHANIC, YOU OR ALFIE?

17 A. PROBABLY PUTTING SHOCKS ON IT, ALFIE CAN DO THAT.

18 Q. DO YOU THINK YOU'RE A BETTER MECHANIC THAN ALFIE?

19 A. AT SOME THINGS.

20 Q. AND WHAT PARTS WERE YOU PUTTING ON YOUR CAR?

21 A. SHOCKS.

22 Q. JUST SHOCKS?

23 A. YES.

24 Q. AND YOU ORDERED THOSE ON MR. RABER'S ACCOUNT?

25 A. YES.

1 Q. AND YOU DIDN'T ASK HIM BEFORE YOU DID THAT, DID YOU?

2 A. THROUGH JAMES, CHAD ASKED FOR ME.

3 Q. SO YOU DIDN'T ASK MR. RABER ABOUT IT, DID YOU?

4 A. NOT PERSONALLY. I WENT TO CHAD BECAUSE JAMES WASN'T
5 THERE.

6 Q. AND OKAY. AND SO YOU BOUGHT NEW SHOCKS WHILE JAMES
7 WASN'T EVEN THERE ON MR. RABER'S ACCOUNT, RIGHT?

8 A. BUT CHAD'S, YOU KNOW, PERMISSION.

9 Q. AND DID YOU EVER PAY WITH YOUR ---

10 BY COMMISSIONER BARDEN:

11 COULD YOU SPEAK UP A LITTLE BIT PLEASE, SIR?

12 GO AHEAD.

13 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

14 Q. AND WERE YOU -- YOU -- WERE YOU WORKING ON YOUR OWN
15 TRUCK RIGHT IN BEFORE THIS ACCIDENT HAPPENED?

16 A. NOT THAT I REMEMBER.

17 Q. WHAT WERE YOU WORKING ON?

18 A. I THINK I WAS BY THE ALIGNMENT RACK.

19 Q. OKAY. WERE YOU WORKING, OR WHAT WERE YOU GOING TO
20 DO?

21 A. I CAN'T REMEMBER EXACTLY ONE HUNDRED PERCENT ON WHAT
22 WAS BEING DONE.

23 Q. AND HOW LONG WOULD IT TAKE TO CHANGE OUT STRUTS ON -
24 - OR THE SHOCKS IN YOUR CAR?

25 A. NOT LONG. I MEAN, IT'S FOUR, SIX, EIGHT, EIGHT

1 BOLTS AND NUTS.

2 Q. SO IT SHOULD HAVE -- I MEAN, LESS THAN AN HOUR YOU
3 THINK?

4 A. IT SHOULD HAVE, YES.

5 Q. AND YOU'RE -- AND YOUR CAR WAS IN THE BAY 'TIL
6 AROUND 5:38; DOES THAT SOUND RIGHT?

7 A. I'M NOT SURE. I WASN'T THERE.

8 Q. OKAY. AND DO YOU KNOW HOW LONG IT HAD BEEN IN THE
9 BAY AT THE TIME OF YOUR ACCIDENT?

10 A. NO, NOT ONE HUNDRED PERCENT. CHARLIE, CHAD'S
11 BROTHER'S THE ONE THAT BROUGHT ME THE KEY -- TO THE
12 HOSPITAL. SO I DON'T KNOW WHO LET IT DOWN OR WHO
13 PUT IT OUT IN -- IN -- IN THE YARD.

14 Q. OKAY. AND HAD YOU WORKED ON YOUR TRUCK BEFORE THE
15 DAY OF THE -- HAD YOU WORKED ON YOUR TRUCK ON THE
16 DAY OF THIS ACCIDENT AT ANY POINT THAT DAY?

17 A. NOT THAT I REMEMBER. I'M NOT SAYING I DIDN'T, BUT
18 NOT THAT I REMEMBER.

19 Q. OKAY. SO YOU THINK ALFIE DID ALL THE WORK ON YOUR
20 TRUCK?

21 A. AS FAR AS I CAN REMEMBER, YES. 'CAUSE I DIDN'T -- I
22 WASN'T -- WELL, I MAYBE WALKED UNDER THERE AND
23 SHOWED HIM. OKAY. I'LL -- YOU KNOW, THE HERE AND
24 HERE, BUT HE ONLY PUT THE TWO IN THE REAR ON.

25 Q. OKAY. DO YOU REMEMBER ANYTHING YOU DID WORK ON THAT

1 DAY?

2 A. I THINK IT WAS AN OIL CHANGE OR TWO, MOVING THE
3 TRAILER AROUND, CLEANING UP, MOVING STUFF AROUND AND
4 TIRES. AS FAR AS I CAN RECALL, IT REALLY WASN'T A
5 BUSY DAY.

6 Q. AND ---

7 A. AND A MATTER OF FACT, THE TRAILER IS SITTING IN THE
8 EXACT SAME SPOT I PUT IT WHEN I DISCONNECTED IT FROM
9 MY TRUCK.

10 Q. DID YOU -- DID YOU WORK ON THE MACHINE RIGHT AFTER
11 IT HAD -- AFTER THE HOSE CAME OFF?

12 A. I DON'T REMEMBER WORKING ON THE MACHINE.

13 Q. ALL RIGHT.

14 A. WE MIGHT HAVE TO KEEP IT GOING, BUT I DON'T REMEMBER
15 WORKING ON IT.

16 Q. OKAY. WHAT DO YOU REMEMBER AFTER THE ACCIDENT?

17 A. NOT VERY MUCH.

18 Q. DID YOU REPORT MEMORY LOSS TO ANY OF THE PHYSICIANS
19 AT THE EMERGENCY ROOM OR ---

20 A. YEAH.

21 Q. --- AFTER THAT? YOU REPORTED IT AT THE EMERGENCY
22 ROOM ON THE DAY OF THE ACCIDENT?

23 A. YES.

24 Q. OKAY. AND WHAT OTHER COMPLAINTS DID YOU HAVE ON THE
25 DAY OF THE ACCIDENT IN THE EMERGENCY ROOM?

1 A. MY EARS AND MY HEAD WAS HURTING RIGHT HERE
2 (INDICATING) ON MY ---

3 BY COMMISSIONER BARDEN:

4 ON YOUR RIGHT SIDE?

5 BY THE WITNESS:

6 RIGHT SIDE.

7 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

8 Q. AND YOU'D ENDED UP WITH A -- WITH YOU HAD A BRUISE
9 THERE?

10 A. YES.

11 Q. AND DID THE DOCTORS LOOK AT THE BRUISE, THEY COULD
12 SEE IT?

13 A. YES.

14 Q. AND WHAT DID YOU SAY ABOUT YOUR MEMORY LOSS ON THE
15 DAY OF THE ACCIDENT?

16 A. I -- I DIDN'T HEAR YOU.

17 Q. WHAT DID YOU SAY ABOUT YOUR MEMORY LOSS ON THE DAY
18 OF THE ACCIDENT?

19 A. EVERYBODY AT THE DOCTORS, AT THE EMERGENCY ROOM, AT
20 THE DOCTORS OFFICE, AND EVEN AT THE E.N.T., THEY
21 WERE ALL CONCERNED AND MORE ABOUT MY EAR THAN THEY
22 WERE WITH THE BRUISE ON MY HEAD.

23 Q. WHAT DID YOU SAY AT THE EMERGENCY ROOM ABOUT YOUR
24 MEMORY LOSS?

25 A. YOU JUST ASKED ME SOMETHING DIFFERENT.

1 Q. WHAT -- OKAY. WELL, ANSWER THAT QUESTION. WHAT DID
2 YOU SAY AT THE EMERGENCY ROOM ABOUT YOUR MEMORY
3 LOSS?

4 A. THEY ASKED ME WHAT WAS I WORKING ON, AND I -- LIKE I
5 TOLD THEM, I DON'T REMEMBER EXACTLY WHAT I WAS
6 DOING.

7 Q. OKAY.

8 A. I REMEMBER DOING THAT AND THE EXPLOSION AND THEN FOR
9 A FEW MINUTES I DON'T REMEMBER.

10 Q. AND YOU TOLD THE EMERGENCY ROOM THAT YOU DON'T
11 REMEMBER A FEW MINUTES AFTER THE ACCIDENT?

12 A. YES.

13 Q. OKAY. NOW, YOU WENT AND SAW CAROLINA E.N.T.; IS
14 THAT RIGHT?

15 A. YES.

16 Q. AND THEY DID IT LOOKS LIKE TWO HEARING TESTS ON YOU,
17 ONE WAS ON FEBRUARY 20TH, THE DAY AFTER THIS, AND
18 ONE WAS ON MARCH 6TH; DOES THAT SOUND RIGHT?

19 A. YES.

20 Q. AND YOUR HEARING ACTUALLY HAD GOTTEN WORSE BETWEEN
21 THE TWO; DID YOU KNOW THAT?

22 A. THAT'S WHAT HE SAYS.

23 Q. DID YOU -- DID ANYTHING ELSE HAPPEN TO YOUR HEARING
24 DURING THAT TIME THAT WOULD CAUSE IT TO GET WORSE?

25 A. NO. NOT THAT I KNOW OF, I MEAN.

1 Q. OKAY. AND HE WANTED YOU TO GO GET ANOTHER KIND OF
2 TEST, A.V.R. TEST, RIGHT?
3 A. IF THAT'S IN CHARLESTON.
4 Q. YEAH.
5 A. CORRECT.
6 Q. YEAH. YEAH.
7 A. YES.
8 Q. AND HE SET UP AN APPOINTMENT FOR YOU, RIGHT?
9 A. TRIED TO. THEY WON'T ACCEPT MY INSURANCE, NOT UNTIL
10 WE -- THEY GET EVERYTHING SWAPPED AROUND WITH THE
11 INSURANCE PLAN TO GO DOWN THERE.
12 Q. DID YOU GO BACK AND TELL THEM THAT AND TRY TO GET
13 SEEN SOMEWHERE ELSE?
14 A. YES.
15 Q. OKAY. AND THEY -- THERE'S NO WHERE ELSE THEY CAN DO
16 THAT TEST; IS THAT ---
17 A. NO. AND HE WAS -- HE KEEPS REFERRING ME BACK THERE.
18 Q. SO YOU WENT BACK TO HIM AND SAW AT -- SAW HIM AFTER
19 THAT PROBLEM?
20 A. ON THE PHONE TO LET THEM KNOW THAT THEY WOULD NOT
21 ACCEPT OUR INSURANCE.
22 Q. SO YOU NEVER SAW HIM AFTER THAT?
23 A. I CAN'T -- I'M NOT ONE HUNDRED PERCENT CERTAIN.
24 Q. OKAY.
25 A. I'VE BEEN TO ORANGEBURG TWO OR THREE TIMES.

- 1 Q. OKAY. AND YOU DON'T KNOW IF YOU'VE BEEN BACK TO THE
2 DOCTOR AND TOLD THEM YOU COULDN'T GET THE TESTING
3 AND ASK HIM TO SEND YOU SOMEWHERE ELSE?
4 A. NOT PERSON TO PERSON. MY WIFE SPOKE WITH HIM ON THE
5 PHONE.
6 Q. OKAY. YOU MENTIONED YOU FELL IN YOUR BATHROOM?
7 A. YES.
8 Q. WERE YOU WET AT -- YOUR FEET WET AT THE TIME YOU
9 WERE GETTING OUT OF THE SHOWER?
10 A. YEAH, I WAS STEPPING OUT OF THE -- OUT OF THE
11 SHOWER, SO THEY PROBABLY WERE WET.
12 Q. IS WHAT -- IS YOUR SHOWER SLIPPERY?
13 A. NO.
14 Q. IT'S NOT?
15 A. NO. OUR SHOWER'S GOT THE LIKE SANDPAPER STRIPS ALL
16 THROUGH IT AND ON THE STEPS COMING DOWN.
17 Q. OKAY.
18 A. I MEAN, I GOT SICK TO DEATH SO WE TRY TO DO
19 EVERYTHING SAFE.
20 Q. THAT THE MEDICAL RECORDS SAY THAT YOU FELL FROM THE
21 COMMODE OR TOILET; IS THAT WHAT HAPPENED?
22 A. WHEN I WAS COMING OUT, THAT'S WHAT I HIT.
23 Q. OH, YOU FELL ONTO IT?
24 A. YES.
25 Q. OKAY. NOW, YOU HAD DEPRESSION AND ANXIETY AND BI-

1 POLAR DISORDER BEFORE THIS ACCIDENT, CORRECT?

2 A. IT WAS -- I DON'T KNOW HOW -- WHAT THEY -- THE
3 TECHNICAL TERM FOR IT, BUT...

4 BY COMMISSIONER BARDEN:

5 WELL, WHAT HAVE YOU HAD BEFORE?

6 BY THE WITNESS:

7 SOME DEPRESSION BUT THE MEDICINE I TAKE IS FOR
8 DEPRESSION, BUT IT'S FOR TO KEEP THE TEMPER DOWN.

9 BY COMMISSIONER BARDEN:

10 OKAY. SO YOU HAD DEPRESSION BEFORE?

11 BY THE WITNESS:

12 SOME.

13 BY COMMISSIONER BARDEN:

14 SOME. WERE YOU TAKING ANY MEDICATION FOR
15 DEPRESSION WHEN THIS HAPPENED TO YOU?

16 BY THE WITNESS:

17 YES.

18 BY COMMISSIONER BARDEN:

19 OKAY. WHAT ABOUT ANXIETY, DID YOU HAVE THAT
20 BEFORE?

21 BY THE WITNESS:

22 NO.

23 BY COMMISSIONER BARDEN:

24 JUST DEPRESSION?

25 BY THE WITNESS:

1 JUST, YEAH, DEPRESSION.

2 BY COMMISSIONER BARDEN:

3 OKAY. HOW ABOUT BIPOLAR, WERE YOU EVER
4 DIAGNOSED AS HAVING BIPOLAR?

5 BY THE WITNESS:

6 NO.

7 BY COMMISSIONER BARDEN:

8 OKAY. OKAY.

9 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

10 Q. DID -- DID YOU TELL THE EMERGENCY ROOM WHEN YOU WENT
11 THAT YOU HAD BIPOLAR?

12 A. NO. WHY WOULD I TELL THEM IF I HAD BIPOLAR IF I
13 WASN'T DIAGNOSED WITH IT?

14 Q. DID YOU TELL ANY DOCTORS THROUGHOUT YOUR TREATMENT
15 THAT YOU HAD BIPOLAR.

16 A. NOT THAT, I RECALL. WHY WOULD I DO THAT?

17 Q. IF IT APPEARS IN YOUR MEDICAL RECORDS, DO YOU KNOW
18 WHERE THEY GOT THAT FROM IF YOU DIDN'T TELL THEM?

19 A. THE ONLY ONE THAT SHOULD HAVE -- SHOULD HAVE BEEN IN
20 WOULD HAVE BEEN FROM UP NORTH.

21 Q. AND ARE YOU TALKING ABOUT DR. ROGERS?

22 A. IS THAT IN THE ---

23 BY COMMISSIONER BARDEN:

24 YOU CAN'T GET ANY HELP. YOU JUST ANSWER THE
25 QUESTIONS AS BEST YOU CAN.

1 BY THE WITNESS:

2 IF THAT'S HIS NAME, DOCTOR ---

3 BY COMMISSIONER BARDEN:

4 SO DR. ROGERS IS THE ONLY ONE THAT WOULD HAVE
5 WRITTEN THAT ABOUT -- I DON'T UNDERSTAND. SO YOU
6 HAVEN'T TOLD ANY DOCTOR THAT YOU HAD BIPOLAR,
7 CORRECT? THAT'S WHAT YOU TOLD ME. YOU SAID, "WHY
8 WOULD I DO THAT?"

9 BY THE WITNESS:

10 YEAH.

11 BY COMMISSIONER BARDEN:

12 OKAY.

13 BY THE WITNESS:

14 AND I -- I DON'T BELIEVE. NO.

15 BY COMMISSIONER BARDEN:

16 OKAY. GO AHEAD, MR. LIIPFERT.

17 BY MR. LIIPFERT:

18 . THANK YOU.

19 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

20 Q. YOU HAD A HISTORY OF MIGRAINES BEFORE THE ACCIDENT
21 TOO, DIDN'T YOU?

22 A. YES.

23 Q. SO YOU HAD HEADACHES BEFORE THE ACCIDENT AND AFTER
24 THE ACCIDENT?

25 A. YES. BUT NOT DAILY. EVERYBODY HAS A MIGRAINE.

1 Q. EVERYBODY HAS MIGRAINES?

2 A. AT SOME POINT IN TIME IN THEIR LIFE OR A HEADACHE.

3 Q. OKAY. BUT YOU HAD ACTUALLY BEEN DIAGNOSED WITH
4 MIGRAINE HEADACHES BEFORE THIS ACCIDENT, HADN'T YOU?
5 AND YOU REPORTED THAT TO THE EMERGENCY I THINK,
6 DIDN'T YOU?

7 A. I HAVE HAD HEADACHE MEDICINE. YES.

8 Q. OKAY. YOU'VE BEEN PUT ON PRESCRIPTION MEDICINE FOR
9 HEADACHES BEFORE THIS ACCIDENT?

10 A. YEAH.

11 Q. OKAY. AND THAT'S ONE OF THE THINGS YOU'RE
12 COMPLAINING ABOUT AS A RESULT OF THIS ACCIDENT IS
13 HEADACHES, RIGHT?

14 A. YES.

15 Q. AND YOU'RE COMPLAINING ABOUT DEPRESSION, AND YOU HAD
16 THAT BEFORE THIS ACCIDENT TOO, RIGHT?

17 A. NOT AS SEVERE.

18 Q. AND WHO JUDGED THAT IT'S MORE SEVERE; THAT IS JUST
19 YOU SAYING IT'S MORE SEVERE, RIGHT?

20 A. THAT MAN UP NORTH, MY REGULAR DOCTOR?

21 Q. NOW, WHO IS YOUR REGULAR DEPRESSION DOCTOR?

22 A. I DON'T -- WELL IT, KOUKOS IS THE ONE I GO TO.

23 Q. OKAY. YOU GO ---

24 BY COMMISSIONER BARDEN:

25 HOW DO YOU -- DO YOU KNOW HOW TO SPELL THAT

1 NAME, KOUKOS?

2 BY THE WITNESS:

3 NO, MA'AM. I DON'T.

4 BY COMMISSIONER BARDEN:

5 OKAY.

6 BY THE WITNESS:

7 MY WIFE DOES.

8 BY COMMISSIONER BARDEN:

9 THAT'S ALL RIGHT. WE CAN GET IT.

10 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

11 Q. OKAY. KOUKOS IS YOUR REGULAR DOCTOR?

12 A. YES.

13 Q. FOR ---

14 A. BARNWELL FAMILY MEDICINE.

15 Q. FOR -- FOR WHERE?

16 A. BARNWELL FAMILY MEDICINE.

17 Q. OKAY. KOUKOS HADN'T GIVEN ANY OPINION THAT YOUR
18 DEPRESSION'S WORSE NOW THAT YOU HAVE SUBMITTED
19 TODAY, HAS HE?

20 A. I DON'T KNOW IF HE HAS OR HASN'T. I DON'T HAVE THE
21 PAPER.

22 Q. PAPER?

23 BY COMMISSIONER BARDEN:

24 WERE YOU GETTING YOUR MEDICATION FROM KOUKOS?

25 BY THE WITNESS:

1 KOUKOS.

2 BY COMMISSIONER BARDEN:

3 FROM KOUKOS FOR DEPRESSION?

4 BY THE WITNESS:

5 YES.

6 BY COMMISSIONER BARDEN:

7 OKAY.

8 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

9 Q. THEN DR. ROGERS HAD NEVER SEEN YOU FOR DEPRESSION
10 BEFORE THIS, RIGHT?

11 A. NO. THAT'S THE FIRST I'VE SEEN DOCTOR ---

12 Q. SO HE DOESN'T KNOW WHAT YOUR DEPRESSION LOOKED LIKE
13 BEFORE THIS, DOES HE, OTHER THAN WHAT YOU TOLD HIM?

14 A. IN MY MEDICAL RECORDS.

15 Q. DID YOU GIVE HIM DR. KOUKOS'S RECORDS ABOUT YOUR
16 DEPRESSION?

17 A. EVERYTHING WAS FAXED TO HIM.

18 Q. OKAY. IF IT -- AND WHATEVER HE SAYS HERE, DO YOU
19 AGREE THAT THAT'S WHAT HE REVIEWED?

20 A. YES.

21 Q. DO YOU THINK YOU SAW HIM FOR TWO-AND-A-HALF HOURS;
22 IS THAT RIGHT?

23 A. ABOUT, YES.

24 Q. OKAY. IF HIS RECORDS SAID YOU ONLY SAW HIM FOR AN
25 HOUR-AND-FIFTEEN-MINUTES, WOULD YOU AGREE WITH THAT?

1 A. I WOULD HAVE TO -- I DON'T KNOW. I WOULDN'T THINK
2 SO. I THOUGHT IT WAS LONGER THAN THAT.

3 Q. OKAY. SO YOU WOULD THINK HIS RECORD WOULD BE WRONG
4 IN THAT REGARD?

5 A. IT SEEMED LONGER THAN THAT.

6 Q. AND THE ONLY -- THE ONLY TESTS YOU'VE HAD DONE ON
7 YOUR HEARING IS WHERE THEY PLAY A NOISE FOR YOU AND
8 ASK YOU IF YOU COULD HEAR IT, RIGHT?

