

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

JUN 29 2018

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

**S.C. SUPREME COURT**

Appellate Case No.: 2015-001702 (Opinion No. 5548, Filed March 28, 2018)

James Dent, Employee ..... Respondent,

vs.

East Richland County Public Service District, Employer and  
State Accident Fund, Carrier ..... Petitioners.

**APPENDIX**

Matthew C. Robertson, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803)771-7211

ATTORNEY FOR RESPONDENT

David H. Keller, Esq. (S.C. Bar # 3345)  
Evelyn A. Norton, Esq. (S.C. Bar # 102792)  
Turner Padgett Graham & Laney P.A.  
200 E. Broad Street  
P.O. Box 1509 (29602)  
Greenville, South Carolina 29601  
Telephone: (864) 552-4619  
(864) 552-4620 (facsimile)  
[dkeller@turnerpadgett.com](mailto:dkeller@turnerpadgett.com)  
[enorton@turnerpadgett.com](mailto:enorton@turnerpadgett.com)

ATTORNEYS FOR PETITIONERS

## INDEX

|                                                                                                      |     |
|------------------------------------------------------------------------------------------------------|-----|
| Record on Appeal .....                                                                               | 1   |
| Final Brief of Appellant.....                                                                        | 216 |
| Final Brief of Respondent.....                                                                       | 246 |
| Court of Appeals Opinion No. 5548 - Heard February 8, 2017 - Filed<br>March 28, 2018 - Reversed..... | 260 |
| Respondents' Petition for Rehearing dated April 12, 2018 .....                                       | 272 |
| Order filed May 29, 2018 - Petition for Rehearing Denied .....                                       | 290 |

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**

DEC 10 2015

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission  
Appellate Panel

---

**SC Court of Appeals**

---

Appellate Case No.: 2015-001702

---

James Dent, ..... Appellant,

v.

East Richland County Public Service  
District, Employer, and State Accident Fund,  
Carrier, ..... Respondents.

---

RECORD ON APPEAL

---

Matthew C. Robertson  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211  
Attorney for Appellant

Page P. Snyder  
STATE ACCIDENT FUND  
Post Office Box 102100  
Columbia, SC 29210  
(803) 896-5896  
Attorney for Respondents

INDEX

|                                                                                |     |
|--------------------------------------------------------------------------------|-----|
| Order of Hearing Commissioner,<br>dated April 14, 2014 .....                   | 1   |
| Order of Full Commission,<br>dated November 21, 2014 .....                     | 12  |
| Order of Hearing Commissioner on Remand,<br>dated February 24, 2015 .....      | 24  |
| Order of Full Commission,<br>dated July 10, 2015 .....                         | 37  |
| <hr/>                                                                          |     |
| Claimant's Form 50, dated September 20, 2013 .....                             | 54  |
| Defendants' Form 51, dated October 3, 2013 .....                               | 58  |
| Claimant's APA Submissions, in their entirety,<br>dated January 24, 2014 ..... | 60  |
| Defendants' APA Submissions, #A, #B, and #C,<br>dated January 15, 2014 .....   | 122 |
| <hr/>                                                                          |     |
| Transcript of Hearing, dated February 7, 2014 .....                            | 150 |
| <hr/>                                                                          |     |
| Request for Proposed Order,<br>dated February 19, 2014 .....                   | 202 |
| Request for Proposed Order,<br>dated March 27, 2014 .....                      | 207 |
| <hr/>                                                                          |     |
| Certificate of Counsel .....                                                   | 212 |

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

James Dent,

Claimant,

vs.

East Richland County Public Service  
District,

Employer/Defendant,

and,

State Accident Fund,

Carrier/Defendant.

ORDER

W.C.C. FILE NO.: 1205879

HEARING DATE:

Held in Columbia, South Carolina on  
February 7, 2014

APPEARANCES:

Matthew Robertson, Esq., Attorney for the Claimant

Page Snyder, Esq., Attorney for the Defendants.

PURPOSE OF HEARING:

To determine issues as set forth on Forms 50 and 51.

DECISION AND ORDER BY:

Susan Barden, Commissioner

FILED:

April 14, 2014

### STIPULATIONS

This case was heard by the undersigned Commissioner in Columbia, South Carolina, on February 7, 2014. The parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the extent of the Claimant's permanent disability and to determine any credit for overpayment.
2. Notice of this hearing was timely and properly served upon all parties of interest.
3. Venue, set in Richland County, is proper as agreed by the parties.
2. Without objection, the Commission's file becomes part of the record, with the exception of any self-serving declarations or unstipulated medical reports.
3. The Claimant seeks a determination of benefits under the S.C. Workers' Compensation Act based upon Claimant's injury by accident occurring on May 1, 2012, while he was in the employment of the Defendant/Employer, East Richland County Public Service District. Therefore, the S.C. Workers' Compensation Commission has jurisdiction of this case.
4. The average weekly wage is \$916.10, making a compensation rate of \$610.75 applicable in this matter.

### APA SUBMISSIONS

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Claimant:

|       |                                        |                 |       |
|-------|----------------------------------------|-----------------|-------|
| APA 1 | Paula L. Belmar, MD Southeastern Spine | 5/17/12-6/8/12  | 1-7   |
| APA 2 | Progressive Physical Therapy           | 1/16/13-7/1/13  | 8-27  |
| APA 3 | Columbia Neurosurgical                 | 8/29/12-7/30/13 | 28-31 |
| APA 4 | Leonard Forrest, MD Southeastern Spine | 7/8/13          | 32-37 |
| APA 5 | Harriet Fowler, CRC, M.Ed              | 9/13/13         | 38-60 |

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Defendants:

|       |                  |                 |       |
|-------|------------------|-----------------|-------|
| APA A | Dr. Brett Gunter | 7/25/12-5/8/13  | 1-11  |
| APA B | Dr. Paula Belmar | 5/10/12-1/4/13  | 12-23 |
| APA C | MRI's & Imaging  | 5/10/12-1/28/12 | 24-26 |

#### STATEMENT OF CASE

On May 1, 2012, James Dent injured his lower back when lifting a manhole cover. This claim was accepted by the Employer/Carrier as a compensable injury to the Claimant's lower back. The Claimant filed a Form 50 on September 23, 2013, alleging that the Claimant was permanently and totally disabled as a result of his May 1, 2012 work injury. Claimant alleged compensable injuries to the back and legs. Defendants asserted that this matter is a single member claim under *Singleton* and that Claimant is not permanently and totally disabled per 42-9-30(21). Defendants filed a Form 21 on October 7, 2013 seeking termination of temporary total benefits and credit of overpayment of benefits. At the hearing, the Claimant was the only witness to testify.

#### EVIDENCE OF THE CASE

On May 1, 2012, the Claimant was working to repair a manhole cover when he lifted the manhole cover and sustained an injury to his lower back, feeling pain in his lower back immediately. The Claimant was first seen by Dr. Paula Belmar at Sentinel Health Partners on May 10, 2012. Claimant complained of low back pain which radiated down his right leg. Dr. Belmar ordered a spine x-ray and a follow-up in one week. At the follow-up visit, Dr. Belmar referred the Claimant to physical therapy. Claimant was unable to start physical therapy immediately due to an unrelated illness. On June 7, 2012, Dr. Belmar ordered a lumbar MRI. On June 25, 2012, the Claimant underwent a lumbar MRI at Camden Open MRI. This MRI

showed disc protrusions at multiple levels which were "probably post traumatic." Defendants' APA, page 25. The MRI also revealed a neoplasm in the lung. Following this MRI, the Claimant was referred to a neurosurgeon. Sometime after the MRI, the Claimant was diagnosed with lung cancer and began treatment including chemotherapy and radiation therapy.

Dr. Brett Gunter of Columbia Neurosurgical Associates took over care on July 25, 2012. Dr. Gunter noted that the Claimant "would not consider a surgical alternative should one be offered." Defendants' APA, page 2. Claimant's treatment with Dr. Gunter consisted of physical therapy, two lumbar epidural steroid injections and a work hardening program. The work hardening program was terminated due to the development of pain and shortness of breath. Dr. Gunter released the Claimant at MMI on May 8, 2013. Dr. Gunter gave an impairment rating of 10% and recommended medium duty work.

The Claimant submitted an IME from Dr. Leonard Forrest who assessed a 21% impairment rating and opined that the Claimant may not be able to do sedentary work on a full-time basis. Harriet Fowler of Vocational Rehabilitation Services opined that the Claimant would not be able to return to obtain substantial gainful employment.

The Claimant was the only witness to testify at the hearing. Claimant's testimony included a description of his educational background and work history, his work accident and the treatment he received for his injuries. The Claimant also testified to his ability to return to employment.

#### **FINDINGS OF FACT**

##### **IT IS FOUND AS A FACT:**

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the

greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected). Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).

2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).

10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting – he admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned – even from Claimant's IME; (b) Claimant's IME admits that, *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not

always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).

17. Claimant ambulates with a cane that no authorized physician has prescribed.

Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).

18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).

19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.

20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "*the lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to

retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (*i.e. Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(2): 35%. I base this award in part on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident.
26. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

28. Claimant's average weekly wage is \$916.09, yielding a compensation rate of \$610.75.

29. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

#### CONCLUSIONS OF LAW

Based upon the evidence submitted in the case, the testimony given, and the foregoing Findings of Fact, I make the following Conclusions of Law:

1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to Sections 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to Section 42-1-40, the Claimant's average weekly wage was \$916.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to Section 42-9-30(21) of the South Carolina Code of Laws for the disability suffered to his back.

7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Brucoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

**ORDER**

Based upon the Findings of Fact and Conclusions of Law:

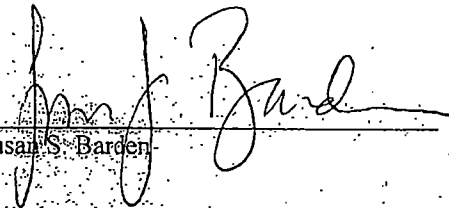
**IT IS, THEREFORE ORDERED**, that the Claimant is awarded permanent partial disability consisting of thirty five percent to the back. Claimant is entitled to a lump sum payment and Utica Mohawk language.

**IT IS FURTHER ORDERED**, that the Defendants are entitled to credit for overpayment of benefits from May 8, 2013 until March 12, 2014.

**IT IS ALSO ORDERED**, that the Defendants pay permanent partial disability in the amount of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars. The award of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars shall be allocated as follows: Twelve Thousand Three Hundred Eighty Nine and 49/100 (\$12,389.49) Dollars as attorneys' fees pursuant to a written agreement between the Claimant and his attorney; Two Thousand Six Hundred Fifty Nine and 15/100 (\$2,659.15) Dollars in disbursements and expenses; Twenty Two Thousand One Hundred Nineteen and 83/100 (\$22,119.83) Dollars in compromise settlement at the rate of Nineteen and 10/100 (\$19.10) Dollars per week for a period of 1,158.04 weeks pursuant to Sections 19-1-150, 42-9-10, 42-9-20

and 42-9-30 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of *James v. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010); see also *Utica Mohawk Mills v. Orr*, 227 S.C. 226, 87 S.E.2d 593 (1955); *Sciarotta v. Bowen*, 837 F.2d 135; *Lemire v. Secretary of Health and Human Services*, 682 F.Supp. 102 (D.C.N.H. 1988); and *Hatch v. Heckler*, 626 F.Supp. 1367 (N.D. California 1986).

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 14, 2014

By: Kristi Love, Administrative Assistant to Commissioner Barden

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

**W.C.C. FILE NUMBER: 1205879**

|                             |   |                        |
|-----------------------------|---|------------------------|
| James Dent,                 | ) |                        |
|                             | ) |                        |
| Employee, Claimant,         | ) |                        |
|                             | ) |                        |
| vs.                         | ) | <b><u>Remanded</u></b> |
|                             | ) |                        |
| East Richland County Public | ) |                        |
| Service District,           | ) |                        |
|                             | ) |                        |
| Employer,                   | ) |                        |
| and                         | ) |                        |
|                             | ) |                        |
| State Accident Fund,        | ) |                        |
| Carrier,                    | ) |                        |
| Defendants.                 | ) |                        |
|                             | ) |                        |

---

Appellate Panel Review held in Columbia,  
South Carolina on September 15, 2014, per  
notices timely and properly served on all  
parties of interest.

Appellate Panel Decision and Order filed

November 21<sup>st</sup>, 2014

---

**APPEARANCES:**

Claimant represented by **Matthew C. Robertson, Esquire**, of Columbia, South  
Carolina; Defendants East Richland County Public Service District and State Accident  
Fund represented by **Page Snyder, Esquire**, of Columbia, South Carolina.

### **STATEMENT OF THE CASE**

This claim went before the Single Commissioner pursuant to Form 50 filed by the claimant, Mr. James L. Dent on September 20, 2013. Therein, Mr. Dent alleged injuries by accident to the back, right leg and left leg, occurring on May 1, 2012 and arising out of and in the course of his employment with East Richland County Public Service. Specifically, the claimant alleged that he injured his back while attempting to singlehandedly move a heavy manhole cover. Claimant further alleged that he is permanently and totally disabled as a result of the accident both as a result of complete loss of earning capacity and as a result of a 50% or greater loss of use of his back to perform work. The Defendants admitted the accident of May 1, 2012. However, the Defendants denied that the claimant has sustained permanent and total disability and argued that the claim should be limited to the lumbar spine only.

The claim was heard by the Single Commissioner on February 7, 2014 in Columbia, South Carolina. On April 14, 2014, the Single Commissioner issued her Decision and Order, making the following findings of fact, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected). Claimant's IME report is

devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).

2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; See also Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).

10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting – he admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned – even from Claimant's IME; (b) Claimant's IME

admits that, "I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity" [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).

17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.
20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating

physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "the lung cancer is not playing any role" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (i.e. Singleton) case for the reasons set forth supra (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician

("Medium") vis a vis the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident.

26. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through May 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
27. As to future medicals. Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$916.09, yielding a compensation rate of \$610.75.
29. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

The Single Commissioner further made conclusions of law as follows:

1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers'-Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.

3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to Sections 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to Section 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to Section 42-9-30(21) of the South Carolina Code of Laws for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to *Dodge v. Bruccoli Clark Laymen, Inc.*, 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the Claimant filed an Application for Review in the case setting forth his exceptions, copies of which were furnished to all interested parties, prior to oral arguments which were presented before the Appellate Panel on September 15, 2014. All proffered testimony has been taken. Such, together with all documentary evidence has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. CODE ANN. §42-15-50 (1976, as amended), 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. Counsel for the Claimant and for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties.

### **DISCUSSION OF LAW AND FACTS**

Having heard oral arguments on behalf of the parties, considered their briefs and viewed the record as a whole, the Appellate Panel considers the Hearing Commissioner's finding that this case is a "one body part case" requiring application of the rule in Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960) (where an injury is confined to a single scheduled member the employee is limited to the scheduled compensation for that body part) to be curious, particularly in light of the Hearing Commissioner's Finding of Fact #1, which found that the greater weight of the evidence shows that the claimant's right leg is affected by his lower back injury.

In addition, the Panel is unaware of any legal precedent for the concept that a body part can be found affected by the injury, but only "minimally affected," thereby requiring the Commission to disregard that affected body part in its analysis of whether or not a case is subject to the Singleton rule. Nor is the Panel aware of any rule, statute or case law which defines a threshold level of "affectedness" another body part must sustain as a result of the primary injury in order to determine whether or not the Singleton rule applies. However, the most recent guidance from the higher courts on the Singleton issue has come in the form of two separate cases: Colonna v. Marlboro Park Hospital, 745

S.E.2d 128, 404 S.C. 537 (S.C.App. 2013) and Beckman v. Sysco Columbia, LLC, Opinion No. 5205, (S.C.App. July 2014).

In Colonna, supra., the injured worker sustained an injury to her right leg in the course and scope of her employment as a geriatric nurse at Marlboro Park Hospital. In 2005, it was found by the Commission that Colonna had sustained a "right lower extremity (ankle) injury." After receiving an award of scheduled compensation for the right leg in 2006, Ms. Colonna filed for a change in condition. She underwent surgery and was ultimately diagnosed with Reflex Sympathetic Dystrophy (RSD) which caused chronic pain to her right foot and ankle. As part of the treatment she received for her RSD, she was implanted with a permanent spinal cord stimulator.

In 2010, Colonna alleged multiple body parts which were not found compensable, specifically including an allegation that her back was a second injured or affected body part due to the implant of the spinal cord stimulator. However, the Commission and the Circuit Court found that the spinal cord stimulator implant did not constitute an injury to the back or affect the back as a second body part but instead was merely a treatment modality for her right leg. As a result, Colonna was limited to scheduled compensation to the right leg only. The Court of Appeals agreed, finding that Colonna had shown no proof that her back was injured or impaired by the spinal cord stimulator.

In Beckman, supra., the injured worker sustained a back injury. In addition, the worker presented evidence that his sacroiliac joint, for which at least one doctor had offered an impairment rating, was affected by the injury. Beckman also argued that his back injury resulted in radiculopathy affecting his left hip, left buttock and left leg. Defendant Sysco argued that the SI joint was part of the back and that, because the

injured worker sustained only a back injury, he was limited to scheduled compensation under Singleton, supra.

However, the South Carolina Court of Appeals held that it need not reach the issue of whether or not the additional, rated body part, the SI joint, was or was not subsumed within the back because the fact that Beckman suffered from radiculopathy affecting his left leg was sufficient to take the case out of Singleton and, therefore, Beckman was entitled to pursue compensation under the general disability statutes.

In the case sub judice, the claimant has an admitted back injury and contends that radiculopathy affecting one or both legs takes his case outside the Singleton rule, - allowing him to pursue a general disability remedy under S.C. CODE ANN. §42-9-10 (1976, as amended). As a result, the Panel finds it appropriate to remand the case to the Hearing Commissioner for consideration of Colonna, supra. and Beckman, supra. in light of her finding that this is a "one body part" case which would limit the claimant to scheduled compensation under Singleton, supra.

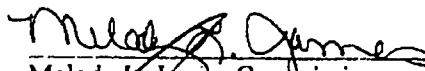
**ORDER**

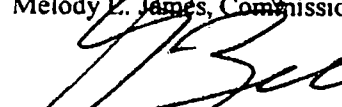
**IT IS HEREBY ORDERED:**

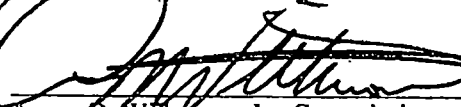
The case is hereby **REMANDED** to the Single Commissioner for consideration of Colonna, supra. and Beckman, supra. in reference to her finding that the case at bar is a "one body part" case wherein the claimant is limited to scheduled compensation for his back.

**AND IT IS SO ORDERED!**

**S.C. WORKERS' COMPENSATION COMMISSION**

  
Melody L. James, Commissioner

  
T. Scott Beck, Commissioner

  
Avery B. Wilkerson, Jr., 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 Kim Falls on November 21, 2014**

James Dent,  
Claimant,  
vs.  
East Richland County Public Service  
District,  
Employer/Defendant,  
and,  
State Accident Fund,  
Carrier/Defendant.

W.C.C. FILE NO.: 1205879

Page Snyder, Esq., Attorney for the Defendants.

FILED: February 24, 2015

### STIPULATIONS

This case was heard by the undersigned Commissioner in Columbia, South Carolina, on February 7, 2014. This case was appealed by the Claimant and the Full Commission heard this case on September 15, 2014. Following oral arguments and a full review of the Record on Appeal, the Appellate Panel issued an Order of Remand on November 21, 2014 to allow the Single Commissioner to consider Colonna v. Marlboro Park Hospital and Beckman v. Sysco Columbia, LLC. At the February 7, 2014 hearing, the parties stipulated to the following issues:

1. The purpose of the hearing is to determine the extent of the Claimant's permanent disability and to determine any credit for overpayment.
2. Notice of this hearing was timely and properly served upon all parties of interest.
3. Venue, set in Richland County, is proper as agreed by the parties.
2. Without objection, the Commission's file becomes part of the record, with the exception of any self-serving declarations or unstipulated medical reports.
3. The Claimant seeks a determination of benefits under the S.C. Workers' Compensation Act based upon Claimant's injury by accident occurring on May 1, 2012, while he was in the employment of the Defendant/Employer, East Richland County Public Service District. Therefore, the S.C. Workers' Compensation Commission has jurisdiction of this case.
4. The average weekly wage is \$916.10, making a compensation rate of \$610.75 applicable in this matter.

### APA SUBMISSIONS

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Claimant:

|       |                                        |                 |       |
|-------|----------------------------------------|-----------------|-------|
| APA 1 | Paula L. Belmar, MD Southeastern Spine | 5/17/12-6/8/12  | 1-7   |
| APA 2 | Progressive Physical Therapy           | 1/16/13-7/1/13  | 8-27  |
| APA 3 | Columbia Neurosurgical                 | 8/29/12-7/30/13 | 28-31 |
| APA 4 | Leonard Forrest, MD Southeastern Spine | 7/8/13          | 32-37 |
| APA 5 | Harriet Fowler, CRC, M.Ed              | 9/13/13         | 38-60 |

Under the Administrative Procedures Act, the following documents were submitted into evidence by the Defendants:

|       |                  |                 |       |
|-------|------------------|-----------------|-------|
| APA A | Dr. Brett Gunter | 7/25/12-5/8/13  | 1-11  |
| APA B | Dr. Paula Belmar | 5/10/12-1/4/13  | 12-23 |
| APA C | MRI's & Imaging  | 5/10/12-1/28/12 | 24-26 |

#### STATEMENT OF CASE

On May 1, 2012, James Dent injured his lower back when lifting a manhole cover. This claim was accepted by the Employer/Carrier as a compensable injury to the Claimant's lower back. The Claimant filed a Form 50 on September 23, 2013, alleging that the Claimant was permanently and totally disabled as a result of his May 1, 2012 work injury. Claimant alleged compensable injuries to the back and legs. Defendants asserted that this matter is a single member claim under *Singleton* and that Claimant is not permanently and totally disabled per 42-9-30(21). Defendants filed a Form 21 on October 7, 2013 seeking termination of temporary total benefits and credit of overpayment of benefits. At the hearing, the Claimant was the only witness to testify.

By Order dated April 14, 2014, the Single Commissioner determined that Claimant was not permanently and totally disabled. The Single Commissioner found that the claim was governed by *Singleton v. Young Lumber Co.* and Claimant was confined to compensation for his back pursuant to S.C. Code §42-9-30(21) because he did not suffer an injury or impairment to a

second body part. The Single Commissioner noted Claimant's subjective complaints of leg pain and found that his right leg was "minimally affected," but found that these complaints did not rise to a level to bring the claim outside of Singleton v. Young Lumber Co. The Order found that Claimant suffered 35% permanent partial disability to the back and he was entitled to further medical care for his low back in the form of physician visits and pain management/medications per Dodge v. Bruccoli Clark Laymen, Inc.

Within the statutory period, Claimant filed an Application for Review setting forth his exceptions to the Single Commissioner's Order dated April 14, 2014. Briefs were timely filed by both parties and the matter was heard by the Full Commission on September 15, 2014. The Full Commission issued an Order remanding the case back to the Single Commissioner on November 21, 2014. Specifically, the Full Commission sought reconsideration of this claim in light of Colonna v. Marlboro Park Hospital and Beckman v. Sysco Columbia, LLC. This Order follows as a result of the Full Commission's remand.

#### **EVIDENCE OF THE CASE**

On May 1, 2012, the Claimant was working to repair a manhole cover when he lifted the manhole cover and sustained an injury to his lower back, feeling pain in his lower back immediately. The Claimant was first seen by Dr. Paula Belmar at Sentinel Health Partners on May 10, 2012. Claimant complained of low back pain which radiated down his right leg. Dr. Belmar ordered a spine x-ray and a follow-up in one week. At the follow-up visit, Dr. Belmar referred the Claimant to physical therapy. Claimant was unable to start physical therapy immediately due to an unrelated illness. On June 7, 2012, Dr. Belmar ordered a lumbar MRI. On June 25, 2012, the Claimant underwent a lumbar MRI at Camden Open MRI. This MRI showed disc protrusions at multiple levels which were "probably post traumatic." Defendants'

APA, page 25. The MRI also revealed a neoplasm in the lung. Following this MRI, the Claimant was referred to a neurosurgeon. Sometime after the MRI, the Claimant was diagnosed with lung cancer and began treatment including chemotherapy and radiation therapy.

Dr. Brett Gunter of Columbia Neurosurgical Associates took over care on July 25, 2012. Dr. Gunter noted that the Claimant "would not consider a surgical alternative should one be offered." Defendants' APA, page 2. Claimant's treatment with Dr. Gunter consisted of physical therapy, two lumbar epidural steroid injections and a work hardening program. The work hardening program was terminated due to the development of pain and shortness of breath. Dr. Gunter released the Claimant at MMI on May 8, 2013. Dr. Gunter gave an impairment rating of 10% and recommended medium duty work.

The Claimant submitted an IME from Dr. Leonard Forrest who assessed a 21% impairment rating and opined that the Claimant may not be able to do sedentary work on a full-time basis. Harriet Fowler of Vocational Rehabilitation Services opined that the Claimant would not be able to return to obtain substantial gainful employment.

The Claimant was the only witness to testify at the hearing. Claimant's testimony included a description of his educational background and work history, his work accident and the treatment he received for his injuries. The Claimant also testified to his ability to return to employment.

#### **FINDINGS OF FACT**

Following a review of the Appellate Panel Order and the Record on Appeal and in consideration of *Colonna v. Marlboro Park Hospital* and *Beckman v. Sysco Columbia, LLC*, I find the following Findings of Fact have been proven by a preponderance of the evidence:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is : years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant)
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.

8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent."  
"Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery. (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant)
13. Claimant reached maximum medical improvement on May 8, 2013. (Defendants' APA, page 1)
14. The authorized treating physician assigned a 10% impairment rating and released Claimant to **medium** work. I give greater weight to the medium duty restrictions imposed by the authorized treating physician than I give to any other evidence regarding restrictions. (Defendants' APA, page 1)

15. Claimant does not drive for the reason that he fears he might faint. Claimant admitted at the hearing that he has no trouble using foot pedals. (testimony of Claimant).
16. There is no impairment rating in evidence as far as either leg is concerned – even from Claimant’s IME who admits that, *“I’m not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity.”* (evidence in its entirety, including but not limited to Claimant’s APA #2, pages 10, 12, 15 and 24; Claimant’s APA #4, page 35; Defendants’ APA, pages 14 and 16).
17. Claimant’s complaints involving his legs are not always consistent, a finding I base on the pain diagrams in evidence (e.g., Claimant’s APA #2, pages 10, 15, and 24).
18. Claimant’s legs do not prevent him from driving. (testimony of Claimant).
19. Claimant’s straight leg test is negative. (Defendants’ APA, pages 14 and 16).
20. Claimant ambulates with a cane that no authorized physician has prescribed.
- Notwithstanding Claimant’s testimony to the contrary, I find that Claimant’s use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
21. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant’s APA #2, pages 22 and 24).
22. I find that the restrictions of “sedentary” to “limited light” as recommended by a physical therapy are based primarily (if not essentially) upon Claimant’s aerobic capacity. I base this finding on Claimant’s APA #2, page 25, and on other evidence

as well. I give greater weight to the medium duty restrictions as imposed by the authorized treating physician. (Defendants' APA, page 1)

23. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "*the lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).
24. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
25. I considered Claimant's vocational report, but I give greater weight to the authorized treating physician's recommendation of medium duty work along with the 10% impairment rating. As Claimant is a high school graduate and capable of performing medium duty work as far as his back injury is concerned, he is not permanently and totally disabled from a workers' compensation standpoint. I note that Claimant has great difficulty because of the radiation and chemotherapy he has undergone in treatment of his cancer; for instance, Claimant's wife told the vocational expert that Claimant's memory is affected such that he "asks the same questions over and over like a child." By contrast, Claimant's vocational expert "parrots" Dr. Forrest's

inaccurate statement that Claimant's cancer plays no role in Claimant's inability to return to work. Claimant relies upon the use of a cane that no workers' compensation physician prescribed. (e.g. Defendants' APA, page 1; Claimant's APA #5, pages 38-39 and 62, and testimony of Claimant).

26. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.

27. Defendants may stop payment of temporary benefits.

28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity. (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).

29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.

30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.
32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

#### CONCLUSIONS OF LAW

Based upon the evidence submitted in the case, the testimony given, and the foregoing Findings of Fact, I make the following Conclusions of Law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.

6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to *Dodge v. Brucoli Clark Laymen, Inc.*, 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

**ORDER**

Based upon the Findings of Fact and Conclusions of Law:

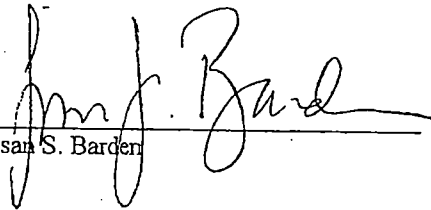
**IT IS, THEREFORE ORDERED**, that the Claimant is awarded permanent partial disability consisting of thirty-five percent to the back. Claimant is entitled to a lump sum payment and Utica Mohawk language.

**IT IS FUTHER ORDERED**, that the Defendants are entitled to credit for overpayment of benefits from May 8, 2013 until March 12, 2014.

**IT IS ALSO ORDERED**, that the Defendants pay permanent partial disability in the amount of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars. The award of Thirty Seven Thousand One Hundred Sixty Eight and 47/100 (\$37,168.47) Dollars shall be allocated as follows: Twelve Thousand Three Hundred Eighty Nine and 49/100 (\$12,389.49) Dollars as attorneys' fees pursuant to a written agreement between the Claimant and his attorney; Two Thousand Six Hundred Fifty Nine and 15/100 (\$2,659.15) Dollars in disbursements and expenses; Twenty Two Thousand One Hundred Nineteen and 83/100 (\$22,119.83) Dollars in compromise settlement at the rate of Nineteen and 10/100 (\$19.10)

Dollars per week for a period of 1,158.04 weeks pursuant to Sections 19-1-150, 42-9-10, 42-9-20 and 42-9-30 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010); see also Utica Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 593 (1955); Sciarotta v. Bowen, 837 F.2d 135; Lemire v. Secretary of Health and Human Services, 682 F.Supp 102 (D.C.N.H. 1988) and Hatch v. Heckler, 626 F.Supp 1367 (N.D. California 1986).

**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).

February 24, 2015

By: Kristi Love, Administrative Assistant to Commissioner Barden

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

James Dent,

Claimant,

vs.

East Richland County Public Service  
District,

Employer/Defendant,

and,

State Accident Fund,

Carrier/Defendant

ORDER

W.C.C. FILE NO.: 1205879

Appellate Panel Review held in Columbia, South  
Carolina on May 18, 2015 per notices timely and  
properly served on all parties of interest.

Appellate Panel Decision and Order filed:

July 10<sup>th</sup>, 2015

APPEARANCES:

Claimant was represented by Matthew C.  
Robertson, Esquire, of Columbia, SC.

Defendants were represented by Page P. Snyder,  
Esquire, of Columbia, South Carolina

### STATEMENT OF THE CASE

This claim went before the Single Commissioner pursuant to a Form 50 filed by the claimant, James Dent, on September 20, 2013. Therein, Mr. Dent alleged injuries by accident to the back, right leg and left leg, occurring on May 1, 2012 arising out of and within the course of his employment with East Richland County Public Service. Claimant alleged he was permanently and totally disabled as a result of his May 1, 2012 accident when he injured his low back while moving a manhole cover. Claimant claims that he has sustained an injury causing radicular pain to both of his legs. The defendants admitted the compensability of the accident to the lumbar spine only and denied that the claimant sustained permanent and total disability.

The claim was heard by the Single Commissioner on February 7, 2014 in Columbia, South Carolina. The Single Commissioner issued her initial Decision and Order on April 14, 2014, making the following findings of facts, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).

4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also Defendants' APA, page 11*).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).

13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting – he admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned – even from Claimant's IME; (b) Claimant's IME admits that, *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).
17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.
20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that *"the lung cancer is not playing any role"* in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very

same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (i.e. *Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident.
26. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.

29. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

In her initial Order and Decision dated April 14, 2014, the Single Commissioner made Conclusions of Law as follows:

1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to Sections 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to Section 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to Section 42-9-30(21) of the South Carolina Code of Laws for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Bruccoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his exceptions. The matter was briefed by both parties, copies of which were furnished to all interested parties prior to oral arguments which were presented before the Appellate Panel on September 15, 2014. All proffered testimony had been taken and all documentary evidence submitted to the individual members of the Appellate Panel and has since been under study and consideration.

On November 21, 2014, the Appellate Panel issued an Order of Remand of the Single Commissioner's initial Decision and Order. The Appellate Panel specifically wanted the Single Commissioner to consider Colonna v. Marlboro Park Hospital and Beckman v. Sysco Columbia, LLC in connection with the Single Commissioner's finding ~~that this is a one body part case pursuant to Singleton~~

As a result of the Order of Remand, the Single Commissioner reconsidered this matter and issued a subsequent Order and Decision on February 24, 2015 making the following findings of facts, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).

5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating and released Claimant to medium work. I give greater weight to the medium duty restrictions imposed by the authorized treating physician than I give to any other evidence regarding restrictions (Defendants' APA, page 1).

15. Claimant does not drive for the reason that he fears he might faint. Claimant admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. There is no impairment rating in evidence as far as either leg is concerned – even from Claimant's IME who admits that, "*I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity*" (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).
17. Claimant's complaints involving his legs are not always consistent, a finding I base on the pain diagrams in evidence (e.g., Claimant's APA #2, pages 10, 15, and 24).
18. Claimant's legs do not prevent him from driving (testimony of Claimant).
19. Claimant's straight leg test is negative. (Defendants' APA, pages 14 and 16).
20. Claimant ambulates with a cane that no authorized physician has prescribed. ~~Notwithstanding Claimant's testimony to the contrary, I find that Claimant's~~ use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
21. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
22. I find that the restrictions of "sedentary" to "limited light" as recommended by a physical therapy are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well. I give greater weight to the medium duty restrictions as imposed by the authorized treating physician (Defendants' APA, page 1).
23. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "*the lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

24. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
25. I considered Claimant's vocational report, but I give greater weight to the authorized treating physician's recommendation of medium duty work along with the 10% impairment rating. As Claimant is a high school graduate and capable of performing medium duty work as far as his back injury is concerned, he is not permanently and totally disabled from a workers' compensation standpoint. I note that Claimant has great difficulty because of the radiation and chemotherapy he has undergone in treatment of his cancer; for instance, Claimant's wife told the vocational expert that Claimant's memory is affected such that he "asks the same questions over and over like a child." Claimant's vocational expert "parrot" Dr. Forrest's inaccurate statement that Claimant's cancer plays no role in Claimant's inability to return to work. Claimant relies upon the use of a cane that no workers' compensation physician prescribed (e.g. Defendants' APA, page 1; Claimant's APA #5, pages 38-39 and 62, and testimony of Claimant).
26. Although the undersigned greatly sympathizes with Claimant, I find that ~~Claimant's disability stems primarily from his cancer condition, including but~~ not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
27. Defendants may stop payment of temporary benefits.
28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity. (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).
29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.
32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

The Single Commissioner made the following Conclusions of Law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Bruccoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his exceptions. The matter was briefed by both parties, copies of which were furnished to all interested parties prior to oral arguments which were presented

before the Appellate Panel on May 18, 2015. All proffered testimony had been taken and all documentary evidence submitted to the individual members of the Appellate Panel and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1976, as amended), 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. The matter was heard by the Appellate Panel on May 18, 2015.

Matthew Robertson, for the Claimant and Page P. Snyder, for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties.

~~Having heard oral arguments on behalf of the parties, considered their briefs and viewed~~  
the records as a whole, the Appellate Panel hereby finds a Full Affirmation of the Single Commissioner's Decision and Order dated February 24, 2015.

#### **DECISION AND ORDER**

The Appellate Panel hereby makes the following findings of fact:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all

considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).

5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
  6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
  7. Claimant was treated conservatively for his back injury. We base this finding on the medical evidence in its entirety.
  8. One month after the date of the accident, Claimant's pain radiation was better. We give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
  9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
- 
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
  11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
  12. We do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
  13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
  14. The authorized treating physician assigned a 10% impairment rating and released Claimant to medium work. We give greater weight to the medium duty restrictions imposed by the authorized treating physician than we give to any other evidence regarding restrictions (Defendants' APA, page 1).

15. Claimant does not drive for the reason that he fears he might faint. Claimant admitted at the hearing that he has no trouble using foot pedals. (testimony of Claimant).
16. There is no impairment rating in evidence as far as either leg is concerned – even from Claimant’s IME who admits that, “*I’m not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity.*” (evidence in its entirety, including but not limited to Claimant’s APA #2, pages 10, 12, 15 and 24; Claimant’s APA #4, page 35; Defendants’ APA, pages 14 and 16).
17. Claimant’s complaints involving his legs are not always consistent; a finding I base on the pain diagrams in evidence (e.g., Claimant’s APA #2, pages 10, 15, and 24).
18. Claimant’s legs do not prevent him from driving. (testimony of Claimant).
19. Claimant’s straight leg test is negative. (Defendants’ APA, pages 14 and 16).
20. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant’s testimony to the contrary, I find that Claimant’s use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
21. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant’s APA #2, pages 22 and 24).
22. I find that the restrictions of “sedentary” to “limited light” as recommended by a physical therapy are based primarily (if not essentially) upon Claimant’s aerobic capacity. I base this finding on Claimant’s APA #2, page 25, and on other evidence as well. I give greater weight to the medium duty restrictions as imposed by the authorized treating physician. (Defendants’ APA, page 1)
23. I considered the opinion of Claimant’s one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest’s opinion that “*the lung cancer is not playing any role*” in Claimant’s inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant’s APA #4, including, but not limited to pages 36-37; Claimant’s APA #5, page 38).

24. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
25. We considered Claimant's vocational report, but we give greater weight to the authorized treating physician's recommendation of medium duty work along with the 10% impairment rating. As Claimant is a high school graduate and capable of performing medium duty work as far as his back injury is concerned, he is not permanently and totally disabled from a workers' compensation standpoint. We note that Claimant has great difficulty because of the radiation and chemotherapy he has undergone in treatment of his cancer; for instance, Claimant's wife told the vocational expert that Claimant's memory is affected such that he "asks the same questions over and over like a child." Claimant's vocational expert "parrot" Dr. Forrest's inaccurate statement that Claimant's cancer plays no role in Claimant's inability to return to work. Claimant relies upon the use of a cane that no workers' compensation physician prescribed (e.g. Defendants' APA, page 1; Claimant's APA #5, pages 38-39 and 62, and testimony of Claimant).
- 
26. ~~Although the undersigned greatly sympathizes with Claimant, we find that~~ Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
27. Defendants may stop payment of temporary benefits.
28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. We base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).
29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.

32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

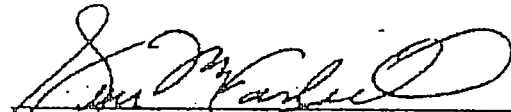
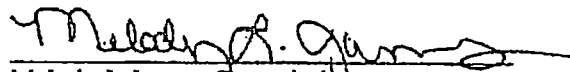
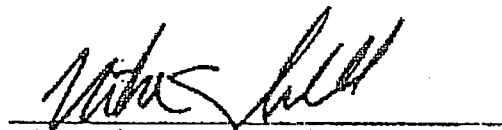
The Appellate Panel hereby makes the following conclusions of law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Bruccoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants' are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

IT IS, THEREFORE, ORDERED the Order of the hearing Single Commissioner dated February 24, 2015 is AFFIRMED IN FULL.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

  
Gene McCaskill, Commissioner  
Melody L. James, Commissioner  
Mike Campbell, 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 Kim Falls on July 10, 2015***

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

*Proudly representing injured workers  
for over 25 years*

Preston F. McDaniel  
Justin S. Byars  
Matthew Robertson  
OF COUNSEL  
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 20, 2013

Virginia L. Crocker, Judicial Director  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

RE: James Dent v. East Richland County Public Service District  
WCC File No.: 1205879

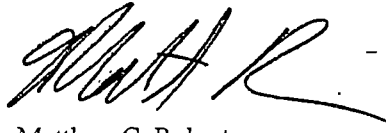
Dear Ms. Crocker:

Enclosed herewith is my Form 50 requesting a hearing with regards to the above-referenced matter along with my proof of service upon the carrier and/or opposing counsel in this matter.

I am requesting that this matter be set for hearing as soon as the Commission calendar will permit.

I hope this is sufficient for filing with the Commission. Should you require anything further, kindly advise.

Sincerely yours,



Matthew C. Robertson  
Attorney for Employee/Claimant

MCR/bre  
Enclosures  
CC: Ellen Goodwin, Esquire  
James Dent

P.54

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](http://www.wcc.sc.gov)



WCC File #: 1205879  
Carrier File #: \_\_\_\_\_  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: James Dent SSN: \_\_\_\_\_ Employer's Name: East Richland County Public Service District  
Address: 10021 ... Address: PO Box 23069  
City: ... State: SC Zip: ... City: Columbia State: SC Zip: 29224  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Insurance Carrier: State Accident Fund  
Preparer's Name: Matthew C. Robertson Law Firm: McDaniel Law Firm Preparer's Phone #: 803.771.7211

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 5/1/2012

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to Back and legs (Part(s) of Body Injured) on 5/1/2012 (Month/Day/Year) in Richland county, state of SC. Body part(s) affected are: Back and legs

2. Briefly describe how the accident occurred. See attached.

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 5/1/2012 (Month/Day/Year) in the following manner: Claimant verbally reported the incident to his supervisor, Jack Molin (Accepted case).

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

☐ (a) medical examination and treatment for: \_\_\_\_\_

☒ (b) additional medical examination and treatment for: Back and legs

☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: \_\_\_\_\_

☒ 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 \$ SEE ATTACHED and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

None

11. Further grounds or unusual aspects of claim:

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.

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

If yes, describe: None. We reserve the right to amend the answer upon completion of our investigation.

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: 1 Hour

☒ 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](mailto:mediation@wcc.sc.gov).

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Ellen Coodwind, Esquire  
address PO Box 102100 Columbia, SC 29202 on the 20 day of September 2013, 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: Matthew C. Robertson Attorney for Claimant: McDaniel Law Firm Email: Mrobertson@pfmcdlaw.com 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  
P.55

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

ATTACHMENT TO FORM 50  
WCC File No.: 1205879

2.

Claimant was picking up a manhole cover and went to toss it back into place when he felt a sharp pain in his back and down his legs.

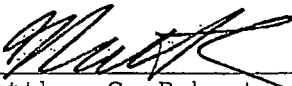
10a.

The Claimant is being paid at a compensation rate of \$610.76 per week at this time but the Claimant works one (1) week per month on call 24/7 at a schedule of 2:00 p.m. to 10:00 p.m., Monday through Friday but is on call 24/7 during those days and is on call Saturday and Sunday 24/7 for which he receives comp. time at the rate of eight (8) hours per day for every eight (8) hours worked and time and a half (1.5) in comp. time for any hours over eight (8) hours per day. Claimant cannot tell at this point whether or not this comp. time has been added to the Claimant's compensation rate.

11b.

Progressive Physical Therapy, 7653 Garners Ferry Road, Columbia, SC 29209; Paula Belmar, MD, Sentinel Health Partners, 2689 Highway 1 South, Elgin, SC 29045; Brett Gunter, MD, Columbia Neurosurgical Associates, 2728 Sunset Boulevard, Suite 106, West Columbia, SC 29169; Camden MRI, 1202 Mill Street, Camden, SC 29020; Image Care, LLC, 710 Rabon Road, Columbia, SC 29203; Leonard Forrest, MD, Southeastern Spine Institute, 1106 Chuck Dawley Blvd., Mt. Pleasant, SC 29464; Harriet Fowler, CRC, M.Ed., Vocational Rehabilitation Services, 2143 Marion Street, Columbia, SC 29201.

Respectfully submitted,

  
Matthew C. Robertson  
Attorney for Claimant

September \_\_, 2013

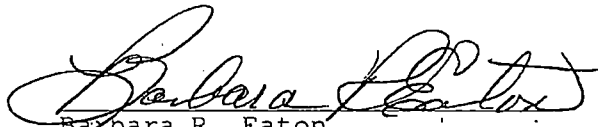
CERTIFICATE OF SERVICE BY MAIL

WCC File No.: 1205879

I hereby certify that I have on this day served the following in the matter of James Dent v. East Richland County Public Service District with a copy of the Form 50 Employee's Request for a Hearing by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

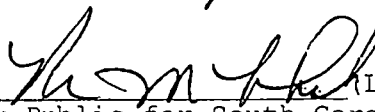
Ellen Goodwin, Esquire  
South Carolina State Accident Fund  
Post Office Box 102100  
Columbia, SC 29221-5000

Virginia L. Crocker, Judicial Director  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

  
Barbara R. Eaton  
Paralegal

SWORN TO BEFORE ME this

20 day of September 2013.

  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: 1/21/14



SOUTH CAROLINA  
STATE ACCIDENT FUND

HARRY B. GREGORY, JR., Director

October 3<sup>rd</sup>, 2013

Virginia Crocker, Judicial Director  
S. C. Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202-1715

Re: James Dent v East Richland County Public Service District  
WCC File No.: 1205879  
SAF File No.: 2012-1433

Dear Ms. Crocker:

Enclosed please find the Form 51 which has been completed by this office in the above-entitled claim. If I may be of further assistance, please feel free to call me.

Sincerely,

Marla I. Rehborn  
Paralegal

Enclosure

cc: Matthew Robertson, Esquire

Post Office Box 102100 Columbia, South Carolina 29221-5000 (803) 896-5800 FAX (803) 612-2785

[www.saf.sc.gov](http://www.saf.sc.gov)

P.58

South Carolina Workers' Compensation Commission  
1612 Marion Street • Post Office Box 1715  
Columbia, South Carolina 29202-1715  
(803) 737-5739  
www.wcc.sc.gov



File #: 1205879  
Carrier File #: 2012-1433  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: James Dent SSN: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: Fort State: SC Zip: 29145  
Home Phone: ( ) - Work Phone: ( ) -  
Date of Injury: 05/01/2012  
Employer's Name: East Richland County Public Library  
Address: PO Box 23069  
City: Columbia State: SC Zip: 29224  
Insurance Carrier: State Accident Fund  
Preparer's Name: Ellen Goodwin, Esq. Law Firm: State Accident Fund Preparer's Phone #: (803) 896-5891

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

Date of Injury or Illness: 05/01/2012

1. It is Admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:  
The Defendants admit an injury to the lumbar spine only; however, extent of injury and all other body parts are denied. The Defendants deny an injury to the right and left leg.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is Admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is Admitted that notice of injury was given the employer. The reasons for denial are:
6. It is Denied the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:  
The Claimant reached MMI on 05/08/2013 and has been released and rated.
7. It is Admitted the employee is entitled to temporary total disability for the period(s) of :  
Weekly benefits continue at this time.
8. It is Denied the employee is permanently disabled. The reasons for denial are:  
Disability, if any, to be determined by W.C.C.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 916.09 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:  
Defendants will be filing a Stop Payment Application and ask that the both issues are set at the same time.
12. Estimated time needed for hearing: 30 minutes

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

Name: Matthew Robertson, Esquire Judicial Director, SCWCC  
Address: 1315 Elmwood Avenue, Columbia, SC 29201 P.O. Box 1715, Columbia, SC 29202-1715

on the 3rd day of October, 2013 by ☒ first class mail ☐ personal service ☐ certified mail.  
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Title: Asst. Chief Counsel Email: Egoodwin@saf.sc.gov Date: 10/3/13

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

WCC Form # 51  
Revised 9/07

5P.59

Employer's Answer to Request for Hearing

STATE OF SOUTH CAROLINA ) BEFORE THE SOUTH CAROLINA  
COUNTY OF RICHLAND ) WORKERS' COMPENSATION COMMISSION  
) WCC File No: 1205879

James Dent, )  
) Employee Claimant, )  
) DATE OF HEARING: 02/07/14  
v. ) APA SUBMISSIONS  
) East Richland County )  
) Public Services, )  
) as Employer, and )  
) State Accident Fund, )  
) as Carrier, - )  
) Defendants. )

Pursuant to South Carolina Code §1-23-330 and Commission Rule 67-612 Matthew C. Robertson, the Attorney for the Claimant, submits the following report(s) in support of and on behalf of the Claimant in this matter:

| Tab Nos. | NAME OF REPORT(S)/PHYSICIAN(S) OR OTHER EVIDENCE             | DATE OF REPORT(S) | PAGE Nos. |
|----------|--------------------------------------------------------------|-------------------|-----------|
| 1        | Paula L. Belmar, MD<br>Southeastern Spine                    | 05/17/12-06/28/12 | 1-7       |
| 2        | Progressive Physical Therapy                                 | 01/16/13-07/01/13 | 8-27      |
| 3        | Columbia Neurosurgical                                       | 08/29/12-07/30/13 | 28-31     |
| 4        | Leonard Forrest, MD<br>Southeastern Spine<br>Institute (IME) | 07/08/13          | 32-37     |
| 5        | Harriet Fowler, CRC, M.Ed.<br>(Vocational Evaluation)        | 09/13/13          | 38-60     |

### Subjective

COMPLAINT OR ISSUE: Patient comes in today in follow up workers comp injury. Pain still present paraspinous area lower back SI joint area.

### Objective

VS: BMI: 31.9: BP: 110/70. H: 66 in. P: 80 /min. W: 198lbs 0oz. Wendy Carter LPN  
back

05/17/2012 11:41: difficulty getting out of chair and climbing on stretcher.

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: tenderness lumbar spine, tenderness left sacroiliac region, pain reproduced with bending, pain reproduced with twisting.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality., limp favoring left leg.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia., No dystonia..

### Assessment

Degenerative disc disease ICD#722.6

Muscle spasms ICD#728.85

Renal calculus ICD#592.0

### Discussion

### Plan

physical therapy and needs to see primary for kidney stones and possible urology referral.

Handouts: Back pain, Back pain.

### Orders

off one week

### Referrals

PHYSICIAN REFERRALS: physical therapy.

### Medications

### Visit Level

### Follow Up

Return to the office in 1 week. Electronically signed by Paula L. Belmar, M.D.

Dent, James L. - 17986 - Paula L. Belmar, M.D. - 05/17/2012 11:21 AM

Electronically signed by: Paula L. Belmar, M.D. on 05/17/2012 11:41 AM

**Subjective**

**Objective**

**Assessment**

**Discussion**

**Plan**

**Orders**

ORDER REHAB and THERAPY: Referral: Physical Therapy: lumbar radiculopathy and degenerative disc changes  
Eval and treat ASAP

**Referrals**

**Medications**

**Visit Level**

**Follow Up**

plb  
this will be set up by care IQ 1-888-922-7347 per Derrick they will call the pt to set this up and then advise us when and where 5/18/12-bt

### Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of active medical problems.

Patient still hurting no therapy due to bronchitis.  
Riding in car. Still on meds. Pain in knee right. Pain radiation is better

### Objective

VS: BMI: 30.4. BP: 124/82. H: 66 in. P: 88 /min. W: 189lbs 0oz. Wendy Carter-LPN

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality., limp favoring left leg.

STRENGTH: left lower extremity weakness 4/5.

MUSCLE TONE: No hypotonia. No dystonia.

### Assessment

Low back pain ICD#724.2

Lumbar radiculopathy ICD#724.4

### Discussion

### Plan

Handouts: Back pain.

### Orders

ORDER RADIOLOGY: MRI lumbar

### Referrals

PHYSICIAN REFERRALS: ortho consult.

### Medications

Vicodin ES (APAP/Hydrocodone): 750 mg-7.5 mg (tablet) SIG- 1 tab(s) every 6 hours orally #30  
Substitutions Allowed Refills- 0 Notes-

### Visit Level

### Follow Up

if not better: -Paula Belmar.

Dent, James L. - 17986 - Paula L. Belmar, M.D. - 06/07/2012 11:08 AM

Electronically signed by: Paula L. Belmar, M.D. on 06/07/2012 1:08 PM

P.65

- 5 -

**Subjective**

**PHONE MESSAGE**

Please enter Rx Info and Pharmacy in Prescription Details section and please enter Preferred pharmacy in Demographics\_\_.

Message taken by:

Caller:

Call back phone number: 408-8664

Date of Birth:

Date of Last Visit:

Comments: patient said that vicodin is not working for his pain. please advise

Wendy Carter LPN

**Objective**

Response:

**Assessment**

REFILL REQUEST

**Discussion**

REFILL REQUESTED

Allergies:

Medication(s) requested:

Refill supply requested:

How to Handle Rx:

Notification:

Pharmacy: elgin

**Plan**

**Orders**

**Referrals**

**Medications**

Percocet (APAP/Oxycodone): 325 mg-10 mg (tablet) SIG- 1 tab(s) every 6 hours as needed orally  
#60 Substitutions Allowed Refills- 0 Notes-

**Visit Level**

**Follow Up**

Electronically signed by Paula L. Belmar, M.D.

**Subjective**

do not do not have a contact # for his workers comp but we have a fax#, I faxed them asking them to call me back ASAP they need to get this pt set up with neurosurgery waiting on call 6/28/12-bt

**Objective**

**Assessment**

Wendy called me asking me to send notes faxed all info on pt to her 7/2/12-bt  
I spoke with pt today he still has not gotten an appt he will call his caseworker today and check on the status and advise me 7/12/12-bt

**Discussion**

**Plan**

**Orders**

**Referrals**

**Medications**

**Visit Level**

**Follow Up**

**Progressive Physical Therapy**  
**LUMBOSACRAL PROGRAM**

Patient Name: James Dent

Next MD appt:

|                    | DATE                        | DATE    | DATE      | DATE   | DATE   | DATE   |
|--------------------|-----------------------------|---------|-----------|--------|--------|--------|
|                    | 1-16-13                     | 1-21    | 1-23      | 1-28   | 1-30   |        |
| CARDIO             | TRM                         |         |           |        |        |        |
|                    |                             |         |           |        |        |        |
| CORE STABILIZATION | PELVIC TILTS                | -X10    | @ home    |        |        |        |
|                    | MULTIFIDUS/TrA "drawing in" |         |           |        |        |        |
|                    | BRIDGING                    | -X10    | X20       | X20    | X20    | X20    |
|                    | ABS                         |         |           |        |        |        |
|                    | LT Rot                      | -X10    | X20       | X20    | X20    | X20    |
|                    | TAYLOR SIT- ROWS            |         |           |        |        |        |
|                    | TAYLOR SIT- T's             |         |           |        |        |        |
|                    | TAYLOR SIT-PULL DOWNS/LATS  |         |           |        |        |        |
|                    | Sick abd                    | X20     | X20(B)    | X20(B) | X20(B) | X20(B) |
|                    | PRONE ON ELBOWS             |         |           |        |        |        |
|                    | PRONE PRESS UPS             |         |           |        |        |        |
|                    | PRONE ALT UE/LE "superman"  |         |           |        |        |        |
|                    | PRONE PLANKS Knees          | X10/13  | X5/10 sec | X5     | X5     | X5     |
|                    | SIDE PLANKS Knees (B)       |         | X5/10 sec | X5     | X5     | X5     |
|                    | Rowing                      | -X20    | X20       | X20    | X20    | X20    |
|                    | QUADRUPED UE/LE "birdog"    | X10     | X10       | X10    | X10    | X10    |
|                    | STANDING T's, I's, Y's      | -X20(B) | X20       | X20    | X20    | X20    |
|                    | KNEEL → 1/2 KNEEL           |         |           |        |        |        |
|                    | HIP - 4 PLANES              |         |           |        |        |        |
|                    | SWISS BALL WALL SLIDES      |         |           |        |        |        |
|                    | SWISS BALL TRUNK EXT.       |         |           |        |        |        |
|                    | SKC                         | X5/15"  | X5/10 sec | X5     | X5     | X5     |
| STRETCHES          | IRONING                     |         |           |        |        |        |
|                    | PIRIFORMIS                  |         |           |        |        |        |
|                    | GLUT                        |         |           |        |        |        |
|                    | HAMSTRING                   |         |           |        |        |        |
|                    |                             |         |           |        |        |        |
| FUNCTIONAL         | BOX LIFTS FLOOR → WAIST     |         |           |        |        |        |
|                    | BOX LIFTS WAIST → SHOULDER  |         |           |        |        |        |
|                    | BOX LIFTS SHldr → OVERHEAD  |         |           |        |        |        |
|                    | BOX CARRIES X 25 FT         |         |           |        |        |        |
|                    | STOOPS/SQUATS               |         |           |        |        |        |
|                    |                             |         |           |        |        |        |
|                    | WRITTEN REP ISSUED?         |         |           |        |        |        |
|                    | THERAPIST'S INITIALS        |         |           |        |        |        |

MAY-29-2013 16:46 From:UCI-Med

Illino Dept 803 376 4335

RECEIVED 05/29/2013 16:56

To: 0709

Page:19/24

/2013 10:27 AM

Whittaker, Amanda -> Kathryn CorVel Corporation

Page 2 of 2

POTSmodem1 To:678-985-4872 POTS modem 2

(1 of 1) 03-18-2013 07:21 AM -0500

BRETT C. GUNTER, MD

03/06/2013

Columbia Neurosurgical Associates, P.A.

720 Rabon Rd. • Columbia, SC 29203

Phone: (803) 462-0423

Fax: (803) 462-0432

132 Sunset Court • W. Columbia, SC 29169

Phone: (803) 794-3700

Fax: (803) 794-0322

### PHYSICAL THERAPY ORDER

Patient Name: JAMES L DENT

Frequency:

Duration:

Diagnosis: Lumbar Spondylosis

Specific Orders Work hardening program

Precautions/ Restrictions:

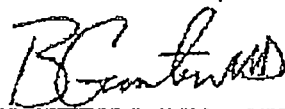
Insurance Authorization:

Appt Date and Time:

I certify that the above ordered physical therapy medically necessary

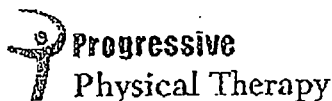
Physician: BRETT C. GUNTER, MD

Signature:



CH P.69

- 9 -



## Medical History

### INJURY DETAILS

Type of Injury: back Date of Onset: 5-1-12  
 How did the injury occur? lifting object  
 List any medications you are presently taking (if any): Zolof, magnesium, percocet  
 Have you had x-rays taken for this injury? ☒ Yes ☐ No

### PAIN DESCRIPTION

Which of the following best describes your pain? (check one) ☐ Sharp ☐ Dull ☒ Aching ☐ Shooting  
 Which of the following best describes the frequency of your pain? (check one) ☐ Constant ☒ Intermittent ☐ Occasional  
 What makes your pain feel worse? (check all that apply) ☒ Lifting ☐ Leaning ☐ Dressing ☒ Climbing  
☒ Sitting ☐ Walking ☒ Standing ☐ Reaching  
☐ Driving ☒ Bending ☒ Stooping ☒ Laying Down  
 What makes your pain feel better? pain meds

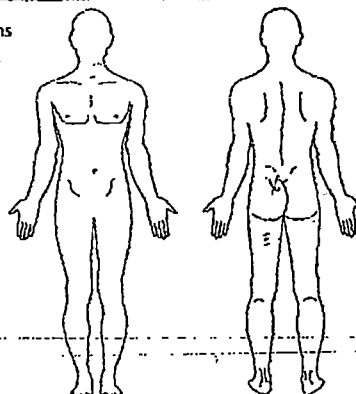
Please rate the level of pain you have experienced over the past 30 days:

|                                                                                | NO PAIN | MODERATE PAIN        | WORST PAIN |
|--------------------------------------------------------------------------------|---------|----------------------|------------|
| What number on the pain scale best describes your pain right now?              | 0       | 1 2 3 4 5 6 7 8 9 10 |            |
| What number on the pain scale describes your worst pain over the past 30 days? |         |                      |            |
| What number on the pain scale describes your least pain over the past 30 days? |         |                      |            |

### SYMPTOM DIAGRAM

Using the diagram at right, please indicate the location and type of symptoms you are experiencing.

(Use the symbols from the diagram key to indicate the location and type of symptom on the image.)



### GENERAL MEDICAL HISTORY

Do you have a history of cancer? ☒ Yes ☐ No  
 Do you have a pacemaker? ☐ Yes ☒ No  
 Do you have hypertension? ☐ Yes ☒ No  
 Do you have bowel/bladder problems? ☐ Yes ☒ No  
 Are you diabetic? ☐ Yes ☒ No  
 Are you pregnant? ☐ Yes ☒ No

Please list any other relevant past medical or orthopedic history:

Small cell lung cancer

01/16/2013 13:59 Clinic Mail

(FAX)8034629549

P.001/002

BRETT C. GUNTER, MD  
Columbia Neurosurgical Associates, P.A.

01/16/2013

720 Rabon Rd. • Columbia, SC 29203

Phone: (803) 462-0423

Fax: (803) 462-0432

132 Sunset Court • W. Columbia, SC 29169

Phone: (803) 794-3700

Fax: (803) 794-0322

### PHYSICAL THERAPY ORDER

Patient Name: JAMES L DENT

Frequency: 2 time(s) a week

Duration: 4-8 week(s)

Diagnosis: Lumbar Radiculopathy, Lumbar Spondylosis

Specific Orders Lumbar physical therapy with the development of home exercise program, core strengthening exercises, and range of motion exercises., Lumbar physical therapy with emphasis on local measures including ultrasound, heat, and TENS, evaluate and management.