9 A. THAT HAD FINDINGS -- THEY PUT STUFF IN MY EARS.
10 THEY'VE -- THE ONLY THING THAT DR. KOUKOS -- ANSLEY
11 SAID DIFFERENTLY WOULD BE GOING DOWN THERE TO SEE IF
12 I COULD BE A COCHLEAR IMPLANT, LIKE AN IMPLANT.

13 Q. AND SO HE WANTED YOU TO SEEK THE COCHLEAR IMPLANTS?

14 A. THAT'S WHAT THE THING DOWN IN -- IN CHARLESTON IS
15 ABOUT.

16 Q. AND HIS MEDICAL RECORDS SAY THAT THEY WANTED YOU TO
17 GET A A.V.R. TEST FOR A MORE OBJECTIVE TEST OF YOUR
18 HEARING LOSS; WERE YOU AWARE OF THAT?

19 A. YEAH. I WAS UNDER THIS UNDERSTAND THAT THAT WAS TO
20 SEE IF WE WERE A CANDIDATE FOR THE COCHLEAR IMPLANT.

21 Q. OKAY. AND YOU THINK -- IS IT YOUR TESTIMONY THAT
22 YOU WERE -- YOU AND MR. RABER AGREED THAT YOU'D BE
23 PAID \$9.00 AN HOUR?

24 A. YES.

25 Q. HE DIDN'T AGREE TO PAY YOU \$450.00 A WEEK?

1 A. NOT THAT I RECALL.

2 Q. OKAY. AND DO YOU KNOW THAT IT -- DO YOU KNOW WHAT
3 HIT YOU IN THE HEAD TO CAUSE THE BRUISE YOU TALKED
4 ABOUT?

5 A. I BELIEVE IT WAS THE METAL CLAMP. IT WOULD HAVE
6 BEEN THE HOSE THAT -- I BELIEVE IT WAS THE METAL
7 CLAMP, BECAUSE THE METAL CLAMP WAS WITH MY HAT WHICH
8 WAS BEHIND ME ON THE FLOOR.

9 Q. OKAY. I THINK -- AND DO YOU RECALL THAT FROM RIGHT
10 AFTER THE ACCIDENT?

11 A. NO. WHEN I PICKED MY HAT UP THOUGH.

12 Q. HOW LONG AFTER THE ACCIDENT DID YOU PICK YOUR HAT
13 BACK UP?

14 A. A FEW MINUTES.

15 Q. THREE MINUTES. SO YOU REMEMBER WHAT WAS GOING ON
16 THREE MINUTES AFTER THE ACCIDENT?

17 A. I SAID A FEW.

18 Q. A FEW MINUTES?

19 A. UH-HUH.

20 Q. BUT I THOUGHT YOU SAY YOU DIDN'T REALLY REMEMBER
21 MUCH ABOUT WHAT WAS GOING ON AFTER THE ACCIDENT, THE
22 ONLY THING YOU REMEMBER IS YOUR HAT AND THE METAL
23 CLAMP?

24 A. A FEW MINUTES. I MEAN ---

25 Q. AND YOU DON'T REMEMBER TRYING TO WORK ON THE MACHINE

- 1 AT ALL?
- 2 A. NOT THAT I RECALL. NO.
- 3 Q. OKAY. AND YOU DON'T RECALL WORKING ON YOUR TRUCK AT
- 4 ALL THE DAY OF THE ACCIDENT?
- 5 A. NOT THE DAY OF THE ACCIDENT, NO.
- 6 Q. HAD YOU WORKED ON YOUR TRUCK BEFORE THAT?
- 7 A. YES.
- 8 Q. WERE YOU SUPPOSED TO ASK MR. RABER BEFORE YOU WORKED
- 9 ON YOUR TRUCK OR WERE YOU ---
- 10 A. AND I HAVE.
- 11 Q. AND WERE YOU ALLOWED TO WORK ON YOUR TRUCK WHENEVER
- 12 YOU WANTED?
- 13 A. AS LONG AS WE WEREN'T BUSY.
- 14 Q. AND WERE YOU SUPPOSED TO ASK MR. RABER, OR WERE YOU
- 15 ALLOWED TO WORK ON YOUR TRUCK, AND WHEN WAS ---
- 16 A. I'VE ALWAYS ASKED JAMES OR CHAD.
- 17 Q. OKAY. BUT YOU DIDN'T WORK ON YOUR TRUCK THAT DAY,
- 18 SO YOU DIDN'T ASK ANYBODY THAT DAY ABOUT WORKING ON
- 19 THE TRUCK; IS THAT RIGHT?
- 20 A. CHAD.
- 21 Q. YOU ASKED CHAD ABOUT WORKING ON YOUR TRUCK THAT DAY?
- 22 A. I ASKED CHAD ABOUT, YOU KNOW, IT BEING PULLED IN TO
- 23 PUT THE SHOCKS ON IT.
- 24 Q. OKAY.
- 25 A. AND CHAD WAS ALSO IN AGREEANCE (phonetic) WITH ALFRED

1 DOING THE WORK FOR THE AIR TOOLS, THE RATCHET WRENCH
2 AND IMPACT WRENCH.

3 Q. DID YOU GIVE THOSE TO ALFIE?

4 A. YES.

5 Q. NOW ---

6 A. I GAVE HIM THEM BEFORE HE STARTED.

7 Q. NOW, SINCE THE ACCIDENT, YOU'VE TRIED TO GO BACK TO
8 WORK FOR HALF-A-DAY?

9 A. IT WAS A COUPLE OF DAYS THAT I NEVER DID MAKE IT A
10 FULL DAY.

11 Q. SO YOU WENT BACK FOR A COUPLE OF DAYS FOR HALF-A-
12 DAY?

13 A. YES.

14 Q. AND MR. RABER WAS GOING TO LET YOU WORK THERE; IN
15 OTHER WORDS, YOU WERE ABLE TO COME BACK; YOU WENT
16 BACK TO RABER TIRE, RIGHT?

17 A. YES.

18 Q. CAN YOU TAKE OUT -- THE -- IS THAT THE HEARING THING
19 YOU'VE GOT IN YOUR LEFT EAR, IS IT REMOVABLE?

20 A. YES.

21 Q. CAN YOU ADJUST THE VOLUME?

22 A. YES.

23 Q. AND THE PROBLEMS YOU HAVE ARE THAT IT WAS TOO LOUD
24 IN YOUR EAR, RIGHT?

25 A. YES.

- 1 Q. YOU COULDN'T TURN THE VOLUME DOWN AND SOLVE THAT
2 PROBLEM?
- 3 A. IT'S IN THE AMPLIFIER, EVEN WITH IT TURNED ALL THE
4 WAY DOWN. IT ---
- 5 Q. YOU COULD PULL IT OUT, COULDN'T YOU?
- 6 A. BUT THEN I CAN'T HEAR. THEN I COULDN'T HEAR
7 NOTHING. IF YOU WAS TO REVIEW HIS -- HIS OWN
8 SURVEILLANCE, YOU WOULD SEE WHERE I ALMOST GOT RUN
9 OVER TWICE. IF I WOULDN'T HAVE LOOKED UP, I WOULD
10 HAVE GOT RUN OVER.
- 11 Q. BY WHO?
- 12 A. ALFRED WAS ONE OF THEM BACKING OUT, AND LITTLE MAN
13 WAS THE OTHER.
- 14 Q. AND WHEN DID ALL OF THIS HAPPEN?
- 15 A. ONCE I WAS TURNING A BRAKE DRUM -- ROTOR, AND TURNED
16 AROUND, AND ALFRED WAS BACKING OFF THE LIFT.
- 17 Q. SO DID YOU -- DID YOU TAKE YOUR HEARING AID OUT AND
18 THAT SOLVED THE NOISE PROBLEM, BUT THEN YOU ALMOST
19 GOT RUN OVER? YOU DIDN'T MENTION THAT EARLIER.
- 20 A. YOU DIDN'T SAY THAT EARLIER. EVEN IF IT ---
- 21 Q. WELL, THEN YOU -- YOU WERE ASKED BY YOUR ATTORNEY
22 WHY YOU COULDN'T WORK ANYMORE, AND YOU SAID IT WAS
23 BECAUSE IT WAS TOO LOUD ---
- 24 A. YES.
- 25 Q. --- WITH YOU'RE -- WITH YOUR HEARING AID?

- 1 A. EVEN IF YOU TAKE IT OUT, HOW CAN YOU -- HOW CAN I
2 WORK IF I CAN'T HEAR?
- 3 Q. WELL, YOU'RE ABLE TO TURN A ROTOR, AREN'T YOU?
- 4 A. THAT'S BY VISUAL.
- 5 Q. OKAY. YOU CAN CHANGE A TIRE, CAN'T YOU?
- 6 A. BUT HOW ARE YOU GOING TO -- HUH?
- 7 Q. YOU CAN CHANGE A TIRE, CAN'T YOU?
- 8 A. YES.
- 9 Q. ALL RIGHT. AND SO THE REASON YOU COULDN'T WORK IS
10 BECAUSE IT'S TOO LOUD?
- 11 A. YES. AND IF YOU TAKE THE HEARING AID OUT, HOW CAN I
12 HEAR HIM?
- 13 Q. AND EVEN AT THE LOWEST SETTING, IT'S TOO LOUD?
- 14 A. YES. IT'S AN AMPLIFIER. THAT'S WHY THEY WANT ME TO
15 -- ROGERS WANTS ME TO GET A DIGITAL AMPLIFIER, BUT I
16 HAVE TO GO TO...
- 17 Q. CHARLESTON?
- 18 A. I -- I THINK IT'S CHARLESTON. AND THEN AGAIN, I'M
19 ALSO WAITING TO GET ANOTHER APPOINTMENT WITH ANSLEY.
- 20 Q. AND ANSLEY WANTED YOU TO HAVE THIS OTHER TEST BEFORE
21 HE SAW YOU AGAIN, RIGHT? DID YOU KNOW THAT, HE
22 WANTED YOU TO HAVE AN OBJECTIVE HEARING TEST BEFORE
23 HE SAW YOU AGAIN?
- 24 A. NO.
- 25 Q. YOU DIDN'T KNOW THAT?

- 1 A. I KNOW THAT HE WANTED ME TO GO DOWN THERE AND THEN
2 COME BACK TO HIS OFFICE.
- 3 Q. NOW, LET'S BACK UP. OKAY, SO YOU CAN PULL THE
4 AMPLIFIER OUT AND THAT STOPS THE LOUDNESS, RIGHT?
- 5 A. (WITNESS NODS HEAD)
- 6 Q. IS THAT A YES?
- 7 A. YES.
- 8 Q. OKAY. AND THEN WHEN YOU NEED TO HEAR YOU CAN PUT IT
9 IN AND YOU CAN HEAR WHAT YOU NEED TO HEAR, RIGHT?
- 10 A. NOT ONE HUNDRED PERCENT, BUT, YES.
- 11 Q. AND SO YOU COULD JUST PULL IT OUT, DO THE VISUAL
12 WORK, PUT IT BACK IN, LISTEN, PULL IT OUT, DO THE
13 VISUAL WORK, PUT IT BACK IN AND LISTEN, RIGHT?
- 14 A. YES. BUT THEN YOU GOT THE DANGERS OF OTHER
15 VEHICLES. IF I STAND RIGHT HERE WORKING ON A CAR --
16 PARK IT, WALKING FROM MY BAY TO THE BATHROOM, OR IF
17 I DON'T HAVE IT THEN I TAKE THE CHANCES OF GETTING
18 HIT. IF I GOT IT IN ALL DAY LONG, THEN I CAN'T
19 MAKE IT THROUGH THE DAY, NOT WITHOUT HAVING A SEVERE
20 HEADACHE.
- 21 Q. HAVE YOU EVER ALMOST RUN OVER SOMEBODY PULLING INTO
22 THE BAY?
- 23 A. NOT THAT I REMEMBER.
- 24 Q. 'CAUSE YOU LOOK WHERE YOU'RE GOING, RIGHT?
- 25 A. SAY THAT AGAIN.

1 Q. OKAY. STILL ---

2 BY MR. LIIPFERT:

3 STRIKE THAT. I BEG THE COURT'S INDULGENCE FOR
4 A MINUTE.

5 BY COMMISSIONER BARDEN:

6 SURE.

7 BY MR. LIIPFERT:

8 ONE MORE MINUTE. I'M GOING TO TRY TO PLAY THIS
9 (VIDEO PRESENTATION), YOUR HONOR.

10 BY COMMISSIONER BARDEN:

11 SURE.

12 BY MR. LIIPFERT:

13 IF IT'S NOT ON, IF YOU'LL LET ME TRY. IT'S NOT
14 VERY LONG.

15 BY COMMISSIONER BARDEN:

16 SURE.

17 BY MR. LIIPFERT:

18 SORRY ABOUT THAT. I DIDN'T MEAN TO BLIND YOU.
19 LET ME SEE IF I CAN GET THAT TOO. IT'LL JUST BE ONE
20 MINUTE.

21 CROSS EXAMINATION RESUMED BY MR. LIIPFERT:

22 Q. (MR. LIIPFERT PRESENTS VIDEO) OKAY. CAN YOU TELL
23 ME WHO THOSE TWO PEOPLE ARE?

24 A. (WITNESS OBSERVES VIDEO) THIS?

25 Q. NO. CAN YOU TELL ME WHO THOSE TWO PEOPLE ARE THAT

1 ARE UP THERE WORKING?
2 A. THAT'S LITTLE MAN PERNELL.
3 Q. OKAY.
4 A. AND ALFRED, RED.
5 Q. ALFRED LOOKS LIKE HE'S WORKING ON SOME TIRES OR
6 SOMETHING, RIGHT?
7 A. YES.
8 Q. AND THAT WASN'T FOR YOUR VEHICLE, WAS IT?
9 A. DON'T LOOK LIKE IT. NO.
10 Q. YOUR VEHICLE WAS OVER IN THE FAR BAY TO THE RIGHT;
11 IS THAT RIGHT?
12 A. YES.
13 Q. OKAY. IS THAT YOU RIGHT THERE?
14 A. THAT'S CHAD, THAT'S THE FOREMAN. THERE'S ME
15 (INDICATING).
16 Q. YEAH. AND YOU CAME FROM OVER -- AND YOU CAME FROM
17 THE RIGHT OVER BY WHERE -- SIR, YOU CAME FROM THE
18 RIGHT OVER BY WHERE YOUR VEHICLE WAS, RIGHT?
19 A. YES.
20 Q. AND WHAT ARE YOU DOING -- AND WHAT ARE YOU DOING
21 RIGHT THERE?
22 A. TRYING TO FIND THE AIR LEAK.
23 Q. OKAY. IS THAT WHAT ALFIE'S DOING TOO? IS THAT WHAT
24 ALFIE'S DOING TOO?
25 A. YES.

- 1 Q. IS THAT WHEN THE -- IS THAT RIGHT AFTER THAT HOSE
2 CAME OFF? SIR, IS THAT RIGHT AFTER THE HOSE CAME
3 OFF?
- 4 A. I DON'T KNOW IF THAT WAS AFTER OR BEFORE.
- 5 Q. WELL, LET ME TRY TO GET IT TO PLAY AGAIN REAL QUICK.
6 AND Y'ALL ARE DOWN THERE?
- 7 A. YES.
- 8 Q. AND IS THAT AFTER THE HOSE CAME OFF?
- 9 A. YES.
- 10 Q. WHO'S THAT TALKING TO -- WHO'S THAT TALKING TO YOU?
- 11 A. THAT'S CHAD, THE SHOP FOREMAN.
- 12 Q. AND WERE YOU -- WELL, DO YOU REMEMBER WHAT HE WAS
13 SAYING TO YOU?
- 14 A. NOT ONE HUNDRED PERCENT.
- 15 Q. YOU WERE ABLE TO HEAR HIM THOUGH?
- 16 A. I WAS MORE OR LESS TRYING TO READ HIS MOUTH.
- 17 Q. HOW WAS YOUR CELL PHONE SET THAT DAY, WAS IT SET ON
18 RING OR VIBRATE?
- 19 A. IT'S SET ON VIBRATE.
- 20 Q. NOW IT IS. WAS IT ON VIBRATE THAT DAY?
- 21 A. IT STAYED ON VIBRATE.
- 22 Q. OKAY. DO YOU REMEMBER WHAT -- WHO YOU WERE TEXTING
23 RIGHT THERE?
- 24 A. MY WIFE.
- 25 Q. OKAY. WHAT DID YOU TEXT HER?

- 1 A. COME GET ME.
- 2 Q. OKAY. NOW WHAT ARE YOU DOING?
- 3 A. LOOKING AT IT WITH RED.
- 4 Q. AND YOU REMEMBER TEXTING YOUR WIFE COME AND GET YOU?
- 5 A. YES.
- 6 Q. AND THAT'S ABOUT TWO MINUTES AFTER THIS HAPPENED?
- 7 A. THAT'S HOW ---
- 8 Q. BUT YOU DON'T ---
- 9 A. I DID -- I STILL DIDN'T REMEMBER WORKING ON THAT
- 10 TIRE CHANGER.
- 11 Q. OKAY. DID YOU REMEMBER TALKING TO CHAD? SO DID YOU
- 12 REMEMBER TALKING TO CHAD?
- 13 A. WE WAS TRYING TO TALK.
- 14 Q. DO YOU REMEMBER THAT?
- 15 A. YES.
- 16 Q. OKAY.
- 17 A. BUT I STILL DON'T REMEMBER WORKING ON IT. I SEE IT
- 18 BUT I STILL DON'T REMEMBER WORKING ON IT.
- 19 Q. OKAY. BUT YOU DO REMEMBER TALKING TO CHAD AND YOU
- 20 DO REMEMBER TEXTING YOUR WIFE COME AND GET ME? SIR?
- 21 A. YES. NOW THAT I SEE IT. YES.
- 22 Q. YOU DO REMEMBER TEXTING YOUR WIFE COME GET YOU AND
- 23 YOU REMEMBER TALKING TO CHAD, RIGHT?
- 24 A. YES. NOW THAT I'VE SEEN IT.
- 25 Q. OKAY.

- 1 A. BUT I STILL DON'T REMEMBER LOOKING AT THE TIRE
2 CHANGER AFTER ---
- 3 Q. OKAY. AND DO YOU REMEMBER IF YOU TOLD CHAD THAT YOU
4 WERE OKAY?
- 5 A. I TOLD CHAD -- I DO REMEMBER TELLING CHAD I COULDN'T
6 HEAR.
- 7 Q. OKAY. DID YOU TELL HIM -- OKAY. DID YOU TELL
8 ANYBODY ELSE YOU COULDN'T HEAR?
- 9 A. EVERYBODY IN THAT SHOP.
- 10 Q. OKAY.
- 11 A. JAMES WASN'T THERE.
- 12 Q. SO AND WAS THIS WHEN YOU WERE TELLING LITTLE MAN
13 THAT YOU COULDN'T HEAR RIGHT THERE?
- 14 A. AND ASKING HIM TO DO SOMETHING I THINK.
- 15 Q. OKAY. TO HELP FIX THE MACHINE?
- 16 A. MOST LIKELY IF THAT'S WHAT I WAS I WAS DOING.
- 17 Q. WAS THAT WHAT YOU WERE DOING?
- 18 A. THAT'S WHAT IT LOOKS LIKE.
- 19 Q. WHAT, DID HE JUST BRING YOU SOMETHING FROM THE
20 MACHINE?
- 21 A. A TOOL OR A CLAMP. .
- 22 Q. SO YOU'RE DOING ALL THAT; YOU DON'T REMEMBER ANY OF
23 THAT?
- 24 A. NO.
- 25 Q. AND YOU TOLD HIM YOU COULDN'T HEAR AND THEN BRING

1 YOU THE TOOL AND THE CLAMP IS WHAT YOU'RE TELLING ME
2 TODAY?

3 A. IT'S LIKE I SAID, I STILL DON'T REMEMBER WORKING ON
4 THAT.

5 Q. BUT YOU COULDN'T HEAR WHAT HE WAS SAYING TO YOU?

6 A. NO.

7 Q. BUT YOU TOLD HIM TO GO GET YOU SOMETHING ---

8 A. IF YOU WANT ---

9 Q. --- TO FIX THE MACHINE EVEN THOUGH YOU COULDN'T HEAR
10 ANYTHING?

11 A. IF YOU LOOK AT HIM, I HAVE TO LOOK AT HIM BECAUSE I
12 COULDN'T HEAR HIM. UH-UH.

13 Q. BUT YOU WENT TO RIGHT TO WORKING ON THAT MACHINE,
14 DIDN'T YOU? I MEAN, THIS IS WITHIN THE FIVE MINUTES
15 OF THIS ACCIDENT TAKING PLACE, YOU'RE DEAF BUT YOUR
16 STILL GOING TO FIX THE MACHINE?