Precautions/ Restrictions:

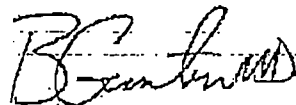
Insurance Authorization: Set up by Care IQ. etc

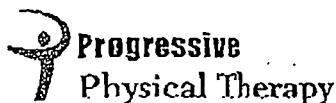
Appt Date and Time: 1/16/13 2:00pm

I certify that the above ordered physical therapy medically necessary

Physician: BRETT C. GUNTER, MD

Signature:





## Medical History

### INJURY DETAILS

Type of Injury: back Date of Onset: 5-1-12  
 How did the injury occur? lifting object  
 List any medications you are presently taking (if any): Neurontin, Percocet  
 Have you had x-rays taken for this injury? ☒ Yes ☐ No

### PAIN DESCRIPTION

Which of the following best describes your pain? (check one) ☒ Sharp ☒ Dull ☒ Aching ☒ Shooting  
 Which of the following best describes the frequency of your pain? (check one) ☐ Constant ☒ Intermittent ☐ Occasional  
 What makes your pain feel worse? (check all that apply) ☒ Lifting ☒ Leaning ☒ Dressing ☒ Climbing  
☒ Sitting ☒ Walking ☒ Standing ☒ Reaching  
☒ Driving ☒ Bending ☒ Stooping ☒ Laying Down  
 What makes your pain feel better? Nothing

Please rate the level of pain you have experienced over the past 30 days:

| NO PAIN               | MODERATE PAIN         |                       |                       |                       |                       |                       | WORST PAIN            |                       |                       |                       |
|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| 0                     | 1                     | 2                     | 3                     | 4                     | 5                     | 6                     | 7                     | 8                     | 9                     | 10                    |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

What number on the pain scale best describes your pain right now?

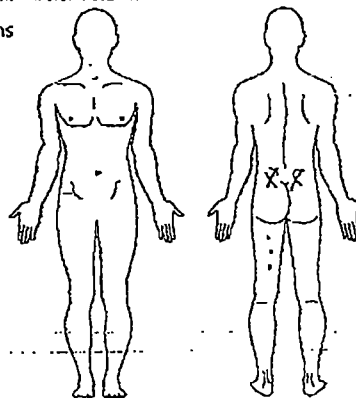
What number on the pain scale describes your worst pain over the past 30 days?

What number on the pain scale describes your least pain over the past 30 days?

### SYMPTOM DIAGRAM

Using the diagram at right, please indicate the location and type of symptoms you are experiencing.

(Use the symbols from the diagram key to indicate the location and type of symptom on the image.)



| DIAGRAM KEY |          |
|-------------|----------|
| SYMBOL      | SYMPTOM  |
| X           | pain     |
| .....       | numbness |
| -----       | tingling |

### GENERAL MEDICAL HISTORY

Do you have a history of cancer? ☒ Yes ☐ No Do you have bowel/bladder problems? ☐ Yes ☒ No  
 Do you have a pacemaker? ☐ Yes ☒ No Are you diabetic? ☐ Yes ☒ No  
 Do you have hypertension? ☐ Yes ☒ No Are you pregnant? ☐ Yes ☒ No  
 Please list any other relevant past medical or orthopedic history: \_\_\_\_\_

**Progressive**  **Physical Therapy**

10040 Two Notch Road \* Columbia, SC 29223  
803-788-9950 Ph \* 803-462-9838 Fx

Date: January 16, 2013

Patient: Mr. James Dent

DOB:

Dear Dr. Gunter,

Mr. Dent was evaluated for physical therapy today per your orders. The Physical Therapy Order included ultrasound and TENS, modalities that are typically contraindicated in individuals with a diagnosis of cancer. During the evaluation Mr. Dent divulged that he was diagnosed in June 2012 with small cell lung cancer and has recently completed radiation therapy. We will not include these modalities in his plan of care at this time unless you feel they are necessary and safe and provide medical clearance. Thank you for your attention to this matter.

Sincerely,

  
Deborah Antley, DPT

Time In: / Time Out:

(M)

1:45

2:15

TICKET NO.

| ACCOUNT NUMBER | DATE     | TIME    | CHECKOUT TIME | TICKET NO. |
|----------------|----------|---------|---------------|------------|
| 10709          | 01/16/13 | 09:04am | PT NORTHEAST, | 107081     |

|                                |           |                           |                   |         |
|--------------------------------|-----------|---------------------------|-------------------|---------|
| NAME & ADDRESS                 | WEDNESDAY | DOB: 11/11/1955 ( years ) | INSURANCE BALANCE | \$0.00  |
| DENT, JAMES                    |           | GENDER: M                 | ACCOUNT BALANCE   | \$0.00  |
| 10702 10702 10702 10702        |           | IBG:                      | CURRENT CHARGES   | 2102.00 |
|                                |           | FCL: 6                    | AMOUNT PAID       |         |
| WRK:                           |           | CELL:                     | NEW BALANCE       |         |
| INSURED: DENT, JAMES           |           | RELATION: OTHER           | CASH              | CHECK   |
| INS: WC/CORVEL THERAPY PROGRAM |           |                           | M.O.              | C.C.    |
| REASON: EVALUATION             |           |                           |                   |         |
| NICKNAME:                      |           | CORPAY:                   |                   |         |

| PROCEDURES                                      | CPT   | FEE    |                                                                                                                                                                                        |
|-------------------------------------------------|-------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Evaluation                                      | 97001 | 110.00 | Eval + tx                                                                                                                                                                              |
| Re-Evaluation                                   | 97002 |        |                                                                                                                                                                                        |
| OT Evaluation                                   | 97003 |        |                                                                                                                                                                                        |
| Functional Capacity Evaluation                  | 97750 |        | 1) mtr & pt. @ sidelyng.                                                                                                                                                               |
| Work Hardening, 2 hours                         | 97545 |        | 2) Ther. ex & HEP.                                                                                                                                                                     |
| Work Hardening, add'l. 1 hour                   | 97546 |        |                                                                                                                                                                                        |
| Therapeutic Exercise, 15 mins 2                 | 97110 | 92.00  | Pt. brought in stim unit asking for instructions in use but all of the parts were not present.                                                                                         |
| Functional Activities, 15 mins                  | 97530 |        |                                                                                                                                                                                        |
| Electrical Stim., Unattended, 15 mins           | 97014 |        |                                                                                                                                                                                        |
| Electrical Stim., Unattended, 15 mins, Medicare | G0283 |        |                                                                                                                                                                                        |
| Electrical Stim., Manual, 15 mins               | 97032 |        | 3) Education on positioning & pain management.                                                                                                                                         |
| Ultrasound, 15 mins                             | 97035 |        |                                                                                                                                                                                        |
| Paraffin Bath                                   | 97018 |        |                                                                                                                                                                                        |
| Massage, 15 mins                                | 97124 |        |                                                                                                                                                                                        |
| Manual Therapy                                  | 97140 |        |                                                                                                                                                                                        |
| Mechanical Traction                             | 97012 |        |                                                                                                                                                                                        |
| Neuromuscular Re-Educ., 15 mins                 | 97112 |        | Visit Number: _____ of _____                                                                                                                                                           |
| Self Care Training, 15 mins                     | 97535 | 120.00 | Staff: _____                                                                                                                                                                           |
| ROM Measure and Report                          | 95851 |        | Therapist's Signature: <i>[Signature]</i>                                                                                                                                              |
| Other / Supplies                                | 99070 |        |                                                                                                                                                                                        |
|                                                 |       |        | RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS                                                                                                                              |
|                                                 |       |        | I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above. |
|                                                 |       |        | Patient or Authorized Person's Signature _____                                                                                                                                         |
|                                                 |       |        | Date _____                                                                                                                                                                             |

P.74

- 14 -

**Progressive**  
**Physical Therapy**  
The Leader in Innovative Therapies

SPINAL EVALUATION  
10040 Two Notch Road  
Columbia, SC 29223

To MD:  
☐ Faxed  
☐ Mailed  
☐ Given to Patient  
☐ Filed in DC chart

Patient Name: James Dent Dx/ICD-9: Lumbar radiculopathy Date: 1-16-13  
DOB: 5-1-20 Date of Onset: 5-1-12 Physician: Thomas A. Dent, DPT  
Claim #: PT - chronic LBP Date of Surgery: None Therapist: Thomas A. Dent, DPT  
History: He had an L5/S1 on Monday which gave  
relief.

Diagnostic findings: Small Cell Lung Cancer Meds: See medical history form

Occupation: Maintenance Foreman

Physical Demands:

Work Status: ☐ full duty ☐ light duty ☒ off duty ☐ N/A

Vitals: HR = 98 BP = 110/70

When Worse: Sitting, standing, walking away

When Better:

Pain: 9/10 @ present 5/10 @ best 9/10 @ worst

Quality: sharp dull aching shooting tingling burning

Summary of Objective Findings: \* → denotes pain below with movements; T → denotes increased tone palpated

| ACTION                                                                           | CERVICAL                                                                                                                                                                                             | THORACIC | LUMBAR |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|--------|
| <b>FLEXION</b><br>CERV 0-45; TL 0-20                                             |                                                                                                                                                                                                      |          | 40°    |
| <b>EXTENSION</b><br>CERV 0-45; TL 0-25                                           |                                                                                                                                                                                                      |          | 5°     |
| <b>SIDEBEND RIGHT</b><br>CERV 0-45; TL 0-35                                      |                                                                                                                                                                                                      |          | 10°    |
| <b>SIDEBEND LEFT</b><br>CERV 0-45; TL 0-35                                       |                                                                                                                                                                                                      |          | 5°     |
| <b>ROTATE RIGHT</b><br>CERV 0-60; TL 0-45                                        |                                                                                                                                                                                                      |          |        |
| <b>ROTATE LEFT</b><br>CERV 0-60; TL 0-45                                         |                                                                                                                                                                                                      |          |        |
| <b>POSTURE</b>                                                                   | Cervical Lordosis OT RT U WNL<br>Thoracic Lordosis OT RT U WNL<br>Kyphosis OT RT U WNL<br>Scapulothoracic <u>Scapular</u><br>Asymmetry <u>Right crest</u><br>Leg length discrepancy <u>RT &gt; L</u> |          |        |
| <b>SPECIAL TESTS/</b><br><b>&amp; NEURAL</b><br><b>TENSION</b><br><b>TESTING</b> | ASLR R <u>+</u> O SI gap<br><input type="checkbox"/> Slump <input type="checkbox"/> SI compression<br><input type="checkbox"/> <input type="checkbox"/>                                              |          |        |

| MYOTOMES                                                                                      | R                                                                                                                                                                        | L | MYOTOMES           | R | L |
|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------|---|---|
| L2-L3 Hip Flex                                                                                | 5                                                                                                                                                                        |   | C1 Cerv Rotation   |   |   |
| L3-L4 Knee Ext                                                                                | 4                                                                                                                                                                        |   | C4 Shldr. Shrug    |   |   |
| L4-L5 Hip DF                                                                                  | 5                                                                                                                                                                        |   | C5 Shldr. Abd      |   |   |
| L5-S1 Toe Ext                                                                                 | 3                                                                                                                                                                        |   | C6 Wrist Ext/Flex  |   |   |
| L5-S2 Toe Walk/ Ry                                                                            | 4                                                                                                                                                                        |   | C7 Wrist Flex/Ext  |   |   |
| <b>OSWESTRY</b><br><b>SCORE</b>                                                               | 31/80                                                                                                                                                                    |   | C8 Finger Flex     |   |   |
|                                                                                               |                                                                                                                                                                          |   | T1 Digital Add/Abd |   |   |
| <b>REFLEXES</b>                                                                               | <input type="checkbox"/> Intact <input type="checkbox"/> Hyperactive <input type="checkbox"/> Hypotonic <input checked="" type="checkbox"/> NT                           |   |                    |   |   |
| <b>DERMATOMES</b>                                                                             | <input type="checkbox"/> Intact bilaterally<br><input type="checkbox"/> Impaired - see below                                                                             |   |                    |   |   |
| <b>RADICULAR</b><br><b>SYMPTOMS</b>                                                           | <input type="checkbox"/> Tingling <input type="checkbox"/> Pain <input type="checkbox"/> Numbness <input type="checkbox"/> <u>See post</u>                               |   |                    |   |   |
| <b>SEGMENTAL</b><br><b>MOVEMENT</b><br><b>&amp;</b><br><b>SOFT TISSUE</b><br><b>PALPATION</b> | Segmental mobility <input type="checkbox"/> hyper <input type="checkbox"/> hypo <input type="checkbox"/> WNL<br>Pain with palpation <input type="checkbox"/> <u>PSIS</u> |   |                    |   |   |
| <b>WADDELLS SIGNS</b><br>(Duchenne plus test)                                                 | <input type="checkbox"/> tone                                                                                                                                            |   |                    |   |   |
| <b>OTHER FINDINGS</b>                                                                         | <u>↓ strength hip</u><br><u>abduct + 4/5</u>                                                                                                                             |   |                    |   |   |

Assessment: This patient presents with the above functional limitations, affecting ADL and work capacity. Signs and symptoms are consistent with a differential diagnosis of chronic LBP

Rehab Potential: ☐ good ☒ fair ☐ poor 2° chronicity Vocational readjustment services required? ☐ yes ☐ no

Goals: to be met in 4 weeks

1. Patient will report decreased pain to 3/10 at present and 5/10 at worst to allow greater functional mobility.
2. Patient will increase Spinal ROM and strength to WNL to improve bending, stooping, driving, and dressing ability.
3. Patient will be independent with a home exercise program to allow return to his/her previous functional status.
4. Patient will demonstrate proper body mechanics with the following activities to allow return to work at full duty or to allow return to previous functional capacity: reaching, lifting, pushing, pulling, stooping, walking, driving, sitting.
5. PT able to lift 20-30 lbs floor in work.

Plan of Care: Physical Therapy 2 x per week for 4-6 weeks with treatment including the following:

- Therapeutic exercise: Spinal rehab- ROM/ stabilization/ endurance/MCU/ HEP
- Functional activities: lift, push, pull, stoop, walk
- Manual therapy: myofascial release, dry needling, joint mobilization, STM
- Modalities: MENS/FC/TENS, moist heat, ice
- Patient education: postural awareness/ body mechanics/ injury prevention
- ultrasound, laser therapy, shockwave therapy, ionto

Please sign and date the PT plan of care. Return to the therapist as soon as possible. Thank you for this referral! History of Cancer

X 1-17-13  
Physician / Doctor / Practitioner / Physician's Asst. Date

Physical Therapist

Date

Time In: 1:30 / Time Out: 2:15  
 (13) 1:30 / 2:15

|                |                |          |         |               |            |
|----------------|----------------|----------|---------|---------------|------------|
| EXAM ROOM TIME | ACCOUNT NUMBER | DATE     | TIME    | CHECKOUT TIME | TICKET NO. |
|                | 005            | 01/21/13 | 02:00pm | PT NORTHEAST, | 107198     |

|                |           |           |
|----------------|-----------|-----------|
| NAME & ADDRESS | DOB:      | INSURANCE |
| DENT, JAMES    |           | BALANCE   |
| MONDAY         | GENDER: M | ACCOUNT   |
|                | IBG:      | BALANCE   |
|                | FCL: 6    | CURRENT   |
|                | CELL:     | CHARGES   |
|                |           | AMOUNT    |
|                |           | PAID      |
|                |           | NEW       |
|                |           | BALANCE   |
|                |           | CASH      |
|                |           | CHECK     |
|                |           | M.O.      |
|                |           | C.C.      |

| PROCEDURES                             | CPT   | FEE    |
|----------------------------------------|-------|--------|
| Evaluation                             | 97001 |        |
| Re-Evaluation                          | 97002 |        |
| OT Evaluation                          | 97003 |        |
| Functional Capacity Evaluation         | 97750 |        |
| Work Hardening, 2 hours                | 97545 |        |
| Work Hardening, add'l. 1 hour          | 97546 |        |
| Therapeutic Exercise, 15 mins          | 97110 | 138.00 |
| Functional Activities, 15 mins         | 97530 |        |
| Electrical Stim., Unattended, 15 mins  | 97014 |        |
| Electrical Stim., Unattended, 15 mins. |       |        |
| Medicare                               | G0283 |        |
| Electrical Stim., Manual, 15 mins      | 97032 |        |
| Ultrasound, 15 mins                    | 97035 |        |
| Paraffin Bath                          | 97018 |        |
| Massage, 15 mins                       | 97124 |        |
| Manual Therapy                         | 97140 |        |
| Mechanical Traction                    | 97012 |        |
| Neuromuscular Re-Educ., 15 mins        | 97112 |        |
| Self Care Training, 15 mins            | 97535 |        |
| ROM Measure and Report                 | 95851 |        |
| Other / Supplies                       | 99070 |        |

S: no c/o ↑ pain  
 O: MHP  
 shu ef  
 A: tol well other than.  
 being job.  
 P: cont

Visit Number: \_\_\_\_\_ of \_\_\_\_\_  
 Staff: \_\_\_\_\_  
 Therapist's Signature: \_\_\_\_\_

RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS  
 I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above.

\_\_\_\_\_  
 Patient or Authorized Person's Signature

\_\_\_\_\_  
 Date

P.76

Time In: 1:38 Time Out: 2:38  
TICKET NO. 107295

| ACCOUNT NUMBER | DATE     | TIME    | CHECKOUT TIME | TICKET NO. |
|----------------|----------|---------|---------------|------------|
|                | 01/23/13 | 02:00pm | PT NORTHEAST  | 107295     |

|                                |           |                 |                            |
|--------------------------------|-----------|-----------------|----------------------------|
| NAME & ADDRESS                 | WEDNESDAY | DOB:            | INSURANCE BALANCE          |
| DENT, JAMES                    |           | GENDER: M       | \$400.00                   |
| BRANCH NAME                    |           | IBG:            | ACCOUNT BALANCE            |
|                                |           | FCL: 6          | \$400.00                   |
| STN SC 19045                   |           | CELL:           | CURRENT CHARGES            |
|                                |           |                 | 184.00                     |
| WRK:                           |           | RELATION: OTHER | AMOUNT PAID                |
| INSURED: DENT, JAMES           |           |                 |                            |
| INS: WC/CORVEL THERAPY PROGRAM |           |                 | NEW BALANCE                |
| REASON: FOLLOW UP              |           |                 |                            |
| NICKNAME:                      |           | COPAY:          | CASH - CHECK - M.O. - D.C. |

| PROCEDURES                                      | CPT   | FEE    |                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------|-------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Evaluation                                      | 97001 |        | S: No c/o ↑ p.                                                                                                                                                                                                                                                                                          |
| Re-Evaluation                                   | 97002 |        |                                                                                                                                                                                                                                                                                                         |
| OT Evaluation                                   | 97003 |        |                                                                                                                                                                                                                                                                                                         |
| Functional Capacity Evaluation                  | 97750 |        |                                                                                                                                                                                                                                                                                                         |
| Work Hardening, 2 hours                         | 97545 |        | O: Shu ex<br>MHP                                                                                                                                                                                                                                                                                        |
| Work Hardening, add'l. 1 hour                   | 97548 |        |                                                                                                                                                                                                                                                                                                         |
| Therapeutic Exercise, 15 mins                   | 97110 | 184.00 | A: add cardio ref + rx<br>JM?                                                                                                                                                                                                                                                                           |
| Functional Activities, 15 mins                  | 97530 |        |                                                                                                                                                                                                                                                                                                         |
| Electrical Stim., Unattended, 15 mins           | 97014 |        |                                                                                                                                                                                                                                                                                                         |
| Electrical Stim., Unattended, 15 mins, Medicare | G0283 |        | P: Cont                                                                                                                                                                                                                                                                                                 |
| Electrical Stim., Manual, 15 mins               | 97032 |        |                                                                                                                                                                                                                                                                                                         |
| Ultrasound, 15 mins                             | 97035 |        |                                                                                                                                                                                                                                                                                                         |
| Paraffin Bath                                   | 97018 |        |                                                                                                                                                                                                                                                                                                         |
| Massage, 15 mins                                | 97124 |        | Visit Number: of<br>Staff: [Signature] OPT<br>Therapist's Signature: [Signature] PTA                                                                                                                                                                                                                    |
| Manual Therapy                                  | 97140 |        |                                                                                                                                                                                                                                                                                                         |
| Mechanical Traction                             | 97012 |        |                                                                                                                                                                                                                                                                                                         |
| Neuromuscular Re-Educ., 15 mins                 | 97112 |        |                                                                                                                                                                                                                                                                                                         |
| Self Care Training, 15 mins                     | 97535 |        | RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS<br>I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above.<br>Patient or Authorized Person's Signature<br>Date |
| ROM Measure and Report                          | 95851 |        |                                                                                                                                                                                                                                                                                                         |
| Other / Supplies                                | 99070 |        |                                                                                                                                                                                                                                                                                                         |
|                                                 |       |        |                                                                                                                                                                                                                                                                                                         |

EXAM ROOM TIME

Time In: 1:30 / Time Out: 2:30  
CHECKOUT TIME

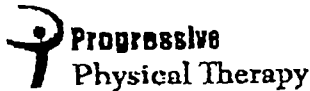
|                |          |         |               |            |
|----------------|----------|---------|---------------|------------|
| ACCOUNT NUMBER | DATE     | TIME    | PT NORTHEAST, | TICKET NO. |
| 155            | 01/28/13 | 02:00pm |               | 107524     |

|                                |                 |           |
|--------------------------------|-----------------|-----------|
| NAME & ADDRESS                 | DOB:            | INSURANCE |
| DENT, JAMES                    | GENDER: M       | BALANCE   |
|                                | IBB:            | ACCOUNT   |
|                                | FCL: 6          | BALANCE   |
|                                | CELL:           | CURRENT   |
|                                |                 | CHARGES   |
| WRK:                           |                 | AMOUNT    |
| INSURED: DENT, JAMES           | RELATION: OTHER | PAID      |
| INS: WC/CORVEL THERAPY PROGRAM |                 | NEW       |
| REASON: FOLLOW UP              |                 | BALANCE   |
| NICKNAME:                      | COPAY:          | CASH      |
|                                |                 | CHECK     |
|                                |                 | M.O.      |
|                                |                 | C.C.      |

| PROCEDURES                                      | CPT   | FEE   |                                                                                                                                                                                        |
|-------------------------------------------------|-------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Evaluation                                      | 97001 |       | S: a little better                                                                                                                                                                     |
| Re-Evaluation                                   | 97002 |       |                                                                                                                                                                                        |
| OT Evaluation                                   | 97003 |       |                                                                                                                                                                                        |
| Functional Capacity Evaluation                  | 97750 |       |                                                                                                                                                                                        |
| Work Hardening, 2 hours                         | 97545 |       | Outline of func act                                                                                                                                                                    |
| Work Hardening, add'l. 1 hour                   | 97546 |       | MHP                                                                                                                                                                                    |
| Therapeutic Exercise, 15 mins                   | 97110 | 92.00 |                                                                                                                                                                                        |
| Functional Activities, 15 mins                  | 97530 | 50.00 |                                                                                                                                                                                        |
| Electrical Stim., Unattended, 15 mins           | 97014 | 25.00 | A: ↓ cardio                                                                                                                                                                            |
| Electrical Stim., Unattended, 15 mins, Medicare | G0283 |       |                                                                                                                                                                                        |
| Electrical Stim., Manual, 15 mins               | 97032 |       |                                                                                                                                                                                        |
| Ultrasound, 15 mins                             | 97035 |       |                                                                                                                                                                                        |
| Paraffin Bath                                   | 97018 |       |                                                                                                                                                                                        |
| Massage, 15 mins                                | 97124 |       | P: cont PT Standard PMA                                                                                                                                                                |
| Manual Therapy                                  | 97140 |       |                                                                                                                                                                                        |
| Mechanical Traction                             | 97012 |       |                                                                                                                                                                                        |
| Neuromuscular-Re-Educ., 15 mins                 | 97112 |       | Visit Number: _____ of _____                                                                                                                                                           |
| Self Care Training, 15 mins                     | 97535 |       | Staff: _____                                                                                                                                                                           |
| ROM Measure and Report                          | 95851 |       | Therapist's Signature: <i>[Signature]</i>                                                                                                                                              |
| Other / Supplies                                | 99070 |       |                                                                                                                                                                                        |
|                                                 |       |       | RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS                                                                                                                              |
|                                                 |       |       | I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above. |
|                                                 |       |       | Patient or Authorized Person's Signature _____                                                                                                                                         |
|                                                 |       |       | Date _____                                                                                                                                                                             |

P.78

13492810



Progressive Physical Therapy Northeast • Phone: (803) 788-9950 • Fax: (803) 462-9858

## Patient Care Discharge Summary

Patient Name: James Dent DOB: \_\_\_\_\_  
Physician: Brett Gunter Therapist: Deborah Antley, DPT  
Diagnosis: Lumbar Radiculopathy.

Initial Evaluation Date: 1-16-13 Treatments Attended: 5  
Treatments Missed: 1 Last Treatment Date: 1-30-13

### It is our understanding that:

- ☐ Patient returned full time to position held prior to injury.
- ☐ Patient returned full time to different position.
- ☐ Patient is working part-time or light duty.

☒ Therapy Interrupted due to Family emergency. Patient dealing  
with much stress at this time.  
Please discharge for now. 30 days or more  
lapse in treatment.

Additional Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We are working to provide the best service and follow up as possible. If you have any questions or concerns regarding this patient, please do not hesitate to call us at 803-788-9950.

Thank you for your interest and assistance.

Physician: \_\_\_\_\_

Date: 3-15-13

Therapist/Staff Signature: \_\_\_\_\_

Date: 3-12-13

Apr. 3. 2013 2:31PM --Cola Neurosurgical Scheduling

Page 4 of No. 1484 P. 3/4

Received by Col. Corporation 3/28/2013, 8:15:12 AM Pacific Time, 2009, Pg. 1 of 1  
03/28/2013 THU 8:51 FAX 1 803 482 0858 Progressive PT

0003/004

**Progressive**  
**Physical Therapy**  
The Leader in Innovative Therapies  
\*\*\*\*\*Choose Your Center\*\*\*\*\*

F-402-0432  
F-066-910-2009

## Patient Attendance Status Report

Patient Name: James Derr DOB: \_\_\_\_\_  
Referring Physician: Dr. Brett Carter

The above patient is scheduled for an evaluation on: \_\_\_\_\_

We have been unable to treat the above patient due to the following:

☐ Unable to obtain authorization from insurance/WKC carrier.☐ We do not participate with \_\_\_\_\_

Insurance Company

☐ Unable to contact patient after several attempts by phone and mail.☐ Patient has refused physical therapy at this time.☒ Other: PT on hold @ this time PT is having a personal  
crisis & family member (son) in ICU.

We are working to provide the best service and follow up possible. Please do not hesitate to call our office if you have any questions or concerns regarding this patient.

B. Burdick PPA  
Staff Signature2-7-13  
Date

Apr. 3. 2013 2:31PM <sup>Re:</sup> Cola Neurosurgical Scheduling

Page 5 of No. 1464 P. 4/4

Received by Cor. Corporation 3/28/2013, 8:35:32 AM Pacific Time, 2058, Page 4 of 4  
03/28/2013 THU 8:51 FAX 1 803 482 9858 Progressive PT

0004/804



Progressive

Physical Therapy

F-462-0432

Progressive Physical Therapy Northeast - Phone: (803) 788-9950 • Fax: (803) 462-9958

## Patient Care Discharge Summary

Patient Name: Jarvis Dent DOB:                       
Physician: Brett Gunter Therapist: Deborah Antley, DPT  
Diagnosis: Lumbar Radiculopathy.

Initial Evaluation Date: 1-16-13 Treatments Attended: 5  
Treatments Missed: 1 Last Treatment Date: 1-30-13

## It is our understanding that:

- ☐ Patient returned full time to position held prior to injury.  
☐ Patient returned full time to different position.  
☐ Patient is working part-time or light duty.  
☒ Therapy interrupted due to Family emergency. Patient dealing  
☐ Other: with much stress at this time.  
Please discharge for now. 30 days or more  
lapse in treatment.

Additional Comments:

We are working to provide the best service and follow up as possible. If you have any questions or concerns regarding this patient, please do not hesitate to call us at 803-788-9950.  
Thank you for your interest and assistance.

Physician:

Date:

4-3-13

Therapist/Staff Signature:

Date:

3-12-13

**Progressive Physical Therapy**

10040 Two Notch Road \* Columbia, SC 29223  
803-788-9950 Ph \* 803-462-9858 Fx

Date: April 10, 2013  
Patient: Mr. James Dent  
DOB: 11/11/57

Dear Dr. Gunter,

Mr. Dent was evaluated for a work hardening program today. After completing the evaluation it is felt that he is not a candidate for this program. Mr. Dent's job at time of injury was as Sewer Line Maintenance Foreman. This position would be rated as Heavy to Very Heavy Physical Demand Labor with Frequent Low Level Work. During the evaluation he exhibited dyspnea and increase in back pain.

Mr. Dent does not plan to return to work. As soon as his worker's compensation claim has been closed he plans to retire. He has already been approved for disability. Please let us know how to proceed with this patient.

Sincerely,

*Deborah Antley, DPT*  
Deborah Antley, DPT

4-12-13 verbal orders received to D/K pt. Spoke to  
Charlene @ Dr. Gunter's office. *Deborah Antley, DPT*  
4-12-13 Message left for Wendy Nankin NCM regarding  
above. DA

Time In: / Time Out:

EXAM ROOM TIME

CHECKOUT TIME

TICKET NO.

| ACCOUNT NUMBER | DATE     | TIME    | PT NORTHEAST, | TICKET NO. |
|----------------|----------|---------|---------------|------------|
| 0              | 04/10/13 | 01:00PM |               | C110989    |

NAME & ADDRESS: DENT, JAMES WEDNESDAY DOB: (51 YEARS) GENDER: M IBG: FCL: 6 CELL: WRK: INSURED: DENT, JAMES INS: WC/CORVEL THERAPY PROGRAM REASON: EVALUATION NICKNAME: RELATION: OTHER COPAY:

|                   |        |      |      |
|-------------------|--------|------|------|
| INSURANCE BALANCE | \$0.00 |      |      |
| ACCOUNT BALANCE   | \$0.00 |      |      |
| CURRENT CHARGES   |        |      |      |
| AMOUNT PAID       |        |      |      |
| NEW BALANCE       |        |      |      |
| CASH              | CHECK  | M.O. | C.C. |

| PROCEDURES                                        | CPT   | FEE |
|---------------------------------------------------|-------|-----|
| 1 Evaluation \                                    | 97001 |     |
| 1 Re-Evaluation                                   | 97002 |     |
| 1 OT Evaluation                                   | 97003 |     |
| 1 Functional Capacity Evaluation                  | 97750 |     |
| 1 Work Hardening, 2 hours                         | 97545 |     |
| 1 Work Hardening, add'l. 1 hour                   | 97546 |     |
| 1 Therapeutic Exercise, 15 mins                   | 97110 |     |
| 1 Functional Activities, 15 mins                  | 97530 |     |
| 1 Electrical Stim., Unattended, 15 mins           | 97014 |     |
| 1 Electrical Stim., Unattended, 15 mins, Medicare | G0283 |     |
| 1 Electrical Stim., Manual, 15 mins               | 97032 |     |
| 1 Ultrasound, 15 mins                             | 97035 |     |
| 1 Paraffin Bath                                   | 97018 |     |
| 1 Massage, 15 mins                                | 97124 |     |
| 1 Manual Therapy                                  | 97140 |     |
| 1 Mechanical Traction                             | 97012 |     |
| 1 Neuromuscular Re-Educ, 15 mins                  | 97112 |     |
| 1 Self-Care Training, 15 mins                     | 97535 |     |
| 1 ROM Measure and Report                          | 95851 |     |
| 1 Other / Supplies                                | 99070 |     |

*Pt. seen for work of hardening evaluation. Pt. not felt appropriate to continue, note sent to MD. Await further orders.*

Visit Number: \_\_\_\_\_ of \_\_\_\_\_

Staff: \_\_\_\_\_

Therapist's Signature: *[Signature]*

RELEASE OF MEDICAL INFORMATION and ASSIGNMENT OF BENEFITS

I hereby authorize the release of medical information necessary to process this claim and authorize payment of medical benefits to PPT or their designee for services described above.

Patient or Authorized Person's Signature

Date

P.83

- 23 -

NO. 2140 Y. 5/5  
21003/003

10040 Two Notch Road  
Columbia, SC 29223  
Ph. 803-788-9950 Fax 803-402-9850

Patient Name: Tanner, David Dx/ICD-9: lumbar spondylitis Date: 4-10-13  
 DOB: \_\_\_\_\_ Date of Onset: 5-1-13 Physician: Boeth Guder, MD  
 Claim #: \_\_\_\_\_ Date of Surgery: NA Therapist: Deborah Hohen, DPT  
 History: PT presents R. work hardening problems following P.T. and steroid inj.  
that pain is no better, & he does not want to have surgery due to being over an  
back surgery he plans to retire.  
 Diagnostic Findings: Lumbar Spondylitis on MRI Mod: Maximum Percut  
 Past Medical History: Small cell lung cancer.

**Quality:** BRAW DOLLY ACTING/STORYING THE OUTLINE SOLD

Assessment: This patient presents with the above functional limitations affecting work capacity. PT feels this patient would benefit from a work conditioning program to prepare for return to work at full duty and to prevent a re-injury on the job. PT not  
felt to be a candidate. Please see attached letter to Dr. Swartz.

functional activities to prepare the patient for return to work. Program hours will progress from 2 hours to \_\_\_\_\_ hours per ses-  
 sion. Patient education, including: (1) back school (2) postural awareness (3) body mechanics instruction (4) injury prevention

Salomon Bentley, DPT 4-10-13  
Physical Therapist Date

**Progressive Physical Therapy**

10040 Two Notch Rd. \* Columbia, SC 29223  
803-788-9950 Ph \* 803-462-9858 Fx

July 1, 2013

Dear Mr. McDaniel,

I am writing in response to your request for further information concerning Mr. James Dent. I do not feel Mr. Dent would be an appropriate candidate for a functional capacity evaluation for several reasons. First of all he has been approved for disability and plans to retire so any information obtained would be of limited use. Given his medical conditions of known low back injury with surgery recommended and lung cancer, testing would be limited due to safety concerns.

I do not recall the specific conversation with Mr. Dent concerning Sedentary to limited Light work, however this would be supported by the findings during the Work Conditioning Evaluation. He was able to lift 10 to 20 lbs. on an Occasional basis. While we did not do a specific test for aerobic fitness his vital signs (resting heart rate of 88 bpm and shortness of breath with the limited testing performed) indicated that his aerobic capacity would support only Sedentary to limited Light Physical Demand Labor.

I did not receive the questionnaire you referred to in your letter so I am attaching a copy of the evaluation performed as well as my letter to Dr. Gunter. Please let me know if I can be of further assistance.

Sincerely,

*Deborah Antley, DPT*  
Deborah Antley, DPT

'2013 10:58 AM

-&gt; Progressive Physical Therapy

Page 2 of 6

**CareIQ**

A CORVEL NETWORK

**CareIQ Therapy Program**  
301 Pennsylvania Parkway, Suite 210  
Indianapolis, IN 46280**Certification Form**Patient Information:

Provider Name: Progressive Physical Therapy

Patient's Name: James Dent

Claim #: 0000000000

Date of Birth:

Date of Injury: 05/01/2012

Home Telephone:

SSN: 000-00-0000

Home Address:

Employer Name: East Ridgeland County Public Works Department

Work Telephone: (803) 788-6351

Employment Information: DO NOT BILL EMPLOYER

Treatment Information:

Physician's Last Name: Gunter

First Name: Brett

Physician's Phone: (803) 794-3700

Fax: (803) 794-0322

Diagnosis: Lumbar Spondylosis

Secondary Diagnosis:

**Service: Work Hardening / Work Conditioning****Body Part: Lower Back Area -****Certified Visits: Initial Evaluation + 5 Visits**

In order to avoid potential interruptions in care, please provide the following documentation to CareIQ Therapy Program office within 24 hours of services rendered. If any questions, please refer to the Provider and Documentation Requirements document provided or call CareIQ at (866) 866-1101.

- Initial Evaluation with Return to Work Questionnaire and script (if not already submitted)
- Progress Report completed at every 6<sup>th</sup> visit (include updated measurements, ROM and status of goals) with prescription to cover additional visits
- All cancellations and no show appointments must be reported to CareIQ Therapy Program within 24 hours of the missed appointment

Fax to: 866-910-2089

Email to: PTDocuments@corvel.com

Disclaimer: This certification is invalid if a current prescription for this patient is not on file.

Billing Address:CareIQ Therapy Program  
301 Pennsylvania Parkway Suite 210  
Indianapolis, IN 46280Confidentiality Note:

The information contained in this transmission is privileged and confidential. It is intended solely for the use of the recipient named above. If the reader of this message is not the recipient named above, you are hereby notified that any dissemination, distribution, copying or disclosure of the contents of this transmission is prohibited. If you have received this transmission in error, please notify CareIQ by telephone and arrange for the return or destruction of original transmission and any accompanying documents.

Amanda direct =  
954-744-5099.

Michael R. 866-1101

5/29/2013 7:28 AM

-&gt; Progressive Physical Therapy

Page 4 of 8

**CareIQ**

A CORVEL NETWORK

**CareIQ Therapy Program**301 Pennsylvania Parkway, Suite 210  
Indianapolis, IN 46280Faxed to  
Vicki ✓**Certification Form****Patient Information:**

Provider Name: Progressive Physical Therapy

Patient's Name: James Dent

Claim #:

Date of Birth:

Date of Injury: 05/01/2012

Home Telephone:

SSN:

Home Address:

Employer Name: East Ridgeland County Public Works Department

Work Telephone: (803) 788-6351

Employment Information: DO NOT BILL EMPLOYER

**Treatment Information:**

Physician's Last Name: Rawl

First Name: Eva

Physician's Phone: (803) 794-3700

Fax: (803) 794-0322

Diagnosis: Lumbar Radiculopathy, Lumbar Spondylosis

Secondary Diagnosis:

**Service: Physical Therapy****Body Part: Lower Back Area****Certified Visits: Initial Evaluation + 5 Visit(s)**

In order to avoid potential interruptions in care, please provide the following documentation to CareIQ Therapy Program office within 24 hours of services rendered. If any questions, please refer to the Provider and Documentation Requirements document provided or call CareIQ at (888) 866-1101.

- Initial Evaluation with Return to Work Questionnaire and script (if not already submitted)
- Progress Report completed at every 6<sup>th</sup> visit (include updated measurements, ROM and status of goals) with prescription to cover additional visits
- All cancellations and no show appointments must be reported to CareIQ Therapy Program within 24 hours of the missed appointment

Fax to: 866-910-2069

Email to: PTDocuments@corvel.com

**Disclaimer:** This certification is invalid if a current prescription for this patient is not on file.**Billing Address:**

CareIQ Therapy Program

301 Pennsylvania Parkway Suite 210

Indianapolis, IN 46280

**Confidentiality Note:**

The information contained in this transmission is privileged and confidential. It is intended solely for the use of the recipient named above. If the reader of this message is not the recipient named above, you are hereby notified that any dissemination, distribution, copying or disclosure of the contents of this transmission is prohibited. If you have received this transmission in error, please notify CareIQ by telephone and arrange for the return or destruction of original transmission and any accompanying documents.

Authentic P.877-7777

Jul. 31. 2013 1:29PM W TC

RECEIVED 07/31/2013 13:45

No. 2697

P. 2

134-128

Brett Gunter, MD  
Columbia Neurosurgical Associates, P.A.  
132 Sunset Court  
West Columbia, SC 29169

RE: James Dent  
Date of Birth: [redacted]  
Social Security Number: [redacted]

Dear Dr. Gunter,

I would sincerely appreciate it if you would answer the following questions and express opinions concerning the treatment and future medical care needs of your patient, Mr. James Dent:

1. Based on your knowledge of Mr. Dent at the time of his release will he need availability to a physician and pain medications on either a periodic or recurring or continual basis to control his back pain stemming from his work related accident and to keep his back condition in the condition that it was in at the time of release?

☒ Yes

☐ No

BCG  
BCG (Initials)

2. In your opinion should he either be under the care of a family practitioner with access to and/or under the care of a chronic pain management specialist for ongoing conservative management of his back pain?

☒ Yes

☐ No

BCG  
BCG (Initials)

3. Based on a review of your chart it appears that you advised Mr. Dent that surgical intervention was the only other treatment modality that was available that may address his ongoing and continual back problems and that Mr. Dent during that discussion advised you that due to his condition he did not want to contemplate surgical intervention at that time. Does that properly represent your recollection of that discussion with Mr. Dent concerning whether or not to perform surgical intervention on Mr. Dent for his back condition?

☒ GENERALLY - EXCEPTION "ONLY OTHER"

Yes

No

BCG  
BCG (Initials)

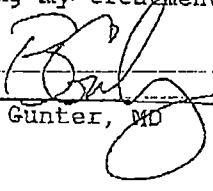
P.88

-28-

Jul. 31. 2013 1:29PM W IC

RECEIVED 07/31/2013 13:45  
No. 2697 P. 3

The above-referenced answers and opinions constitute my  
answers and opinions to a reasonable degree of medical certainty  
concerning my treatment and care of my patient, Mr. James Dent.

  
Brett C. Gunter, MD

Date 7-30-2013

COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.  
Spine and Neurological Surgery

Carolina Spine Center  
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.  
PH (803) 462-3602 Fax (803) 462-3647

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

JAMES L DENT

Patient Name

Patient social security #

Chart #

E. RICHLAND COUNTY PUBLIC SERV

State Accident Fund

Employer Name

Insurance Carrier

Case #

03/06/2013

05/01/2012

Date of Service

Date of Accident

Diagnosis code(s) and/or description of condition for which patient is being treated

Remain out of work for until further notice

PHYSICAL LIMITATIONS

FOLLOW UP

Physician: BRETT C. GUNTER, MD

Signature:



COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.

Spine and Neurological Surgery

Caroline Spine Center  
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.  
PH (803) 462-3602 Fax (803) 462-3647

WORK STATUS INFORMATION

PATIENT WORK INJURY INFORMATION

JAMES L DENT

Patient Name

Patient social security #

Chart #

Employer Name

Insurance Carrier

Case #

08/29/2012

Date of Service

Date of Accident

Diagnosis code(s) and/or description of condition for which patient is being treated

Remain out of work for 8 WEEKS

PHYSICAL LIMITATIONS

FOLLOW UP

Physician: BRETT C. GUNTER, MD

Signature:



**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

*Proudly representing injured workers  
for over 25 years*

Preston F. McDaniel  
Justin S. Byars  
Matthew Robertson  
OF COUNSEL  
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

August 2, 2013

Dr. Leonard Forrest  
Southeastern Spine Institute  
1106 Chuck Dawley Boulevard  
Mt. Pleasant, South Carolina 29464

RE: James Dent  
Date of evaluation: July 8, 2013  
SCWCC File No.:  
DOB:  
Patient No.:

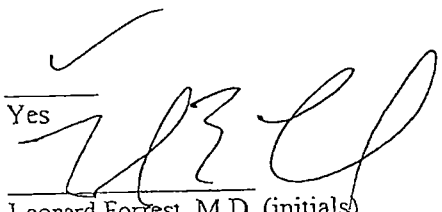
Dear Dr. Forrest:

I would appreciate it if you would consider the attached opinion and, if it is your opinion that Mr. Dent has lost more than 50% of the functional use of his back to do work requiring the use of his back, I would appreciate it if you would sign the statement and return it to us so we can submit it to a Commissioner.

1. According to the physical therapist the FCE could not be performed due to his condition and in your evaluation you found that James Dent is limited at best to sedentary duty work under the Department of Labor standards (See Page 2). After being advised that the FCE could not be performed because the physical therapist did not think that he could withstand an FCE and based on your evaluation and knowing the current condition of Mr. Dent's back and based on the U.S. Department of Labor's Dictionary of Occupational Titles physical demand work categories (very heavy duty, heavy duty, medium duty, light duty and sedentary physical demand levels) in your opinion knowing he is excluded from being able to do the work in any job classified in 4 out of 5 of the physical work demand categories in your opinion has he lost more than 50% of the functional use of his back to do work requiring the use of his back?

Yes

No

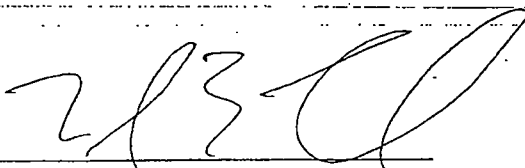
  
Leonard Forrest, M.D. (initials)

P.92

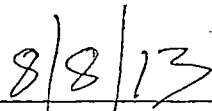
- 32 -

Dr. Leonard Forrest  
RE: James Dent  
August 2, 2013  
Page 2 of 2

The above referenced opinion constitutes my opinion to a reasonable degree of medical certainty based on my evaluation and knowledge of the condition of James Dent.

  
\_\_\_\_\_  
Leonard Forrest, M.D.

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
8/8/13

Sincerely yours,



Matthew C. Robertson  
Attorney for Employee/Claimant

MCR/bre



SOUTHEASTERN

SPINE  
INSTITUTE

MAIN CAMPUS

1106 Chuck Dawley Blvd.  
Mt. Pleasant, SC 29464

1122 Chuck Dawley Blvd.  
Mt. Pleasant, SC 29464

(843) 849-1551

Fax (843) 884-0629

1-800-432-0274

SPINAL SURGERY

Donald R. Johnson, II, MD  
Steven C. Poletti, MD  
R. Blake Dennis, MD  
Richard F. Frisch, MD  
Daniel R. Butler, PA-C  
Justin C. Swain, PA-C  
Courtney E. Bock, PA-C  
G. Ryan Aprill, PA-C  
Kelly Eddinger, PA-C

CONSERVATIVE SPINE CARE

Leonard E. Forrest, MD  
John F. Johnson, MD  
G. Robert Richardson III, MD  
Kirsten W. Loeffler, PA-C  
Helen Kulseth, PA-C

PAIN MANAGEMENT

Mark D. Netherton, MD  
W. Blane Richardson, MD  
Ellen E. Rbame, MD  
Virginia G. Blease, PA-C  
Kathleen L. Bukowsky, PA-C  
Christina Lockhart, PA-C  
Megan Plumb, PA-C

AFFILIATED PHYSICIANS

NEURORADIOLOGY

Richard C. Holgate, MD

NEUROLOGY-INTRAOPERATIVE

NEUROMONITORING

George "Trey" Lee, MD

VASCULAR-SPINE

ACCESS-SURGERY

Thomas C. Appleby, MD

July 8, 2013

Preston F. McDaniel, Esquire  
1315 Elmwood Avenue  
Columbia, SC 29210

RE: James Dent

DOB: . . . .

Patient#

Dear Attorney McDaniel:

Today, I had an opportunity to evaluate Mr. James Dent. As you know, Mr. Dent is a -year-old individual who has pain in his low back, into the right buttock, and down the right leg to below the calf.

Mr. Dent indicates that his symptoms began as a result of a work incident that occurred on May 1, 2012. Mr. Dent describes while he was carrying out his duties of sewer maintenance and repair he lifted a manhole cover, it slipped, and he tried to grab it. When he grabbed it, he indicates that he experienced pain to the extent that it knocked him to his knees. The pain was prominent and he felt it as a sharp/stabbing pain. The pain went down the right leg.

Mr. Dent indicates that he was treated initially by Dr. Paula Belmar. He relates that his initial treatment was with medication by mouth and physical therapy. Subsequently, he was referred to Dr. Gunter where he had two steroid injections. He indicates that the steroid injections helped at most for a couple of days. His only treatment since then has been with medication by mouth, currently Percocet.

Mr. Dent relates that his symptoms include stabbing, burning, and aching. The level of pain is 6 to 9 on a scale of 0 to 10. Nothings helpful. The symptoms are worse if he rides in a car for 30 minutes or more or if he does bending or lifting.

P.94

- 34 -

DENT, JAMES

Patient#

DOB:

July 8, 2013

Page 2.

Mr. Dent relates that he was found to have small cell lung cancer last July. He was treated with chemotherapy and radiation therapy from approximately August to November. He indicates recently having been found to have metastasis to lymph nodes and an adrenal gland. He relates that the scan they did showed no indication of involvement of his back at this point in time.

Mr. Dent filled out the review of systems page on our intake form and I reviewed that.

Mr. Dent's job was doing sewer maintenance and repair. He was a foreman but indicates as a foreman he still had to do heavy-work activities. He indicates that he last worked on the day of his injury, which was May 12, 2012. Two months ago, Mr. Dent indicates that he was formally retired.

Mr. Dent indicates that he was introduced into a work hardening program. He indicates that he wasn't able to do anything without increased pain, so he wasn't able to persist with that program.

On physical examination, Mr. Dent is pleasant and cooperative. Height is 5 foot 6 inches and weight 160 pounds. He's alert and oriented. There's tenderness over the low back and into the right buttock. No tenderness over the mid back or upper back or neck. I'm not finding any definite weakness or definite neurologic deficit involving the right lower extremity nor the left lower extremity. There's also no evident weakness or evidence of neurologic deficit involving the upper extremities bilaterally.

There's an MRI that was done last summer available and I reviewed that. He had multilevel degenerative changes in the lumbar spine. There are superimposed disc bulges/protrusions at L3-4, L4-5, and L5-S1.

Mr. Dent has pain in his low back, right buttock, and down the right leg to below the knee. The symptoms began as a result of an incident where he was lifting a very heavy manhole cover, it slipped, he grabbed it, and in the process of doing this his pain began; that was 14 months ago. He was treated initially with physical therapy and medication by mouth, which didn't help significantly. Subsequently he had two injections, which also did not help significantly. Currently, he's taking Percocet. He had an MRI scan most recently about a year ago, which shows degenerative changes at multiple levels and superimposed disc bulges/protrusions.

DENT, JAMES

Patient#

DOB:

July 8, 2013

Page 3

The likelihood is that the incident that occurred on May 1, 2012 caused one or more of the disc bulges/protrusions and aggravated the underlying degenerative condition and whatever bulge or bulges that was already present. That's the cause of his symptoms that he began with at that time, which persists to the present. That's my opinion to a reasonable degree of medical certainty.

As for the significance of the small cell lung cancer, I think that's very significant to Mr. Dent as a person certainly but I don't think it's playing any role with regard to the symptoms that began 14 months ago nor the back and related leg symptoms that persists now. Mr. Dent indicates that there was some type of scan done just a couple of weeks ago that didn't show any involvement of the back, which may have been a bone scan but I don't know. Also, certainly a new MRI of the lumbar spine could be done. Frankly I don't see a point in doing it from our perspective, as I'm not thinking further treatment is going to be of great benefit. His situation is clearly not a surgical one with regard to his work-related injury. At the other end of the spectrum, he's had injections that didn't help. Ultimately, in my opinion Mr. Dent is at maximal medical improvement at this time.

As for future needs certainly he's going to need to continue his pain medication, which currently is Percocet. Additional medications may or may not be needed. I don't envision any surgery playing a role for the work-related situation. Further injections could be tried for Mr. Dent but I wouldn't have a great level of optimism, given the lack of any significant benefit with the prior ones. A back brace for Mr. Dent for comfort is a consideration.

If Mr. Dent's symptoms worsen significantly in his back, I would then suggest new scanning be done; however, I would think it would be more likely related to his lung cancer than to any direct worsening because of his injury. If so, then further treatment in that regard would be under the direction of his oncology specialist and possibly include radiation.

I want to emphasize that in my opinion Mr. Dent's inability to work is on the basis of his work injury and in my opinion that would be true whether or not he had the small cell lung cancer. In fact the lung cancer is not playing any role in my opinion currently, which is that Mr. Dent is unable to return to work at any level.

DENT, JAMES

Patient#

DOB:

July 8, 2013

Page 4

Clearly, he can't return to work at his prior job. However, I don't think he'd be able to work even at a lesser level on any regular basis; again, this is purely with regard to the work-related injury. Also to be considered is the fact that Mr. Dent has worked doing such manual-labor work for his whole career. Even though he has a high school education, I don't see him being able to learn new skills to work at a different job that would be a sedentary one for example. Even at that, I'm not convinced he would be able to even do sedentary-level work on a full-time basis.

As for impairment rating, in my opinion this is a class 3 motion segment lesion and I would ascribe a 21% permanent impairment rating for the result of the work incident that occurred on May 1, 2012. This is a whole person permanent impairment rating.

Thank you for referring Mr. James Dent for this independent medical evaluation. If I can be of further assistance or if you have any questions or concerns, please don't hesitate to call or write.

Sincerely,

Leonard Forrest, M.D.

LEF/sk

T- 7/12/13

page 2

Harriet Fowler, CRC, M.Ed.  
Vocational Rehabilitation Services  
2143 Marion Street  
Columbia, South Carolina 29201  
Tel: (803) 256-3213 Fax: (803) 256-2129

|                 |            |                   |                       |
|-----------------|------------|-------------------|-----------------------|
| Client:         | James Dent | Employer:         | East Richland         |
| Address:        |            |                   | County Public Service |
|                 |            | Date of Birth:    |                       |
| Telephone:      |            | SSN:              |                       |
| Date of Injury: | 05/01/2012 | Date of Referral: | 09/04/2013            |

## Initial Evaluation

The following is a result of a request by Attorney Matthew C. Robertson in Columbia, South Carolina for a vocational evaluation. Mr. Robertson's office provided medical records upon which the medical history was based and work history was a self-report by the client and his wife in an interview on 09/13/2013.

Educational/Vocational History:

The following is a self-report by the client, and his wife as the client had severe problems recalling the sequence of his jobs, the city they were in, even where and when he went to high school-even with his rather simple work history. Had he been alone without his wife's input he would have been unable to recall it. The client's wife told me privately that the radiation and chemotherapy had really affected the client's memory and noted the client constantly repeats himself and "asks the same questions over and over like a child." (They noted they would "do drills" before "having to recall it with those attorneys.")

The client graduated from Spring Valley High School in 1974 in Columbia, South Carolina. He noted he had "about a C to D average in high school" upon graduation. He noted he was on a vocational track in high school, rather than a college preparatory track and took heating and air conditioning technician classes in shop.

During his last two years in high school he noted he worked weekends during the school year and during summers at J.B. White's in Columbia, South Carolina as a "furniture deliverer driving a box truck and loading and unloading". This job is classified as very heavy in physical demand category and is semi-skilled (D.O.T. Furniture Driver/Deliverer, 905.663-018). Ending pay was \$2.50/hour.

Upon graduation from high school in 1974 the client began working with Black Glass Company in Columbia, South Carolina "running rubber around windows" as an assembly worker, which he noted involved "moving and stacking big windows" and other material handling involving lifting up to 100 pounds. This job is classified as heavy in physical demand category and is semi-skilled (D.O.T. Window Assembler, 809.681-010; Material Handler, 929.687-030). The client worked at this job for 3 months until

he was offered a better job. Ending pay was approximately \$3.00/hour.

In 1974 the client began working with Wometco Vending in Columbia, South Carolina as a vending machine deliverer and installer working throughout the state. He noted this involved lifting over 100 pounds, and "mainly just moving them to the right place on the floor and plugging in." This job is classified as very heavy in physical demand category and is semi-skilled (D.O.T. Vending Machine Deliverer/Installer, 905.663-018). The client worked at this job for 10 years until he obtained a better job in 1985, as it did not involve out of town work/travel. Ending pay was approximately \$10.00/hour.

In 1985 the client began working with East Richland County Public Service in Columbia, South Carolina as a general laborer "digging up lines, laying pipe, and unstopping sewer lines." He noted he had "to pull large hoses and lift weights up to 100 pounds at times." After 10 years in 1995 he was lead worker/foreman, but in this position continued performing his previous tasks as well as "training/directing others on the crew" with him. He noted he was "in the ditch, always doing the same work as them." He noted he did "no hiring or firing." This job is classified as heavy in physical demand category and is

low skilled (D.O.T. Sewer Line Repaircr and Lead Worker, 869.664-018). The client worked at this job for 27 years until injury of 05/01/2012 (described below); and has not returned due to physician restrictions. He noted he was in the TERI Program and would have continued in that program for another 3 years were it not for the accident. (The S.C. TERI program allows the employee to retire, continue to work and receive both his retirement pay and regular pay for the job he is performing.) He noted he "needed to" continue in the TERI program for financial reasons. Ending pay was \$916.30 average weekly, or approximately \$23.90/hour based on a 40 hour work week.

Vocational Testing Results:

The client was administered the Wide Range Achievement Test-Revision 3 (WRAT-3) on 09/13/2013. He scored at 3<sup>rd</sup> grade level in arithmetic, 4<sup>th</sup> grade level in spelling, and at 5<sup>th</sup> grade level in reading.

Summary and Conclusions:

The client states that on 05/01/2012 he was working in his job as a sewer line maintenance worker/lead worker when he "picked up a manhole cover" and it slipped and when he "grabbed it" he "fell immediately" as an "immediate pain hit" him "so hard" he "crumpled to the ground." He noted he had hoped the pain would

improve, but progressively worsened to the point he had to go see a physician.

The client was then seen at Sentinel Health Partners in Columbia, South Carolina by family practice physician, Paula L. Belmar, M.D. on 05/10/2012, 05/17/2012, 05/25/2012, 06/07/2012/ 06/28/2012, 07/13/2012, 08/24/2012, and 01/04/2013. During these appointments Dr. Belmar noted the client began having back pain after a work accident on 05/01/2012 when he picked up a 90 pound man hole cover and "went to his knees" with pain having worsened by the next day; with pain in paraspinal lower back and SI joint areas, and down right leg; numbness in thigh area; and pain in right knee; and right foot burning pain.

During these appointments she noted on exam the client "obviously uncomfortable"; pain reproduced with bending, twisting; limited and painful range of motion; "difficulty getting out of chair and climbing on stretcher"; left lower

extremity weakness at 4 over 5; tenderness in the lumbar spine on left and right and in bilateral sacroiliac region; and "limp favoring left leg".

X-rays (on 05/10/2012) revealed muscle spasming (evidenced by loss of lordotic curve), "advanced" L3-L4 degenerative disc

disease, "moderate" L4-L5 degenerative disc disease; "moderate to advanced" L5-S1 degenerative disc disease with "fairly marked disc narrowing at L5-S1; and "at least moderate" L2-L3, L3-L4, L4-L5, and L5-S1 facet joint changes. M.D. radiologist noted

that if the client was "not better in 2 weeks" a lumbar MRI was needed.

On 06/25/2012 the client underwent a lumbar MRI at Camden Open MRI in Camden, South Carolina which revealed "herniated nucleus pulposus"/"moderately large protrusions" at L3-L4, L4-L5, and L5-S1 on the left; "disc protrusions at L2-L3, L3-L4, L4-L5 and L5-S1 on the right"; lateral recess stenosis at L3-L4 and L4-L5 and degenerative facet joint changes: "marked disc narrowing at L3-L4, L4-L5 and moderate narrowing at L5-S1"; and edema in the L3-L4 vertebral bodies. Schmorl's nodes were also noted at L1/T10, L2, L3, and L5. M.D. radiologist noted these were "large disc protrusions." He also noted in relation to causation, "The findings are probably post-traumatic given the two contiguous vertebral bodies."

During these appointments Dr. Belmar diagnosed disc protrusion, lumbar radiculopathy, muscle spasming, degenerative disc disease, and low back pain. She administered Toradol injection, Depo Medrol injection, and prescribed Medrol Dosepak, Vicodin,

Phenergan, Percocet, and Flexeril and ordered physical therapy "ASAP." An orthopedic consult was ordered on 06/07/2012 and a neurosurgical consult on 06/28/2012 "ASAP."

Following administration of all above medications and physical therapy Dr. Belmar noted (on 07/13/2012) the client continued with "still incapacitating pain"; and on 08/24/2012 "a lot of pain" was noted; and at last appointment Dr. Belmar added Dilaudid for additional pain relief. She ordered the client out of work during these appointments, and also ordered "no standing or heavy lifting" additionally on 07/13/2012.

The client was seen by Brett C. Gunter, M.D. at Columbia Neurosurgical Associates in Columbia, South Carolina on 07/25/2012 and 03/06/2013. At initial appointment Dr. Gunter noted nature of 05/01/2012 accident and subsequent medical history. He noted that the client had "constant" pain rated at a 9 over 10 level that was "worse with standing or walking too long, bending, stooping or twisting"; "worse with sitting back in a chair"; "worse in the morning"; and only "marginally improved by lying down and changing positions." He also noted continued intermittent pain/burning sensations in his knee region and in the dorsum of his foot bilaterally. Exam revealed spinal back range of motion reduced in "all cardinal planes" and

hyper-reflexive lower extremities on both right and left. Dr. Gunter noted MRI dated 06/25/2012 of the lumbar spine revealed "disc protrusions" at L2-3, L3-4, L4-5, and L5-S1; stenosis at L3-4 and L4-5; vertebral edema at L3 and L4; "multilevel degenerative disc disease"; lumbar spondylosis; and "congenitally short pedicles." He ordered both lumbar spine x-rays as well as an additional lumbar MRI, and the client was kept out of work.

On 08/28/2012 the client underwent a lumbar spine MRI at Dr. Gunter's offices which revealed a L2-L3 "moderate" right disc bulge possibly compressing "the exiting right L2 nerve root"; with right and central stenosis; L2-L3 degenerative facet and ligamentous changes; L5-S1 "moderate" disc bulge with degenerative facet changes; L3-L4 and L4-L5 "moderate" disc bulges with "moderate acquired" stenosis; L3-L4 and L4-L5 "degenerative facet and ligamentous changes superimposed upon a somewhat congenitally narrow canal with short lumbar pedicles"; L3-L4 and L4-L5 reactive marrow edema in discs; L3-L4 and L4-L5 annular tears with scar tissue; and L4-L5 small Schmorl's nodes. (M.D. radiologist noted continued "back pain with tingling and numbness in legs.")