17 A. I HAVE SIX KIDS. I DO WHATEVER I HAVE TO TO SUPPORT
18 MY FAMILY.

19 Q. OKAY.

20 BY MR. LIIPFERT:

21 I DON'T THINK I HAVE ANYTHING FURTHER.

22 BY COMMISSIONER BARDEN:

23 MR. STORY.

24 BY MR. STORY:

25 A COUPLE, YOUR HONOR. I'M LOOKING RIGHT HERE.

1 CAN YOU PUT THAT ON 15, 16? I DON'T WANT TO ASK A
2 QUESTION IF I FIND -- RIGHT BEFORE THAT. OKAY. HOW
3 ABOUT LIKE A MINUTE OR SO BEFORE?

4 BY MR. LIIPFERT:

5 SURE.

6 BY MR. STORY:

7 OKAY. WELL THAT -- WELL, THAT'S FINE. THAT'S
8 FINE RIGHT THERE, WORTH.

9 CROSS EXAMINATION BY MR. STORY:

10 Q. MR. CRANE, MY NAME'S MATT STORY. I REPRESENT THE
11 UNINSURED EMPLOYERS' FUND AND I GOT A COUPLE OF
12 QUESTIONS FOR YOU.

13 A. UH-HUH.

14 Q. THIS ITEM RIGHT HERE (INDICATING), THAT'S NOT YOUR
15 HAT IS IT?

16 A. NO. MY HAT'S -- WELL, YOU'LL ---

17 Q. THIS IS BEFORE?

18 A. YEAH.

19 Q. THIS IS -- OKAY. HERE YOU COME. YOU'RE WEARING
20 YOUR HAT?

21 A. YES.

22 Q. SO THAT'S NOT YOUR HAT?

23 A. NO. MY HAT'S THIS THERE (INDICATING).

24 Q. ON YOUR HEAD?

25 A. YES.

1 Q. OKAY. SO AFTER THIS, YOU SAID YOUR HAT GOT BLOWN
2 BEHIND YOU?
3 A. I BELIEVE IT WAS BEHIND ME.
4 Q. OKAY. WELL, HERE -- WE -- I JUST WANT TO WATCH IT
5 'CAUSE I'M TRYING TO FIGURE OUT WHERE YOUR HAT WENT?
6 A. SEE, ME AND ALFIE, WE'RE LOOKING AT IT.
7 Q. OKAY. AND THAT'S -- YOU'RE HOLDING YOUR HEAD.
8 OKAY. YOUR HAT'S NOT BEHIND YOU, IS IT?
9 A. NO. IT WAS IN FRONT OF ME.
10 Q. OKAY. 'CAUSE EARLIER YOU SAID ---
11 A. IT WAS BEHIND ME.
12 Q. I'M TRYING TO UNDERSTAND. EARLIER YOU SAID IT WAS
13 BLOWN BY YOU WITH A PIECE OF SOMETHING?
14 A. YES, IT WAS.
15 Q. BUT APPARENTLY IT WAS NOT?
16 A. IT MOST LIKELY'S GOING TO BE RIGHT THERE ON THIS.
17 Q. IT'S NOT ANYWHERE WE CAN SEE?
18 A. RIGHT.
19 Q. OKAY. SO IT'S -- AND IT'S NOT BEHIND THAT TIRE
20 THAT'S BEHIND YOU?
21 A. NO.
22 Q. OKAY. I JUST WANT TO MAKE SURE WHAT I SAW THERE.
23 I'VE JUST GOT A COUPLE OF MORE QUESTIONS FOR YOU.
24 MR. SAMUELS ASKED YOU ABOUT YOUR WORK BEING DIRECTED
25 BY CHAD OR BY MR. RABER?

- 1 A. YES.
- 2 Q. OKAY. BUT I WANT TO KNOW WHAT IT MEANS WHEN THEY
- 3 SAY DIRECTED YOUR WORK. OKAY? YOU'RE THE PRO
- 4 MECHANIC IN THE SHOP; IS THAT RIGHT?
- 5 A. CORRECT.
- 6 Q. YOU'RE THE BEST MECHANIC THERE IS IN THIS SHOP?
- 7 A. AT -- AT THE TIME, YES.
- 8 Q. OKAY. YOU KNOW MORE ABOUT BEING A MECHANIC THAN
- 9 ANYBODY ELSE?
- 10 A. IN AT THE SHOP AT THE TIME? YES.
- 11 Q. OKAY. AND WHAT YOU DO IS YOU USE YOUR SKILL AS A
- 12 MECHANIC TO DO YOUR JOB?
- 13 A. YES.
- 14 Q. OKAY. YOU USE YOUR TOOLS TO DO YOUR JOB?
- 15 A. YES.
- 16 Q. OKAY. WHEN -- WHEN A JOB COMES IN, IS IT ASSIGNED
- 17 TO YOU?
- 18 A. YES.
- 19 Q. OKAY. AND YOU GET A JOB, AND WHAT'S THE EXAMPLE OF
- 20 A JOB, IS IT CHANGE TIRES?
- 21 A. WHETHER IT'S CHANGE TIRES, DO AN ALIGNMENT, OIL
- 22 CHANGE, FRONT END PARTS, BRAKES.
- 23 Q. OKAY.
- 24 A. TUNE UPS, WATER PUMPS, RADIATORS, OR EVEN
- 25 DIAGNOSTICS.

1 Q. OKAY. AND WHEN YOU GET THOSE JOBS, YOU'RE NOT TOLD
2 HOW TO DO THOSE THINGS, ARE YOU? MR. RABER DOESN'T
3 SAY "I WANT YOU TO CHANGE THESE TIRES, AND I WANT
4 YOU TO GO TO THE RACK, AND I WANT YOU TO PUT THIS
5 TIRE ON THIS WHEEL, AND I WANT YOU TO PUT IT ON THIS
6 THING AND I WANT YOU TO BOLT IT IN IN THIS MANNER"?
7 THEY DON'T TELL YOU HOW TO DO YOUR JOB?

8 A. NO. NO.

9 Q. OKAY.

10 A. NO.

11 Q. OKAY. YOU ---

12 A. NOT STEP BY STEP.

13 Q. --- NOT -- THEY JUST SAY "CHANGE THE TIRES"?

14 A. RIGHT.

15 Q. AND IN THE END, YOU GIVE THEM A RESULT, CHANGED
16 TIRES; IS THAT RIGHT?

17 A. (WITNESS NODS HEAD)

18 BY COMMISSIONER BARDEN:

19 IS THAT A YES?

20 BY THE WITNESS:

21 YES.

22 CROSS EXAMINATION BY MR. STORY:

23 Q. OKAY. THEY DON'T TELL YOU HOW TO DO IT; THEY WANT
24 TO GET A RESULT FROM YOU; IS THAT FAIR?

25 A. CORRECT.

- 1 Q. OKAY. IF THEY GOT A BRAKE JOB, THEY SAY "DO ME A
2 BRAKE JOB." YOU FIGURE OUT WHAT'S NEEDED, CORRECT?
- 3 A. YES.
- 4 Q. YOU FIGURE OUT IF YOU NEED TO -- TO TAKE DOWN THE
5 ROTORS, PUT IN NEW PADS, IF THEY'RE GOOD; YOU MAKE
6 ALL THOSE DETERMINATIONS?
- 7 A. TO A CERTAIN EXTENT. HE HAS TO APPROVE IT.
- 8 Q. SURE. BUT HE'S APPROVING IT BASED ON WHAT YOU'RE
9 TELLING HIM?
- 10 A. CORRECT.
- 11 Q. HE'S NOT -- HE'S NOT GOING IN AND SAYING "I WANT YOU
12 TO CHECK THIS ROTOR AND THIS ROTOR AND THIS ROTOR."
13 YOU NORMALLY CHECK ALL OF THOSE THINGS?
- 14 A. RIGHT.
- 15 Q. OKAY. AND YOU KNOW TO COME IN AND MAKE YOUR
16 ASSESSMENT OF THIS IS WHAT I THINK NEEDS TO BE DONE?
- 17 A. YES.
- 18 Q. AND THEN YOU ACTUALLY DO THE WORK?
- 19 A. YES.
- 20 Q. NOBODY STANDS OVER YOU WHILE YOU'RE DOING THE WORK
21 WATCHING YOU DO THE WORK?
- 22 A. NOT EVERY DAY, NOT RIGHT OVER TOP OF ME BUT YES.
- 23 Q. OKAY. DO PEOPLE COME AND THEY WATCH YOU AND THEY
24 CHECK AND MAKE SURE THINGS ARE GETTING DONE?
- 25 A. YEAH.

- 1 Q. BUT YOU'RE DOING THE WORK?
- 2 A. YES.
- 3 Q. OKAY. I JUST WANT TO MAKE SURE I UNDERSTAND. YOU
- 4 USE YOUR OWN TOOLS; IS THAT CORRECT?
- 5 A. RIGHT.
- 6 Q. EVERY SHOP YOU'VE WORKED IN -- YOU'VE WORKED IN
- 7 OTHER SHOPS; IS THAT CORRECT?
- 8 A. YES.
- 9 Q. EVERY SHOP YOU'VE WORKED IN, SOMEBODY PROVIDES THE
- 10 BUILDING?
- 11 A. RIGHT.
- 12 Q. SOMEBODY PROVIDES THE BAYS?
- 13 A. CORRECT.
- 14 Q. SOMEBODY PROVIDES THE LIFTS?
- 15 A. YES.
- 16 Q. SOMEBODY PROVIDES THE TIRE -- THE BALANCER OR THE
- 17 TIRE MACHINE AND EVERYTHING?
- 18 A. YES.
- 19 Q. YOU CAN'T BE A MECHANIC WITHOUT THOSE PIECES?
- 20 A. CORRECT.
- 21 Q. OKAY. BUT IN ORDER TO BE THE MECHANIC, YOU'VE GOT
- 22 TO STEP IN TO DO IT?
- 23 A. YES.
- 24 Q. OKAY. I WAS A LITTLE CONFUSED. YOU SAID YOU TOOK
- 25 YOUR TRUCK AND YOU MOVED A TRAILER?

1 A. YES.

2 Q. IS THAT THE DAY THIS ACCIDENT HAPPENED?

3 A. YES.

4 Q. OKAY. SAME DAY YOU -- YOU HOOK UP YOUR TRUCK TO A

5 TRAILER, YOU MOVE IT AROUND AND YOU PARK IT?

6 A. YES. I MOVE IT FROM THIS SIDE OF THE BUILDING

7 (INDICATING) ALL THE WAY AROUND TO THIS SIDE.

8 Q. OKAY.

9 A. SO THAT THEY -- WHOEVER IT WAS SOLD -- BOUGHT THE

10 PORTABLE BUILDING CAN GET IT MOVED.

11 Q. OKAY.

12 A. AND THEN I BROUGHT IT BACK AROUND, AND THE TIRE

13 TRAILER WITH THE TIRES ARE STILL SITTING IN THE

14 EXACT SAME SPOT I LEFT IT.

15 Q. OKAY. WHEN YOU DO THAT, YOU SAID THAT YOU HAD A

16 PROBLEM WITH YOUR SHOCKS?

17 A. YES. I HAD SOME PROBLEMS ---

18 Q. --- FROM DOING THAT?

19 A. YES.

20 Q. OKAY. AND THEN YOU GO TO CHAD, AND CHAD SAYS

21 BECAUSE YOU MOVED IT, ORDER NEW SHOCKS?

22 A. LIKE HE -- LIKE CHAD SAID, IT BROKE WHILE YOU WERE

23 MOVING HIS TRAILER, HE SAID, I'D ORDER IT, YOUR NEW

24 SHOCKS TO PUT ON IT.

25 Q. OKAY. THAT'S WHAT SO ---

- 1 A. I SAID, "SO THAT'S WHAT YOU WANT ME TO DO?" HE
2 SAID, "WELL, I'M TELLING YOU GO AHEAD."
- 3 Q. OKAY. SO YOU ORDERED THEM AND GOT THEM THE SAME
4 DAY?
- 5 A. YES.
- 6 Q. OKAY. AND THEN YOU GO AND YOU HAVE ALFIE PUT THEM
7 ON?
- 8 A. YES.
- 9 Q. OKAY. NOW, YOU DON'T KNOW WHAT ALFIE'S RELATIONSHIP
10 IS WITH MR. RABER, DO YOU?
- 11 A. NO.
- 12 Q. OKAY.
- 13 A. I MEAN, HE'S JUST ANOTHER EMPLOYEE LIKE I WAS.
- 14 Q. WELL, YOU SIGNED THE INDEPENDENT CONTRACT, RIGHT?
15 YOUR UNDERSTANDING WAS YOU WERE AN INDEPENDENT
16 CONTRACTOR?
- 17 A. WELL, EVERYBODY HAS SIGNED THAT.
- 18 Q. I WASN'T -- I KNOW, BUT I WANT TO TALK ABOUT YOU.
19 YOU KNOW THAT WHAT YOU SIGNED CALLED YOU AN
20 INDEPENDENT CONTRACTOR?
- 21 A. TO A CERTAIN EXTENT, YES.
- 22 Q. I UNDERSTAND THAT AND I KNOW WE'RE HERE OVER A LEGAL
23 QUESTION, BUT THAT'S WHAT YOU SIGNED?
- 24 A. YES.
- 25 Q. OKAY. EVERYBODY ELSE DID THE SAME THING?

1 A. YES.

2 Q. DID YOU SEE THEM DO THAT?

3 A. YES.

4 Q. SO YOU WATCHED?

5 A. SOME OF -- SOME OF THEM.

6 Q. OKAY. SO YOU WATCHED OTHER PEOPLE SIGNED OUT THE --

7 -

8 A. NOW, ALFIE, I DIDN'T REMEMBER SEEING HIM. BUT ME,

9 CHAD, AND PERNELL SIGNED OURS ALL AT THE SAME TIME.

10 Q. OKAY. SO YOU WATCHED OTHER PEOPLE DO THAT THE SAME

11 TIME. SO YOUR UNDERSTANDING WAS YOU WERE AN

12 INDEPENDENT CONTRACTOR?

13 A. THAT'S ---

14 Q. THAT'S WHY YOU SIGNED IT?

15 A. WELL, I HAD TO. I AIN'T GOING TO LOSE MY JOB FOR

16 NOT SIGNING IT.

17 Q. I UNDERSTAND THAT, BUT THAT'S WHY YOU SIGNED IT.

18 YOU WERE TOLD TO SIGN IT, YOU READ IT; IS THAT

19 CORRECT?

20 A. FROM WHAT I CAN UNDERSTAND OF IT, YES.

21 Q. OKAY. YOU SIGNED YOUR NAME SAYING YOU READ IT?

22 A. YES.

23 Q. YOU DIDN'T SIGN YOUR NAME WITHOUT READING IT, DID

24 YOU?

25 A. TO THE BEST OF MY ABILITY. I HAVE PROBLEMS WITH

1 READING.

2 Q. YOU'RE A HIGH SCHOOL GRADUATE?

3 A. YES.

4 Q. READ THE NEWSPAPER?

5 A. NOT COMPLETELY, NOT AND UNDERSTAND EVERY WORD.

6 Q. OKAY. BUT YOU WATCH T.V., YOU SEE THINGS AND YOU
7 CAN READ AND YOU KNEW THEY ASKED YOU TO SIGN
8 SOMETHING, AND YOU SIGNED IT?

9 A. YES.

10 Q. OKAY.

11 BY COMMISSIONER BARDEN:

12 DO YOU HAVE PROBLEMS READING?

13 BY THE WITNESS:

14 YES, MA'AM.

15 BY COMMISSIONER BARDEN:

16 HAVE YOU ALWAYS HAD PROBLEMS READING?

17 BY THE WITNESS:

18 YES, MA'AM.

19 CROSS EXAMINATION RESUMED BY MR. STORY:

20 Q. HAVE YOU EVER ---

21 BY COMMISSIONER BARDEN:

22 UNDERSTANDING WORDS OR WHAT?

23 BY THE WITNESS:

24 THEY -- WHEN I WAS IN SCHOOL, THEY PUT ME IN
25 E.S.E., SAYING IT WAS DYSLEXIC. AND THEN I HAVE

1 TRIED TO GET MY TRANSCRIPT FROM SCHOOL, BUT THEY SAY
2 THAT SINCE IT HAS BEEN SO LONG THAT THEY DON'T HAVE
3 IT NO MORE.

4 BY COMMISSIONER BARDEN:

5 WHAT DO YOU NEED ---

6 BY THE WITNESS:

7 WHERE WOULD I GO TO FIND THAT?

8 BY COMMISSIONER BARDEN:

9 WHAT DO YOU NEED YOUR TRANSCRIPT FOR?

10 BY THE WITNESS:

11 FOR OPPORTUNITIES LIKE WITH JAMES. JAMES KNEW
12 I HAD PROBLEMS READING.

13 BY COMMISSIONER BARDEN:

14 ALL RIGHT. THANK YOU.

15 BY MR. STORY:

16 THANK YOU, COMMISSIONER.

17 CROSS EXAMINATION RESUMED BY MR. STORY:

18 Q. BUT YOUR POSITION IS THAT Y'ALL WERE ALL WORKING AT
19 THE TIME OF THIS INCIDENT?

20 A. UH-HUH.

21 Q. AND WHEN YOU BROUGHT YOUR TRUCK IN, YOU ORDERED THE
22 SHOCKS, THEY COME THE SAME DAY; IS THAT CORRECT?

23 A. YES.

24 Q. AND YOU'RE ON THE CLOCK, AND ALFIE'S ON THE CLOCK;
25 IS THAT CORRECT.

- 1 A. YES.
- 2 Q. BUT YOU ---
- 3 A. I'VE WORKED ON CHAD'S TRUCK, JAMES'S TRUCKS, MARIE'S
- 4 CAR, ON -- I MEAN, IT'S PULL IT IN. IF WE WERE
- 5 SLOW, PULL IT IN, DO WHAT YOU DO AND THEN THERE YOU
- 6 GO.
- 7 Q. AND YOU GET PAID FOR THAT?
- 8 A. YES. I MEAN, I'D NEVER CLOCK ---
- 9 Q. REGULAR PAY?
- 10 A. I'VE NEVER CLOCKED OUT AND CLOCKED BACK IN.
- 11 Q. OKAY. AND YOU'D NEVER SEEN ANYBODY ELSE CLOCK OUT
- 12 AND CLOCK BACK IN ---
- 13 A. NO.
- 14 Q. --- TO DO THAT? BUT IN THIS CASE, YOU PAY ALFIE TO
- 15 WORK ON YOUR CAR; IS THAT RIGHT?
- 16 A. THAT'S WHY I SWAPPED THE TOOLS WITH ALFIE. HE
- 17 WANTED TO DO IT, AND I FELT -- DIDN'T FEEL LIKE
- 18 WORKING ON IT.
- 19 Q. SURE. BUT HE WAS SUPPOSED TO WORK. HE WAS THERE
- 20 WORKING LIKE YOU WERE?
- 21 A. UH-HUH.
- 22 Q. SO HE WAS SUPPOSED TO WORK IF THERE'S WORK TO BE
- 23 DONE, BUT YOU PAID HIM IN TOOLS TO DO THIS
- 24 PARTICULAR JOB ON YOUR TRUCK?
- 25 A. RIGHT.

1 Q. OKAY.

2 A. HE WANTED THE TOOLS, AND I WAS LIKE YOU -- YOU KNOW,
3 IF YOU DO THAT, I'LL JUST GIVE YOU MY TOOLS THEN AND
4 ---

5 Q. SURE. SO YOU PAID HIM SOMETHING IN ---

6 A. --- I HAVE.

7 Q. YOU MADE A -- AN ADDITIONAL DEAL WITH HIM TO DO THAT
8 WORK?

9 A. YES.

10 Q. OKAY. NOW, LET ME ASK YOU ABOUT SEEING DR. ROGERS.
11 YOU SAID HE'S A NICE GUY, YOU'S -- BUT THEN YOU SAID
12 YOU WEREN'T REAL HAPPY WITH HIM. YOU'VE MET HIM ONE
13 TIME; IS THAT CORRECT?

14 A. RIGHT. HE SAT ME -- HE'S A NICE GUY. THE ONLY
15 THING I DIDN'T LIKE OR WAS UNHAPPY IS THE WAY I FELT
16 WHEN I LEFT.