On 01/15/2013 and 01/29/2013 the client was administered (by Eva J. Rawl, M.D.) lumbar epidural steroid injections at Dr. Gunter's offices. At first injection it was noted the client had continued left lower back pain radiating down to left lower extremity to his posterior thigh at an 8 over 10 level. By 01/29/2013 it was noted that the client had had "20 to 30% improvement in pain" since the 01/15/2013 injection; but in spite of that continued with "still low back pain with thigh pain"; with pain at a 7 over 10 level.

At second and final appointment with Dr. Gunter on 03/06/2013 Dr. Gunter noted that in spite of two lumbar epidural steroid injections and "many visits of lumbar physical therapy," the client continued with "significant pain in his lower back and left leg"; and continued with "reduced range of motion in all cardinal planes tested." He noted the client would "not consider" surgery. Dr. Gunter concluded; "Limited improvement, but no consideration for surgery. He wants to pursue a work hardening program." Therefore Dr. Gunter ordered a "work hardening program followed by functional capacity examination." At this last appointment he also ordered the client to "remain out of work."

The client began physical therapy at Progressive Physical Therapy in Columbia, South Carolina on 01/16/2013. At initial evaluation on this date, therapist noted pain on this date remained at a 9 over 10 level; and that "sitting, standing, walking around" all worsened the pain. She noted pain went from left back paraspinals/PSIS down into left thigh. She noted severely reduced range of motion with lumbar extension 5 degrees, sidebending to left 5 degrees, sidebending to right 10 degrees, and lumbar flexion 40 degrees. She also noted decreased strength with left hip abduction and extension strength at 4 over 5. She also noted the client had a positive or abnormal left straight leg raise test. The client was seen on 01/16/2013, 01/21/2013, 01/23/2013, 01/28/2013, and 01/30/2013.

The client was discharged from therapy on 04/10/2013 where pain was noted to be at a 8 over 10 level with pain continuing to radiate down lower extremities to thighs (left more than right). She also noted that lumbar range of motion remained severely reduced (lumbar extension 10 degrees, sidebending to the left and right 5 degrees, and flexion 45 degrees), straight leg raise test on the left remained positive, and tenderness remained at L3, L4, and L5 paraspinals/PSIS. She noted testing revealed the client limited to the occasional level only in kneeling, stooping and squatting and that he had pain with all of these

activities. (Occasional level limits the client to a maximum of 2.67 hours total in an 8 hour day.) She noted the client per testing able to lift maximum of only 10 pounds from floor to his waist, 10 pounds from his knees to his waist, and only 20 pounds from level (approximately waist); but noted the client even with these light weights was "short of breath" with only "three lifts". She also noted that with the above activities when the client had to move downward she had to "assist to lower to floor and rise." She opined on this date she felt the client unfit physically, i.e. too severely physically impaired to even participate in work hardening activities, i.e. physical therapy geared to returning the client to work. She noted, "Mr. Dent was evaluated for a work hardening program today. During the evaluation he exhibited dyspnea and increase in back pain...it is felt that he is not a candidate for this program. He has already been approved for disability." She also noted his job fell into the "heavy to very heavy" physical demand category "with frequent low level work."

On 07/01/2013 in a letter to Mr. Dent's attorney the physical therapist wrote; "I am writing in response to your request for further information concerning Mr. James Dent. I do not feel Mr. Dent would be an appropriate candidate for a functional capacity evaluation for several reasons. Given his medical conditions of

known low back injury with surgery recommended and lung cancer, testing would be limited due to safety concerns..he has been ~~approved for disability so any information would be of limited~~ use. I do not recall the specific conversation with Mr. Dent concerning sedentary to limited light work, however, this would be supported by the findings during the Work Conditioning Evaluation. He was able to lift 10 to 20 lbs. on an occasional basis..his aerobic capacity would support only sedentary to limited light physical demand labor."

On 05/08/2013 Dr. Gunter noted the client "currently on disability" and had been denied entrance to work hardening due to pain and dyspnea. He noted he felt the client to be at maximum medical improvement with a 10% whole person rating per AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, and noted, "It does not identify a clear indication for any mechanical restriction." He recommended "medium duty" noting the client felt he could perform no more than sedentary. He noted the client might need "periodic non-steroidal anti-inflammatory drugs over the years."

On 07/30/2013 Dr. Gunter replied to the following questions from the client's attorney affirmatively with "yes" answers: "Based on your knowledge of Mr. Dent at the time of his release will he

need availability to a physician and pain medications on either a periodic or recurring or continuing basis to control his back pain stemming from his work-related accident and to keep his back condition in the condition that it was at the time of release?" "In your opinion should he either be under the care of a family practitioner with access to and/or under the care of a chronic pain management specialist for ongoing conservative management of his back pain?" "Based on a review of your chart it appears that you advised Mr. Dent that surgical intervention was the only other treatment modality that was available that may address his ongoing and continual back problems and that Mr. Dent during that discussion advised you that due to his condition he did not want to contemplate surgical intervention at that time. Does that properly represent your recollection of that discussion with Mr. Dent concerning whether or not to perform surgical intervention on Mr. Dent for his back condition?" However, although he answered yes to the last/third question he added, "Generally, exception 'only other'."

On 07/08/2013 the client was seen by Leonard Forrest, M.D. at Southeastern Spine Institute in Mount Pleasant, South Carolina who noted medical history since accident. He noted that "nothing" was ultimately "helpful" with the pain including that the steroid injections "helped at most for a couple of days" and

physical therapy and medications "didn't help significantly." He noted that stabbing, burning, aching pain at a level ranging from 6 to 9 over 10, continued "in his low back, into the right buttock, and down the right leg to below the knee" through this date; and that riding "in a car for 30 minutes or more" and bending or lifting worsened the pain.

Dr. Forrest reviewed 08/22/2012 MRI and noted results including disc bulges/protrusions at L3-L4, L4-L5, and L5-S1 with degenerative changes.

In relation to causation Dr. Forrest noted, "The likelihood is that the incident that occurred on May 1, 2012 caused one or more of the disc bulges/protrusions and aggravated the underlying degenerative condition and whatever bulge or bulges that was already present. That's the cause of his symptoms that he began with at that time, which persists to the present." In relation to limitations he noted, "Clearly, he can't return to work at his prior job. However, I don't think he'd be able to work even at a lesser level on any regular basis; again, this is purely with regard to the work-related injury. Also to be considered is the fact that Mr. Dent has worked doing such manual-labor work for his whole career. Even though he has a high school education, I don't see him being able to learn new

skills to work at a different job that would be a sedentary one for example. Even at that, I am not convinced he would be able to even do sedentary-level work on a full-time basis. I want to emphasize that in my opinion Mr. Dent's inability to work is on the basis of his work injury and in my opinion that would be true whether or not he had the small cell lung cancer. In fact the lung cancer is not playing any role in my opinion currently, which is that Mr. Dent is unable to return to work at any level. As for the significance of the small cell lung cancer, I think that's very significant to Mr. Dent as a person certainly but I don't think it's playing any role with regard to the symptoms that began 14 months ago nor the back and related leg symptoms that persists now. Mr. Dent indicates that there was some type of scan done just a couple of weeks ago that didn't show any involvement of the back, which may have been a bone scan but I don't know. His situation is clearly not a surgical one with regard to his work-related injury. At the other end of the spectrum, he's had injections that didn't help. Ultimately, in my opinion Mr. Dent is at maximum medical improvement at this time."

In relation to impairment and future needs he noted, "As for impairment rating in my opinion this is a class 3 motion segment lesion and I would ascribe a 21 % permanent impairment rating

for the result of the work incident that occurred on May 1, 2012. This is a whole person impairment rating. As for future needs, certainly he's going to need to continue his pain medication, which currently is Percocet. Additional medications may or may not be needed. I don't envision any surgery playing a role for the work-related situation. Further injections could be tried for Mr. Dent but I wouldn't have a great level of optimism, given the lack of any significant benefit with the prior ones. A back brace for Mr. Dent for comfort is a consideration."

On 08/08/2013 in response to the following question from the client's attorney Dr. Forrest answered affirmatively or "yes":  
"According to the physical therapist the FCE could not be performed due to his condition and in your evaluation you found that James Dent is limited at best to sedentary duty work under the Department of Labor standards (See Page 2). After being advised that the FCE could not be performed because the physical therapist did not think that he could withstand an FCE and based on your evaluation and knowing the current condition of Mr. Dent's back and based on the U.S. Department of Labor's Dictionary of Occupational Titles physical demand work categories (very heavy duty, heavy duty, medium duty, light duty, and sedentary physical demand levels) in your opinion

knowing he is excluded from being able to do the work in any job classified in 4 out of 5 of the physical work demand categories in your opinion has he lost more than 50% of the functional use of his back to do work requiring the use of his back?"

Also, in relation to the client's lung cancer and related limitations/restrictions, on 08/07/2012, Rudolph L. Wise, M.D. of Kershaw Medical Center in Camden, South Carolina noted diagnoses of "bronchogenic carcinoma of the lung-diagnosis established in 2012"; "secondary polycythemia"; "SIADH on the basis of carcinoma of the lung" and "first relapse of lung cancer based on CT of June 2013 showing retroperitoneal lymph node and left adrenal metastasis." Dr. Wise noted the client had undergone radiation therapy and chemotherapy and noted, "Mr. James Dent is presently undergoing chemotherapy for recurrent small cell bronchogenic carcinoma. This is to attest to his neurological status and his mental capacity, as he is manifesting the effects of prior radiation therapy and chemotherapy on his cognitive capacity. This letter is being written to address his mental capacity, as he has undergone radiation therapy and he's on multidrug chemotherapy, resulting in episodes of not being quite lucid and clear mentally at times."

In conclusion, Mr. Dent following all above outlined treatment, has been deemed by physical therapy too severely impaired ~~physically to safely participate in work hardening or even to~~ participate in a functional capacity evaluation. This physical therapist provided at the last treatment appointment/discharge that the client was unable to lift more than 10 pounds from the floor or from knee level to waist level and maximum from 20 pounds from waist level but only with shortness of breath and with having to be assisted to lower his body to the floor to be able to lift the 10 pounds and rise. To be able to perform sedentary work the client must be able to independently lift 10 pounds from the floor and do this up to at least one third of the day. Because of the client's being short of breath after only three lifts, and knowing he would have to perform such lifts 2.67 hours out of an 8 hour day to even be at sedentary level, and because at a sedentary level he would have to do this independently, and testing revealed he could not; per testing the client could not safely perform even sedentary work. Obviously, the physical therapist felt this was the case because she could have performed the FCE and tested the client only at the sedentary level (and thus determined he could have worked at the sedentary level) but felt it was unsafe to test at even the lowest/lightest level, i.e. the sedentary level. Also, last orthopedist and physiatrist (Dr. Forrest) concurred noting, "I'm

not convinced he would be able to even do sedentary work on a full-time basis. my opinion currently is that Mr. Dent is unable to return to work at any level." (A neurosurgeon who saw the client recommended medium duty, but this was certainly in tremendous contraindication to the physical therapist findings who had physically worked with the client and actually observed and tested his physical capacities. Because both the physical therapist and the physiatrist/orthopedist are in agreement; and because a physical medicine and rehabilitation physician, i.e. physiatrist, has more specific training in rehabilitation in determining limitations than a neurosurgeon, and because the physical therapist actually tested and observed the maximum physical abilities of the client, the weight of the evidence points to the physiatrist/orthopedist's and physical therapist's opinions being most accurate. Also, the opinion of the orthopedist/physiatrist is from an examination following the neurosurgeon's, i.e. reflecting the most current condition of the client.

Also, the client has restrictions/limitations from his oncologist due to the effects of radiation and chemotherapy which include "episodes of not being quite lucid and clear mentally at times."

Therefore, given the client's restrictions, there is no job he previously held that he is now able to do. In order to determine jobs remaining within the client's current capacities, a transferable skills capacity analysis was performed. This occupational system analyzed the 12,741 job titles which exist in the United States economy as defined by the Dictionary of

20

21. अङ्कित

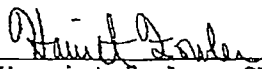
R7179C7FNR

- 57 -

titles identified that would be within his current transferrable abilities.

Given the client's advancing age ( ), education and functional academic levels including illiteracy, work history and attendant skills (all heavy and very heavy categories and lower skilled), and significant and severe physical limitations it is clearly more likely than not that the client is and will be (given MMI status) unable to obtain or maintain substantial gainful employment. Although the client's limitation (related to radiation/chemotherapy effects) of episodes of lack of mental clarity/lucidity could further create an employment barrier, the client would remain more likely than not unable to obtain or maintain substantial gainful employment even if this mental limitation were absent.

The contents of my report as well as the conclusions set forth therein, are to a reasonable degree of vocational certainty.

  
Harriet Fowler, CRC, M.Ed.  
Vocational Rehabilitation Manager

November 4, 2013  
Date

-----  
**Harriet Fowler, CRC, M.Ed.**  
**Vocational Rehabilitation Services**  
2143 Marion Street  
Columbia, South Carolina 29201  
Tel: (803)256-3213 Fax: (803)256-2129

Client: James Dent                      Employer: East Richland  
Address:                                              County Public Service  
DOB:  
Telephone:                                              SSN:  
Date of Injury: 05/01/2012                      Date of Referral: 09/04/2013

The following addendum results from a question by the client's attorney, Matthew Robertson, as to whether the client's low achievement scores per WRAT-3 testing were a result of memory loss from his cancer treatment or were premorbid in relation to such treatment.

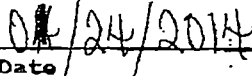
ADDENDUM

As noted in my January 14, 2014 addendum, the means to fully objectively answer the above query would be to obtain scores prior to the client's cancer treatment; and thus the client's high school records were obtained. These records reflect the client ranked 670 out of 723 in his class with a grade point ratio of 1.645, or at lowest first percentile; clearly consistent with an overall D average. All standardized achievement tests were not available, but standardized achievement tests in 1972 in 10<sup>th</sup> grade revealed reading at a second grade level and spelling at a second grade level. Also, percentile scores on the Differential Aptitude Tests were quite low with 15<sup>th</sup> percentile, 3<sup>rd</sup> percentile, 5<sup>th</sup> percentile, 20<sup>th</sup>

percentile, 3<sup>rd</sup> percentile, 10<sup>th</sup> percentile and 25<sup>th</sup> percentile.  
Other scores were not available/unreadable. Thus, the client's  
grades, class rank and the available standardized test scores  
would be evidentiary to support that the client's lower  
achievement scores on the WRAT in my original report were likely  
not lowered by his cancer treatment but existed prior to such  
treatment.

The contents of my report as well as the conclusions set  
forth therein, are to a reasonable degree of vocational  
certainty.

  
\_\_\_\_\_  
Harriet Fowler, CRC, M.Ed.  
Vocational Rehabilitation Manager

  
\_\_\_\_\_  
Date

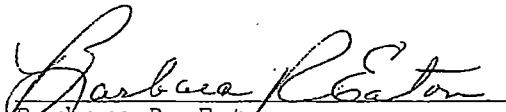
CERTIFICATE OF SERVICE BY HAND DELIVERY

WCC File No.: 1205879

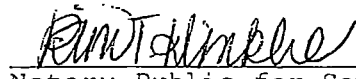
I hereby certify that I have on this day served the following in the matter of James Dent v. East Richland County Public Service District with a copy of Claimant's Pre-Hearing Brief, Notice of Witnesses and Written Reports(s)/Physician or Other Evidence, and APA Submissions, with enclosures by hand delivery and leaving with the receptionist as follows:

Ellen Goodwin, Esquire  
South Carolina State Accident Fund  
800 Dutch Square Blvd., Ste. 160  
Columbia, SC 29210

Commissioner Susan S. Barden  
SC Workers' Compensation Commission  
1333 Main Street, Ste. 500  
Columbia, South Carolina 29202

  
Barbara R. Eaton  
Paralegal

SWORN TO BEFORE ME this  
24 day of January, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 4/20/20

DEFENDANTS'  
INDEX OF MEDICAL SUBMISSIONS

James Dent v East Richland County Public Library  
WCC File No.: 1205879

---

| <u>APA<br/>NO.</u> | <u>NAME OF REPORT(S)/PHYSICIAN<br/>OR OTHER EVIDENCE</u> | <u>DATE OF<br/>REPORT(S)</u> | <u>NO. OF<br/>PAGES</u> |
|--------------------|----------------------------------------------------------|------------------------------|-------------------------|
| A.                 | Dr. Brett Gunter                                         | 07/25/2012-05/08/2013        | 1-11                    |
| B.                 | Dr. Paula Belmar                                         | 05/10/2012-01/04/2013        | 12-23                   |
| C.                 | MRI's & Imaging                                          | 05/10/2012-08/28/2012        | 24-26                   |

**COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.**  
[www.columbianeurosurgical.com](http://www.columbianeurosurgical.com)

Spine & Neurological Surgery  
Thomas J. Holbrook, Jr., MD  
William M. Rambo, Jr., MD  
Randall G. Drye, MD  
Scott B. Boyd, MD  
Brett C. Gunter, MD  
Karl A. Lozanne, MD

720 Rabon Road  
Columbia, SC 29203  
(803) 462-0423 - (F) 462-0432

Pain Medicine  
Eva J. Rawl, MD

132 Sunset Court  
W. Columbia, SC 29169  
(803) 794-3700 - (F) 794-0322

**OFFICE VISIT-FOLLOW UP**

**Patient:** JAMES T. DENT

**Chart:**

**Date:** 05/08/2013

**DOB:**

**INTERIM HISTORY:**

He went to a work hardening program and it was terminated due to the development of pain and some "dyspnea."

**PHYSICAL-EXAM:**

**GENERAL EXAM:**

LUNGS: clear to auscultation bilaterally

HEART: regular rate and rhythm

**NEUROLOGICAL EXAM:**

MENTAL STATUS: awake alert and oriented to person, place and time

SPEECH: fluent and conversant

**POWER EXAM:**

**LOWER EXTREMITIES:**

HIP FLEXOR: power 5/5 bilaterally

HIP EXTENSOR: power 5/5 bilaterally

KNEE FLEXOR: power 5/5 bilaterally

KNEE EXTENSOR: power 5/5 bilaterally

ANKLE DORSIFLEXOR: power 5/5 bilaterally

ANKLE PLANTAR FLEXOR: power 5/5 bilaterally

**ASSESSMENT:**

He is currently on disability. He is at Maximum medical improvement. His Impairment rating is 10% of the whole person according to the American Medical Association Guides to the Evaluation of Permanent Impairment 5th edition. It does not identify a clear indication for any mechanical restriction. I would recommend medium duty under the circumstances. He indicates he does not believe he could perform any work more than sedentary. He may require periodic non-steroidal anti-inflammatory drugs over the years.

**PLAN:**

Release

Return to work Medium Duty

**THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED**  
**BRETT C. GUNTER, MD**

**FAXED TO:**

Paula Belmar MD

FAX: 4387563

**COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.**

[www.columbianeurosurgical.com](http://www.columbianeurosurgical.com)

**Spine & Neurological Surgery**

Thomas J Holbrook, Jr., MD  
William M. Rambo, Jr., MD  
Randell G. Drye, MD

Scott B. Boyd, MD  
Brett C. Gunter, MD  
Karl A. Lozano, MD

720 Rabon Road,  
Columbia, SC 29203  
(803) 462-0423 - (F) 462-0432

**Pain Medicine**

Eva J. Rawl, MD

132 Sunset Court  
W. Columbia, SC 29169  
(803) 794-3700 - (F) 794-0322

**OFFICE VISIT-FOLLOW UP**

**Patient:** JAMES L DENT

**DOB:** 03/15/1950

**Chart:** 0000000000

**Date:** 03/06/2013

**INTERIM HISTORY:**

He has completed many visits of lumbar physical therapy and two lumbar epidural steroid injections by Dr. Rawl. He is better overall, but he still has significant pain in his lower back and left leg. He would not consider a surgical alternative should one be offered.

**PHYSICAL EXAM:**

**GENERAL EXAM:**

LUNGS: clear to auscultation bilaterally

HEART: regular rate and rhythm

BACK: reduced range of motion in all cardinal planes tested.

**NEUROLOGICAL EXAM:**

MENTAL STATUS: awake alert and oriented to person, place and time

SPEECH: fluent and conversant

**POWER EXAM:**

**LOWER EXTREMITIES:**

HIP FLEXOR: power 5/5 bilaterally

HIP EXTENSOR: power 5/5 bilaterally

KNEE FLEXOR: power 5/5 bilaterally

KNEE EXTENSOR: power 5/5 bilaterally

ANKLE DORSIFLEXOR: power 5/5 bilaterally

ANKLE PLANTAR FLEXOR: power 5/5 bilaterally

**ASSESSMENT:**

Limited improvement, but no consideration for surgery. He wants to pursue a work hardening program.

**PLAN:**

Work hardening program

Followed by Functional capacity examination

remain out of work

f/u after above

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

**BRETT C. GUNTER, MD**

**FAXED TO:**

RAWL, EVA J, MD  
720 RABON RD  
COLUMBIA, SC 29203-8900

Corvel Scan Date: 2/4/2013

Phone: (803)462-0423  
Fax: (803)462-0432

DENT, JAMES L - DOB:   
LUMBAR ESI - 1/29/2013 (Authenticated by: Theresa Jones - 1/29/2013)

Date : 01/29/2013

Patient : JAMES L DENT

Chart :

### LUMBAR ESI

#### Procedure Note

After obtaining informed consent, the patient was placed in a prone position of the C-arm table. The patient's back was prepped and draped in sterile fashion. The appropriate vertebral segments were identified using a C-arm. Local anesthesia of the skin and subcutaneous tissue was obtained using a # 27 gauge needle and 1% lidocaine. With C-arm guidance and using a # 20 gauge 3.5 inch epidural needle, the following level was injected: L3-4. Negative aspiration and no paresthesia noted.

Omnipaque 240 contrast was injected confirming needle localization with fluoroscopy in the Lateral and Oblique Views.

Each level was injected with 2 ml of PF 0.25% Bupivacaine/1% Lidocaine pre-mixed with 40 mg of preservative-free Triamcinolone. The patient tolerated the procedure well without any immediate complications. After an appropriate period of observation, the patient was allowed to go home with a driver. The patient was instructed to refrain from driving for 12 hours after the injection and told to contact our office immediately with any new pain, signs/symptoms of infection, new weakness/sensory changes or new bowel/bladder habit changes.

**Comment:** 20-30% improvement in pain Still LBP with some L thigh pain. 5/5 power.

RAWL, EVA J, MD  
720 RABON RD  
COLUMBIA, SC 29203-8900

Corvel Scan Date: 2/4/2013

Phone: (803)462-0423  
Fax: (803)462-0432

DENT, JAMES L - DOB: \_\_\_\_\_  
LUMBAR ESI - 1/29/2013 (Authenticated by: Theresa Jones - 1/29/2013)

BP Pre: 144/90    BP Post: 119/93    Weight: 180

**Meds:** Percocet 5/325 - 325 mg-5 mg  
Flexeril - 10 mg  
Norco - 325 mg-5 mg  
Norvasc - 5 mg

**Allergies:** NKDA...

PHYSICIAN : EVA J. RAWL, MD

RAWL, EVA J, MD  
720 RABON RD  
COLUMBIA, SC 29203-8900

Phone: (803)462-0432 Corvel Scan Date: 2/4/2013  
Fax: (803)462-0432

DENT, JAMES L - DOB: [redacted]  
LUMBAR ESI - 1/15/2013 (Authenticated by: Theresa Jones - 1/16/2013)

Date : 01/15/2013  
Patient : JAMES L DENT  
Chart :

## LUMBAR ESI

### Procedure Note

After obtaining informed consent, the patient was placed in a prone position of the C-arm table. The patient's back was prepped and draped in sterile fashion. The appropriate vertebral segments were identified using a C-arm - Local anesthesia of the skin and subcutaneous tissue was obtained using a # 27 gauge needle and 1% lidocaine. With C-arm guidance and using a # 20 gauge 3.5 inch epidural needle, the following level was injected: L3-4. Negative aspiration and no paresthesia noted.

Omnipaque 240 contrast was injected confirming needle localization with fluoroscopy in the Lateral and Oblique Views.

Each level was injected with 2 ml of PF 0.25% Bupivacaine/1% Lidocaine pre-mixed with 40 mg of preservative-free Triamcinolone. The patient tolerated the procedure well without any immediate complications. After an appropriate period of observation, the patient was allowed to go home with a driver. The patient was instructed to refrain from driving for 12 hours after the injection and told to contact our office immediately with any new pain, signs/symptoms of infection, new weakness/sensory changes or new bowel/bladder habit changes.

**Comment:** L LB rad to L LE post thigh. 5/5 power and sensation stocking dysthesia. Neg SLR bil.

RAWL, EVA J, MD  
720 RABON RD  
COLUMBIA, SC 29203-8900

Phone: (803)462-0423 Corvel Scan Date: 2/4/2013  
Fax: (803)462-0432

DENT, JAMES L - DOB:  
LUMBAR ESI - 1/15/2013 (Authenticated by: Theresa Jones - 1/16/2013)

BP Pre : 130/85 BP Post : 135/85 Weight: 179

Meds: Percocet 5/325 - 325 mg-5 mg  
Flexeril - 10 mg  
Norco - 325 mg-5 mg  
Norvasc - 5 mg

Allergies: NKDA...

PHYSICIAN : EVA J. RAWL, MD

**COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.**

[www.columbianeuroworld.com](http://www.columbianeuroworld.com)

Spine & Neurological Surgery  
Thomas J. Holbrook, Jr., MD  
William M. Rambo, Jr., MD  
Randall G. Drye, MD  
Scott B. Boyd, MD  
Brett C. Gunter, MD  
Karl A. Lozanne, MD

720 Rabon Road  
Columbia, SC 29203  
(803) 462-0423 - (F) 462-0432

Pain Medicine  
Eva J. Rawl, MD

132 Sunset Court  
W. Columbia, SC 29169  
(803) 794-3700 - (F) 794-0322

**OFFICE VISIT-FOLLOW UP**

**Patient:** JAMES L DENT

**Chart:**

**Date:** 08/29/2012

**INTERIM HISTORY:**

He has primarily lower back pain and had about 3-4 total visits of lumbar physical therapy. He's had no visits to Pain Management Specialist. He has not worked since his injury on the job.

**PHYSICAL EXAM:**

**GENERAL EXAM:**

BACK: reduced range of motion in all cardinal planes tested.

**NEUROLOGICAL EXAM:**

MENTAL STATUS: awake alert and oriented to person, place and time

SPEECH: fluent and conversant

**POWER EXAM:**

**LOWER EXTREMITIES:**

HIP FLEXOR: power 5/5 bilaterally

HIP EXTENSOR: power 5/5 bilaterally

KNEE FLEXOR: power 5/5 bilaterally

KNEE EXTENSOR: power 5/5 bilaterally

ANKLE DORSIFLEXOR: power 5/5 bilaterally

ANKLE PLANTAR FLEXOR: power 5/5 bilaterally

**RADIOGRAPHIC STUDIES:**

MRI lumbar spine shows moderate spinal stenosis at L3-4 and L4-5

**ASSESSMENT:**

Complex patient. He is in the middle of his treatment for lung cancer including chemotherapy and radiation therapy. He has lumbar spondylosis with moderate stenosis, but symptoms primarily of lower back pain.

**PLAN:**

Pain Management Specialist for lumbar epidural steroid injection once chemo and radiation are completed. Lumbar physical therapy with the development of home exercise program, core strengthening exercises, and range of motion exercises. Lumbar physical therapy with emphasis on local measures including ultrasound, heat, and TENS, evaluate and management.

f/u in 8 weeks

remain off work for now

**THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED**

**BRETT C. GUNTER, MD**

**FAXED TO:**

Michael J. Nienhuis MD FAX: 7886508

**COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.**  
Spine and Neurological Surgery

Carolina Spine Center  
A Program of Columbia Neurosurgical Associates

Sylvia Miller, Dir. Industrial Care Dept.  
PH (803) 462-3602 Fax (803) 462-3647

**WORK STATUS INFORMATION**

**PATIENT WORK INJURY INFORMATION**

JAMES L DENT

Patient Name

Patient social security #

Chart #

E. RICHLAND COUNTY PUBLIC SERV

STATE ACCIDENT FUND

Employer Name

Insurance Carrier

07/25/2012

05/01/2012

Case #

Date of Service

Date of Accident

Diagnosis code(s) and/or description of condition for which patient is being treated

Remain out of work for 6 weeks

**PHYSICAL LIMITATIONS**

**FOLLOW UP**

Physician: BRETT C. GUNTER, MD

Signature:



**COLUMBIA NEUROSURGICAL ASSOCIATES, P.A.**[www.columbianeurosurgical.com](http://www.columbianeurosurgical.com)**Spine & Neurological Surgery**Thomas J. Holbrook, Jr., MD  
William M. Rambo, Jr., MD  
Randall G. Drye, MDScott B. Boyd, MD  
Brett C. Gunter, MD  
Karl A. Lozanne, MD720 Rabon Road  
Columbia, SC 29203  
(803) 462-0423 - (F) 462-0432**Pain Medicine**Steven B. Stordick, MD  
Eva J. Rawl, MD132 Sunset Court  
W. Columbia, SC 29169  
(803) 794-3700 - (F) 794-0322**OFFICE CONSULTATION****Patient:** JAMES L. DENT**Chart:****Date:** 7/25/2012**CHIEF COMPLAINT:**

Lower back pain

**INTERIM HISTORY:**

Mr. Dent is a year old right handed male presenting with lower back pain. This pain began on May 1, 2012 when working as a maintenance foreman for the East Richland County Public Service Department. He was lifting a manhole cover to replace it when he felt a pull in his back that caused immediate severe lower back pain. After resting at home for a week, he was evaluated by Sentinel Health in Elgin, SC and prescribed Flexeril, Vicodin, Prednisone, and lumbar physical therapy.

**CURRENT SYNDROME:**

**Back:** 100% This is a constant ache that is worse with sitting back in a chair, in the morning, standing or walking too long, bending, stooping, or twisting. It is marginally improved by lying down and changing positions.

**Hip/Leg:** He has intermittent burning sensations in his knee region and in the dorsum of his foot bilaterally. He denies real pain in his hips or legs.

Additionally, the results of his MRI prompted further evaluation for cancer. He was recently diagnosed with lung cancer and is to see an oncologist later today.

**PATIENT HISTORY:**

**PAST MEDICAL HISTORY, CURRENT MEDICATIONS, ALLERGIES, SOCIAL HISTORY, FAMILY HISTORY, AND REVIEW OF SYSTEMS:** All are contained in the 3-page past history document. I have reviewed this information which I signed today, and it is contained in the chart and considered a part of this note.

**Allergies:** NKDA

He takes low dose aspirin daily.

No history of significant bleeding including with previous surgical procedures. No history of problems with anesthesia. No history of AIDS or hepatitis. The patient does not have diabetes mellitus. The patient has never had a heart attack. The patient has hypertension. The patient has not had previous lumbar surgery. The patient is a cigarette smoker. The patient does not use alcohol. The patient denies illicit drug use.