17 Q. SURE. SURE. BUT YOU'VE MET HIM ONE TIME?

18 A. YES.

19 Q. YOU DON'T HAVE AN ONGOING RELATIONSHIP WITH HIM; IS
20 THAT CORRECT?

21 A. NO.

22 Q. OKAY. NOW, YOU DROVE FROM BARNWELL TO GREENVILLE TO
23 SEE HIM?

24 A. MY WIFE, YES.

25 Q. ALMOST THREE HOURS?

- 1 A. YES.
- 2 Q. OKAY. ABOUT 160 MILES AWAY?
- 3 A. I'M ---
- 4 Q. ABOUT THREE HOURS?
- 5 A. ABOUT THAT.
- 6 Q. OKAY. SO IF WE DO 60 -- IF Y'ALL GO 60 MILES AN
- 7 HOUR, THAT'S ABOUT 180 MILES. ORANGEBURG FROM WHERE
- 8 YOU LIVE IS ABOUT 35 MILES; IS THAT RIGHT?
- 9 A. APPROXIMATELY.
- 10 Q. OKAY. BEAUFORT, WHERE WE ARE -- WE'RE IN PORT ROYAL
- 11 NEAR BEAUFORT, BEAUFORT IS ABOUT 72 MILES FROM YOU;
- 12 IS THAT RIGHT?
- 13 A. IT'S -- BY THE G.P.S., I REMEMBER THIS 'CAUSE OF
- 14 WATCHING THE -- MY WIFE PROGRAM IT WAS SEVENTY-SEVEN
- 15 POINT TWO.
- 16 Q. THERE YOU GO. SO A LITTLE BIT OVER AN HOUR TO GET
- 17 TO BEAUFORT. SO ALL OF THOSE PLACES ARE CLOSER TO
- 18 YOU THAN GREENVILLE IS; IS THAT RIGHT?
- 19 A. YES.
- 20 Q. YOU'VE TALKED ABOUT BEING A VOLUNTEER FIREMAN. YOU
- 21 STILL PARTICIPATE AS A VOLUNTEER FIREMAN; IS THAT
- 22 RIGHT?
- 23 A. AS MUCH AS I CAN.
- 24 Q. OKAY. SO YOU HAVEN'T QUIT DOING THAT; YOU JUST HAVE
- 25 DIFFERENT DUTIES NOW?

- 1 A. YES.
- 2 Q. OKAY. HOW MANY FIRES DID YOU EVER WORK AN ACTUAL
- 3 FIRE BEFORE THIS ACCIDENT?
- 4 A. SEVERAL.
- 5 Q. WHAT'S SEVERAL MEAN, FIVE?
- 6 A. OVER THE FIVE YEARS I'VE BEEN ON THAT DEPARTMENT,
- 7 PROBABLY SIX ---
- 8 Q. OKAY.
- 9 A. --- HOUSE FIRES.
- 10 Q. SIX WHEN YOU GO OUT AND YOU'VE ACTUALLY GOT TO PUT A
- 11 FIRE OUT?
- 12 A. YES.
- 13 Q. OKAY.
- 14 A. AND THEN THE BRUSH FIRES. CAR WRECKS, I'VE PROBABLY
- 15 DONE NINE DIFFERENT CARS.
- 16 Q. OKAY.
- 17 A. PROBABLY ABOUT TEN OR THIRTEEN DIFFERENT BRUSH
- 18 FIRES.
- 19 Q. OKAY. SINCE THIS ACCIDENT, HOW MANY HOUSE FIRES
- 20 HAVE THERE BEEN THAT THEY DIDN'T LET YOU GO OUT TO,
- 21 SINCE FEBRUARY TO NOW AND JUNE?
- 22 A. ABOUT TEN.
- 23 Q. SO THERE HAVE BEEN TEN HOUSE FIRES IN THE LAST FOUR
- 24 MONTHS?
- 25 A. THAT WE WERE AFFILIATED WITH, WHETHER IT WAS OUR

1 DEPARTMENT OR BACKUP FOR SOMEBODY ELSE.

2 Q. BUT I'M TRYING TO UNDERSTAND. . IN THE FIVE YEARS
3 BEFORE THIS ACCIDENT, YOU WORKED TEN HOUSE FIRE --
4 YOU WORKED SIX HOUSE FIRES TOTAL?

5 A. YES. I ALSO WORKED IN ATLANTA AS WELL.

6 Q. OKAY. BUT SINCE THIS, IN THE LAST FOUR MONTHS THERE
7 HAVE BEEN TEN HOUSE FIRES ---

8 A. RIGHT.

9 Q. --- THAT YOU COULDN'T WORK ON?

10 BY COMMISSIONER BARDEN:

11 IS THAT A YES?

12 CROSS EXAMINATION RESUMED BY MR. STORY:

13 Q. IS THAT A YES?

14 A. YES.

15 Q. OKAY. I APPRECIATE THAT.

16 A. BUT SEE, LIKE I SAY, BEFORE I WAS ALSO WORKING IN
17 ATLANTA SO I WASN'T HERE ALL THE TIME LIKE I WAS --
18 AND THAT'S ONE THING I DID LIKE ABOUT JAMES. JAMES
19 WAS VERY UNDERSTANDING AND WOULD LET YOU GO IF WE
20 WEREN'T BUSY.

21 Q. SURE.

22 BY MR. STORY:

23 THAT'S ALL THE QUESTIONS I HAVE COMMISSIONER.

24 THANK YOU.

25 BY COMMISSIONER BARDEN:

1 OKAY. MR. SAMUELS, ANY OTHER QUESTIONS?

2 RE-DIRECT EXAMINATION BY MR. SAMUELS:

3 Q. LET ME ASK YOU ABOUT THIS INDEPENDENT CONTRACTOR
4 AGREEMENT. HOW LONG HAD YOU BEEN WORKING WHEN YOU
5 SIGNED THAT?

6 A. A COUPLE OF WEEKS, A MONTH MAYBE.

7 Q. HAD YOU ALREADY RECEIVED A PAYCHECK BEFORE THEN?

8 A. A COUPLE OF THEM.

9 Q. YOU'VE ALREADY HAD ---

10 BY MR. SAMUELS:

11 SCRATCH THAT.

12 RE-DIRECT EXAMINATION RESUMED BY MR. SAMUELS:

13 Q. WHO'S TRAILER WAS IT THAT YOU'D HAULED AROUND THE
14 BUILDING THAT HAD THE TIRES ON IT?

15 A. MR. JAMES'S.

16 Q. WHO'S MACHINE WERE YOU WORKING ON AND BENDING OVER
17 WHEN YOU WERE INJURED?

18 A. MR. JAMES'S.

19 Q. HAS -- HAVE YOU BEEN SENT BY THE UNINSURED
20 EMPLOYERS' FUND OR RABER TIRE TO ANY DOCTORS,
21 ORANGEBURG, BEAUFORT, ANYWHERE?

22 A. NONE OF THOSE.

23 Q. AND YOU WENT TO DR. ROGERS. DID HE MAKE YOU FEEL
24 BAD BECAUSE HE WAS MEAN TO YOU OR BECAUSE OF THE WAY
25 YOU WERE?

1 A. 'CAUSE OF THE WAY I ----

2 BY MR. STORY:

3 I'M GOING TO OBJECT, YOUR HONOR, AS TO WHAT WAS
4 IN DR. ROGER'S MIND WHEN HE WAS DOING ANY OF HIS
5 ANALYSIS.

6 BY COMMISSIONER BARDEN:

7 WELL, I'M GOING TO LET HIM TESTIFY AS TO WHAT
8 HIS FEELINGS WERE AFTER HE LEFT. AND TO NOT TO WHAT
9 DOCTOR -- NOT TO WHAT -- HE BELIEVES DR. ROGERS DID
10 OR SAID BUT JUST WHAT HIS OWN FEELINGS WERE, AND
11 I'LL ALLOW HIM TO TESTIFY. GO AHEAD, SIR.

12 BY THE WITNESS:

13 ABOUT HOW HE MADE ME FEEL?

14 BY MR. SAMUELS:

15 YES, SIR.

16 BY COMMISSIONER BARDEN:

17 HOW DID YOU FEEL? NOT HOW DID HE MAKE YOU, HOW
18 DID YOU FEEL WHEN YOU LEFT?

19 BY THE WITNESS:

20 DEPRESSED, AGGRAVATED, HOPELESS, LIKE A
21 FAILURE.

22 (RECORDING DEVICE MALFUNCTIONED AT 1:32 P.M. AND LAST
23 LESS THAN ONE MINUTE OF HEARING WAS NOT RECORDED)
24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
25 CONCLUDED AT THE HOUR OF 1:33 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1403368

EMPLOYEE/CLAIMANT: DANNY B. CRANE

EMPLOYER: JAMES RABER D.B.A RABER'S DISCOUNT TIRE
RACK

INSURER: SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE
STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED
AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 83 PAGES
REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE
FOREGOING HEARING OF DANNY B. CRANE TAKEN ON THE 26TH DAY
OF JUNE, 2014.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND
ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL
HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE
QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND
OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY
ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 30TH DAY
OF SEPTEMBER, 2014.



SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-002116

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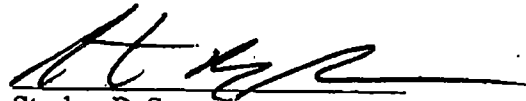
Danny B. Crane, ... Appellant,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

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



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August 31, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

SEP 30 2016

SC Court of Appeals

Appellate Case No.: 2015-002116

Danny B. Crane, ... Appellant,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier, ... Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. Whether the commission erred as a matter of fact and law in finding that Appellant did not suffer from hearing loss in the accident when substantial hearing loss was shown by three objective hearing tests using the "pure tone audiogram" required by Regulation 67-1102.
2. Whether the commission erred as a matter of fact and law in failing to order an auditory brainstem response test (ABR) with follow up treatment to determine whether the hearing loss resulted from inner ear damage or from brain injury, and whether Appellant should undergo a cochlear implant.
3. Whether the commission erred as a matter of fact and law in finding that Appellant had not proven his case when the medical evidence and unrefuted testimony proved Appellant suffered from hearing loss related to the accident.
4. Whether the commission erred as a matter of fact and law in finding that Appellant was not credible regarding his hearing loss when the "inconsistencies" in his ability to hear are actually confirmation of profound hearing loss in his right ear and substantial hearing loss in his left ear.
5. Whether the commission erred as a matter of fact and law in finding that Appellant was not entitled to temporary total disability compensation when the evidence showed he was unable to work in a tire store due to the hearing loss.
6. Whether the commission erred as a matter of fact and law in finding that if Appellant had reached MMI, then failing to make a disability award for hearing loss under Regulation 67-1102.
7. Whether the commission erred as a matter of fact and law in relying on boilerplate default entries in electronic medical records.

STATEMENT OF THE CASE

This workers' compensation appeal arises out of work-related injuries sustained by the Appellant, Danny Crane, on February 19, 2014. As Crane's employer, Raber's Discount Tire Rack (Raber), was uninsured for workers' compensation, the South Carolina Uninsured Employer's Fund (Fund) was added as a party.

Crane filed a Form 50 (Request for Hearing) on March 11, 2014. Crane alleged injuries to his "Head/brain, Ears (hearing) and face."¹ He sought medical treatment and temporary total disability compensation. [R. p. 60]. Crane had received limited evaluation and treatment for hearing loss by an ENT specialist and a neurologist.

The Fund timely filed a Form 51 (Employer's Answer to Request for Hearing) on March, 2014. The Fund made a general denial of all issues. [R. pp. 61-62].

Raber filed an untimely Form 51 (Employer's Answer to Request for Hearing) on May 5, 2014. Raber admitted it had notice of the injury; alleged Crane was an independent contractor rather than an employee; alleged Crane "was working on his personal vehicle at the time of the accident"; and denied the injury alleging "Claimant has no objective medical evidence to support hearing loss." [R. p. 63].

¹On appeal, Crane abandoned the brain and face claims.

A hearing was held before Commissioner Susan S. Barden on June 26, 2014. Crane was the sole witness who testified at the hearing.² Commissioner Barden advised the parties of her decision immediately after the hearing. A preliminary Decision and Order was drafted but not signed.

On December 16, 2014, Appellant filed Motion to Submit Additional Evidence with a supporting Affidavit. [R. pp. 162-168]. The additional evidence included a report from an ENT, Dr. Rocco Cassone, and an updated Pure Tone Audiogram with a report from the audiologist. Commissioner Barden granted the Motion and considered the additional evidence in her Decision and Order. [R. pp. 23-24, 38].

Commissioner Barden issued a Decision and Order on April 30, 2015. Commissioner Barden held:

Based upon the foregoing, it is hereby:

ORDERED, ADJUDICATED, AND DECREED that Employer is subject to the Act.

IT IS FURTHER ORDERED that Claimant is entitled to be reimbursed for the Emergency Room visit on the date of the accident, the CT scans and associated visits, the two visits with Dr. Ansley, and the February 25, 2014, and March 31, 2014, visits to Barnwell Family Practice.

IT IS FURTHER ORDERED that Claimant is not entitled to any future medical or psychological benefits.

IT IS FURTHER ORDERED that Claimant is not entitled to any temporary total disability payments as a result of the incident.

²Although Crane suffered significant hearing loss in the work accident, he is able to hear conversation in a quiet environment in his left ear with assistance from a hearing aid. He was thus able to testify.

IT IS FURTHER ORDERED that Claimant is not entitled to any permanent impairment as a result of the incident as any injuries resolved or returned to baseline.

AND IT IS SO ORDERED.

Appellant timely filed a Form 30 (Notice of Appeal) on May 12, 2015. [R. pp. 169-170]. On appeal to the Appellate Panel, Crane withdrew the brain injury claim. The appeal went forward on the claim for hearing loss, vestibular problems and depression.

The Appellate Panel heard oral arguments on July 21, 2015. The Appellate Panel issued a Decision and Order on October 1, 2015, in which it summarily affirmed the decision of the Single Commissioner. [R. pp. 41-59].

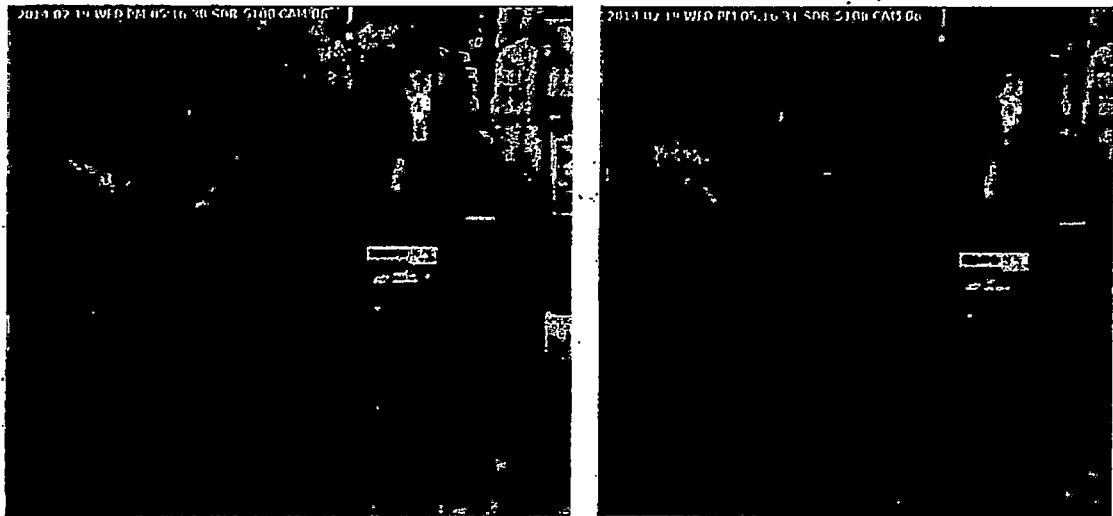
This appeal followed.

STATEMENT OF THE FACTS

The Appellant, Danny Crane, was employed as a mechanic for James Raber d/b/a Raber's Discount Tire Rack. Crane had worked for Raber since July 2013.

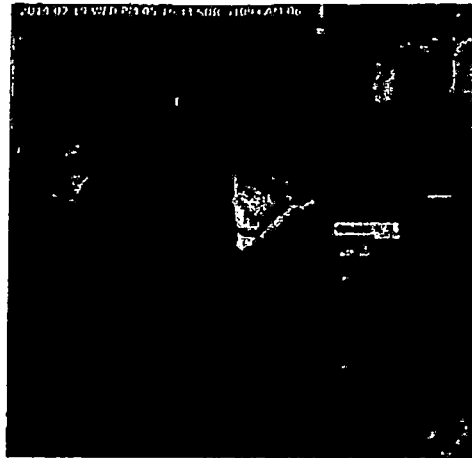
This case arises out of a work-related accident occurring on February 19, 2014. As Crane was working, he heard a hissing noise from an air-powered tire changer. He went to investigate. He bent down to try to locate the air leak, when the high-pressure 3" diameter hose exploded near his face. [R. p. 195, line 24-p. 198, line 15].

Security cameras recorded the incident and the immediate aftermath. [R. p. 124 (CD)]. At 5:16:30, Crane was bending over the machine looking for the leak.

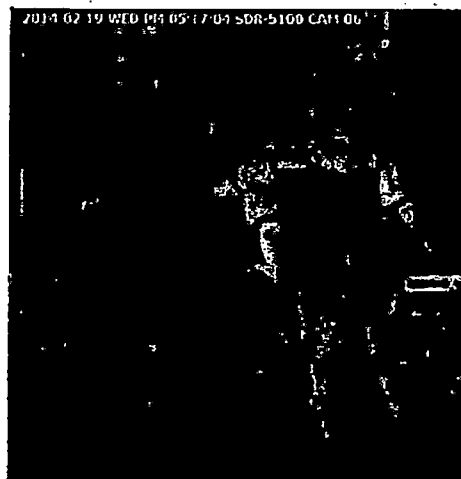


The hose blew in the next second.

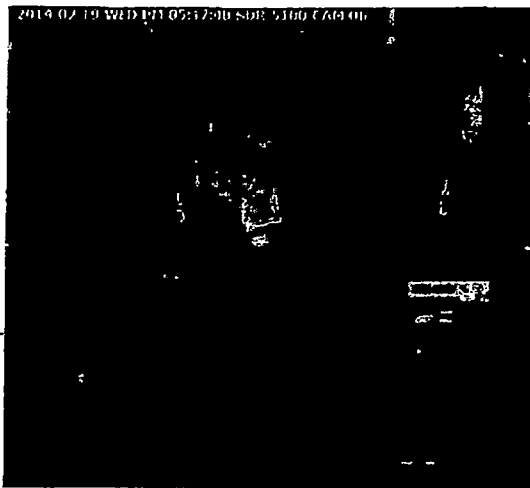
Crane immediately stood up and backed away from the tire changer. He bent over in pain and put his hands over his ears.



After a few moments, Crane stood up. Crane's supervisor (with the clipboard) came over to help him. The supervisor put his head close to Crane's head to try to talk to him because Crane could not hear anything.



Crane then pulled out his cellphone and texted his wife to "come get me."



After about two minutes, Crane went back to the tire changer. He retrieved the hat which had been knocked off his head and spent approximately eight minutes repairing the tire changer. At 5:27 (per the time stamp on the video), he got up from behind the tire changer, walked away and lit a cigarette. After smoking the cigarette, Crane continued attempting to work until his wife arrived to take him to the emergency room.

Crane's wife took him to Barnwell County Hospital. He was checked in at 5:05 p.m.³ Under Reason for Visit, the triage nurse wrote: "Air tank exploded at Raber tire. Not able to hear. Pain in right ear and right side of face. Happened approx. 30 min ago. Rt [illegible] pain." [R. p. 72].

The ER physician (Dr. Kassahun) recorded a chief complaint of "ear injury" which is "still present." The doctor wrote: "Patient had tire blow up while working and now has difficulty hearing on both ears." The patient was in "moderate" pain

³The time stamps on the video appear to be one hour ahead.

with “hearing loss/ringing” in both ears. [R. p. 75]. The Clinical Impression was “Hearing Loss - acute R/L.” Crane was “advised to see ENT on 2/20/14 and he agreed.” [R. p. 75]. The discharge diagnosis was “CONDUCTIVE HEARING LOSS MIDDLE EAR.” [R. p. 76].

Crane saw the ENT, Dr. Ansley, on February 20, 2014. On physical exam, Dr. Ansley noted “Bilateral tympanic membrane perforations . . . He does seem to be having difficulty hearing. He was sent for an audiogram which showed a severe sensorineural hearing loss in bilateral ears.” [R. p. 89, lines 12-14]. On the Pure Tone Audiogram performed at Dr. Ansley’s office, the audiologist wrote “Repeat HE in few days – possible TTS.”⁴

Crane had the CT scan on February 25, 2014. The reason for the exam was “Sudden hearing loss. Patient states he had a tire changer with 150 PSI blow up in his face last week with loss of hearing both ears.” The impression was normal, although the radiologist noted “If the patient has sensorineural hearing loss, consider further evaluation with MRI brain and internal auditory canals.”⁵ [R. pp. 78-79].

Crane also saw his family doctor, Dr. Koukos, on February 25, 2014. On physical exam, Dr. Koukos wrote: “Unable to hear following air line explosion. Had

⁴TTS (temporary threshold shift) is a temporary shift of the auditory threshold. The damage can become permanent (permanent threshold shift, PTS) if sufficient recovery time is not allowed for before continued sound exposure. When the hearing loss is rooted from a traumatic occurrence, it may be classified as noise-induced hearing loss, or NIHL.

⁵Sensorineural hearing loss (SNHL) is a type of hearing loss in which the root cause lies in the vestibulocochlear nerve (cranial nerve VIII), the inner ear, or central processing centers of the brain. Sensorineural hearing loss can be mild, moderate, or severe, including total deafness.

hearing test by ENT. Works in tire shop. Unable to hear auto's in shop. Some dizziness. Right ear clear. Right side headache." Dr. Koukos ordered another CT scan. [R. pp. 107-108].

On March 6, 2014, Crane returned to Dr. Ansley for repeat "evaluation of his ears. He is still having difficulty hearing." The Pure Tone Audiogram showed a downward shift (worsening) of Crane's hearing. He was referred to MUSC for "ABR study to obtain more objective measure of his hearing."⁶ [R. pp. 92-93]. Crane was unable to obtain the ABR as his family medical insurance did not cover MUSC. [R. p. 201, lines 5-22]. He only worked two partial days after the accident, so had no income. [R. p. 198, line 23-p. 199, line 7].

The second CT scan (ordered by Barnwell Family Medicine) was done on March 17, 2014. The indication was "Constant headache, hearing loss." The impression was a "Normal unenhanced head CT." [R. p. 106].

On March 26, 2014, Crane lost his balance getting out of the shower. He fell onto the toilet and cracked a rib. He was seen at Barnwell County Hospital. [R. pp. 80-85, 87]. He followed up with Barnwell Family Practice for the rib injury on March 31, 2014. He was not seen by his regular doctor, Dr. Koukos. He was seen by Dr. Mol Ky. [R. pp. 95-97].

⁶The auditory brainstem response (ABR) is an auditory evoked potential extracted from ongoing electrical activity in the brain and recorded via electrodes placed on the scalp. The ABR is used for newborn hearing screening, auditory threshold estimation, intraoperative monitoring, determining hearing loss type and degree, and auditory nerve and brainstem lesion detection.

ABR is particularly used to determine suitability and effectiveness of cochlear implants – which are used to treat patients diagnosed with "severe or profound sensorineural hearing loss."

Crane was evaluated by a neurologist, Dr. David Rogers, on May 19, 2014.

On physical examination, Dr. Rogers reported "Patient demonstrates apparent healed 60% tear of right tympanic membrane. More complete approximately 80% tear in the left tympanic membrane. Both TMs were injected, left being affected more greatly than right." Dr. Rogers also reviewed the Pure Tone Audiogram results and assigned impairment ratings. He opined to "a reasonable degree of medical certainty that Mr. Crane's profound bilateral hearing loss is permanent and cannot be restored by natural means." [R. pp. 115-120].

The case was tried on June 26, 2014, before Commissioner Susan Barden. At the time of the trial, Crane had purchased an in-ear amplifier at Walgreens'. He wore the amplifier in his left ear - which still retains some hearing. His right ear is completely deaf. The amplifier allowed him to hear most of the questions asked of him during the trial. However, the problem with the amplifier is that very loud sounds - such as the noise in a tire changing business - are so loud they give him headaches. He cannot work with the amplifier in, but without it, he cannot hear cars coming in or normal speaking. [R. p. 5, lines 2-6; R. p. 187, line 24-p. 188, line 2; R. p. 189 lines 11-15; R. p. 198, lines 23-29; R. p. 226, line 18-p. 229, line 20].

Commissioner Barden stopped the trial after Claimant rested without hearing any defense witnesses. She advised the parties that Claimant had proven his case as to being an employee subject to the Act, such that no further evidence on the employment issue was necessary. She further advised the attorneys that she did not consider Crane a credible witness.

After the initial proposed Order was drafted, Claimant filed a motion to submit additional evidence. Commissioner Barden granted the Motion. The additional evidence was considered in her revised order.

The additional evidence was an updated Pure Tone Audiogram done on August 19, 2014 by the same audiologist who did the first two Audiograms, along with reports from the audiologist and an ENT, Dr. Rocco D. Cassone (Dr. Ansley's partner at Carolina Ear, Nose and Throat Clinic).

Dr. Cassone wrote:

Danny Crane is referred by Disability Determination services. The patient has a long standing hearing loss following a sudden injury to his ears when a container blew up in a work related injury. There was an extremely amount of noise and he had sudden ringing in his ears and hearing loss. He has had previous audiometric evaluations. He has had balance problems ever since and has significant difficulty being able to work because of both the hearing loss and the dizziness.

Dr. Cassone's IMPRESSION/RECOMMENDATION was: "He reads lips. He may be a candidate for a cochlear implantation and this should be considered. He should probably have audiometric evaluations. He should be considered disabled because of this." [R. p. 165, lines 23-25].

The audiologist repeated the recommendation for ABR studies "as a means of obtaining more objective measures of his hearing, so as to obtain a true estimate of his hearing. Finding of the assessment conducted on August 19, 2014 suggest a right profound hearing loss, while the left ear suggests a profound to severe hearing loss." [R. p. 164, lines 4-6].

Commissioner Barden issued her Decision and Order on April 30, 2015. She found the uninsured Employer subject to the Act. She further ordered "that Claimant

is entitled to be reimbursed for Emergency Room visit on the date of the accident, the CT scans and associated visits, the two visits with Dr. Ansley and the February 25, 2014, and March 31, 2014, visits to Barnwell Family Practice.” [R. p. 40, lines 1-4]. She denied all future medical treatment and temporary total disability compensation. She specifically found “Claimant is not entitled to any permanent impairment as a result of the incident as any injuries resolved or returned to baseline.” [R. p. 40, lines 9-10]. She denied Crane’s request to be sent for ABR testing.

This appeal followed.

STANDARD OF REVIEW

The Administrative Procedures Act governs appellate review of the full commission's decision. Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981). Under this standard, the appellate court can reverse or modify the decision only if the claimant's substantial rights 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 on the whole record. S.C.Code Ann. § 1-23-380(A)(5) (Supp. 2011). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached." Shealy v. Aiken Cnty., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

Two principles form the lens through which the court reviews decisions of the workers' compensation commission. First is the guiding principle undergirding our workers' compensation system that the Act is to be liberally construed in favor of the claimant. Carter v. Penney Tire & Recapping Co., 261 S.C. 341, 349, 200 S.E.2d 64, 67 (1973). The second is the equally compelling evidentiary principle that an award may not rest upon surmise, conjecture, or speculation. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999). Instead, "[an award] must be founded on evidence of sufficient substance to afford a reasonable basis for it." Wynn v. People's Natural Gas Co. of S. C., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961).

ARGUMENT

1. Danny Crane suffered compensable hearing loss with headaches and dizziness arising out of his work accident.

The Appellate Panel erred in finding Danny Crane's injuries had resolved or returned to baseline. In so doing, the commissioners ignored and overlooked the medical evidence, instead relying on the single commissioner's arbitrary perception of Crane's ability to testify with an amplifier in his better ear. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012) (finding based on commissioner's own medical opinion is not substantial evidence and must be reversed); Marbury v. Sullivan, 957 F.2d 837, 840-41 (11th Cir. 1992) (Johnson, J., concurring)(hearing officer "may not arbitrarily substitute his own hunch or intuition for the diagnoses of a medical professional.").

The "inconsistency" in Crane's ability to hear observed by the single commissioner is actually confirmation of his hearing loss. The commissioner was informed during pretrial and at the opening of the case that Crane would be able to testify because he had an amplifier in his left ear – along with fairly good discrimination of speech as shown in the Speech Discrimination tests. The commissioner knew from the outset that Crane would likely be able to hear most, but not all, of what was said. [R. pp. 4-5]. This is exactly what happened.

Furthermore, during the hearing, the attorneys sat at counsel table facing the Commissioner. For most of the hearing, Crane sat to the left of the Commissioner between the bench and counsel table. From this position, his better ear was on the side of the attorneys, whereas his totally deaf right ear was facing the Commissioner.

When the security video was played, Crane turned around to watch it, thus turning his better ear towards the Commissioner.

Disregarding the video and medical evidence, while substituting an unfounded credibility finding is legal error. The video and medical evidence is unrefuted and confirms that Crane suffered a substantial hearing loss in the work accident. If there were any unanswered questions about his medical condition, then the appropriate action would be to order the ABR testing – not to deny the test based on speculation that his hearing loss had resolved or returned to baseline. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)(medical opinion of a commissioner is not evidence).

It is undisputed Crane had no preexisting history of hearing loss. Nor is there any doubt that Crane texted his wife to “come get me” immediately after the hose exploded and that she took him to the emergency room. The emergency room documented his complaints of headache and hearing loss/ringing in both ears. [R. pp. 72-76].

Crane was seen by an ENT three times and underwent three Pure Tone Audiograms. The Pure Tone Audiogram is the specific test required by the Commission’s regulations for determining loss of hearing. 25A S.C. Code Ann. Reg. § 67-1102 (2007). The test cannot be manipulated – and indeed, the results of the three tests show a level of consistency that could not have been faked.

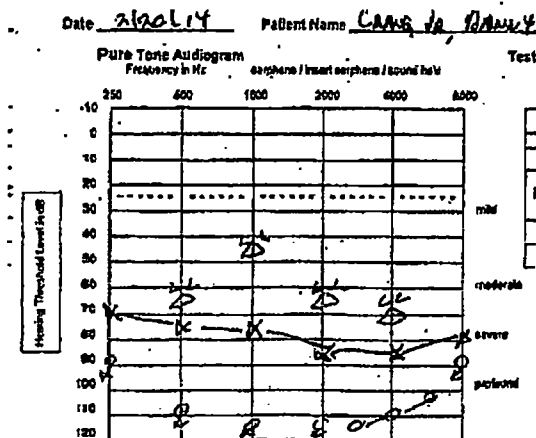
The audiogram is given by an audiologist. The patient wears headphones and is placed in a soundproof room. The audiologist sends electronic tones through the headphones at various levels of pitch and volume. If the patient hears a tone in his

left ear, he raises his left arm; a tone in the right ear, he raises his right arm. Because the patient has no way of knowing when the tone is being sent, he cannot manipulate the test. If someone tried to manipulate the test, the audiologist would be able to discern this because the result would not be the consistent pattern shown on Crane's three test results.

The Pure Tone Audiogram is an objective test. The ABR is "more objective" because it measures brain wave responses to audio input, thus it does not require the patient to raise his hand when he hears a tone. The audiologist and ENT ordered the ABR to get a more accurate measure of Crane's hearing loss for a cochlear implant – not because they doubted his credibility.

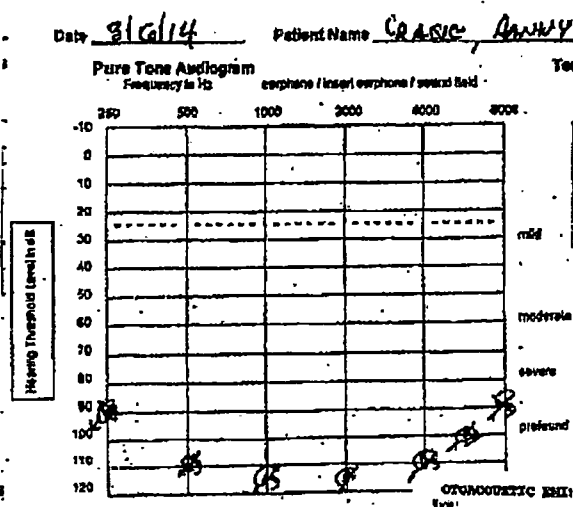
A comparison of the three Pure Tone Audiograms shows both the severity and consistency of Crane's hearing loss. The first test was done on February 20, 2014 – the day after the accident. The dotted line shows the threshold for hearing loss – test results above the line show normal hearing; below the line shows hearing loss from mild to moderate to severe to profound.

The first test showed profound hearing loss in the right ear and severe hearing loss in the left ear. [R. p. 90].

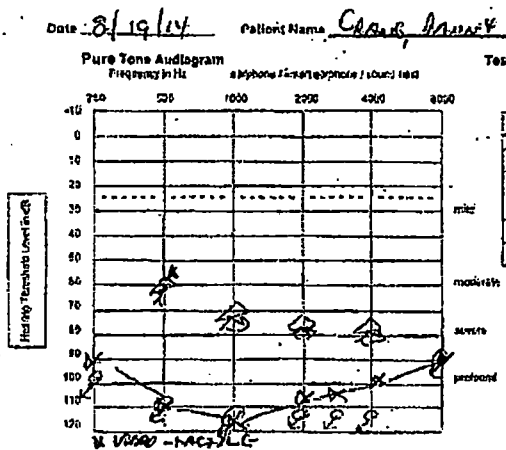


The second test was done two weeks later, on March 6, 2014. [R. p. 93].

Both tests showed profound hearing loss in the right ear – with the first showing moderate to severe in the left ear. Note the similarity in the pattern in the two tests. Both tests show the same pattern with the values very similar for the right ear (and worse for the left ear in the second test).



The third test was done six months later on August 19, 2014 (two months *after* the hearing). It too shows a pattern consistent with the previous tests. As the third Pure Tone Audiogram was done six months after the accident, it simply cannot be said that Crane's hearing loss has resolved or returned to baseline.



Despite the consistent medical evidence of continuing hearing loss in August 2014, the commission found:

Claimant reached maximum medical improvement on March 31, 2014. Even Claimant's IME found Claimant to be at maximum medical improvement. However, I find that Claimant has not proven any permanency, as Dr. Rogers' report is unreliable. More importantly, Claimant's own family doctor found Claimant's hearing normal after the date of the accident, and offered no opinion to the contrary. [R. p. 56, Finding of Fact 39].

The hearing Commissioner inexplicably puts great weight on "normal" post-accident hearing" in Dr. Mol Ky's medical records where Crane was seen after he lost his balance and fell in the bathroom at home. [R. pp. 95-97]. Although Dr. Ky is in the same practice as Crane's family doctor, Dr. Koukos, Dr. Ky did not examine and treat Crane for hearing loss. Dr. Ky treated Crane for a broken rib. Dr. Ky is not Crane's "own family doctor."

Furthermore, these are electronic medical records (EMR). The default setting on EMR is normal for every condition. These records document the condition for which the patient was being actively treated at the time – which was a broken rib; not hearing loss. By the same token, relying on internal inconsistencies elsewhere in EMR showing "normal" hearing and no mention of tympanic membranes when Crane did see Dr. Koukos for hearing loss, headaches and dizziness fails to recognize the limitations inherent in EMR. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012)(medical opinion of a commissioner is not evidence).⁷

The commission's finding that Crane's hearing had returned to baseline on March 31, 2014 when he saw Dr. Ky for his rib injury is entirely speculative. See

⁷The hearing commissioner in the case *sub judice* also heard Burnette.

Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012)(reversing commission's factual finding because "rank speculation" is not substantial evidence). Crane still suffered from hearing loss at the time of the June 26, 2014 hearing. Even more importantly, the third Pure Tone Audiogram done after the hearing showed the profound hearing loss was still present. [R. p. 166]. Dr. Cassone (who, unlike Dr. Ky, evaluated Crane specifically for hearing loss) confirmed the hearing loss and dizziness had persisted even six months after the accident. [R. pp. 164-165].

It is inexplicable that the hearing commissioner found the August 2014 testing and evaluation "not only does not change my conclusions, it also confirms them. This evidence actually hurts Claimant's case more than it helps." [R. p. 24, lines 4-6]. The testing and evaluation confirm persistent hearing loss and disability 2-3 months *after* the original hearing. This is positive medical evidence – consistent with two similar evaluations – confirming ongoing hearing loss using the test required by the regulations. The hearing commissioner read a hidden meaning into the reports that simply isn't there. This truly is rank speculation.

The hearing commissioner emphasizes throughout her order that her decision is largely based on hunches about Crane's motivation as he testified – specifically stating "Claimant's conduct/presentation at the hearing (including prior to opening the record) was more revealing than the substance of his actual testimony." [R. p. 21, lines 14-15]. While the general rule requires the appellate courts to give deference to a hearing commissioner or trial judge on issues of credibility due to their ability to personally observe the witness, rulings must nonetheless be based on positive evidence in the record. Furthermore, in workers' compensation, "[t]he final

determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel.” Hamilton v. Martin Color-Fi, Inc., 405 S.C. 478, 487, 748 S.E.2d 76, 81 (Ct. App.2013). As the appellate panel reviews the same cold record reviewed by this Court, it would seem the substance of the testimony and medical evidence must form the basis of the decision. Making conclusions about someone’s motivation based on hunches and intuition is quintessentially speculation.

The hearing commissioner questioned Crane’s credibility primarily because his ability to hear questions was, in her view, inconsistent. The supposed inconsistency is explained by the hearing tests. As part of the Pure Tone Audiogram, the audiologist also performed Word Discrimination testing. It is this testing that explains how Crane was able to testify at the hearing – as well as demonstrating why he heard some but not all of the questions asked of him.

The Word Discrimination score is a representation of how well an individual will do with hearing aids. Those with good or excellent scores are expected to do extremely well with hearing aids and will hear very much like an individual with normal hearing. Individuals with poor discrimination scores are expected to have some difficulties even with hearing aids.

Crane’s Word Discrimination test scores are shown in order from left to right.

Speech Scores (dB)		
	Right	Left
SRT/SAT	40	80
Word Discrimination (five voices)	80	80
MCL		105
UCL		

Speech Scores (dB)		
	Right	Left
SRT/SAT	40	40
Word Discrimination (five voices)	80	96
MCL		
UCL		

Speech Scores (dB)		
	Right	Left
SRT/SAT	40	40
Word Discrimination (five voices)	80	82
MCL		105
UCL		

On February 20, 2015, his Speech Score was 92%. On March 6, 2014, he did even better, with a 96% Speech Score. Six months later, his score on the August 19, 2014 Word Discrimination test was 82%. These tests are deliberately given in a quiet environment – much more akin to the relative peace and quiet of a courtroom versus the chaos and noise of a tire shop.

These test results belie the suggestion that Crane was somehow feigning deafness. They confirm that he is profoundly deaf in his right ear and severely deaf in his left ear.

Word Discrimination testing was not even attempted on Crane's right ear.

This makes sense when one looks at the definition for *profound* hearing loss:

Profound: (<90 dB)—May hear some loud sounds, but will be more aware of vibration; may rely on alternate mode of communication such as sign language. Amplification may assist in speechreading, monitoring one's own voice and increasing awareness of environmental sounds.

On the left ear, where the loss is *severe*, word discrimination testing was entirely logical. The definition of severe hearing loss is:

Severe: (70 dB to 90 dB)—Will not hear conversational speech; may be able to identify environmental sounds; great reliance on visual cues and amplification.

Crane was able to testify because he wore an amplifier (hearing aid) in his left ear. The problem for him working is that he cannot hear speech without amplification – and with the amplifier in his ear the loud crashing and mechanical noises are so loud they give him severe headaches.

The medical opinions are consistent with the testing results. No doctor doubted that Crane suffered significant hearing loss as a result of the work accident.

The only question was whether they could better treat him by determining the extent and nature of his hearing loss with an ABR test. The suggestion by the hearing Commissioner that Crane “avoided” getting the ABR test “for a reason now abundantly clear to me” is completely unfounded – as well as entirely speculative.⁸

[R. p. 30, Finding of Fact 14]. See Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012)(“[R]ank speculation . . . cannot now be used as the basis for denying [an injured worker’s] claim for lost wages.”).

Crane’s family doctor, Dr. Koukos, saw him for the accident on February 25, 2014. On physical exam, Dr. Koukos wrote: “Unable to hear following air line explosion. Had hearing test by ENT. Works in tire shop. Unable to hear auto’s in shop. Some dizziness. Right ear clear. Right side headache.” [R. pp. 107-108].

The first ENT, Dr. Ansley, examined Crane on February 20, 2014 – the day after the accident. Dr. Ansley recorded “Bilateral tympanic membrane perforations. . . . He does seem to be having difficulty hearing. He was sent for an audiogram which showed a severe sensorineural hearing loss in bilateral ears.” [R. p. 89]. On the return visit on March 6, 2014, Dr. Ansley recorded “He is still having difficulty hearing.” Dr. Ansley referred Crane for the ABR test at MUSC to return after

⁸Crane testified he had been referred for further testing by the ENT specialist “Down in Charleston at M. Something, it was for the cochlear implants, but they can’t get me in because of the type of insurance that my wife’s got us on; they won’t accept it. So they’re in the process of trying to switch the H.M.O., is it? I can’t remember the exact, but a change in the plan so that they will accept it.” Crane added the insurance issue was the reason he had not gone and that, if the testing were arranged, paid for and scheduled, he “Most definitely” would go to the test. [R. p. 201, lines 5-19]. On cross-examination about scheduling the test, Crane again explained his doctor “Tried to [set up an appointment for him]. They won’t accept my insurance, not until we – they get everything swapped around with the insurance plan to go down there.” [R. p. 215, lines 1-11].

completing the test. [R. p. 92]. As previously noted, Crane was unable to undergo the test due to insurance problems.