**PHYSICAL EXAM:**

**VITALS:** Height: 66in. Weight: 190lbs. Pulse: 84

**GENERAL EXAM:**

**GENERAL:** moderately obese male otherwise appropriate.

**HEAD:** normocephalic

**EYES:** pupils equal and reactive, extrocular movements intact

EARS: external anatomy unremarkable  
NECK: full range of motion without tenderness to palpation  
THROAT: oropharynx clear to visual inspection  
LUNGS: Fine crackles bilaterally.  
HEART: regular rate and rhythm  
ABDOMEN: soft non-distended, nontender  
EXTREMITIES: warm, moist, pulses present  
BACK: Mild reduction in ROM-all cardinal planes.  
NEUROLOGICAL EXAM:  
MENTAL STATUS: awake alert and oriented to person, place and time  
SPEECH: fluent and conversant  
CRANIAL NERVE:  
III. Oculomotor: medial, superior; oblique muscle intact  
IV. Trochlear: superior oblique muscle intact  
V. Trigeminal: facial sensory muscle intact  
VI. Abducent: lateral rectus-muscle intact  
VII. Facial: muscles of facial expression symmetric  
VIII. Vestibulocochlear: hearing in both ears present  
IX. Glossopharyngeal: sensation of oropharynx present  
X. Vagus: elevation of oropharynx present  
XI. Accessory: shoulder shrug intact  
XII. Hypoglossal: tongue protrudes normally in the midline  
POWER EXAM:  
UPPER EXTREMITIES:  
SHOULDER ABDUCTION: power 5/5 bilaterally  
ELBOW FLEXOR: power 5/5 bilaterally  
ELBOW EXTENSOR: power 5/5 bilaterally  
WRIST FLEXOR: power 5/5 bilaterally  
WRIST EXTENSOR: power 5/5 bilaterally  
HAND GRIP: power 5/5 bilaterally  
LOWER EXTREMITIES:  
HIP FLEXOR: power 5/5 bilaterally  
HIP EXTENSOR: power 5/5 bilaterally  
KNEE FLEXOR: power 5/5 bilaterally  
KNEE EXTENSOR: power 5/5 bilaterally  
ANKLE DORSIFLEXOR: power 5/5 bilaterally  
ANKLE PLANTAR FLEXOR: power 5/5 bilaterally  
SENSORY:  
TRUNK: sensation intact to light touch  
UPPER EXTREMITIES: sensation intact to light touch  
LOWER EXTREMITIES: sensation intact to light touch  
CEREBELLAR: guarded.  
REFLEXES: mildly hyper-reflexic BLE without clonus or up-going Babinski's..

**RADIOGRAPHIC STUDIES:**

MRI of the lumbar spine dated 6/25/12 shows congenitally short pedicles, multilevel DDD, vertebral edema at L3 and L4, disc protrusions at L2-3, L3-4, L4-5, and L5-S1 with lateral recess stenosis at L3-4 and L4-5.

**ASSESSMENT:**

Lumbar stenosis and spondylosis. The imaging is quality is too poor for surgical evaluation and planning.

**PLAN:**

MRI L-spine with and without contrast to "evaluate lower back pain"  
Follow up after MRI  
AP/LAT lumbar spine, Flex/Extension lumbar spine

---

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED  
BRETT C. GUNTER, MD

---

### Subjective

**COMPLAINT OR ISSUE:** The patient is here for evaluation and management of active medical problems. worker's comp. Patient still c/o back pain seen by PT is feeling better and only slightly still has pain with less radiation to the right lower leg. Has been undergoing PT.

### Objective

VS: BMI: 31.2. BP: 114/68. H: 66 in. P: 80 /min. W: 194lbs 0oz. Wendy Carter LPN

**EXAM:** GEN: obviously uncomfortable.

**MUSCULOSKELETAL:** no joint deformity.

**SPINE:** no deformity, tenderness lumbar spine, pain reproduced with bending.

**NEURO:** DTR's: Symmetrical..

**GAIT:** No gait abnormality.

**STRENGTH:** Strength symmetrically 5/5.

**MUSCLE TONE:** No hypotonia. No dystonia.

### Assessment

Low back pain ICD#724.2

Lumbar radiculopathy ICD#724.4

### Discussion

### Plan

off for another week continue PT

Handouts: Hypertension.

### Orders

### Referrals

### Medications

### Visit Level

### Follow Up

Return to the office in 2 weeks Electronically signed by Paula L. Belmar, M.D.

### Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of the following active health problems:

worker's comp Low back pain ICD#724.2

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

disc protrusion

L3 L4 EDEMA

Active problems reviewed. Medications reviewed. Health Maintenance reviewed.

SH/Lifestyle:

Reports medication compliance, active lifestyle.

Denies sedentary lifestyle, exercising.

ROS:

on radiation and had chemo small cell.

Still has pain lower back difficulty waling and doing ADLs and needs local shot of the lower back and PT..

Denies symptoms of chest pain, dyspnea, edema, weakness or tiredness.

### Objective

VS: BMI: 29.5. BP: 104/64. H: 66 in. P: 80 /min. W: 183lbs 0oz. Wendy Carter LPN

EXAM: GEN: obviously uncomfortable.

LYMPH:

CARDIOVASCULAR:

MUSCULOSKELETAL: no joint deformity.

SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical..

SENSATION:

GAIT: No gait abnormality., limp favoring left leg.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

SKIN:

### Assessment

Lung cancer ICD#162.9

Low back pain ICD#724.2

### Discussion

### Plan

no work for 3m.

Handouts: pain management rules and regulations, pain management rules and regulations.

### Orders

### Referrals

**Medications**

**Dilaudid:** 2 mg (tablet) SIG- 1 tab(s) every 4 hours as needed for pain orally Dispense- #120 Tablet(s)  
Refills- 0 Notes-

**Visit Level**

**Follow Up**

Return to the office in 3 months Electronically signed by Paula L. Belmar, M.D.

Electronically signed by: Paula L. Belmar, M.D. on 01/04/2013 12:43 PM

**Subjective**

**COMPLAINT OR ISSUE:** The patient is here for evaluation and management of the following active health problems:

worker's comp Low back pain ICD#724.2

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

disc protrusion

L3 L4 EDEMA

Active problems reviewed Medications reviewed. Health Maintenance reviewed.

SH/Lifestyle:

Reports medication compliance, active lifestyle.

Denies sedentary lifestyle, exercising.

ROS:

Started chemo and radiation small cell lung cancer. NOT in the bone only lung. Has second MRI back for monday. Seen by Dr Gunner and has a follow up. Has a lot of pain.

Denies symptoms of chest pain, dyspnea, edema, weakness or tiredness.

**Objective**

VS: BMI: 29.2. BP: 110/70. H: 66 in. P: 88 /min. W: 181lbs 0oz. Wendy Carter LPN EXAM: FACE:

Sinuses- Nontender.

EARS: Right Ear: Ear Canal- Normal. TM- Normal.

Left Ear: Ear Canal- Normal. TM- Normal.

NOSE: No discharge or inflammation.

THROAT: Pharynx Normal.

NECK: No adenopathy.

RESP: Normal.

LUNGS: Percussion- Resonant bilaterally. Auscultation- Breath sounds symmetrically clear.

HEART: Rhythm- Regular. Murmur- Not detected. Rub- Not detected. Click- Not detected. Gallop- Not detected.

ABDOMEN: Soft. Tenderness- None. Mass(s)- None. Bowel Sounds- Present.

EXTREMITIES: Cyanosis. Absent. Clubbing. Absent. Edema- None.

BACK: Tenderness- None. Left sacroiliac tenderness. Spine- Normal. ROM- Limited. Painful. Straight Leg Raising- straight leg raising negative

**Assessment**

worker's comp Low back pain ICD#724.2

Lung cancer ICD#162.9

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

disc protrusion

L3 L4 EDEMA

**Discussion****Plan**

off three month 12/15/12

CQM: Tobacco QM: Tobacco - current smoker. #1034F INTERVENTION: Tobacco use cessation intervention, counseling. #4000F

Handouts: Narcotic-Acetaminophen, UTI.

**Orders**

**Referrals**

**Medications**

Flexeril (Cyclobenzaprine): 10 mg (tablet) SIG- 1 tab(s) 3 times a-day orally Dispense- #30  
Substitutions Allowed Refills- 1 Notes-

Percocet (APAP/Oxycodone): 325 mg-10 mg (tablet) SIG- 1 tab(s) every 6 hours as needed orally  
Dispense- #60 Substitutions Allowed Refills- 0 Notes-

**Visit Level**

**Follow Up**

Return to the office in 3 months

Electronically signed by: Paula L. Belmar, M.D. on 08/24/2012 10:26 AM

### Subjective

COMPLAINT OR ISSUE: The patient is here for evaluation and management of the following active health problems:

worker's comp Low back pain ICD#724.2

Hypertension ICD#401.9

Insomnia ICD#780.52

Allergies ICD#477.9

Gastroesophageal reflux disease or GERD ICD#530.81

Active problems reviewed. Medications reviewed. Health Maintenance reviewed.

SH/Lifestyle:

Reports medication compliance, active lifestyle.

Denies sedentary lifestyle, exercising.

ROS:

had MRI done. Still c/o pain and radiates inferiorly

Denies symptoms of chest pain, dyspnea, edema, weakness or tiredness.

### Objective

VS: BMI: 30.4. BP: 110/70. H: 66 in. W: 189lbs 0oz. Wendy Carter LPN

EXAM: BACK: Tenderness- Right lumbar paraspinal area. Left lumbar paraspinal area. Spine- Normal.

ROM- Limited. Painful. Normal. Straight Leg Raising- straight leg raising negative

### Assessment

Disc protrusion

L3L4 edema from trauma.

### Discussion

### Plan

off two weeks.

Handouts: Back pain.

### Orders

### Referrals

PHYSICIAN REFERRALS: neurosurgeon.

### Medications

### Visit Level

### Follow Up

Electronically signed by Paula L. Belmar, M.D.

### Subjective

Patient in today for follow up lower back pain. not feeling well. Still pain that is incapacitating

### Objective

VS: BMI: 30.6. BP: 130/70. H: 66 in. P: 80 /min. W: 190lbs 0oz. Rikitia Boston, LPN

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: no deformity, tenderness lumbar spine, pain reproduced with bending.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

### Assessment

-Low back pain ICD#724.2

disc protrusion

L3 L4 EDEMA

### Discussion

### Plan

no heavy lifting or standing. Off one month.

Handouts: Back pain, Back pain, Back pain.

OFF ONE MONTH.

### Orders

### Referrals

NEUROSURGEON

### Medications

CONTINUE PAIN MEDS.

### Visit Level

### Follow Up

Return to the office in 1month Electronically signed by Paula L. Belmar, M.D.

### Subjective

**COMPLAINT OR ISSUE:** The patient is here for evaluation and management of active medical problems. worker's comp. Patient still c/o back pain seen by PT is feeling better and only slightly still has pain with less radiation to the right lower leg. Has been undergoing PT.

### Objective

**VS:** BMI: 31.2. BP: 114/68. H: 66 in. P: 80 /min. W: 194lbs 0oz. Wendy Carter LPN

**EXAM:** GEN: obviously uncomfortable.

**MUSCULOSKELETAL:** no joint deformity.

**SPINE:** no deformity, tenderness lumbar spine, pain reproduced with bending.

**NEURO:** DTR's: Symmetrical..

**GAIT:** No gait abnormality.

**STRENGTH:** Strength symmetrically 5/5.

**MUSCLE TONE:** No hypotonia. No dystonia.

### Assessment

Low back pain ICD#724.2

Lumbar radiculopathy ICD#724.4

### Discussion

### Plan

off for another week continue PT

Handouts: Hypertension.

### Orders

### Referrals

### Medications

### Visit Level

### Follow Up

Return to the office in 2 weeks Electronically signed by Paula L. Belmar, M.D.

B/f

2012-1433

PRIMARY CARE DIVISION  
**SENTINEL**

HEALTH PARTNERS, INC.

2689 HWY 1 SOUTH • ELGIN, SC 29045 • PHONE: 438-7698

Paula L. Belmar, M.D.  
Eva Reynolds, FNP

Jennifer Carter, P.A.C.  
Mia W. Kang, M.D.

Date: 5/17/12  
James Dent has been under  
my care from 5/17/12 to 5/25/12  
and is able to return to school / work on 5/28/12  
Limitations / Remarks:

Form #002

Paula Belmar MD

19

### Subjective

#### COMPLAINT OR ISSUE: WORKER'S COMP

The patient complains of Trauma or injury

5/1/12 worker's comp claim.

LBP that happened at work

The injuries involve the lower back

#### SYMPTOMS/RELATED:

Reports symptoms of pain.

Back pain started 5/1 at work. Picked up a man hole and went to his knees. Usually 90 lbs. Had pain and more pain worse the next morning. Pain goes down right leg. Right foot burns numb thigh area.

Works for Public Service Distic. East Richland County.

Denies symptoms of bruising, weakness, abrasions.

### Objective

VS: BMI: 32.1. BP: 128/80. H: 66 in. P: 88 /min. W: 199lbs 0oz. Wendy Carter LPN

EXAM: GEN: obviously uncomfortable.

MUSCULOSKELETAL: no joint deformity.

SPINE: tenderness lumbar spine, pain reproduced with bending, pain reproduced with twisting, tenderness right sacroiliac region.

NEURO: DTR's: Symmetrical.

GAIT: No gait abnormality.

STRENGTH: Strength symmetrically 5/5.

MUSCLE TONE: No hypotonia. No dystonia.

GENERAL APPEARANCE: Normal.

RESP: Normal.

LUNGS: Percussion- Resonant bilaterally. Auscultation- Breath sounds symmetrically clear.

HEART: Rhythm- Regular. Murmur- Not detected. Rub- Not detected. Click- Not detected. Gallop- Not detected.

ABDOMEN: Soft. Tenderness- None. Mass(s)- None. Bowel Sounds- Present.

EXTREMITIES: Cyanosis- Absent. Clubbing- Absent. Edema- None.

### Assessment

Lumbar radiculopathy ICD#724.4

### Discussion

### Plan

Handouts: back exercises.

OFFICE INJECTIONS/MEDICATIONS: Toradol (ketorolac) INJECTION - KETORLAC 15 MG. #J1885

Dose- 30 mg (= 2 units) Lot#: d112445 Expiration Date: 9/13 Manufacturer: Anatomical Site: IM Right

Buttocks. NDC# 64679-758-06U Nurse: Rikitia Boston, LPN

DepoMedrol 80 mg INJECTION - METHYLPREDNISOLONE 80 MG. #J1040 Dose- 80 mg. Lot#: obxpk Expiration Date: 12/14 Manufacturer: Anatomical Site: NDC# 0781-3132-95 Nurse: Rikitia Boston, LPN

### Orders

ORDER RADIOLOGY: Is spine xray

### Referrals

### Medications

**Medrol Dosepak:** 4 mg (tablet) SIG- take as directed Dispense- #1 Pack(s) Refills- 0 Notes-

**Vicodin ES (APAP/Hydrocodone):** 750 mg-7.5 mg (tablet) SIG- 1 tab(s) every 6 hours orally  
Dispense- #30 Substitutions Allowed Refills- 0 Notes-

**Phenergan (Promethazine):** 25 mg (tablet) SIG- 1 tab(s) every 6 hours as needed orally Dispense-  
#10 Substitutions Allowed Refills- 1 Notes-

**Flexeril (Cyclobenzaprine):** 10 mg (tablet) SIG- 1 tab(s) 3 times a day orally Dispense- #30  
Substitutions Allowed Refills- 1 Notes-

### Visit Level

### Follow Up

Return to the office in 1 week off for one week. Electronically signed by Paula L. Belmar, M.D.

Electronically signed by: Paula L. Belmar, M.D. on 05/10/2012 12:31 PM

Sentinel Health Partners Radiology Report  
2689 Hwy 1 South  
Elgin, South Carolina 29045  
Phone: 803-438-7698

Patient: Dent, James L  
Acct No:   
Birthdate:   
Physician: Paula L. Belmar, M.D.

Service Date: 5/10/12

History: WORKER'S COMP. PULLED MUSCLE LIFTING.

Study: LUMBAR SPINE, THREE VIEWS

Findings: There are at least three or four calcifications overlying the left kidney. There is loss of the normal lordotic curve probably due to muscle spasm. There is advanced disc narrowing consistent with chronic degenerative disc disease changes at L3-4 and moderate degenerative disc disease changes at L4-5 and moderate to advanced degenerative disc disease changes with fairly marked disc narrowing at L5-S1. There are at least moderate degenerative facet joint changes at L2-3 and L3-4, L4-5 and L5-S1. There are atherosclerotic changes of the aorta.

IMPRESSION: LOSS OF NORMAL LORDOTIC CURVE PROBABLY DUE TO MUSCLE SPASM.  
POSSIBLE RENAL STONES ON THE LEFT. CHRONIC DEGENERATIVE DISC AND FACET JOINT  
CHANGES AS DESCRIBED ABOVE AS WELL AS ATHEROSCLEROTIC CHANGES.

Electronically Signed by: Don Copley, M.D.

Camden Radiology Associates

Trans: DJC/tr

Trans date/time: 5/11/2012 12:34

cc:

Notes:

kidney stone left and muscle spasm and deg disc if not better in 2w needs MRI lumbar. . Please f/u with  
your physician for stone.  
5/11/12 Patient notified. rwb  
Electronically signed by: Paula L. Belmar, M.D. on 05/11/2012 1:58 PM

B/F  
2012-1433

PRIMARY CARE DIVISION  
**SENTINEL**  
HEALTH PARTNERS, P.A.

2689 HWY 1 SOUTH • ELGIN, SC 29045 • PHONE: 438-7698

Paula L. Belmar, M.D.

Jennifer Carter, PA-C

Eva Reynolds, FNP

Min W. Kang, M.D.

James Dent Date: 5.10.12  
my care from 5.7.12 to 5.17.12 has been under  
and is able to return to school / work on 5.18.12  
Limitations / Remarks:

Form #002

Paula Belmar MD  
AK

\*\*\*  
**IMAGECARE, LLC**

**710 RABON ROAD  
COLUMBIA, SC 29203  
803-462-3680**

Name: Dent, James L

Patient ID:

DOB:

Acc#:

Patient Phone #: 803-462-3680

Exam Date: 08/28/2012

Exam: MRI L-spine with - wo kontras

Reason: STENOSIS, SPINAL (724.00)

Referrer: Gunter, Brett MD

\*\*\*  
PROCEDURE: MRI lumbar spine without and with intravenous gadolinium contrast-enhancement, initial exam

CLINICAL HISTORY: Back pain and tingling and numbness in legs since lifting injury on 05/01/2012. Past history of lung cancer.

TECHNIQUE: 4 mm sagittal and axial T1 and T2 images and T2 STIR images were obtained. Following the intravenous administration of 17 cc of MultiHance gadolinium contrast, sagittal and axial T1-weighted images were obtained. 3 cc of on used to MultiHance were discarded.

FINDINGS: There are 5 lumbar vertebral segments with normal anatomic alignment of the lumbosacral and distal 2 thoracic spine segments without fracture deformity, bone destruction, or evidence of underlying inflammatory or neoplastic disease. Moderate acquired central stenosis at the L3-4 and L4-5 disc levels are noted due to moderate diffuse degenerative disc bulges and mild productive degenerative facet and ligamentous changes superimposed upon a somewhat congenitally narrow canal with short lumbar pedicles. There is marked degenerative narrowing of both L3-4 and L4-5 discs with reactive marrow edema of the superior endplate of L4 adjacent to the degenerative L3-4 disc. Small Schmorl's nodes of the vertebral endplates adjacent to the degenerative L4-5 disc are noted. There is no evidence of disc herniation, spondylolisthesis, or significant foraminal stenosis at the L3-4 or L4-5 levels. Moderate degenerative disc narrowing of the L5-S1 disc is noted with a moderate diffuse symmetric circumferential bulge of the disc margin with mild productive degenerative L5-S1 facet changes without disc herniation, spondylolisthesis, or significant central or foraminal stenosis at the L5-S1 level. The L2-3 disc shows mild degenerative changes of disc desiccation with slight disc narrowing with a mild bulge of the disc with a moderate asymmetric far right lateral and foraminal disc bulge which may compress the exiting right L2 nerve root, best visualized on axial T1 images 24 and 25, on axial T2 images 15 and 16, and on sagittal images 12, 13, and 14. There is also a mild degree of central stenosis at the L2-3 level due to the mild diffuse disc bulge and mild degenerative facet and ligamentous changes superimposed upon the congenitally narrowed canal. The L1-2, T12-L1, and T11-12 discs and adjacent vertebral segments are normal. No intradural, retroperitoneal or surrounding paraspinal soft tissue abnormalities are noted. No abnormal intradural nerve root enhancement is noted on the gadolinium enhanced images. Focal enhancement of the posterior margins of the L3-4 and L4-5 discs are noted consistent with small amounts of enhancing scar tissue within annular tears.

IMPRESSION: (1) A congenitally narrow lumbar canal is noted with moderate central stenosis at the L3-4 and L4-5 disc levels due to degenerative bulging discs and mild productive degenerative facet and ligamentous changes.

(2) Mild L2-3 Central stenosis is noted with moderate right L2-3 foraminal stenosis due to an asymmetric broad-based far right lateral and foraminal disc bulge.

(3) A moderate symmetric circumferential degenerative disc bulge and mild productive facet changes at the L5-S1 level are noted without disc herniation or significant appearing spinal stenosis.

(4) The remainder of the exam is unremarkable.

Martin P. Dommers, M.D.  
Electronic Signature

P.146

**CAMDEN OPEN MRI**1202-A Mill Street  
Camden, SC 29020

Phone: 1-803-432-0470

Fax: 1-803-432-0570

Patient: James Dent  
Account #:  
Physician: Dr. Belmar

History: low back pain

**LUMBAR SPINE MRI 6-25-12**

MRI was performed on .3 Tesla Open Permanent Magnet HiatachI System: Scanogram, T2 sagittal, T1 sagittal, proton density sagittal and T2 axial sequences were obtained.

Multiple sequences reveal considerable motion artifact. There is abnormal signal with edema in the L3 and L4 vertebral bodies. There is a Schmorl's node in the superior end plate of L5 and L3 as well as L2 and minimal Schmorl's node in the superior end plate of L1 and inferior end plate of T10. There are moderately large disc protrusions (HNP's) on the left at L3-4, L4-5 and L5-S1 and small to moderate disc protrusions on the right at L4-5 and L5-S1. There is a small disc protrusion on the right at L2-3 and L3-4. There is marked disc narrowing at L3-4 and L4-5 and moderate disc narrowing at L5-S1. There are degenerative facet joint changes particularly at L3-4 and L4-5 with lateral recess stenosis at both levels. No central stenosis is seen.

**IMPRESSION: LARGE DISC PROTRUSIONS AS DESCRIBED ABOVE. EDEMA IN THE L3 AND L4 VERTEBRAL BODIES. NO COMPRESSION IS SEEN HOWEVER. THE FINDINGS ARE PROBABLY POST TRAUMATIC GIVEN THE TWO CONTIGUOUS VERTEBRAL BODIES HOWEVER THE POSSIBILITY OF NEOPLASM CANNOT BE TOTALLY EXCLUDED. LATERAL RECESS STENOSIS AT L3-4 AND L4-5.**

Donald J. Copley, MD  
Camden Radiology Associates

DJC/js

Date Signed: 6-27-12  
Date Transcribed: 6-27-12

Sentinel Health Partners Radiology Report  
2689 Hwy 1 South  
Elgin, South Carolina 29045  
Phone: 803-438-7698

Patient: Dent, James L  
Acct No:  
Birthdate:  
Physician: Paula L. Belmar, M.D.

Service Date: 5/10/12

History: WORKER'S COMP. PULLED MUSCLE LIFTING.

Study: LUMBAR SPINE, THREE VIEWS

Findings: There are at least three or four calcifications overlying the left kidney. There is loss of the normal lordotic curve probably due to muscle spasm. There is advanced disc narrowing consistent with chronic degenerative disc disease changes at L3-4 and moderate degenerative disc disease changes at L4-5 and moderate to advanced degenerative disc disease changes with fairly marked disc narrowing at L5-S1. There are at least moderate degenerative facet joint changes at L2-3 and L3-4, L4-5 and L5-S1. There are atherosclerotic changes of the aorta.

IMPRESSION: LOSS OF NORMAL LORDOTIC CURVE PROBABLY DUE TO MUSCLE SPASM.  
POSSIBLE RENAL STONES ON THE LEFT. CHRONIC DEGENERATIVE DISC AND FACET JOINT  
CHANGES AS DESCRIBED ABOVE AS WELL AS ATHEROSCLEROTIC CHANGES.

Electronically Signed by: Don Copley, M.D.

Camden Radiology Associates

Trans: DJC/tr

Trans date/time: 5/11/2012 12:34

cc:

Notes:

kidney stone left and muscle spasm and deg disc if not better in 2w needs MRI lumbar. . Please f/u with  
your physician for stone.  
5/11/12 Patient notified. rwb  
Electronically signed by: Paula L. Belmar, M.D. on 05/11/2012 1:58 PM

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing Pre-Hearing Brief, Notice of Witnesses and Written Medical Reports, and a copy of the medical reports in the case of James Dent v East Richland County Public Library, WCC File No.: 1205879 has been served upon Matthew Robertson, Esquire on this 15<sup>th</sup> day of January, 2014, in the US Postal Service, by first-class postage, addressed to:

Matthew Robertson, Esquire  
1315 Elmwood Avenue  
Columbia, SC 29201



Marla I. Rehborn  
Legal Assistant  
State Accident Fund  
P.O. Box 102100  
Columbia, SC 29221-5000

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
COLUMBIA, SOUTH CAROLINA  
WCC FILE NO. 1205879

EMPLOYEE/CLAIMANT: JAMES L. DENT

EMPLOYER: EAST RICHLAND COUNTY PUBLIC SERVICE

INSURER: STATE ACCIDENT FUND

CCPY

---

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

---

PURSUANT TO NOTICE OF WORKERS' COMPENSATION  
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 7TH DAY OF  
FEBRUARY, 2014, COMMENCING AT THE HOUR OF 10:30 A.M., IN  
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN BARDEN,  
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH  
VERBATIM REPORTER

---

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

APPEARANCES

MATTHEW C. ROBERTSON, ESQUIRE, OF THE FIRM  
McDANIEL LAW FIRM  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEYS FOR THE EMPLOYEE/CLAIMANT,

PAGE P. SNYDER, ESQUIRE, OF THE FIRM  
STATE ACCIDENT FUND  
POST OFFICE BOX 102100  
COLUMBIA, SOUTH CAROLINA 29221-5000

ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: JOSEPH DENT  
JULIE DENT

I N D E X

|                                            | <u>PAGE</u> |
|--------------------------------------------|-------------|
| <u>JAMES L. DENT:</u>                      |             |
| DIRECT EXAMINATION BY MR. ROBERTSON.....   | 11          |
| CROSS EXAMINATION BY MS. SNYDER.....       | 44          |
| RE-DIRECT EXAMINATION BY MR. ROBERTSON.... | 50          |
| CERTIFICATE OF NOTARY PUBLIC.....          | 52          |

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 COLUMBIA,  
4           SOUTH CAROLINA.

5           \* \* \* \* \*

6           BY COMMISSIONER BARDEN:

7           TODAY'S DATE IS FEBRUARY 7TH, 2014. THIS IS  
8           SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE  
9           NUMBER 1205879. THIS IS THE CASE OF THE CLAIMANT  
10          MR. JAMES DENT WHO IS PRESENT TODAY AND REPRESENTED  
11          BY ATTORNEY MATT ROBERTSON VERSUS THE EMPLOYER EAST  
12          RICHLAND PUBLIC SERVICE AND ITS CARRIER THE STATE  
13          ACCIDENT FUND, BOTH OF WHICH ARE REPRESENTED BY  
14          ATTORNEY PAGE SNYDER. THE PURPOSE OF TODAY'S  
15          HEARING IS TO DETERMINE ISSUES RAISED IN FORMS 50,  
16          51 AND 21. THE PARTIES AGREE AND STIPULATE THAT MR.  
17          DENT'S AVERAGE WEEKLY WAGE IS \$910.09 YIELDING A  
18          COMPENSATION RATE OF \$610.75. THE DATE OF THIS  
19          ADMITTED ACCIDENT WAS MAY 1ST, 2012.

20          ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,  
21          VENUE, OR ANY OTHER ITEMS?

22          BY MR. ROBERTSON:

23          NONE FROM THE CLAIMANT, YOUR HONOR.

24          BY MS. SNYDER:

25          NO.

BY COMMISSIONER BARDEN:

THANK YOU BOTH. WITHOUT OBJECTION, THE COMMISSION FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION OF SELF-SERVING DECLARATIONS AND UNSTIPULATED MEDICAL REPORTS.

PRIOR TO GOING ON THE RECORD, WE HELD A PREHEARING CONFERENCE. IT'S THE POSITION OF THE CLAIMANT THAT HE IS PERMANENTLY AND TOTALLY DISABLED WHETHER PURSUANT TO SECTION 42-9-10 BECAUSE OF THE COMBINATION OF HIS BACK AND HIS LEG INJURIES. HIS LEGS ARE AFFECTED BY HIS BACK AND OTHER FACTORS OR ALTERNATIVELY 42-9-30 IN THAT HE HAS SUSTAINED A 50 PERCENT OR GREATER LOSS OF USE OF HIS SPINE, AND HE BELIEVES THAT THE DEFENDANTS CANNOT SUCCESSFULLY REBUT THE PRESUMPTION THAT HE IS PERMANENTLY AND TOTALLY DISABLED. IN ANY EVENT, AT A MINIMUM, HE BELIEVES THAT HIS AWARD SHOULD BE BASED UPON 500 WEEKS EVEN IF HE IS NOT FOUND TO BE PERMANENTLY AND TOTALLY DISABLED. IT IS HIS OPINION THAT WHEN CONSIDERING HIS VOCATIONAL REPORT CONTAINING HIS VOCATIONAL EXPERT'S OPINION AS WELL AS THE IMPAIRMENT RATING FROM HIS I.M.E., DR. FORREST, OF 21 PERCENT. HOWEVER, DR. FORREST DOES OPINE THAT THE CLAIMANT HAS ACTUALLY SUSTAINED A GREATER THAN 50 PERCENT LOSS OF USE OF HIS BACK, AND THE CLAIMANT

1 BELIEVES THAT ANY IMPAIRMENT RATING IS A MERE  
2 STARTING POINT IN DETERMINING PERMANENT DISABILITY  
3 AND IS IN NO WAY A REFLECTIVE OR ACCURATE INDICATOR  
4 OF THE CLAIMANT'S RESIDUAL CONDITION. BUT WHEN  
5 TAKING THE VOCATIONAL REPORT, THE STATEMENT OF DR.  
6 FORREST, THE IMPAIRMENT RATING, THE FACT THAT THE  
7 CLAIMANT IS LIMITED TO BY A PHYSICAL THERAPIST WHO  
8 LIMITED LIGHT AT A MAXIMUM, THE CLAIMANT BELIEVES  
9 THAT HE IS INDEED ENTITLED TO A FINDING UNDER EITHER  
10 STATUTORY THEORY, AND OF COURSE UNDER EITHER THEORY  
11 ENTITLED TO RECEIVE LIFETIME CAUSALLY-RELATED  
12 MEDICALS. HE WOULD POINT TO MY ATTENTION THE FACT  
13 THAT HE IS A 27-YEAR EMPLOYEE, AND HE DOES SEEK HIS  
14 AWARD IN A LUMP SUM WITH ALLOCATION LANGUAGE, JAMES  
15 V. ANNE LANGUAGE IN THE ORDER. BUT IT IS HIS  
16 CONTENTION THAT IMPAIRMENT RATINGS ARE JUST EXACTLY  
17 THAT. THEY ARE NOT ACCURATE OR RELIABLE INDICATORS  
18 OF A CLAIMANT'S RESIDUAL CONDITION, AND THE CLAIMANT  
19 CONTENDS THAT THE EVIDENCE POINTS TO A FINDING AND  
20 IS CONVINCING EVIDENCE THAT HE IS PERMANENTLY AND  
21 TOTALLY DISABLED. BECAUSE OF HIS RESTRICTIONS, HE  
22 IS UNABLE TO RETURN TO HIS PRE-ACCIDENT JOB, AND OF  
23 COURSE, HIS RESTRICTIONS ARE VERY SIGNIFICANT.