The neurologist, Dr. Rogers, confirmed Dr. Ansley's observations of tympanic membrane perforations, reporting "Patient demonstrates apparent healed 60% tear of right tympanic membrane. More complete approximately 80% tear in the left tympanic membrane. Both TMs were injected, left being affected more greatly than right." Dr. Rogers also reviewed the Pure Tone Audiogram results and assigned impairment ratings. He opined to "a reasonable degree of medical certainty that Mr. Crane's profound bilateral hearing loss is permanent and cannot be restored by natural means." [R. pp. 115-120]. The hearing commissioner rejected Dr. Rogers' report as unreliable; yet – as to hearing loss and balance problems – his report is consistent with every other doctor who saw Crane for these conditions.

As to the post hearing evidence, the hearing Commissioner completely misapprehends or disregards Dr. Cassone's report. She states "Even more striking than this physician's [Dr. Cassone's] record is the fact that Claimant then later (September 2014) underwent another audiological evaluation with another provider (i.e., not Dr. Ansley)." [R. p. 23, lines 16-18]. This is simply incorrect. All three of Crane's audiological evaluations were done by the *same* audiologist. All three tests showed profound hearing loss in the right ear and serious hearing loss in the left – with good speech recognition in the left ear with amplification.

As to seeing "another provider," a quick look at the records shows Dr. Cassone is Dr. Ansley's partner in the Carolina Ear, Nose and Throat Clinic in Orangeburg. [R. pp. 94, 164]. It's the same practice!

More importantly, Dr. Cassone agrees with all the other doctors. Dr. Cassone

wrote:

The patient has a long standing hearing loss following a sudden injury to his ears when a container blew up in a work related injury. There was an extremely amount of noise and he had sudden ringing in his ears and hearing loss. He has had previous audiometric evaluations. He has had balance problems ever since and has significant difficulty being able to work because of both the hearing loss and the dizziness.

Dr. Cassone's IMPRESSION/RECOMMENDATION was: "He reads lips. He may be a candidate for a cochlear implantation and this should be considered. He should probably have yearly audiometric evaluations. He should be considered disabled because of this." [R. p. 165, lines 23-25].

The hearing Commissioner wrote "I find it compelling that there are not causation statements in evidence from Claimant's two treating providers (Drs. Koukos and Ansley). Instead, Claimant traveled by car approximately 3 hours to Greenville to obtain the IME opinion from Dr. Rogers." [R. p. 38, Finding of Fact 41 (emphasis in original)]. As this Court has previously observed, "[t]he nature and timing of [an employee's] visits do not discredit [a doctor's] medical opinion." Cranford v. Hutchinson Constr., 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012)(finding "both parties presented credible conflicting medical evidence."). The Commission arbitrarily disregarded Dr. Rogers' opinion, when there was no conflicting medical evidence.

More importantly, there *are* causation statements from Drs. Kassahun, Koukos, Ansley and Cassone – all of whom are treating doctors. Dr. Kassahun wrote: "Patient had tire blow up while working and now has difficulty hearing on both ears." [R. p. 75]. Dr. Ansley wrote "He had a machine blow up in his face a

couple of days ago and he is having some difficulty hearing.” [R. p. 89]. Dr. Koukos wrote “Unable to hear following air line explosion.” [R. p. 107]. Dr. Cassone wrote “The patient has a long standing hearing loss following a sudden injury to his ears when a container blew up in a work related injury.” [R. p. 165, lines 5-7]. These causation statements cannot be ignored – particularly when there is video of the accident, no prior history of hearing problems, an immediate trip to the emergency room, and three Pure Tone Audiograms showing significant hearing loss. See Doe v. South Carolina Dept. of Disabilities and Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008)(reversing Commission’s denial of claim because the “only evidence of causation is that Claimant’s mental injury was caused by her stress at work as stated by Dr. Lowe”). The hearing commissioner goes to great lengths to impugn Crane’s motivation and character, even implying that but for the video evidence of the accident, she would have denied the claim altogether. It is unfortunate that the hearing commissioner took such a view of this case. Sometimes it is difficult to recognize that a person with a profound hearing loss – probably aggravated by depression and the inability to work – is still able to testify *with use of a hearing aid*. While it may be counterintuitive for a deaf person to understand most spoken speech in a quiet courtroom, the medical evidence (and use of a hearing aid) explains this conundrum.

Here, the Single Commissioner and Appellate Panel engaged in so-called “sit and squirm” jurisprudence when they discounted Crane’s testimony and medical evidence about loss of hearing based on the Single Commissioner’s lay “Impressions” of Crane’s ability to hear and understand the questions he was being

asked. The Single Commissioner wrote: "Claimant's inconsistent performance at the hearing as to what he can allegedly hear/not hear is the most persuasive evidence of all." [R. p. 30, Finding of Fact 14]. She further wrote:

Claimant's "display" and evasiveness at the hearing (among other problematic issues) make me seriously question whether or not there was an actual injury. One cannot help but question that if Claimant had legitimate, causally-related hearing loss, he would have felt no need to "perform" at the hearing. However, because there was an incident (captured by video) and for which Claimant went to the Emergency Room, I find that Claimant sustained an injury to his ears on the date of the accident.

[R. p. 24, Finding of Fact 1].

Rulings of this type have been roundly condemned by the Federal Courts as inherently unreliable. "In 'sit and squirm' jurisprudence, [a commissioner] who is not a medical expert will subjectively arrive at an index of traits which he expects the claimant to manifest at the hearing. If the claimant falls short of the index, the claim is denied." Wilson v. Heckler, 734 F.2d 513 (11th Cir. 1984).

This approach "will not only result in unreliable conclusions when observing claimants with honest intentions, but may encourage claimants to manufacture convincing observable manifestations of pain or, worse yet, discourage them from exercising their right to appear before [the commission] for fear that they may not appear to the unexpert eye to be as bad as they feel." Tyler v. Weinberger, 409 F.Supp. 776 (E.D. Va. 1976)(finding claimant disabled as a matter of law where factual finding that claimant "over-exaggerated his complaint about sitting for extended periods" was "unreasonable under the law and this Court does not accept them."). A hearing officer "may not arbitrarily substitute his own hunch or intuition for the diagnoses of a medical professional." Marbury v. Sullivan, 957 F.2d 837,

840-41 (11th Cir. 1992) (Johnson, J., concurring). Cf., Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012) (finding based on commissioner's own medical opinion is not substantial evidence and must be reversed).

As lawyers, we are taught to reach factual conclusion based on consideration of the evidence – not form a hypothesis only to disregard the evidence that doesn't support the initial hypothesis. The “sit and squirm” methodology ensures arbitrary and unpredictable rulings based on gut feelings and intuition – rulings ultimately based on speculation which must be subject to review and reversal by the appellate courts. See Hutson v. South Carolina State Ports Authority, 732 S.E.2d 500, 399 S.C. 381 (2012) (“To use such unsupported and wildly optimistic goals which are in direct conflict with the only concrete evidence in the record would turn the Act on its head and violate the stated policy behind it.”); Therrell v. Jerry's Inc., 633 S.E.2d 893, 370 S.C. 22 (2006) (“Though the workers' compensation commission carries the duty to determine how an injury is compensable, the commission makes this decision based on submitted evidence, not out of thin air.”); Stallcup v. Carolina Wood Turning Co., 7 S.E.2d 550 (N.C. 1940) (Seawell, J. dissenting) (“How far the Industrial Commission may be indulged in refusing to believe credible testimony is still to be worked out, but its arbitrary disregard of positive testimony and the substitution therefor of mere speculation is within the power of review and correction by this Court.”).

The Court should find Crane suffered hearing loss as a matter of law. The evidence of ongoing hearing loss and balance problems is overwhelming, such that the commission's findings are not supported by substantial evidence. When the only

evidence in the record shows that the existence of a work-related injury, the Commission's findings must be reversed as unsupported by substantial evidence. See, e.g., McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992); Massey v. W.R. Grace & Co., 286 S.C. 434, 334 S.E.2d 122 (1985); Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct.App. 1995).

The decision below should be reversed and remanded. The Commission should be instructed to award Crane medical treatment through Dr. Ansley and Cassone for his hearing loss and balance problems, along with an appropriate payment of temporary total disability compensation. Once Crane reaches MMI, he should receive a disability award based on the hearing loss and balance problems caused by the workplace accident.

2. Danny Crane should be placed on a running award of temporary total disability compensation.

The Commission found "Claimant is not entitled to receive any temporary benefits, as there are no work excuse notes in the record entitling Claimant to such benefits." [R. p. 56, Finding of Fact 40]. This finding is in error. There was a work excuse in the record from Dr. Ansley taking Crane out of work from March 6, 2014 through April 1, 2014. [R. p. 123]. The work excuse was not renewed because Crane was not to return to Dr. Ansley until after the ABR test – which, as previously noted, he was unable to obtain.

A work excuse is not the only evidence on which entitlement to temporary compensation can be based. See S.C. Code Ann. § 42-1-120 (2007) ("The term 'disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."). Other

evidence shows Crane is unable to work in a tire store due to his hearing loss. Crane testified he could not hear spoken voices and moving cars without his left ear amplifier – yet when he wore it while attempting to work, the noise of the tire shop was so extremely loud that it gave him severe headaches. [R. p. 5, lines 4-6; R. p. 187, line 24-p. 188, line 2; R. p. 189, lines 11-15; R. p. 198, lines 23-29; R. p. 226, line 18-p. 229, line 20].

As to medical evidence, the problem in the shop was documented by Dr. Koukos, who wrote on February 25, 2014: “Unable to hear following air line explosion. Had hearing test by ENT. Works in tire shop. Unable to hear auto’s in shop. Some dizziness. Right ear clear. Right side headache.” [R. pp. 107-108].

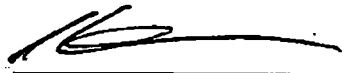
Dr. Cassone wrote: “He has had balance problems ever since and has significant difficulty being able to work because of both the hearing loss and the dizziness . . . He should be considered disabled because of this.” [R. p. 165 (emphasis added)]. See Johnson v. Rent-A-Center, Inc., 398 S.C. 595, 730 S.E.2d 857 (2012) (employee entitled to temporary total disability benefits where employee had not returned to work after being put under medical restrictions).

These unrefuted medical opinions, along with Crane’s testimony and the undisputed fact that he was only able to return to work for two partial days, confirm that Crane should receive temporary total disability compensation from the last day he attempted to work. Temporary compensation should continue until he reaches maximum medical improvement and his permanent disability is determined.

CONCLUSION

For the foregoing reasons, the Court should affirm in part and reverse in part. The Court should affirm the findings that Crane was an employee who suffered a work-related injury. The Court should reverse the denial of medical treatment after March 31, 2014 and the denial of compensation. Crane should be provided medical testing and treatment, along with temporary total disability compensation on a running award.

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September 29, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-002116

RECEIVED

SEP 30 2016

SC Court of Appeals

Danny B. Crane, ... Appellant,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with
Rule 211(b), SCACR.

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DANNY B. CRANE..... APPELLANT,

v.

RABER'S DISCOUNT TIRE RACK, EMPLOYER, AND SOUTH
CAROLINA UINSURED EMPLOYERS FUND, CARRIER, ...RESPONDENTS.

FINAL BRIEF OF RESPONDENT
S.C. UNINSURED EMPLOYERS' FUND

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STATEMENT OF ISSUES ON APPEAL

1. Did the Workers' Compensation Appellate Panel err in affirming the Single Commissioner's finding of fact that Petitioner was not a credible witness where the medical records provided by the Petitioner/Claimant contained inconsistent reports to medical providers, the Petitioner/Claimant gave testimony which was inconsistent with those same medical records, and the Single Commissioner found the Petitioner/Claimant's behavior at the Hearing to be disingenuous?
2. Did the Workers' Compensation Appellate Panel err in affirming the Single Commissioner's finding that Petitioner's hearing injury resolved or returned to baseline where the medical records provided by Petitioner show no complaints of hearing loss at subsequent doctor's visits?
3. Did the Workers' Compensation Appellate Panel err in affirming the Single Commissioner's finding that Petitioner is not entitled to temporary total disability compensation because Petitioner did not present any credible evidence that he is unable to perform his job duties as a result of his injuries from the subject work incident?
4. Did the Workers' Compensation Appellate Panel err in relying on electronic medical records introduced by Petitioner where there evidence in the record that the default setting on those records is "normal" and where there is other evidence to support the Commission's finding that Petitioner's hearing injury had resolved or returned to baseline by that date?

5. Did the Workers' Compensation Appellate Panel err in affirming the Single Commissioner's finding that Petitioner is not entitled to a disability award for hearing loss pursuant to Regulation 67-1102 where the Commission properly found Petitioner did not suffer a permanent injury from the subject work incident?

STATEMENT OF THE CASE

The Single Commissioner Hearing. On March 11, 2014, Petitioner Danny Crane ("Petitioner") filed a Form 50 Request for Hearing. (R. p. 60). Petitioner requested a finding of compensability, temporary total disability benefits, reimbursement for expenses already incurred, and an order requiring defendants to provide further medical treatment. (R. p. 60). Petitioner alleged injuries to his head and brain, bilateral hearing loss, aggravation of pre-existing psychological condition, and a vestibular disturbance, including problems with dizziness and balance. (R. p.64-65).

On March 24, 2014, South Carolina Uninsured Employers' Fund ("UEF") filed a Form 51 Employer's Answer to Request for Hearing. The UEF denied all elements of the claim. (R. p. 61).

A hearing on Petitioner's alleged injuries was held before Commissioner Susan S. Barden on June 26, 2014. (R. p. 171-252).

On December 16, 2014, Petitioner filed a Motion to Submit Additional Evidence. This newly submitted evidence included a report from an additional medical provider. (R. p. 162). Commissioner Barden granted the Motion. (R. p. 23-24).

On April 30, 2015, Commissioner Barden issued a final Decision and Order finding that the Employer was subject to the Workers' Compensation Act, that Petitioner sustained an injury to his ears on the date of the accident and ordered Petitioner be reimbursed for his Emergency Room visit on February 19, 2014, his CT scan and associated visits, his two visits to his treating ENT, and his follow-up visit to Barnwell Family Practice. (R. p. 1-40). Commissioner Barden denied compensation for any future medical benefits, temporary total disability payments, and any permanent impairment as a result of the incident. (R. p. 39-40).

The Appellate Panel. Petitioner timely filed a Form 30 Notice of Appeal on May 12, 2015. (R. p. 169). The Full Commission Appellate Panel heard oral arguments on July 21, 2015. (R. p. 41). On October 1, 2015, the Appellate Panel issued a final Decision and Order affirming the Single Commissioner's Order in full. (R. p. 41-59).

Petitioner timely filed and served a Notice of Appeal to this Court on October 9, 2015.

STATEMENT OF FACTS

This case arises out of an incident which occurred on February 19, 2014 at Raber's Discount Tire Rack (hereinafter "Raber's Tire"). On February 19, 2014, Petitioner, while working at Raber's Tire, bent down to inspect a noise coming from a tire changer when an air line hose became disconnected, causing a loud noise. (R. p. 196). The entire incident was documented on videotape. (R. p. 124). The video shows Petitioner move away from the tire changer and hold his head and ears. (R. p. 124). The video then shows Petitioner talk to a co-worker and then pull out his phone. (R. p. 124, 237). The video then shows Petitioner return to work. (R. p. 124).

Petitioner's wife later took Petitioner to the Emergency Room at Barnwell County Hospital. The Emergency Room records note that Petitioner complained of an ear injury, ringing in his ears, difficulty hearing, and right ear facial pain. (R. p. 74-75). The records state that Petitioner was found to be alert and oriented with a normal mood/affect. (R. p. 74-75). Additionally, the records state that Petitioner's head was atraumatic and a "disoriented" option was not checked or marked. (R. p. 74-75). The records do not indicate Petitioner had any bruising or marks as a result of being hit being struck in the head. (R. p. 69-77). The records also do not note any memory loss, headaches, or dizziness. (R. p. 69-77). No brain diagnostic tests were ordered and Petitioner was sent home with antibiotic eardrops for an outer ear or middle ear infection. (R. p. 69-77).

The emergency room referred Petitioner to Ear Nose and Throat specialist, Dr. John F. Ansley. Petitioner visited Dr. Ansley the day after the incident. (R. p. 89). Dr. Ansley's notes indicate Petitioner reported a machine blew up in his face and that Petitioner was having some difficulty hearing. (R. p. 89). Petitioner complained only of hearing loss at this appointment. (R. p. 89). Dr. Ansley diagnosed Petitioner with bilateral tympanic membrane perforations, and

performed a Pure Tone Audiogram ("PTA") which showed severe sensorineural hearing loss. (R. p. 90). Dr. Ansley scheduled Petitioner for a follow-up visit, noting that he expected Petitioner's hearing to improve. (R. p. 89).

Dr. Ansley also ordered a CT scan. This CT scan was performed on February 25, 2014. (R. p. 78-79, 91). The results showed normal auditory canals, normal ossicles, normal tympanic cavities, and chronic sinusitis. (R. p. 78-79, 91).

Petitioner had a follow-up appointment with Dr. Ansley on March 6, 2014. (R. p. 92). At this appointment, Dr. Ansley performed a second PTA test. (R. p. 93). Inexplicably, this second test showed that Petitioner's hearing had worsened and not improved. (R. p. 92-93). Dr. Ansley wrote "he actually had a shift downward on audiogram" and ruled out sensorineural hearing loss as a diagnosis (R. p. 92). Dr. Ansley then recommended Petitioner receive a "more objective measure of his hearing" and scheduled an Auditory Brainstem Response ("ABR") test for Petitioner at the Medical University of South Carolina. (R. p. 92). Dr. Ansley's notes do not indicate any complaints of headaches, dizziness, balance problems, or memory loss. (R. p. 89-94).

Dr. Ansley requested Petitioner schedule a follow-up appointment after receiving the more objective ABR test. (R. p. 92). Petitioner never returned to see Dr. Ansley and never had the ABR test. (R. p. 215).

On March 26, 2014, Petitioner fell getting out of his bathtub and was admitted to the Barnwell County Emergency Room for a rib fracture and wheezing. (R. p. 80-88). Petitioner testified that his fall was caused by the balance, dizziness issues he experienced after the subject work incident. Petitioner stated "I have fell out of, you know, trying to get out of the tub and broke my ribs." (R. p. 202). However, the emergency room records do not indicate that the fall was caused by any dizziness or loss of balance. (R. p. 80-88). In fact, dizziness and balance

problems are not mentioned at all in the records. (R. p. 80-88). While the records confirm Petitioner's history of migraines, depression, Bipolar disorder, and a 1990 coma following a motor vehicle accident, they do not list any complaints or history of hearing loss, new headaches, cognitive difficulty, dizziness, memory loss, or even reference the subject work incident. (R. p. 7).

On March 31, 2014, Petitioner had a follow-up appointment for his rib fracture with his primary care physician's practice. (R. p. 95). These records note Petitioner "fell last Tuesday morning getting out of bath. Was seen in ER and given oxycodone for pain management but is now out of medication. Patient is now in pain on right side. Patient did not hit head when fell. Having trouble obtaining a full breath. Stopped smoking early last week. The patient is a 37 year old male who presents with a complaint of right rib pain." (R. p. 95). The records do not mention any problems with Petitioner's hearing or that Petitioner's fall was caused by a dizzy spell. (R. p. 95-99). In fact, the record later states "[u]pon examination of the ears, nose, mouth and throat – ... otoscopic exam reveals normal external auditory canals with tympanic membranes clear and mobile..." (R. p. 96). Under Assessments, the treating physician listed only rib fracture, sinusitis, nicotine addiction, and bipolar affective disorder. (R. p. 96-97). There is no mention of any hearing problems. (R. p. 95-99).

No other medical records related to the February 19 work incident exist until May 19, 2014. (R. p. 115). Petitioner did not return to Dr. Ansley. (R. p. 215). He did not receive the more objective ABR test at the Medical University of South Carolina which Dr. Ansley recommended. (R. p. 214-215). Instead, three months after the accident, at the recommendation of his attorney, Petitioner went to see Dr. David S. Rogers at the Oaktree Medical Centre Department of Neurology. (R. p. 115). Dr. Rogers is located in Greenville, more than seventy-

seven miles from Petitioner's home – a fact which Petitioner was able to easily recall at the Single Commissioner's hearing despite his claims of memory loss. (R. p. 249).

Petitioner reported to Dr. Rogers that he was struck in the head by an object during the incident at Raber's Tire on February 19, 2014. (R. p. 115). This is inconsistent with Petitioner's medical records from the day of the subject work incident. (R. p. 69-77). He reported that the resulting head injury has since been causing dizziness and balance problems. (R. p. 116). He reported he had fallen several times since the accident due to these balance issues and that his rib fracture on March 26, 2014 was caused by this balance problem. (R. p. 116). Petitioner also told Dr. Rogers that he was bleeding from his ears after exposure to loud noises, having cognitive and memory difficulties, and experiencing irritability and anxiety. (R. p. 116). Dr. Rogers found that Petitioner suffered from an "apparent *healed* 60% tear of the right tympanic membrane. More complete approximately 80% tear in the left tympanic membrane [emphasis supplied]." (R. p. 118). Dr. Rogers assigned permanent impairments, including an impairment for a "closed head injury with resultant post-concussive syndrome." (R. p. 119-120). Claimant also told Dr. Rogers that he never returned to work at Raber's Tire after the subject work incident on February 19. (R. p. 117).

Petitioner was the only witness to testify at the Single Commissioner hearing and his testimony varied greatly from the medical records his counsel introduced into evidence. Petitioner claimed he sustained an aggravation of a pre-existing psychological condition, a vestibular disturbance causing dizziness and other balance issues, brain injury, memory loss, headaches, and hearing loss. (R. p. 178). Petitioner testified the hose came loose from a tire changer at Raber's Tire, struck him in the forehead, and left a bruise on his right forehead as a result. (R. p. 197). Petitioner also testified he remembered being on his hands and knees immediately after the incident. (R. p. 198). The photos provided in Petitioner's Initial Brief show

Petitioner standing. Petitioner testified he remembered texting his wife immediately after the incident. (R. p. 233). He also recalled telling his co-worker, Chad, that Petitioner could not hear anything. (R. p. 233-35). However, Petitioner was unable to remember that he returned to work immediately after the incident despite the video evidence to the contrary. (R. p. 233-35).

Petitioner testified he reported memory loss to the Emergency Room staff on the day of the accident. (R. p. 212). However, there are no such complaints included in Petitioner's records from the date of the subject work incident. (R. p. 69-77). Additionally, Petitioner testified he had a bruise on his forehead which was visible to the Emergency Room staff which was caused by being struck in the head by the air hose. (R. p. 213). Again, this claim is not reflected in Petitioner's medical records from the date of the incident. (R. p. 69-77).

As to his ear injury, Petitioner testified his ears would bleed onto his pillows at night. (R. p. 199-200). He stated this bleeding was caused by wearing the amplifier he bought at Walgreens. (R. p. 198-99). He stated that the noises from the electric fans, bright lights, and electric pump gave him headaches and that his ears would bleed later that evening onto his pillows. (R. p. 198-99). Petitioner testified that, on another occasion, his children turned the music in the car up so loud that it caused his ears to bleed. (R. p. 199-200). He stated the music was so loud that his mother-in-law complained when he pulled up to the house. (R. p. 199-200).

Petitioner denied he was ever diagnosed with bipolar disorder and denied that he ever reported to any treating doctor that he was ever diagnosed with bipolar disorder. Petitioner stated: "Why would I tell them if I had bipolar if I wasn't diagnosed with it?" (R. p. 218). However, Petitioner reported his Bipolar diagnosis to Dr. Rogers one month prior to the Single Commissioner hearing. (R. p. 117).

Petitioner admitted he had a history of migraines prior to the subject accident. (R. p. 219-20). However, he qualified this by saying "everybody has migraines." (R. p. 219). He admitted

he was diagnosed with migraines and was prescribed migraine medication prior to the subject accident. (R. p. 220).

As to his claim for temporary disability benefits, Petitioner testified he returned to work at Raber's Tire "a couple of days," but could never complete a full day because of his headaches. (R. p. 226). However, Petitioner told Dr. Rogers only a month prior to the hearing that he never returned to Raber's Tire after the February 19 accident. (R. p. 117).

Petitioner admitted Mr. Raber allowed Petitioner to return to work. (R. p. 226). Petitioner admitted he can still turn a rotor because that is only visual. (R. p. 228). Petitioner admitted he can still change a tire. (R. p. 228). However, Petitioner claimed that he was still unable to work because he could not hear, even after he purchased a hearing amplifier from Walgreens for his left ear. (R. p. 226-27). Petitioner claimed this amplifier caused the loud noises in the shop to be amplified and caused headaches. (R. p. 198-99). However, Petitioner also admitted that he had migraines which pre-dated this incident and did not introduce any evidence that these headaches were aggravated by the subject work incident. (R. p. 219).

Additionally, Petitioner testified that the hearing amplifier was removable and he could adjust the volume. He testified that he was able to remove the amplifier and perform his work. (R. p. 229). He was also able to then put the amplifier back into his ear when necessary. (R. p. 229). Petitioner's only concern was that might get run over if he could not hear a car coming. (R. p. 229). Petitioner could not provide an example of this ever happening. (R. p. 229).

Finally, and most importantly, the Petitioner's behavior at the hearing was so inconsistent and unbelievable that the Single Commissioner stopped the hearing. As the Commissioner stated in her Order, this was a hearing that begged to be videotaped. (R. p. 21). At the outset of the hearing, Petitioner made a clear point of having trouble hearing the Commissioner, asking her to raise her voice so Petitioner could hear her. (R. p. 21; 187-89). However, Petitioner was later

able to answer questions asked by his own attorney when asked at a normal level and with his back turned so that Petitioner was unable to lip read. (R. p. 21). The Single Commissioner noted that, at times, Claimant either looked at his hands while answering questions or had his back to the questioner. (R. p. 21). Petitioner even continued to answer questions from defense counsel while defense counsel was crouched down dealing with the video footage. (R. p. 22). Commissioner Barden noted she had trouble hearing defense counsel, and yet Petitioner was able to hear and answer the questions asked of him by the attorneys. (R. p. 21).

STANDARD OF REVIEW

The Administrative Procedures Act governs review of the full workers' compensation commission's decision. *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 732 S.E.2d 500 (2012). The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-380(5). The court may affirm the decision of the agency or remand the case for further proceedings. S.C. Code Ann. § 1-23-380(5). The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380. "This Court will not overturn a decision by the Commission unless the determination is unsupported by substantial evidence. *Pollack v. Southern Wine & Spirits of Am.*, 405 S.C. 9, 14, 747 S.E.2d 430, 432 (S.C. 2013). "Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the

conclusion that the administrative agency reached to justify its action." *Id.* "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." *Hill v. Eagle Motor Lines*, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007).

The Commission is the ultimate factfinder in workers' compensation cases. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). Where there is a conflict in the evidence, either by different witnesses or in the testimony of the same witness, the findings of fact of the Commission are conclusive. *Hall v. United Rentals, Inc.*, 371 S.C. 69, 80, 636 S.E.2d 876, 882 (Ct. App. 2006) ; *Glover v. Columbia Hospital of Richland-County*, 236 S.C. 410, 114 S.E.2d 565 (1960). Where the medical evidence conflicts, the findings of fact of the Commission are conclusive. *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 435, 458 S.E.2d 76, 78 (Ct. App. 1995).

The review must be conducted by the court and must be confined to the record. S.C. Code Ann. § 1-23-380(4).

ARGUMENT

Petitioner has raised seven issues on appeal. However, due to a failure by Petitioner to cite any legal authority or even address two of these issues in his initial brief, Respondent South Carolina Uninsured Employers' Fund ("Respondent") requests this Court deem those issues abandoned. Additionally, Petitioner's first issue on appeal – whether the commission erred as a matter of fact and law in finding that Appellant did not suffer from hearing loss in the accident – is contradictory to the findings of the Commission. The Commission did in fact find that Petitioner suffered a hearing loss; however the Commission found that this hearing loss was temporary and not permanent.

Respondent requests this Court affirm the findings of the Appellate Panel in full and hold that Petitioner's injuries resolved or returned to baseline by March 31, 2014, and therefore, Petitioner not entitled to any future medical benefits, temporary total disability payments, or any permanent impairment. These findings made by the Commission are supported by substantial evidence found in the record.

I. The Commission properly found that Petitioner is not a credible witness.

"[A]ny questions of credibility must be resolved by the Commission." *Smith v. S.C. Dep't of Mental Health*, 329 S.C. 485, 501, 494 S.E.2d 630, 638 (Ct. App. 1997). "It is logical for the [Appellate Panel], which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion." *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

In making a determination as to a witness' credibility, the Commission may consider inconsistent statements by a Petitioner to both his medical providers and to the Commission. *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 681 S.E.2d 595 (S.C. Ct. App. 2009). In *Fishburne v. ATI Sys. Int'l*, the Petitioner was the only witness to testify on her behalf. *Id.* During the Single Commissioner's hearing, the Petitioner exaggerated her symptoms and made statements which were inconsistent with her medical records. *Id.* Additionally, the Single Commissioner relied upon his/her own impressions of the witness at the hearing. *Id.* The Single Commissioner's order specifically stated the Petitioner "ambulated into the hearing room with a cane that no doctor prescribed. ... [P]resented herself as continually wiping tears [the] Commissioner never observed, and constantly made loud sniffing sounds from a nose that ... never 'ran'." *Id.* This conduct, in addition to the Petitioner's inconsistent statements, caused the Single Commissioner to question

the witness' credibility. *Id.* On appeal, the Court found that these findings contained in the record were substantial evidence sufficient to support the Commission's finding that the Petitioner's testimony was not credible. *Id.*

In the present case, Petitioner argues that the Single Commissioner and Appellate Panel "disregard[ed] the video and medical evidence, while substituting an unfounded credibility finding." (Appellant's Initial Br., p. 12). This is simply not true. In making its finding that Petitioner is not a credible witness, the Commission relied on the medical records submitted by Petitioner, the video recording of the February 19 incident, as well as Petitioner's own testimony and actions at the Single Commissioner hearing – all of which contained inconsistencies and exaggerations. This evidence all supports the Commission's finding that the Petitioner is not a credible witness.

First, the Appellate Panel's ruling is supported by Petitioner's wildly inconsistent medical evidence. This reliance on Petitioner's own evidence is hardly speculation, as Petitioner asserts in his appeal. For example, on the day of the subject work incident, Petitioner complained only of an ear injury, ringing in his ears, difficulty hearing, and right ear facial pain. (R. p. 69-77). These records are consistent with Petitioner's complaints to Ear Nose and Throat specialist, Dr. John F. Ansley the following day. There, Petitioner complained only of hearing loss. (R. p. 89). Then on May 19, three months after the accident, Petitioner reported to Dr. Rogers that he was hit in the head by the air hose during the work incident on February 19. (R. p. 115). However, Petitioner's records from the Emergency Room that day note Petitioner's injury was atraumatic. (R. p. 69-77). Petitioner also reported to Dr. Rogers that he was suffering from balance problems, that he had fallen several times due to these balance problems, he was bleeding from his ears, suffering from anxiety, and having cognitive and memory problems. (R. p. 116). However, Petitioner's emergency room records from the day of the work incident are void of any mention

of head trauma. (R. p. 69-77). Petitioner's medical records from his intervening doctor visits are devoid of any complaints of head trauma, balance problems, bleeding from the ears, or memory loss. (R. p. 69-121). Yet, Petitioner testified that his rib injury was caused by one of his resulting dizzy spells. (R. p.202).

Similarly, Petitioner's records from his March 26 visit to the ER for his rib injury list every other prior medical condition from which Petitioner has ever suffered, yet is completely devoid of any mention of the February 19 incident. (R. p. 80-86). Under "Past History", Petitioner listed his 1990 coma, a prior leg injury, and his pre-existing headaches, Bipolar disorder, anxiety and depression, but yet did not mention Petitioner's most recent accident – the accident which resulted in the condition which Petitioner claims caused his fall and rib fracture. (R. p. 9).

Additionally, Petitioner's alleged medical problems from the February 19 incident seem to get progressively worse with each new doctor, yet Petitioner has not submitted any evidence as to why his health has inexplicably devolved. In fact, the medical evidence submitted by Petitioner shows that Dr. Ansley expected Petitioner's hearing to improve during the two-week interim between their appointments. (R. p. 89) When Petitioner's hearing did not improve during that time period, Dr. Ansley ordered "more objective" testing for Petitioner. (R. p. 93). However, Petitioner failed to have these tests performed. (R. p. 215).

The medical records submitted by Petitioner are also inconsistent with Petitioner's testimony at the Single Commissioner hearing. Petitioner testified that he was struck in the head during the incident and that he had a visible bruise on his forehead. (R. p. 197, 213). However, the records from Petitioner's emergency room visit on February 19 specifically state "atraumatic." (R. p. 74). Petitioner testified he reported to the emergency room doctors that he had memory loss. (R. p. 212-13). Yet these records do not mention any sort of memory loss. (R.

p. 69-77). Petitioner stated in his testimony that his March 26 fall from his bathtub was caused by the dizziness he had been experiencing since the subject incident. (R. p. 202-03). However, the medical records from that evening do not indicate any reports of dizziness and the medical history does not even reference the February 19 visit. (R. p. 80-86). Finally, Petitioner testified that he was never diagnosed with Bipolar disorder. (R. p. 218). However, the medical records submitted by Petitioner indicate he was diagnosed with Bipolar disorder in 2007. (R. p. 95). Additionally, Petitioner reported to Dr. Rogers only a month prior to his hearing testimony that he had, in fact, been diagnosed with bipolar disorder. (R. p. 115). Petitioner also reported his Bipolar diagnosis to the emergency room doctors on the date of his rib injury. (R. p. 80-86).

Notably, Petitioner dropped his claim for a brain injury on the appeal to the Full Commission. Due to Petitioner's credibility issues at the hearing and his inconsistent complaints to medical providers, the Single Commissioner denied Petitioner's claim for brain injury and Petitioner did not appeal this finding. (R. p. 31). The Commissioner noted this decision stemmed from Petitioner's ability to make mileage calculations and recall minute details of the accident on the spot at the hearing. (R. p. 27). Additionally, there was no evidence submitted showing that Petitioner was ever hit in the head during the accident or that he complained of being hit in the head before stating this to Dr. Rogers three months after the incident. The Commission found this lack of medical evidence, combined with Petitioner's medical history of a coma, created serious doubts about Petitioner's credibility and decision to bring a claim for brain injury.

Finally, and most importantly, the Single Commissioner relied heavily on her impressions of Petitioner's behavior from the hearing. The Commissioner noted this was a hearing that begged to be videotaped. (R. p. 25-26). Petitioner first made a clear point of being unable to hear the Commissioner, yet later in the hearing appears perfectly able to hear the attorneys on direct and cross examination. (R. p. 25-26). Additionally, when the security video

was played, Petitioner turned around to watch the video, he turned his back to the attorneys and turned his “better” ear to the Commissioner. (R. p. 25-26). However, even with his back turned and his bad ear now turned toward counsel, Petitioner continued to answer questions asked by counsel for the employer. (R. p. 25-26). At times the Commissioner had trouble hearing the Commissioner’s questions, but Petitioner continued to answer counsel’s questions with no request that he speak up. (R. p. 25-26).

Petitioner now argues that these inconsistencies in his ability to hear are proof of his hearing loss. In support of this argument, Petitioner asserts that the reason Petitioner heard some questions with ease and struggled to hear the Commissioner is because Petitioner was wearing a hearing amplifier in his left ear. Petitioner testified he wears this aid in his left ear because it is the better ear. However, even this statement is inconsistent with the medical evidence provided by Petitioner. Dr. Rogers opined, “[p]atient demonstrates apparent *healed* 60% tear of right tympanic membrane. More complete approximately 80% tear in the left tympanic membrane. Both TMs were inject, *left being affected more greatly than right* [emphasis supplied].” (R. p.118).

All of the reasons cited by the Commission – inconsistent testimony, inconsistent statements to medical providers, and exaggerated testimony at the hearing – are consistent with those reasons cited in *Fishburne*, and constitute substantial evidence upon which to confirm the Appellate Panel’s holding that Petitioner is not a credible witness.

II. The Appellate Panel properly found that Petitioner’s hearing injury resolved or returned to baseline by March 31, 2014.

The Appellate Panel is given discretion to weigh and consider all the evidence, both lay and expert, when deciding whether causation has been established. *Ballenger v. S. Worsted Corp.*, 209 S.C. 463, 467, 40 S.E.2d 681, 683 (1946); *Tiller v. National Health Care Ctr.*, 334 S.C. 333, 338, 513 S.E.2d 843, 845, (S.C. 1999). Thus, while medical testimony is entitled to

great respect, the fact finder may disregard it if other competent evidence is presented. *Id.* "Where the medical evidence conflicts, the findings of fact of the Commission are conclusive. *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 435, 458 S.E.2d 76, 78 (Ct. App. 1995). "[I]t is not for this court to balance objective against subjective findings of medical witnesses, or to weigh the testimony of one witness against that of another. That function belongs to the Appellate Panel alone." *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127, (S.C. Ct. App. 2011) (quoting *Roper v. Kimbrell's of Greenville*, 231 S.C. 453, 461, 99 S.E.2d 52, 57 (1957)).

Petitioner cites *Burnette v. City of Greenville* in support of its position that the Commission's findings of fact regarding Petitioner's alleged injuries should be reversed. In *Burnette*, the Commission's Order included medical evidence and findings which were not supplied by any medical provider or contained in any medical records. 401 S.C. 417, 737 S.E.2d 200 (S.C. Ct. App. 2012). The Court stated "[b]ecause no evidence indicates this opinion originated from a medical provider, yet it appears in the single commissioner's order, we are forced to conclude it is the medical opinion of the single commissioner, adopted by the Commission." *Id.* The court found that, because the medical opinion in the order came from the commissioner, and the record on appeal did not otherwise contain any evidence which challenged the opinions provided by the Petitioner's treating providers, the findings of the Single Commissioner were unsupported by substantial evidence. *Id.*

The present case is distinguished from *Burnette*. First, the medical evidence cited in the Commission's Order can be cited back to the medical records introduced. In making its finding that Petitioner's hearing loss resolved by March 31, 2014, the Commission relied on the notes in Petitioner's Emergency Room records from the night of Petitioner's fall in his bathroom and Petitioner's follow-up appointment with his primary care physician's office. (R. p. 27-29).

Despite Petitioner's testimony to the contrary, the only clinical impression listed in Petitioner's Emergency Room records from that night is the right rib condition. (R. p. 28, 80-86). The subject work incident was not listed under Petitioner's Past History and the notes do not indicate that Petitioner's fall was caused by any symptoms of dizziness. (R. p. 80-86). Due to this lack of evidence to corroborate Petitioner's testimony that he continues to suffer from hearing loss, the Commission found that Petitioner's injuries resolved by March 31, 2014. (R. p.39).

Petitioner asserts that the Commission "inexplicably puts great weight on 'normal' post-accident hearing in Dr. Mol Ky's medical records" following Petitioner's fall from his bath tub. Petitioner asserts that he was not being treated for his hearing, but instead, was being treated for broken ribs. However, this assertion ignores Petitioner's testimony at the hearing that his fall was caused by the dizziness and headaches which Petitioner claims were caused by the subject work incident. (R. p. 116, 202). The medical records do not state the fall was caused by any dizziness or instability. (R. p. 80-86). Petitioner's medical history listed on the night of Petitioner's fall includes a long list of prior accidents, including a motor vehicle accident which occurred in 1990. (R. p. 7). However, the records do not mention the subject work incident at all. (R. p. 80-86).

Finally, the only evidence which contradicts the finding of the Commission that Petitioner's injury resolved by March 31, 2014 is the medical exam performed by Dr. Rogers three months later. However, the Commission properly found that Dr. Rogers' report was unreliable based on the inconsistent medical history provided to Dr. Rogers by Petitioner. (R. p.53).

Based on these notes and the finding that Petitioner is not a credible witness, the Commission properly found that Petitioner's injury resolved or returned to baseline by March 31,

2014. Furthermore, based upon this finding, the Commission properly ordered Petitioner was not entitled to any future medical benefits, including Petitioner's requested ABR test.

III. The Appellate Panel properly found that Petitioner is not entitled to temporary total disability compensation because Petitioner failed to present any evidence that he is unable to perform his job duties as a result of the subject work incident.

The Commission correctly found that Petitioner did not prove by the greater weight of the evidence that he was unable to work, and therefore, is not entitled to any temporary disability payments under SC Code Ann § 42-9-260. The Petitioner bears the burden of proving entitlement to temporary disability compensation. *Lee v. Bondex, Inc.*, 406 S.C. 97, 749 S.E.2d 155 (S.C. Ct. App. 2013). To show that one is entitled to temporary total disability benefits, one must prove that the incapacity for work resulting from an injury is total. S.C. Code Ann. § 42-9-10 (Supp. 2012); *Lee*, 406 S.C. at 102, 749 S.E.2d at 157. The Petitioner satisfies his burden by proving work restrictions that prevent him from performing his regular job and the unavailability of light-duty employment through the same employer. *Id.* However, Petitioner did not submit any evidence that his incapacity to work is total and that light-duty was unavailable with Raber's Tire.

The only evidence supporting claims that he is unable to work came from the Petitioner himself. Petitioner testified he returned to work a couple of days for half-days but could never make it to the end of a shift. (R. p. 226). However, Petitioner told Dr. Rogers that he never returned to work at Raber's Tire after the subject work incident on February 19. (R. p.117).