24 CONVERSELY, IT IS THE POSITION OF THE  
25 DEFENDANTS THAT THIS IS A BACK INJURY ONLY. THE

1 DEFENDANTS BELIEVE THAT THERE IS NO PERMANENT -- NO  
2 DISABILITY BEYOND THE IMPAIRMENT RATING OF THE  
3 AUTHORIZED PHYSICIAN DR. GUNTER, AND IF THERE IS ANY  
4 DISABILITY BEYOND THE IMPAIRMENT RATING, IT WOULD BE  
5 STRICTLY DE MINIMUS. EVEN IF I CONSIDER THE  
6 IMPAIRMENT RATING OF THE CLAIMANT'S I.M.E., THE  
7 DEFENDANTS BELIEVE THAT THERE IS NO PERMANENT  
8 PARTIAL DISABILITY BEYOND THAT IMPAIRMENT RATING AT  
9 A MAXIMUM. BUT THE DEFENDANTS WOULD POINT TO MY  
10 ATTENTION THE RATING OF THE AUTHORIZED PROVIDER, AND  
11 THE DEFENDANTS BELIEVE THAT THE AUTHORIZED  
12 PROVIDER'S IMPAIRMENT RATING SHOULD BE ACCORDED  
13 GREATER WEIGHT. THE DEFENDANTS BELIEVE THAT THERE  
14 IS IN FACT WORK THAT THE CLAIMANT CAN PERFORM WITHIN  
15 THE RESTRICTIONS AS ISSUED BY THE AUTHORIZED  
16 PROVIDER, WHICH WOULD BE MEDIUM WORK. THE  
17 DEFENDANTS DO ACKNOWLEDGE AND CONCEDE THAT THE  
18 CLAIMANT HAS HAD LUNG CANCER AND HAS BEEN TREATED  
19 FOR THAT, AND THE DEFENDANTS BELIEVE THAT THAT IS A  
20 DISABLING FACTOR, WHICH ECLIPSES THIS BACK INJURY  
21 FOR WHICH WE ARE PRESENT TODAY. THE DEFENDANTS  
22 BELIEVE THAT THERE IS WORK THAT THE CLAIMANT CAN  
23 PERFORM, WORK BASED STRICTLY ON HIS BACK INJURY  
24 ALONE, AND THAT'S WHAT SHOULD BE THE FOCUS OF THE  
25 INQUIRY. THE DEFENDANTS OBJECT TO THE AWARD BEING

1           MADE IN A LUMP SUM WITH THE ALLOCATION LANGUAGE.  
2           THE DEFENDANTS WOULD CONCLUDE THAT THE CLAIMANT IS  
3           NOT PERMANENTLY AND TOTALLY DISABLED AND IS ONLY  
4           ENTITLED TO AN AWARD PURSUANT TO SECTION 42-9-30,  
5           ITEM 21. BOTH PARTIES AGREE THAT THE CLAIMANT HAS  
6           REACHED MAXIMUM MEDICAL IMPROVEMENT.

7           IS THERE ANYTHING THAT I MAY HAVE MISSTATED OR  
8           MISCHARACTERIZED AS FAR AS YOUR RESPECTIVE  
9           POSITIONS, AND IF THERE IS, I CERTAINLY WILL STAND  
10          TO BE CORRECTED AND HEAR FROM YOU UNLESS YOU'RE  
11          SATISFIED WITH THAT SUMMARY, SIR.

12       BY MR. ROBERTSON:

13               YOUR HONOR, JUST ONE MINOR ITEM.

14       BY COMMISSIONER BARDEN:

15               YES, SIR.

16       BY MR. ROBERTSON:

17               IN ADDITION, IF YOU DO NOT FIND THE CLAIMANT  
18               PERMANENTLY AND TOTALLY DISABLED, WE WOULD STILL ASK  
19               FOR FUTURE MEDICALS TO BE AWARDED UNDER DODGE TO THE  
20               EXTENT THAT BOTH DR. GUNTER AND DR. FORREST HAVE  
21               OPINED THAT THE CLAIMANT WILL NEED FUTURE  
22               MEDICATIONS, AND I BELIEVE DR. FORREST I BELIEVE  
23               INDICATES PERHAPS FUTURE SCANNING AS WELL AS CHRONIC  
24               PAIN MANAGEMENT. THANK YOU.

25       BY COMMISSIONER BARDEN:

1                   THANK YOU FOR THAT ADDITION. I APPRECIATE  
2                   THAT. MS. SNYDER.

3                   BY MS. SNYDER:

4                   I WOULD ONLY LIKE TO ADD ---

5                   BY COMMISSIONER BARDEN:

6                   YES, GO AHEAD.

7                   BY MS. SNYDER:

8                   --- THAT WE ARE SEEKING CREDIT FOR PAYMENTS  
9                   BACK TO THE DATE OF M.M.I.

10                  BY COMMISSIONER BARDEN:

11                  OKAY. THANK YOU SO MUCH. AND THAT WOULD BE  
12                  MAY 8TH, 2013?

13                  BY MS. SNYDER:

14                  YES.

15                  BY COMMISSIONER BARDEN:

16                  ALL RIGHT, I GOT IT. I APPRECIATE BOTH OF  
17                  Y'ALL.

18                  BY MR. ROBERTSON:

19                  MAY I BRIEFLY RESPOND?

20                  BY COMMISSIONER BARDEN:

21                  YES.

22                  BY MR. ROBERTSON:

23                  YOUR HONOR, ---

24                  BY COMMISSIONER BARDEN:

25                  OBVIOUSLY IF HE IS PERMANENTLY AND TOTALLY

1 DISABLED, THAT ISSUE IS MOOT.

2 BY MR. ROBERTSON:

3 IT IS MOOT, YES, YOUR HONOR.

4 BY COMMISSIONER BARDEN:

5 BUT YOU GO AHEAD AND TELL ME.

6 BY MR. ROBERTSON:

7 IF YOU DO NOT FIND THAT THE CLAIMANT IS  
8 PERMANENTLY AND TOTALLY DISABLED, WE AGREE THAT SOME  
9 CREDIT IS AVAILABLE TO THE DEFENDANTS, BUT I WOULD  
10 ASK THAT YOU LIMIT IT TO THE DATE THE FORM 21 WAS  
11 FILED.

12 BY MS. SNYDER:

13 AND THAT WAS OCTOBER 7TH, 2013.

14 BY MR. ROBERTSON:

15 YES, I AGREE.

16 BY COMMISSIONER BARDEN:

17 ALL RIGHT. AND OUR FIRST AND ONLY WITNESS IS  
18 MR. DENT. SO, MR. DENT, IF YOU WILL RAISE YOUR  
19 RIGHT HAND, PLEASE. AND IF YOU WILL REMOVE YOUR  
20 CAP, PLEASE, SIR. CAN YOU REMOVE YOUR CAP?

21 BY THE WITNESS:

22 (THE WITNESS COMPLIES)

23 BY COMMISSIONER BARDEN:

24 THANK YOU.

25 \* \* \* \* \*

1 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE  
2 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE  
3 MATTER HEREIN:

4 JAMES L. DENT

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

6 BY COMMISSIONER BARDEN:

7 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 BY THE WITNESS:

9 JAMES L. DENT.

10 BY COMMISSIONER BARDEN:

11 THANK YOU SO MUCH. PLEASE ANSWER ANY QUESTIONS  
12 MR. ROBERTSON HAS.

13 BY MR. ROBERTSON:

14 THANK YOU, YOUR HONOR. MAY IT PLEASE THE  
15 COMMISSION.

16 DIRECT EXAMINATION BY MR. ROBERTSON:

17 Q. MR. DENT, BEFORE WE BEGIN, HAVE YOU BEEN DIAGNOSED  
18 WITH SMALL CELL LUNG CANCER. IS YOUR CANCER  
19 CURRENTLY IN REMISSION?

20 A. YES.

21 Q. OKAY. BUT DUE TO THE CHEMICAL THERAPY THAT YOU HAVE  
22 GOTTEN, DO YOU HAVE SOME PROBLEMS WITH REMEMBERING  
23 THINGS?

24 A. OH, YEAH.

25 Q. OKAY. ARE YOU GOING TO DO THE BEST YOU CAN TODAY TO

ANSWER MY QUESTIONS AND ANSWER COUNSEL'S QUESTIONS -

--

A. YEAH, I SURE WILL.

Q. --- TO THE BEST OF YOUR MEMORY?

A. MM-HMM.

BY COMMISSIONER BARDEN:

IS THAT A YES?

BY THE WITNESS:

YES.

BY COMMISSIONER BARDEN:

OKAY.

DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

Q. AND WHEN WAS YOUR LAST SESSION OF CHEMOTHERAPY, WHAT MONTH?

A. ABOUT A MONTH.

Q. WAS IT IN DECEMBER?

BY THE WITNESS:

WAS IT DECEMBER?

BY COMMISSIONER BARDEN:

SHE CAN'T HELP YOU.

BY MR. ROBERTSON:

SHE CAN'T HELP YOU.

BY COMMISSIONER BARDEN:

JUST DO THE BEST YOU CAN.

BY THE WITNESS:

OH, OKAY. I WOULD SAY AROUND DECEMBER, SIR.

DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

Q. OKAY. MAYBE A MONTH OR TWO AGO?

A. YES.

Q. ALL RIGHT. HOW OLD ARE YOU TODAY, SIR?

A.

Q. OKAY. WHAT'S YOUR DATE OF BIRTH?

A.

Q. ALL RIGHT. ARE YOU MARRIED?

A. YES.

Q. WHAT'S YOUR WIFE'S NAME?

A. DENT.

Q. OKAY. DO YOU HAVE ANY CHILDREN?

A.

Q. ALL RIGHT. WHAT'S THE NAME OF YOUR OLDEST BOY?

A.

Q.

A. DENT, JUNIOR.

Q. OKAY. AND YOUR MIDDLE CHILD?

A. DENT.

Q. AND YOUR YOUNGEST?

A. HUH?

Q. YOUR YOUNGEST CHILD, WHAT'S HIS NAME?

A. OH,

Q. WHAT IS YOUR CURRENT ADDRESS, SIR?

1 A.  
2 Q. AND WHAT CITY IS THAT IN?

3 A.

4 Q. AND THAT WAS

5 A. YEAH,

6 Q. OKAY.

7 BY COMMISSIONER BARDEN:

8 THANK YOU, SIR.

9 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

10 Q. HOW LONG HAVE YOU LIVED AT THAT ADDRESS, MR. DENT?

11 A. TWENTY-THREE YEARS.

12 Q. OKAY. HAVE YOU GRADUATED FROM HIGH SCHOOL?

13 A. YES, SIR.

14 Q. OKAY. DO YOU REMEMBER WHAT YOUR GRADES WERE LIKE IN  
15 HIGH SCHOOL?

16 A. THEY WASN'T TOO SPIFFY.

17 Q. OKAY. DID YOU KNOW THAT YOUR HIGH SCHOOL RECORDS  
18 SHOWED A "D" AVERAGE?

- 19 A. OH, YEAH, PROBABLY SO.

20 Q. ALL RIGHT. NOW, I'M GOING TO ASK YOU A LITTLE BIT  
21 ABOUT YOUR EMPLOYMENT HISTORY IF THAT'S OKAY.

22 A. MM-HMM.

23 Q. DO YOU REMEMBER WORKING FOR A COMPANY CALLED J.B.  
24 WHITES?

25 A. YES, SIR.

1 Q. DO YOU REMEMBER WHAT YOU DID FOR THAT COMPANY?

2 A. I DELIVERED FURNITURE.

3 Q. OKAY. THAT JOB, WAS THAT BASICALLY WHAT YOU WOULD  
4 CALL HEAVY LABOR?

5 A. YEAH.

6 Q. WERE YOU DOING A LOT OF LIFTING?

7 A. MM-HMM.

8 BY COMMISSIONER BARDEN:

9 IS THAT A YES?

10 BY THE WITNESS:

11 YES.

12 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

13 Q. REMEMBER WE TALKED ABOUT PLEASE SAY "YES" OR "NO,"  
14 OKAY?

15 A. OKAY.

16 Q. ALL RIGHT, SIR.

17 BY COMMISSIONER BARDEN:

18 WE MIGHT DISAGREE DOWN THE ROAD WHAT "MM-HMM"  
19 - MEANS WHEN SHE TRIES TO TYPE THAT DOWN. IT'S KIND  
20 OF HARD TO TYPE.

21 BY MR. ROBERTSON:

22 YES, EXACTLY.

23 BY COMMISSIONER BARDEN:

24 THAT'S WHY. WE'RE NOT PICKING ON YOU.

25 BY THE WITNESS:

1 OKAY.

2 BY MR. ROBERTSON:

3 COMMISSIONER, I'LL TRY TO REMEMBER TO PROMPT  
4 HIM.

5 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

6 Q. OKAY. AND YOU DID A LOT OF UNLOADING AND LOADING  
7 TRUCKS AND SUCH?

8 A. YES.

9 Q. ALL RIGHT. YOUR NEXT JOB, WAS THAT BLYCO GLASS  
10 COMPANY?

11 A. THAT WAS ONE OF MY FIRST JOBS.

12 Q. OKAY. AND WHAT DID YOU DO AT BLYCO GLASS COMPANY IF  
13 YOU REMEMBER?

14 A. INSTALLED GLASS.

15 Q. DID YOU MOVE THINGS -- YOU MOVED IT?

16 A. NO, WE INSTALLED IT IN THE FRAMES AND SUCH.

17 Q. OKAY.

18 BY COMMISSIONER BARDEN:

19 OH, INSTALLED IT?

20 BY THE WITNESS:

21 MM-HMM.

22 BY COMMISSIONER BARDEN:

23 IS THAT A YES?

24 BY THE WITNESS:

25 YES.

1 BY COMMISSIONER BARDEN:

2 OKAY.

3 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

4 Q. DID YOU STACK BIG WINDOWS?

5 A. YES.

6 Q. ALL RIGHT. WERE THEY HEAVY?

7 A. OH, YEAH.

8 Q. WOULD YOU SAY THEY WEIGHED OVER 100 POUNDS?

9 A. OH, YEAH, PRETTY -- YEAH.

10 Q. AND YOU HAD TO LIFT THOSE?

11 A. YES. CERTAIN ONES WEIGH 100 POUNDS, AND -- YOU  
12 KNOW...

13 Q. SURE, I UNDERSTAND. ALL RIGHT. DID YOU WORK FOR A  
14 COMPANY CALLED WOMETCO VENDING?

15 A. YEAH.

16 Q. ALL RIGHT. WHAT WAS YOUR JOB AT WOMETCO VENDING;  
17 WHAT DID YOU DO, SIR?

18 A. WE INSTALLED VENDING MACHINES.

19 Q. OKAY. DID YOU HAVE TO MOVE THE VENDING MACHINES TO  
20 GET THEM IN THE RIGHT POSITION?

21 A. YES, SIR.

22 Q. AND THOSE VENDING MACHINES, WERE THEY VERY HEAVY?

23 A. YES, SIR.

24 Q. DID YOU HAVE TO DO SOME LIFTING IN THAT JOB?

25 A. WELL, MOSTLY OUR HAND TRUCKS AND STUFF LIKE

1           THAT DONE IT.

2           Q.   A LOT OF PUSHING AND PULLING?

3           A.   YEAH, PUSHING AND PULLING.

4           Q.   OKAY.  AND WHAT WAS ENTAILED WITH INSTALLING, JUST  
5                PUSHING AND PULLING THEM INTO PLACE AND PLUGGING  
6                THEM IN?

7           A.   MM-HMM.

8           BY COMMISSIONER BARDEN:

9                IS THAT A YES?

10          BY THE WITNESS:

11                PUTTING THEM IN PLACE.

12          BY COMMISSIONER BARDEN:

13                IS THAT A YES?

14          BY THE WITNESS:

15                YES.

16          BY COMMISSIONER BARDEN:

17                OKAY.

18          DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

19-        Q.   OKAY.  NOW, YOUR NEXT JOB WOULD HAVE BEEN EAST  
20                RICHLAND PUBLIC SERVICE DISTRICT; IS THAT RIGHT?

21           A.   YES.

22        Q.   AND DID YOU BEGIN WORKING THERE IN 1985; DOES THAT  
23                SOUND RIGHT?

24           A.   YEAH, '85.

25        Q.   ALL RIGHT.  AND SO YOU WORKED THERE FOR 27 YEARS?

- 1 A. RIGHT.
- 2 Q. ALL RIGHT. DID YOU WORK THERE UP UNTIL THE TIME YOU
- 3 WERE INJURED IN 2012?
- 4 A. YES.
- 5 Q. OKAY. WHEN YOU WERE HIRED AT EAST RICHLAND, WHAT
- 6 WERE YOUR JOB DUTIES; WHAT WERE YOU HIRED TO DO?
- 7 A. MAINLY WE -- YOU KNOW, MAINTAIN SEWER LINES.
- 8 Q. OKAY. DID ---
- 9 BY COMMISSIONER BARDEN:
- 10 AND, SIR, I'M GOING TO ASK YOU SOMETHING. IF
- 11 YOU WILL MOVE YOUR HAND FROM YOUR MOUTH, THAT WILL
- 12 HELP US HEAR YOU A LITTLE BETTER.
- 13 BY THE WITNESS:
- 14 OH, OKAY.
- 15 BY COMMISSIONER BARDEN:
- 16 THERE YOU GO. THANK YOU.
- 17 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:
- 18 Q. THANK YOU, SIR. ALL RIGHT. NOW, WAS THAT A GENERAL
- 19 LABORER JOB?
- 20 A. YES, SIR, WHEN I FIRST STARTED, YES.
- 21 Q. OKAY, ALL RIGHT. NOW, WHEN YOU GOT ON THE SEWER
- 22 CREW, DID YOU DIG UP SEWER LINES?
- 23 A. YES.
- 24 Q. ALL RIGHT. DID YOU LAY PIPE?
- 25 A. YES.

1 Q. DID YOU UNSTOP SEWER LINES?

2 A. YES.

3 Q. OKAY. NOW, WHAT DID YOU HAVE TO DO TO DIG UP SEWER  
4 LINES; DID YOU ACTUALLY HAVE TO DIG UP DITCHES AND  
5 SUCH?

6 A. YES.

7 Q. OKAY. DID THAT ENTAIL A LOT OF STOOPING AND  
8 BENDING?

9 A. MAINLY, YEAH, A LOT OF IT.

10 Q. OKAY. DID YOU HAVE TO STAND ON YOUR FEET THE WHOLE  
11 TIME TO DIG THOSE DITCHES?

12 A. MM-HMM.

13 BY COMMISSIONER BARDEN:

14 IS THAT A YES?

15 BY THE WITNESS:

16 YES.

17 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

18 Q. AND IS THAT SOMETHING YOU THINK YOU COULD DO AT THIS  
19 TIME, DIG THOSE DITCHES AND DIG UP THE SEWER LINES?

20 A. OH, NO.

21 Q. OKAY. DO YOU THINK YOUR BACK CONDITION AT THIS  
22 POINT WOULD PREVENT YOU FROM DOING THAT?

23 A. YES, SIR.

24 Q. ALL RIGHT. NOW, DID YOU LAY PIPE? I BELIEVE I  
25 ALREADY ASKED YOU THAT, BUT YOU DID LAY PIPE,

1 CORRECT?

2 A. RIGHT.

3 Q. AND WAS THAT DONE AFTER THE DITCH WAS ALREADY DUG?

4 A. YES. WELL, WE HAD TO DIG THE DITCH AND, YOU KNOW,  
5 LAY THE PIPE.

6 Q. AND LAY THE PIPE. DID YOU HAVE TO CARRY THE PIPE  
7 FROM A TRUCK TO THE DITCH?

8 A. YES.

9 Q. OKAY. HOW MUCH DID THE PIPE WEIGH?

10 A. PROBABLY 40, 50 POUNDS.

11 Q. DO YOU THINK YOU COULD LIFT AND CARRY THAT PIPE NOW?

12 A. NO, SIR.

13 Q. OKAY. IS THAT BECAUSE OF YOUR BACK CONDITION?

14 A. RIGHT.

15 Q. ALL RIGHT. NOW, WHAT DO YOU HAVE TO DO TO UNSTOP A  
16 SEWER LINE?

17 A. WELL, WE GOT LITTLE JET MACHINES THAT GO UP IN THE  
18 LINE AND DO IT. AND IF WE CAN'T GET IT LIKE THAT,  
19 WE, YOU KNOW, DIG IT UP.

20 BY COMMISSIONER BARDEN:

21 WITH A SHOVEL, A HAND SHOVEL?

22 BY THE WITNESS:

23 WELL, SOMETIMES, YES. MOST TIMES A SHOVEL.

24 BY COMMISSIONER BARDEN:

25 OKAY.

1 BY THE WITNESS:

2 ACCORDING TO HOW, YOU KNOW, YOU CAN GET TO IT  
3 OR NOT, YOU KNOW.

4 BY COMMISSIONER BARDEN:

5 OKAY. SO SOMETIMES YOU HAD TO USE A HAND  
6 SHOVEL?

7 BY THE WITNESS:

8 MM-HMM.

9 BY COMMISSIONER BARDEN:

10 IS THAT A YES?

11 BY THE WITNESS:

12 YES.

13 BY COMMISSIONER BARDEN:

14 THANK YOU.

15 BY THE WITNESS:

16 I'VE GOT TO REMEMBER THAT.

17 BY COMMISSIONER BARDEN:

18 THAT'S FINE.

19 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

20 Q. I'VE GOT TO REMIND YOU, PLEASE SAY "YES" OR "NO,"  
21 OKAY, MR. DENT?

22 A. YES, SIR.

23 Q. OKAY. NOW, WHEN YOU DIDN'T HAVE TO USE THE SHOVEL,  
24 WAS THERE A TUBE YOU COULD PUT IN THE SEWER LINE  
25 THAT MIGHT UNSTOP IT, SOMETHING YOU PUSHED IN THERE?

1 A. YES, SIR.

2 Q. OKAY. AND DID THAT ENTAIL A LOT OF PUSHING AND

3 PULLING?

4 A. YEAH, IF YOU COULDN'T GET IT LIKE THAT, YOU KNOW,

5 YOU HAD TO DIG IT UP.

6 Q. OKAY, YEAH. DO YOU THINK YOU COULD DO THAT DIGGING

7 AND THAT PUSHING AND PULLING NOW?

8 A. NO, SIR.

9 Q. IS THAT BECAUSE OF YOUR BACK CONDITION?

10 A. RIGHT.

11 Q. ALL RIGHT. AND IN YOUR JOB, DID YOU HAVE TO LIFT

12 MANHOLES IN THE STREET?

13 A. YES, SIR.

14 Q. MANHOLE COVERS I SHOULD SAY.

15 A. MM-HMM.

16 Q. YES?

17 A. YES.

18 Q. OKAY. NOW, AND ONCE YOU LIFTED A MANHOLE COVER AND

19 REMOVED IT, DID YOU HAVE TO CLIMB UP AND DOWN A

20 SERIES OF STEPS OR RUNGS TO GET IN AND OUT OF THE

21 SEWER?

22 A. YEAH, WE HAD TO GET OUT OF THE DITCH. WE PUT A

23 LADDER DOWN IN THE HOLE TO GET OUT OF IT.

24 Q. OKAY. DO YOU THINK YOU COULD DO THAT CLIMBING NOW?

25 A. NO.

- 1 Q. HOW ABOUT LIFTING OR MOVING THE MANHOLE COVERS?
- 2 A. I KNOW I CAN'T DO THAT.
- 3 Q. AND THE REASON YOU CAN'T DO THOSE THINGS, DO YOU
- 4 FEEL LIKE THAT'S BECAUSE OF YOUR BACK CONDITION?
- 5 A. YES, SIR.
- 6 Q. OKAY. ALL RIGHT. NOW, WERE YOU EVENTUALLY PROMOTED
- 7 TO FOREMAN ON THE JOB?
- 8 A. YES, SIR.
- 9 Q. OKAY. LET ME ASK YOU THIS: AFTER YOU WERE PROMOTED
- 10 TO FOREMAN, DID YOU STILL HAVE TO DO THESE HEAVY-
- 11 LABOR TASKS?
- 12 A. YES.
- 13 Q. OKAY. WAS THAT CONSIDERED A WORKING SUPERVISOR
- 14 POSITION?
- 15 A. RIGHT.
- 16 Q. AND DID YOU HAVE TO FILL IN FOR CREW MEMBERS THAT
- 17 CALLED IN SICK OR DIDN'T SHOW UP?
- 18 A. YES, SIR.
- 19 Q. OKAY, ALL RIGHT. NOW, I WANT TO TAKE YOU TO MAY 1ST
- 20 OF 2012, AND THIS IS AN ADMITTED ACCIDENT, SO WE
- 21 WON'T GO INTO IT A WHOLE GREAT DEAL AND WASTE THE
- 22 COMMISSIONER'S TIME, BUT I WOULD LIKE YOU IF YOU
- 23 COULD TELL THE COMMISSIONER WHAT HAPPENED ON MAY THE
- 24 1ST, 2012, THAT CAUSED YOUR BACK TO BE INJURED.
- 25 A. WELL, I WAS -- I WAS WORKING AROUND A DITCH, AND I

1 WAS TRYING -- WE HAD TO TAKE A MANHOLE OFF THE ROAD,  
2 AND WE TOOK THE MANHOLE OFF AND GOT IT CEMENTED BACK  
3 RIGHT, AND I HAD TO PUT IT BACK ON, AND THAT'S WHEN  
4 MY BACK WENT OUT.

5 Q. OKAY. WERE YOU MOVING THE MANHOLE COVER BACK INTO  
6 PLACE ---

7 A. YES.

8 Q. --- WHEN YOU SAID THIS HAPPENED?

9 A. MM-HMM.

10 BY COMMISSIONER BARDEN:

11 IS THAT A YES?

12 BY THE WITNESS:

13 YES.

14 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

15 Q. OKAY. AND WHAT DID YOU FEEL RIGHT AT THE START --  
16 WHAT DID YOU INITIALLY FEEL WHEN THIS HAPPENED?

17 A. I FELT A SHARP PAIN AND WENT TO MY KNEES.

18 Q. OKAY. YOU WENT TO YOUR KNEES?

19 A. RIGHT.

20 Q. ALL RIGHT. WAS YOUR SUPERVISOR THERE ON THE JOB  
21 WHEN THAT HAPPENED?

22 A. YES.

23 Q. IS HIS NAME JACK?

24 A. JACK.

25 Q. OKAY. DID JACK SEE YOU GO TO YOUR KNEES?

1 A. OH, YEAH.

2 Q. ALL RIGHT. DID PEOPLE COME OVER TO HELP YOU, YOU

3 KNOW, AND MAKE SURE YOU WERE ALL RIGHT?

4 A. YEAH, YEAH -- HH-HMM.

5 Q. OKAY. THAT'S A YES, CORRECT?

6 A. YES.

7 Q. OKAY, ALL RIGHT. NOW, WERE YOU IN IMMEDIATE PAIN AT

8 THAT TIME?

9 A. OH, YEAH.

10 Q. WHERE WERE YOU HURTING?

11 A. IN MY LOWER BACK.

12 Q. OKAY. WAS IT TO ONE SIDE OR THE OTHER OR ALL ACROSS

13 YOUR LOWER BACK?

14 A. ALL ACROSS THE BACK.

15 Q. OKAY. AND DID THE EAST RICHLAND DISTRICT, DID THEY

16 SEND YOU TO THE DOCTOR?

17 A. YES.

18 Q. BUT NOT RIGHT AWAY?

19 - - A. NO, NOT RIGHT AWAY. - -

20 Q. WAS IT ABOUT A WEEK LATER?

21 A. ABOUT A WEEK -- ABOUT A WEEK LATER.

22 Q. OKAY. WAS DR. BELMAR THE FIRST DOCTOR YOU SAW?

23 A. YES, SIR.

24 Q. ALL RIGHT. AND THE TREATMENT THAT YOU RECEIVED IS

25 OUTLINED IN YOUR MEDICAL RECORDS THAT WE HAVE PASSED

- 1 UP, AND I KNOW THE COMMISSIONER WILL READ ALL OF  
2 THAT, BUT DO YOU FEEL LIKE DR. BELMAR DID A LOT FOR  
3 YOU?
- 4 A. SHE DONE WHAT SHE COULD, I RECKON.
- 5 Q. OKAY. DID SHE GIVE YOU MEDICATIONS?
- 6 A. YES, SIR.
- 7 Q. WAS THAT ABOUT IT?
- 8 A. YEAH, THAT WAS ABOUT IT.
- 9 Q. OKAY. NOW, DID THE INSURANCE COMPANY AND THE EAST  
10 RICHLAND, DID THEY EVENTUALLY REFER YOU TO SEE  
11 ANOTHER DOCTOR?
- 12 A. YES, SIR.
- 13 Q. WAS THAT DR. BRETT GUNTER?
- 14 A. MM-HMM.
- 15 Q. YES?
- 16 A. YES.
- 17 Q. OKAY. ALL RIGHT. NOW, I'M GOING TO ASK YOU ABOUT  
18 THE TREATMENT THAT DR. GUNTER GAVE YOU. DID HE SEND  
19 YOU FOR PHYSICAL THERAPY?
- 20 A. YES.
- 21 Q. DO YOU REMEMBER GOING TO PHYSICAL THERAPY?
- 22 A. KIND OF.
- 23 Q. OKAY. DO YOU REMEMBER IF YOU DID EXERCISES IN THE  
24 THERAPY?
- 25 A. YES, SIR.