Petitioner admitted Mr. Raber allowed Petitioner to return to work. (R. p. 226). Petitioner admitted he can still turn a rotor because that is only visual. (R. p. 228). Petitioner admitted he can still change a tire. (R. p. 228). Petitioner stated that when he wore the amplifier he bought at Walgreens, the noises from the electric fans, bright lights and electric for the lift in the shop gave him headaches. (R. p. 204-05). However, Petitioner also admitted he had pre-existing migraines,

for which he was prescribed medication, prior to this incident. (R. p. 219-220). Petitioner has presented no evidence that his pre-existing headaches have been aggravated by this incident.

Additionally, Petitioner testified that the hearing amplifier was removable and he could adjust the volume. He stated he could remove the amplifier and perform his work. (R. p. 226-229). Petitioner could then put the amplifier back into his ear when necessary. (R. p. 226-229). Petitioner's only concern was that he might be hit by a car if he could not hear the car coming. (R. p. 229). However, he never had an incident where he almost hit anyone in the garage while he was driving. (R. p. 229).

None of the testimony offered by Petitioner shows that he is actually unable to perform his job duties. The video introduced by Petitioner shows Petitioner return to work immediately following the subject work incident. Therefore, Respondent requests this Court affirm the finding of the Commission and find that Petitioner is not entitled to temporary disability benefits.

IV. The Appellate Panel properly relied upon electronic medical records introduced by Petitioner's counsel.

Petitioner fails to cite any authority in his brief as to why it was improper for the Commission to rely upon electronic medical records which were admitted into evidence at the request of Petitioner. Petitioner simply states: "Furthermore, these are electronic medical records (EMR). The default setting on EMR is normal for every condition."

An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory. *See In the Matter of the Care & Treatment of McCracken*, 346 S.C. 87, 92-3, 551 S.E.2d 235, 238-39 (2001) (finding issues were abandoned because there was no specific legal ground upon which the court could rely); see also *Pack v. S.C. Dep't of Transp.*, 381 S.C. 526, 532, 673 S.E.2d 461, 464 (Ct. App. 2009) (holding appellant abandoned issue when she cited no legal authority to support her argument). Where an appellant's brief suggests other facts that could have been considered by the Appellate Panel, but fails to provide the court with no

substantive legal authority upon which to rely, the issue is abandoned. *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 716 S.E.2d 123 (S.C. Ct. App. 2011). Because Petitioner fails to cite any legal authority which supports his contention that electronic medical records are unreliable, this Court should find that this issue was abandoned by Petitioner.

To the extent this Court does not deem the issue abandoned, Petitioner's conclusory statement that "[t]he default setting on EMR is normal for every condition" is unsupported by any evidence contained in the record. There is no testimony to support this contention or any testimony to show that the EMR software for the records referenced by Petitioner had default settings of normal.

Finally, even if Petitioner were able to show that the default setting on the emergency room records is normal, this record still contradicts Petitioner's testimony at the Single Commissioner's hearing. Petitioner stated that he went to the emergency room that night because he tripped getting out of the bathtub due to the dizziness and balance problems. (R. p. 202). Petitioner is still incorrect in stating that Petitioner was seeking treatment *only* for a broken rib at the time of this appointment. By Petitioner's own testimony, Petitioner fell and consequently broke his rib as a direct result of the symptoms he suffered following the subject incident. (R. p. 116, 202). Yet, Petitioner failed to report the alleged causation of Petitioner's fall. (R. p. 80-86).

V. The Commission properly denied Petitioner's claim for a disability award pursuant to Regulation 67-1102.

Petitioner asserts that the Commission failed to make a disability award for hearing loss under Regulation 67-1102. Again, Petitioner does not address this issue anywhere in Petitioner's Initial Brief. Petitioner only states "Once Crane reaches MMI, he should receive a disability award based on the hearing loss and balance problems caused by the workplace accident." Respondent, therefore, request this Court find that Petitioner has abandoned this issue.

To the extent Petitioner has not abandoned this issue on appeal, Regulation 67-1102 provides that the method of calculation for a hearing handicap. The regulation also provides that a pure tone audiogram should be used as the method for the calculation. Although Petitioner does not address this issue in his brief, counsel for Petitioner seems to imply that because the ABR testing, which is required in the statute, showed profound hearing loss, the Commission must follow the regulation and automatically award disability compensation.

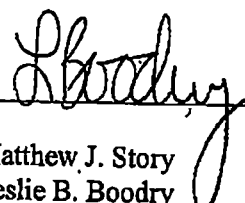
Petitioner appears to assert that the results of the ABR testing are completely conclusive as to Petitioner's alleged hearing loss. However, if that were correct, there would be no reason for a hearing in the first place. Additionally, this assertion overlooks the note made by Dr. Ansley after Petitioner's first ABR test in which she expected his hearing to improve.

Finally, Petitioner argues that the medical evidence shows that Petitioner's hearing loss has remained consistent throughout all of the records. However, there is no medical evidence or testimony to support this statement.

CONCLUSION

For the reasons stated, Respondent respectfully requests this Court affirm the decision of the Appellate Panel.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

APPELLATE CASE NO.: 2015-002116

RECEIVED
SEP 23 2016
SC Court of Appeals

DANNY B. CRANE..... APPELLANT,

v.

RABER'S DISCOUNT TIRE RACK, EMPLOYER, AND SOUTH
CAROLINA UINSURED EMPLOYERS FUND, CARRIER, ... RESPONDENTS.

CERTIFICATE OF COMPLIANCE

I certify that I have complied with Rule 211(b) of the South Carolina Appellate Court Rules.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

RECEIVED

SEP 30 2016

SC Court of Appeals

Appellate Case No.: 2015-002116

Danny B. Crane, ... Appellant,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier, ... Respondents.

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ARGUMENT

1. Danny Crane suffered compensable hearing loss with headaches and dizziness arising out of his work accident.

The Appellate Panel erred in finding Danny Crane's injuries had resolved or returned to baseline when the unrefuted medical evidence overwhelmingly confirms otherwise. See Hutson v. South Carolina State Ports Authority, 732 S.E.2d 500, 399 S.C. 381 (2012) ("To use such unsupported and wildly optimistic goals which are in direct conflict with the only concrete evidence in the record would turn the Act on its head and violate the stated policy behind it."). As Respondents acknowledge, "[t]he Commission did in fact find that Petitioner [sic] suffered a hearing loss; however the Commission found that this hearing loss as temporary and not permanent." [Brief of Respondents, pg. 13]. Respondents' statement confirms that the true error of the Commission lies in disregarding the Pure Tone Audiograms and multiple opinions of the doctors proving Crane's permanent hearing loss.

A. The Commission improperly used an arbitrary credibility finding to disregard positive evidence of disability [in reply to Respondents' argument at pages 13-18].

Respondents devote the bulk of their brief to attacking Crane's credibility. This is understandable, as the Commission rejected *all* the medical evidence based on an inherently arbitrary and capricious credibility finding. This is the very essence of the "sit and squirm" jurisprudence long condemned by the Federal Courts.¹ Wilson v. Heckler, 734 F.2d 513 (11th Cir. 1984) ("In 'sit and squirm' jurisprudence, [a commissioner] who is not a medical expert will subjectively arrive at an index of

¹No South Carolina state court has addressed the issue.

traits which he expects the claimant to manifest at the hearing. If the claimant falls short of the index, the claim is denied.”).

The playbook used by Respondents in this case is a simple one. The medical evidence is overwhelmingly against them. The law is against them. The only way to get around that is an *ad hominem* attack against Crane, painting him as someone undeserving of sympathy and credence, let alone disability benefits. Once the well is poisoned, then the trier of fact simply combs the record for isolated nuggets to bolster this preordained conclusion.²

Respondents recite a litany of purported discrepancies within the testimony and medical records. The vast majority of these are random isolated instances where the Commission saw inconsistencies which simply do not exist. Respondents contend the instant case is akin to Fishburne v. Ati Systems Intern., 384 S.C. 76, 681 S.E.2d 595 (Ct. App. 2009). A closer look at Fishburne demonstrates that, while the playbook is the same, the evidence is completely different.

In Fishburne, this Court affirmed the Commission’s disability award, including affirming a finding that “she did not provide credible testimony at the hearing.” Id. at 681 S.E.2d 602. Fishburne contended she was permanently and totally disabled. However, the Commission found she only sustained a 10% loss of use of her back.

²Carl Sandburg expressed the concept in more colorful terms: “If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell.” Carl Sandburg, The People, Yes (1936)

In affirming the 10% loss of use under the substantial evidence standard of review, this Court focused on the wide range of medical evidence presented by both parties. Fishburne relied on an opinion by Dr. Tollison that she was permanently and totally disabled, along with a vocational opinion. While acknowledging the existence of Fishburne's evidence, the Court referenced multiple medical opinions that supported the Commission's 10% disability award. The Court noted:

- Dr. Thomas thought Fishburne could return to her previous work if she were off narcotics.
- Dr. Reid determined Fishburne could work at medium duty.
- An FCE determined Fishburne could perform medium work.
- "Fishburne underwent many tests and none revealed any serious problems."

Fishburne stands for the well-established proposition that it is the role of the Commission to weigh conflicting evidence. The instant case differs in that *there is no conflicting evidence*.

Unlike the testing in Fishburne, three separate Pure Tone Audiograms consistently showed profound hearing loss in the right ear and severe hearing loss in the left. Speech discrimination testing was also consistent. [R.pp. 90, 93, 166].

Also unlike Fishburne, the medical opinions are unanimous. The three doctors who evaluated Crane's deafness universally opined he had suffered substantial hearing loss as a result of his work accident. As to Crane's hearing "returning to baseline," Dr. Cassone confirmed the hearing loss and dizziness had persisted even six months after the accident – and his opinion was based on testing done months after the hearing. [R. pp. 164 - 166].

Indeed, an eerily similar (and entirely speculative) finding of a work injury "returning to baseline" is exactly what this court faced in Burnette v. City of

Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012). In Burnette, the Court wrote “We find no evidence that challenges the conclusions of Burnette’s doctors ... As a result, the record provides little or no support of the findings of the Commission...” Id. Regarding one specific finding by the Commission, the Court made the stunning observation that: “Because no evidence indicates this opinion originated from a medical provider, yet it appears in the single commissioner’s order, *we are forced to conclude it is the medical opinion of the single commissioner, adopted by the Commission.*” Id.

In this case, there is simply no evidence to weigh. It is absurd for the Commission to hone in on a medical report by a doctor who was treating Crane for a broken rib – not hearing loss and dizziness. An isolated medical report written by a doctor treating an unrelated medical condition who gives no opinion (nor was cross-examined) on the material facts is probative of nothing. See Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011) (permitting the Commission to disregard medical evidence only when other competent evidence exists in the record).

The employee in Burnette also challenged the Commission’s findings on her credibility as “neither material nor supported by substantial evidence.” Burnette. The Court sidestepped the issue, noting other issues were dispositive of the appeal. A similar result should follow in this case. As in Burnette, the Commission “bullet-proofed” its decision with gratuitous credibility findings that ostensibly would withstand appellate review. The credibility findings must be disregarded as the

underlying factual finding that Crane's hearing loss had returned to baseline is speculation and conjecture, unsupported by substantial evidence.

To the extent that the credibility findings are relevant, one can return to Fishburne for an example of credibility findings with a basis in the record. Fishburne used a cane no doctor prescribed, wiped away non-existent tears, and sniffled from a nose that never ran. These displays are overtly calculated to appear more disabled and more emotionally distraught than was actually the case.

Here, we have the opposite. Crane wore a hearing aid so he could function more – so that he could participate in the hearing. He never made himself appear more disabled than he was – in fact, he repeatedly testified that he wanted and needed to work because he had a wife and six children to support.

Unlike in Fishburne, the single commissioner could not point to any overt objective sign of exaggeration (a nonprescribed cane, nonexistent tears and sniffles). Her observations are simply that sometimes Crane could understand the questions he was asked and sometimes he couldn't. This is not demonstrable evidence of subterfuge; it is simply evidence that the witness is hard of hearing. It is not entirely clear what the single commissioner expected would happen – it is certainly what she was told to expect at the beginning of the hearing.

This is the concern. We all accept the general proposition that a credibility finding is difficult to reverse on appeal because the trier of fact is in the best position to observe the demeanor of the witness. However, what happens when the trier of fact makes a fundamentally arbitrary ruling, yet couches it as a credibility finding?

Must the court abandon its duty and accede to a rule of untouchability when faced with blatant caprice and hypocrisy?

Whether the Court decides this case on the Commission's substitution of concrete evidence with speculation or addresses the credibility findings head on, the decision below cannot stand. The finding that Crane's hearing loss had returned to its pre-injury baseline – and the resulting denial of medical treatment and compensation – is not supported by substantial evidence. The decision below should be reversed because it is based on pure speculation wherein the hearing commissioner “arbitrarily substitute[d] h[er] own hunch or intuition for the diagnoses of a medical professional.” Marbury v. Sullivan, 957 F.2d 837, 840-41 (11th Cir. 1992) (Johnson, J., concurring). Cf., Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012) (finding based on commissioner's own medical opinion is not substantial evidence and must be reversed).

B. The Appellate Panel's finding that Crane's hearing had returned by baseline by March 31, 2014 is contrary to the evidence [in reply to Respondents' argument at pages 18-20].

Respondents' argue that the Commission correctly found Crane's hearing loss had resolved by March 31, 2104, because “the only clinical impression listed in [Crane's] Emergency Room records from that night [and the follow-up with Dr. Ky] is the right rib condition.” [Brief of Respondents, pg. 19]. Respondents' ask this Court to accept the premise that a treatment record for an unrelated broken rib is substantial evidence proving that hearing loss had spontaneously resolved – even though the records in question make no such statement. This is exactly the kind of speculation that commanded reversal in Burnette. Id. The Appellate Panel cannot

simply make things up; their decisions *must* be based on concrete evidence in the record. See Therrell v. Jerry's Inc., 633 S.E.2d 893, 370 S.C. 22 (2006) ("Though the workers' compensation commission carries the duty to determine how an injury is compensable, the commission makes this decision based on submitted evidence, not out of thin air.")

Respondents also contend the Commission was justified in rejecting both Crane's testimony and Dr. Rogers' report as not credible. This brings us back around to the question of what can the appellate courts do when faced with arbitrary and capricious credibility findings used as a proxy for rejecting positive evidence. See Stallcup v. Carolina Wood Turning, Co., 7 S.E.2d 550 (N.C. 1940) (Seawell, J. dissenting) ("How far the Industrial Commission may be indulged in refusing to believe credible testimony is still to be worked out, but its arbitrary disregard of positive testimony and the substitution therefor of mere speculation is within the power of review and correction by this Court.").

Neither Dr. Rogers' report nor Crane's testimony were refuted or contradicted by other evidence in the record. The report and testimony are consistent with the reports from Drs. Kassahun, Koukos, Ansley and Cassone; and with the Pure Tone Audiogram testing. There may have been minor differences in the details, but all the medical evidence consistently shows significant hearing loss since the work accident. There is no legal justification for outright rejecting evidence.

Furthermore, even if the Commission could give no weight to Dr. Rogers' report or Crane's testimony, it cannot ignore (or outright misinterpret) the third Pure Tone Audiogram and Dr. Cassone's report. These were done after March 31, 2014

and after the hearing. A report confirming hearing loss and disability absolutely outweighs a medical record for an unrelated rib injury *as a matter of law*. Indeed, this is not a question of weighing conflicting medical evidence. It is a question of the existence of evidence. There is no evidence showing Crane's hearing had returned to normal on March 31, 2014 or any other date.

As there is no substantial evidence supporting the Commission's finding that Crane's hearing had returned to baseline on March 31, 2014, the decision below should be reversed.

2. Danny Crane proved he is entitled to temporary total disability compensation as his injury prevented him from working in his normal employment and his employer made no offer of employment suitable to his capacity [in reply to Respondents' argument at pages 21-22].

Respondents seek to bar Crane from receiving temporary total disability compensation for his injury. Respondents contend Crane "did not submit any evidence that his incapacity for work is total and that light-duty was unavailable with Raber's tire." [Brief of Respondents, pg. 21].

As a general proposition, when the injured worker is unable to perform his regular duties, the employer must either offer suitable employment within the injured worker's capacity or pay either temporary total disability compensation or wages in lieu of compensation. See S.C. Code Ann. § 42-9-190 (2005); S.C. Code Ann. § 42-9-200 (2007) ("if the injury results in disability of more than fourteen days, compensation shall be allowed from the date of disability"); S.C. Code Ann. § 42-9-260(A) (Supp. 2006); 25A S.C. Code Ann. Reg. 67-502 (2007) (defining "disability", "return to work without restriction", and "temporary partial incapacity").

Crane did submit evidence of his disability. Crane testified when he went back to work:

With the amplifier they put in, with the noises from like the brake lays [sic], that electric motor running and the loud squeals that you can amplify off of that axle cutting of brake lays [sic], the electric motors of the lifts coming up and down, they would give me a headache and I couldn't – I mean severely. [R. p. 204, lines 15-23].

He added he attempted to work the next day and another day but was unable to complete the entire shift. [R. p. 205, lines 2-6; R. p. 226, lines 7-10]. He explained it was too loud to work with the amplifier and impossible to work with it out. [R. p. 226, line 18-p. 227, line 19]. Crane was the only witness – the employer did not testify to dispute Crane's explanation for his inability to continue working at Raber Tire.

Respondents do not contend that proof of disability requires expert medical testimony. They question the sufficiency of Crane's testimony, but do not contest the fact that his testimony, taken at face value, supports his claim for temporary total disability compensation. Nonetheless, it should be noted that Dr. Ansley wrote Crane out of work on March 6, 2014. The work slip expired on April 1, 2014 – presuming that Crane would return to the doctor for further evaluation following the ABR test. [R. pp. 92, 123]. The ABR test did not happen because Raber had no workers' compensation insurance to provide treatment and Crane's health insurance did not cover treatment at MUSC. [R. p. 215, lines 1-11]. Most importantly, Dr. Cassone wrote: "He has had balance problems ever since and has significant difficulty being able to work because of both the hearing loss and the dizziness . . . He should be considered disabled because of this." [R. p. 165, lines 9-10, 25 (emphasis added)].

See Johnson v. Rent-A-Center, Inc., 398 S.C. 595, 730 S.E.2d 857 (2012) (employee entitled to temporary total disability benefits where employee had not returned to work after being put under medical restrictions).

The evidence confirms that Crane should be on a running award of temporary total disability compensation. The Appellate Panel's denial of temporary compensation rests on the erroneous finding that Crane's work injury had returned to baseline. Once that finding is reversed, the way is clear for him to receive temporary compensation.

3. The Commission erred in relying on electronic medical records [in reply to Respondents' argument at pages 22-23].

Respondents contend the issue about reliance on electronic medical records is not preserved and should be deemed abandoned. Appellant did not argue the reliance on EMR as a separate ground. The issue is fully discussed in pages 16-17 of Appellant's brief. It does not appear as a separate argument. Rather it is part and parcel of the overall argument that the Appellate Panel relied on speculation in giving any weight to boilerplate medical records where the physician in question was treating an unrelated medical condition (broken rib). The error was relying on a medical record which contained no opinion by the doctor stating Crane's hearing loss had spontaneously resolved.. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012) (medical opinion of a commissioner is not evidence); Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012) (reversing commission's factual finding because "rank speculation" is not substantial evidence).

4. The Commission erred in denying Crane's future claim for a permanent disability award [in reply to Respondents' argument at pages 24].

Respondents contend Appellant failed to preserve the issue of a permanent disability award for hearing loss. Respondents misapprehend the procedural posture of this case.

Appellant is not asking for a permanent disability award at this time. He is not at MMI and needs additional treatment before his disability can be determined. The essence of the issue is that the Commission found as a fact that Crane had reached MMI on March 14, 2014 with no permanent impairment. That finding effectively forecloses any future disability award.

While a disability award could theoretically issue based on Dr. Rogers' opinion that the hearing loss is permanent and could not be improved by natural means, Crane asked the Commission to defer that finding until he completes a full course of treatment aimed at restoring some level of hearing and alleviating his dizziness. See McMahan v. S.C. Dept. of Education-Transportation, Op. No. 5415 (S.C.Ct.App. filed June 15, 2106)(Shearouse Adv.Sh. No. 24 at 56)(permanent disability award can be made based on existing evidence even if employee has not reached MMI).

In short, the issue is not ripe. MMI and permanent disability need to be determined by the Commission on remand. The decision below must be reversed and remanded with instructions to provide medical treatment, temporary compensation and, upon a determination of MMI, permanent disability compensation.

CONCLUSION

For the foregoing reasons, the Court should affirm in part and reverse in part. The Court should affirm the findings that Crane was an employee who suffered a work-related injury. The Court should reverse the denial of medical treatment after March 31, 2014 and the denial of compensation. Crane should be provided medical testing and treatment, along with temporary total disability compensation on a running award.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-002116

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Danny B. Crane, ... Appellant,

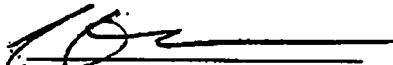
v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies
with Rule 211(b), SCACR.

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