- 1 Q. OKAY. DID YOU GET HEAT AND ICE TREATMENTS?
- 2 A. I GOT HEAT TREATMENT.
- 3 Q. OKAY. DID THE PHYSICAL THERAPY WHEN IT WAS OVER,
- 4 DID YOU FEEL LIKE IT HELPED YOU?
- 5 A. NO, SIR.
- 6 Q. OKAY. DID DR. GUNTER ALSO GIVE YOU STEROID
- 7 INJECTIONS?
- 8 A. YES, SIR.
- 9 Q. DID THOSE HELP YOU?
- 10 A. ABOUT TWO WEEKS.
- 11 Q. OKAY. THEY WORKED ABOUT TWO WEEKS, AND THEN ---
- 12 A. THEN YOU HAD TO GET ANOTHER ONE, AND YOU CAN'T GET
- 13 BUT TWO A YEAR.
- 14 Q. ALL RIGHT.
- 15 A. OR SOMETHING LIKE THAT.
- 16 Q. AND DID THEY -- THE EFFECT OF THE INJECTION
- 17 EVENTUALLY WEAR OFF?
- 18 A. YES.
- 19 Q. ALL RIGHT. DID DR. GUNTER DISCUSS SURGERY WITH YOU?
- 20 A. YES.
- 21 Q. DID YOU TELL DR. GUNTER THAT YOU WERE NOT REALLY
- 22 ABLE TO CONSIDER HAVING SURGERY?
- 23 A. YEAH, THAT'S WHAT I TOLD HIM.
- 24 Q. WAS THAT DUE TO YOUR CANCER CONDITION?
- 25 A. MM-HMM.

1 BY COMMISSIONER BARDEN:

2 IS THAT A YES?

3 BY THE WITNESS:

4 YES.

5 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

6 Q. ALL RIGHT. DO YOU RECALL DR. GUNTER SENDING YOU FOR  
7 A WORK HARDENING EVALUATION, AND WHEN I SAY THAT, I  
8 MEAN A BUNCH OF TESTS TO SEE WHAT YOU COULD LIFT AND  
9 HOW LONG YOU COULD STAY ON A TREADMILL AND THINGS  
10 LIKE THAT?

11 A. YES, SIR.

12 Q. ALL RIGHT.

13 A. I COULDN'T COMPLETE IT.

14 Q. ALL RIGHT. YOU WEREN'T ABLE TO FINISH THOSE TESTS?

15 A. MM-MM.

16 Q. NO?

17 BY COMMISSIONER BARDEN:

18 IS THAT A NO?

19 BY THE WITNESS:

20 NO.

21 BY COMMISSIONER BARDEN:

22 NO, YOU COULDN'T OR IS THAT RIGHT? YOU COULD  
23 NOT? I DON'T WANT THE NO TO BE NO, THAT'S NOT  
24 RIGHT.

25 BY THE WITNESS:

1 I COULDN'T FINISH THE TEST.

2 BY COMMISSIONER BARDEN:

3 I GOT IT. THAT'S GOOD.

4 BY MR. ROBERTSON:

5 THANK YOU.

6 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

7 Q. DID YOU HAVE TO STOP BECAUSE OF BACK PAIN AND  
8 SHORTNESS OF BREATH?

9 A. YES.

10 Q. OKAY. DO YOU KNOW IF THE THERAPIST RECOMMENDED YOU  
11 FOR THAT WORK HARDENING PROGRAM AFTER YOU COULDN'T  
12 FINISH THE TEST?

13 A. NO.

14 Q. OKAY.

15 BY MR. ROBERTSON:

16 COMMISSIONER, I WOULD REFER YOU TO CLAIMANT'S  
17 APA PAGE 22 ON THAT.

18 BY COMMISSIONER BARDEN:

19 -- THANK YOU.

20 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

21 Q. ALL RIGHT. WAS IT YOUR UNDERSTANDING THAT THE  
22 PROGRAM WOULDN'T DO YOU ANY GOOD?

23 A. NO, HE SAID IT WOULDN'T DO...

24 Q. OKAY. WHEN HE SAID ---

25 A. BECAUSE I COULDN'T COMPLETE IT.

1 Q. IS THAT DR. GUNTER YOU'RE REFERRING TO?

2 A. MM-HMM.

3 Q. YES?

4 BY COMMISSIONER BARDEN:

5 IS THAT A YES?

6 BY THE WITNESS:

7 YES.

8 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

9 Q. OKAY, ALL RIGHT. DID YOU KNOW THAT THE THERAPIST  
10 REPORTED THAT YOU COULD ONLY DO SEDENTARY TO LIGHT  
11 LIMITED WORK? DOES THAT SOUND FAMILIAR?

12 A. YES.

13 Q. ALL RIGHT.

14 BY MR. ROBERTSON:

15 COMMISSIONER, THAT'S APA PAGE 25.

16 BY COMMISSIONER BARDEN:

17 THANK YOU.

18 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

19 Q. ALL RIGHT. DID DR. GUNTER EVENTUALLY RELEASE YOU  
20 FROM HIS CARE?

21 A. YES.

22 Q. OKAY. WAS THERE A POINT WHERE DR. GUNTER BASICALLY  
23 SAID THERE'S NOTHING MORE HE CAN DO FOR YOU?

24 A. THAT IS RIGHT.

25 Q. ALL RIGHT. AND WAS IT YOUR UNDERSTANDING THAT HE

1 RELEASED YOU TO MEDIUM LEVEL WORK, OR DO YOU KNOW?

2 A. HE SAID I COULD -- YOU KNOW, MEDIUM -- YOU KNOW,  
3 JUST NOTHING HARD WORK, YOU KNOW, JUST BARELY.

4 Q. OKAY, ALL RIGHT. BUT THE THERAPIST WHO EVALUATED  
5 YOU SAID LIGHT WORK?

6 A. RIGHT.

7 Q. NOW, DID YOU KNOW THAT DR. GUNTER GAVE YOU A PERCENT  
8 LEVEL OF IMPAIRMENT TO YOUR BACK IN HIS OPINION WHEN  
9 HE RELEASED YOU, OR DID HE DISCUSS THAT WITH YOU AT  
10 ALL?

11 A. NO, HE DIDN'T DISCUSS IT.

12 Q. OKAY. WITHOUT TELLING ME WHAT DR. GUNTER MAY HAVE  
13 SAID, DID DR. GUNTER DISCUSS IMPAIRMENT RATINGS WITH  
14 YOU AT ALL AND HIGH IMPAIRMENT RATINGS VERSUS LOW  
15 IMPAIRMENT RATINGS?

16 A. WELL, I THINK HE SAID 80 PERCENT OR SOMETHING. I  
17 FORGOT WHAT IT WAS.

18 Q. OKAY. DID HE SAY THERE WAS A REASON HE DOESN'T GIVE  
19 HIGH IMPAIRMENT RATINGS ANYMORE?

20 A. YEAH, HE TOLD ME -- HE SAID ---

21 BY MS. SNYDER:

22 I OBJECT.

23 BY MR. ROBERTSON:

24 DON'T TELL ME WHAT HE TOLD YOU.

25 BY COMMISSIONER BARDEN:

1 SUSTAINED.

2 BY MR. ROBERTSON:

3 YEAH, DON'T TELL ME WHAT HE TOLD YOU.

4 BY COMMISSIONER BARDEN:

5 THAT WOULD BE HEARSAY.

6 BY THE WITNESS:

7 OKAY.

8 BY COMMISSIONER BARDEN:

9 YOU DID ASK HIM WHAT THEY DISCUSSED, AND THAT  
10 INVITES A HEARSAY RESPONSE. SO, WE CAN'T HAVE THAT.

11 BY MR. ROBERTSON:

12 QUESTION WITHDRAWN, YOUR HONOR.

13 BY COMMISSIONER BARDEN:

14 ALL RIGHT. THANK YOU.

15 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16 Q. DO YOU RECALL GOING TO SEE DR. FORREST IN MT.  
17 PLEASANT?

18 A. YES, SIR.

19 Q. OKAY. DID YOU SPEND ABOUT AN HOUR WITH DR. FORREST  
20 WOULD YOU SAY?

21 A. YEAH, ABOUT AN HOUR AND A HALF, SOMETHING LIKE THAT.

22 Q. DID HE EXAMINE YOU?

23 A. YES, SIR.

24 Q. DID HE GO OVER YOUR M.R.I. REPORTS WITH YOU?

25 A. YEAH, HE HAD AN M.R.I. THERE, AND HE WENT OVER IT

1 AND SHOWED ME WHAT THE DISC WAS AND ALL THAT.

2 Q. RIGHT, OKAY. NOW, LET ME ASK YOU THIS: DO YOU AGREE  
3 WITH DR. FORREST WHEN HE OPINES THAT YOU'VE LOST 50  
4 PERCENT OR MORE LOSS OF USE OF YOUR BACK DUE TO THE  
5 INJURY WITH EAST RICHLAND?

6 A. OH, YEAH, I BELIEVE IT. YEAH, BECAUSE I CAN'T DO  
7 NOTHING LIKE I USED TO COULD DO, YOU KNOW.

8 Q. SURE, OKAY. I WANT TO ASK YOU ABOUT SOME OF THE  
9 CURRENT PROBLEMS THAT YOU'RE HAVING WITH YOUR BACK  
10 AT THIS TIME. DO YOU STILL HAVE PAIN IN YOUR LOWER  
11 BACK?

12 A. YEAH, IT GOES -- IT GOES DOWN MY LEG.

13 BY COMMISSIONER BARDEN:

14 WHICH LEG IS IT?

15 BY THE WITNESS:

16 MY RIGHT LEG.

17 BY COMMISSIONER BARDEN:

18 YOUR RIGHT LEG, OKAY.

19 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

20 Q. DO YOU SOMETIMES HAVE PAIN GOING TO YOUR LEFT LEG  
21 ALSO?

22 A. YEAH, MY LEFT LEG.

23 Q. BUT IS IT MOSTLY YOUR RIGHT LEG?

24 A. IT'S MOSTLY THE RIGHT.

25 Q. OKAY, ALL RIGHT. NOW, THE PAIN IN YOUR LOWER BACK

1 ON A SCALE OF ONE TO TEN, HOW WOULD RATE THAT PAIN  
2 ON AN AVERAGE DAY?

3 A. PROBABLY AROUND AN EIGHT.

4 Q. OKAY, ALL RIGHT. DO YOU EVER -- AND YOU HAVE PAIN  
5 GOING DOWN YOUR RIGHT LEG; IS THAT WHAT YOU SAID?

6 A. YES.

7 Q. ALL RIGHT. DO YOU EVER HAVE PROBLEMS WITH NUMBNESS  
8 IN YOUR RIGHT LEG?

9 A. MM-HMM.

10 Q. YES?

11 BY COMMISSIONER BARDEN:

12 IS THAT A YES?

13 BY THE WITNESS:

14 YES.

15 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16 Q. DOES YOUR RIGHT LEG EVER SOMETIMES FEEL LIKE IT'S  
17 GOING TO GIVE WAY?

18 A. IT DID THE OTHER NIGHT.

19 Q. IT DID THE OTHER NIGHT?

20 A. I FELL IN THE SHOWER AND HIT MY NOSE.

21 Q. DID IT CAUSE YOU TO FALL?

22 A. YES.

23 Q. HAS THAT ---

24 A. A MATTER OF FACT, I'VE GOT MY ARM NOW WRAPPED UP.

25 Q. OKAY. HAS THAT PROBLEM IN YOUR RIGHT LEG EVER

- 1 CAUSED YOU TO FALL BEFORE?
- 2 A. MAYBE A WHILE BACK.
- 3 Q. OKAY. NOW, THE PROBLEM WITH WEAKNESS AND GIVING WAY
- 4 IN YOUR RIGHT LEG, IS IT YOUR UNDERSTANDING THAT'S
- 5 RELATED TO YOUR BACK?
- 6 A. REPEAT THAT AGAIN.
- 7 Q. BASED ON WHAT YOU KNOW, IS YOUR BACK AFFECTING YOUR
- 8 RIGHT LEG IN THAT WAY?
- 9 A. A PSYCHOTIC[sic] NERVE OR SOMETHING. I DON'T KNOW
- 10 WHAT IT IS.
- 11 Q. RIGHT, OKAY, THAT'S FINE. DO YOU HAVE TROUBLE
- 12 SLEEPING?
- 13 A. YES, SIR.
- 14 Q. ALL RIGHT. ARE YOU STILL TAKING MEDICATIONS FOR
- 15 YOUR BACK AT THIS TIME?
- 16 A. YEAH, I THINK I'M TAKING PERCOCET.
- 17 Q. OKAY. DO YOU HAVE TROUBLE STANDING FOR LONG PERIODS
- 18 OF TIME?
- 19 A. OH, YEAH.
- 20 Q. HOW ABOUT SITTING FOR LONG PERIODS OF TIME?
- 21 A. OH, I CAN'T EVEN SIT HARDLY. I CAN'T -- WHEN I WENT
- 22 TO CHARLESTON ---
- 23 Q. IS THAT THE TIME YOU WENT TO SEE DR. FORREST?
- 24 A. YES, SIR.
- 25 Q. OKAY. HOW FAR CAN YOU WALK BEFORE YOUR BACK MAKES

1           YOU NEED TO STOP AND REST?

2           A.    ABOUT FROM HERE TO THAT DOOR (WITNESS INDICATES).

3           Q.    OKAY. ARE YOU ABLE TO TAKE LONG TRIPS IN YOUR CAR?

4           BY COMMISSIONER BARDEN:

5                   AND THE RECORD WILL REFLECT THAT THE CLAIMANT  
6                   IS SITTING IN THE WITNESS' CHAIR, AND HE IS  
7                   INDICATING TO THE DOOR IN COURTROOM "A."

8           BY MR. ROBERTSON:

9                   THANK YOU, YOUR HONOR.

10          BY COMMISSIONER BARDEN:

11                   WHICH I DON'T HAVE A TAPE MEASURER, BUT I WOULD  
12                   ASSUME IT'S SOME ---

13          BY MR. ROBERTSON:

14                   A VERY SHORT DISTANCE, I WOULD SAY.

15          DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16          Q.    ARE YOU ABLE TO TAKE LONG TRIPS IN YOUR CAR?

17          A.    NO, SIR.

18          Q.    OKAY. YOU ---

19          A.    I MEAN, I DO, BUT I HAVE TO GET OUT, YOU KNOW, AND  
20                WALK AROUND.

21          Q.    OKAY. AND THAT TRIP TO CHARLESTON GAVE YOU A LOT OF  
22                TROUBLE?

23          A.    MM-HMM.

24          Q.    YES?

25          BY COMMISSIONER BARDEN:

1 IS THAT YES?

2 BY THE WITNESS:

3 YES. AND I HAD TO STOP ABOUT THREE TIMES.

4 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

5 Q. DO YOU STILL DRIVE YOURSELF?

6 A. NO.

7 Q. ALL RIGHT.

8 A. I TOLD MY WIFE I DIDN'T WANT TO DRIVE NO MORE.

9 Q. OKAY.

10 BY COMMISSIONER BARDEN:

11 AND WHY IS THAT?

12 BY THE WITNESS:

13 I DON'T KNOW. I'M JUST SCARED I'LL, YOU KNOW,  
14 FALL OUT OR SOMETHING LIKE THAT.

15 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

16 Q. DO YOU HAVE -- DO YOU FEEL LIKE YOU HAVE TROUBLE  
17 WITH YOUR LEG WORKING THE PEDALS OR...?

18 A. NO. I CAN MASH THE PEDALS PRETTY GOOD.

19 BY COMMISSIONER BARDEN:

20 YOU'RE WORRIED ABOUT FAINTING OR SOMETHING?

21 BY THE WITNESS:

22 YES, SIR -- MA'AM.

23 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

24 Q. IS THAT RELATED MORE TO YOUR BACK, OR IS RELATED TO  
25 YOUR CANCER?

1 A. I DON'T KNOW. I MEAN, YOU KNOW.

2 Q. OKAY, THAT'S FAIR. ARE YOU ABLE TO DO YOUR OWN YARD  
3 WORK?

4 A. NO, SIR..

5 Q. OKAY. DID YOU USED TO DO YOUR YARD WORK BEFORE THIS  
6 ACCIDENT?

7 A. OH, YEAH.

8 Q. ALL RIGHT. WHAT KIND OF HOBBIES DO YOU HAVE; WHAT  
9 DID YOU DO FOR LEISURE TIME?

10 A. WELL, WHEN I WAS FEELING GOOD, I WOULD GO FISHING  
11 AND STUFF LIKE THAT?

12 Q. DO YOU STILL GO FISHING?

13 A. MM-HMM.

14 BY COMMISSIONER BARDEN:

15 IS THAT A YES?

16 BY THE WITNESS:

17 YES.

18 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

19 Q. OKAY. DO YOU GO FISHING AS MUCH AS YOU USED TO DO?

20 A. NO, SIR.

21 Q. WHY NOT?

22 A. BECAUSE I JUST -- I JUST CAN'T GET OUT ON THE BOAT  
23 NO MORE.

24 Q. OKAY. IS IT YOUR BACK THAT GIVES YOU PROBLEM  
25 GETTING DOWN IN THE BOAT?

1 A. MM-HMM.

2 BY COMMISSIONER BARDEN:

3 IS THAT A YES?

4 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

5 Q. IS THAT A YES?

6 A. YES.

7 Q. PLEASE REMEMBER TO SAY YES. I KNOW IT'S ---

8 A. I KNOW, IT'S ROUGH.

9 Q. LET ME ASK YOU THIS: DID YOU USED TO DO A LOT OF  
10 CARPENTRY PROJECTS AROUND THE HOUSE?

11 A. YES.

12 Q. OKAY. DID YOU BUILD A DECK AT ONE TIME OR A PORCH?

13 A. YES.

14 Q. CAN YOU STILL DO THOSE TYPE OF THINGS?

15 A. NO, SIR.

16 Q. AND WHY IS THAT?

17 A. I JUST CAN'T BEND OVER AND NAIL AND DO THIS AND  
18 THAT.

19 Q. OKAY. IS THAT DUE TO YOUR BACK?

20 A. YES.

21 Q. OKAY. HAVE YOU DONE HEAVY LABOR BASICALLY ALL OF  
22 YOUR LIFE?

23 A. DO WHAT?

24 Q. IN ALL YOUR JOBS, HAVE YOU EVER DONE ANYTHING THAT  
25 WASN'T HEAVY LABOR?

1 A. NO, SIR.

2 Q. OKAY. SO HEAVY LABOR IS WHAT YOU'VE DONE?

3 A. MM-HMM.

4 BY COMMISSIONER BARDEN:

5 IS THAT A YES?

6 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

7 Q. YES?

8 A. YES. I CAN'T REMEMBER THAT.

9 Q. DO YOU THINK YOU WOULD BE ABLE TO GO BACK TO DOING  
10 ANY OF THE TYPE OF WORK THAT YOU'VE DONE IN THE  
11 PAST?

12 A. NO, SIR.

13 Q. IS THAT DUE TO YOUR BACK?

14 A. MM-HMM.

15 Q. YES?

16 A. YES.

17 Q. OKAY. WOULD YOU BE ABLE TO LIFT OR MOVE LARGE  
18 VENDING MACHINES?

19 A. NO, SIR.

20 Q. WOULD YOU BE ABLE TO LIFT OR MOVE 100 POUND  
21 MATERIALS AND WINDOWS?

22 A. NO, SIR.

23 Q. WOULD YOU BE ABLE TO LIFT AND DELIVER FURNITURE?

24 A. NO, SIR.

25 Q. WOULD YOU BE ABLE TO DO MOST OF THE THINGS THAT YOU

- 1 DID ON THE JOB AT EAST RICHLAND?
- 2 A. NO, SIR.
- 3 Q. OKAY. CAN YOU DIG?
- 4 A. NO, SIR.
- 5 Q. CAN YOU CLIMB IN AND OUT OF DITCHES?
- 6 A. NO, SIR.
- 7 Q. OKAY. DO YOU KNOW HOW TO USE A COMPUTER?
- 8 A. NO, SIR.
- 9 Q. OKAY. NOW, I'M NOT ASKING THIS TO EMBARRASS YOU,
- 10 SIR, BUT ARE YOU GOOD WITH READING AND WRITING?
- 11 A. NO, SIR.
- 12 Q. HOW ABOUT MATH?
- 13 A. NAW, NOT REAL GOOD.
- 14 Q. DO YOU THINK YOU COULD DO A JOB THAT REQUIRES A LOT
- 15 OF PAPERWORK?
- 16 A. NO, SIR.
- 17 Q. WOULD YOU BE ABLE TO DO A JOB THAT REQUIRES YOU TO
- 18 DO A LOT OF MATH?
- 19 A. NO, SIR.
- 20 Q. OKAY. DO YOU THINK YOU COULD DO A DESK JOB?
- 21 A. NO, SIR.
- 22 Q. HAVE YOU EVER DONE A DESK JOB?
- 23 A. NO, SIR.
- 24 Q. DO YOU FEEL LIKE THERE'S ANY KIND OF JOB THAT YOU
- 25 COULD DO AT THIS TIME?

1 A. NO, SIR.

2 Q. IS THAT DUE TO YOUR BACK?

3 A. MM-HMM.

4 BY COMMISSIONER BARDEN:

5 IS THAT A YES?

6 DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

7 Q. YES?

8 A. YES.

9 Q. HAVE YOU BEEN ACCEPTED FOR SOCIAL SECURITY  
10 DISABILITY TO YOUR KNOWLEDGE?

11 A. TO MY KNOWLEDGE, MAYBE.

12 Q. OKAY, MAYBE?

13 A. MAYBE.

14 Q. YOU DON'T KNOW?

15 A. I DON'T KNOW.

16 Q. DO YOU RECEIVE A CHECK FROM SOCIAL SECURITY EVERY  
17 MONTH ---

18 A. I THINK SO.

19 Q. --- OR DIRECT DEPOSIT?

20 A. YEAH.

21 Q. OKAY. ALL RIGHT. DO YOU KNOW IF ANY DOCTOR HAS  
22 RECOMMENDED THAT YOU RECEIVE CONTINUING MEDICATIONS?

23 A. NOT THAT I KNOW OF.

24 BY MR. ROBERTSON:

25 COMMISSIONER, I'LL DEFER TO THE MEDICAL RECORDS

1 ON THAT.

2 BY COMMISSIONER BARDEN:

3 OKAY. AND I WILL CERTAINLY READ THEM.

4 BY MR. ROBERTSON:

5 I KNOW YOU WILL, COMMISSIONER. THAT'S ALL I  
6 HAVE AT THIS TIME. THANK YOU.

7 BY COMMISSIONER BARDEN:

8 THANK YOU SO MUCH.

9 PLEASE ANSWER ANY QUESTIONS MS. SNYDER HAS FOR  
10 YOU.

11 CROSS EXAMINATION BY MS. SNYDER:

12 Q. MR. ROBERTSON ASKED YOU A LOT OF GOOD QUESTIONS, SO  
13 MAYBE WE CAN KEEP THIS BRIEF, OKAY?

14 A. OKAY.

15 Q. I SEE YOU'RE IN A WHEELCHAIR TODAY. I HAVEN'T HAD A  
16 CHANCE TO MEET WITH YOU BEFOREHAND, BUT I SEE YOUR  
17 WIFE ALSO HAS A CANE. CAN YOU TELL ME ABOUT ---

18 A. NO, SHE'S JUST CARRYING THAT FOR ME.

19 BY MS. JULIE DENT:

20 THEY OFFERED THE ---

21 BY COMMISSIONER BARDEN:

22 WAIT, YOU DON'T GET TO TALK, MA'AM. YOU'RE NOT  
23 A WITNESS. SO, GO AHEAD, MS. SNYDER, ASK YOUR  
24 QUESTION AGAIN.

25 CROSS EXAMINATION RESUMED BY MS. SNYDER:

1 Q. DO YOU ALWAYS UTILIZE A WHEELCHAIR?  
2 A. NO.  
3 Q. NO. CAN YOU TELL ME ABOUT AND DESCRIBE TO ME ABOUT  
4 HOW OFTEN YOU USE A WHEELCHAIR OR WHEN YOU USE A  
5 WHEELCHAIR?  
6 A. WHEN I WALK A LOT.  
7 Q. WHEN YOU WALK A LOT, OKAY. WAS IT PRESCRIBED TO YOU  
8 BY A DOCTOR?  
9 A. YEAH, WELL, I CAN'T REMEMBER.  
10 Q. THAT'S OKAY.  
11 A. YEAH, I DON'T REMEMBER.  
12 Q. WHEN DID YOU START USING A WHEELCHAIR?  
13 A. PROBABLY ABOUT A YEAR AGO.  
14 Q. A YEAR AGO, AND IS THAT FOR YOUR BACK PAIN, OR DOES  
15 THAT HAVE ANYTHING TO DO WITH YOUR CANCER?  
16 A. IT'S MY PAIN.  
17 Q. YOUR PAIN, OKAY.  
18 BY COMMISSIONER BARDEN:  
19 - DOES IT HAVE ANYTHING TO DO WITH THE CANCER AND  
20 THE CHEMO?  
21 BY THE WITNESS:  
22 NO -- NO, MA'AM.  
23 BY COMMISSIONER BARDEN:  
24 OKAY.  
25 CROSS EXAMINATION RESUMED BY MS. SNYDER:

1 Q. BUT YOU DON'T RECALL A DOCTOR GIVING YOU -- WHERE  
2 DID YOU GET -- I'M SORRY. LET ME START OVER. WHERE  
3 DID YOU GET THE WHEELCHAIR FROM?

4 A. DOWNSTAIRS.

5 Q. OH, IN THE BUILDING?

6 A. YEAH.

7 Q. OKAY, GOT IT. SORRY. BUT YOU DON'T TYPICALLY  
8 UTILIZE A WHEELCHAIR?

9 A. UH-UH.

10 BY COMMISSIONER BARDEN:

11 IS THAT A NO?

12 BY THE WITNESS:

13 NO.

14 BY COMMISSIONER BARDEN:

15 SO, YOU USE A CANE; WOULD THAT BE RIGHT?

16 BY THE WITNESS:

17 YES.

18 BY COMMISSIONER BARDEN:

19 OKAY.

20 CROSS EXAMINATION RESUMED BY MS. SNYDER:

21 Q. AND WAS THAT GIVEN TO YOU BY A DOCTOR?

22 A. MM-HMM.

23 BY COMMISSIONER BARDEN:

24 IS THAT A YES?

25 BY THE WITNESS:

1 YES. I'VE GOT TO KEEP REMEMBERING THAT.

2 CROSS EXAMINATION RESUMED BY MS. SNYDER:

3 Q. THAT'S OKAY. IT'S TOUGH. DO YOU RECALL WHICH  
4 DOCTOR GAVE YOU THE CANE?

5 A. I SURE DON'T.

6 Q. OKAY. I WOULD LIKE TO ASK YOU A COUPLE OF QUESTIONS  
7 ABOUT THE DAY OF YOUR ACCIDENT. YOU MENTIONED THAT  
8 YOU WENT TO YOUR KNEES AFTER YOU PICKED UP THE  
9 MANHOLE COVER. THAT WAS BECAUSE OF THE PAIN IN YOUR  
10 BACK?

11 A. YEAH.

12 Q. IS THAT CORRECT?

13 A. THE PAIN SHOT DOWN MY BACK AND LEG.

14 Q. OKAY. HAVE YOU SEEN A DOCTOR ---

15 BY COMMISSIONER BARDEN:

16 WHICH LEG; IS THIS THE RIGHT LEG IT WENT DOWN?

17 BY THE WITNESS:

18 YES, MA'AM.

19 BY COMMISSIONER BARDEN:

20 ALL RIGHT.

21 CROSS EXAMINATION RESUMED BY MS. SNYDER:

22 Q. DO YOU RECALL GOING TO A DOCTOR FOR YOUR LEGS OR  
23 YOUR LEG PAIN?

24 A. NO.

25 Q. NO. HAVE YOU BEEN ASSIGNED AN IMPAIRMENT RATING FOR

- 1 YOUR LEG PAIN?
- 2 A. NO.
- 3 Q. OKAY. WHEN DID YOU START HAVING PAIN IN YOUR LEGS
- 4 REGULAR? EITHER LEG, I SUPPOSE. I WOULD ASK YOU TO
- 5 SPECIFY.
- 6 A. PROBABLY A YEAR OR SO AGO.
- 7 Q. YEARS AGO BEFORE YOUR ACCIDENT?
- 8 A. NO. A YEAR -- ABOUT A YEAR AGO.
- 9 Q. OKAY. A YEAR AGO FROM TODAY?
- 10 A. YEAH, A YEAR AGO FROM TODAY.
- 11 Q. OKAY. AT THE TIME OF YOUR ACCIDENT, WERE YOU
- 12 PARTICIPATING IN THE STATE'S TERI PROGRAM?
- 13 A. YES, MA'AM.
- 14 Q. DID YOU HAVE AN IDEA OF WHAT DATE YOU WOULD RETIRE?
- 15 A. I HAD TWO AND A HALF, THREE YEARS -- ALMOST THREE
- 16 YEARS TO GO.
- 17 Q. OKAY.
- 18 A. SO, I JUST STARTED ABOUT TWO WEEKS -- TWO YEARS, AND
- 19 THAT'S WHEN THE ACCIDENT HAPPENED.
- 20 Q. SO, YOU HAD BEEN ON TERI FOR TWO YEARS BEFORE THE
- 21 ACCIDENT?
- 22 A. YES, MA'AM.
- 23 Q. OKAY. DID YOU HAVE A PLANNED DATE OF WHEN YOU WOULD
- 24 RETIRE?
- 25 A. LET ME SEE. WELL, I FIGURED ABOUT THREE MORE YEARS,

1           YOU KNOW.

2           Q.   RIGHT. IT'S A FIVE-YEAR PROGRAM, CORRECT?

3           A.   YEAH, FIVE YEARS WOULD BE UP.

4           Q.   OKAY. AND I UNDERSTAND THAT SOMETIMES YOU CAN GET  
5           HIRED BACK AFTER TERI. WERE YOU PLANNING TO BE DONE  
6           AFTER TERI?

7           A.   YES, MA'AM.

8           Q.   OKAY. DO YOU RECALL ANY DOCTORS TELLING YOU THAT  
9           YOU HAD LUMBAR RADICULOPATHY; DOES THAT SOUND  
10          FAMILIAR TO YOU?

11          A.   UH-UH.

12          BY COMMISSIONER BARDEN:

13                IS THAT A NO?

14          CROSS EXAMINATION RESUMED BY MS. SNYDER:

15          Q.   IS THAT A NO?

16          A.   NO.

17          Q.   OKAY, THAT'S FINE.

18          BY MS. SNYDER:

19                I THINK THAT'S ALL I HAVE AT THIS TIME.

20          BY COMMISSIONER BARDEN:

21                THANK YOU, MS. SNYDER. MR. ROBERTSON, ANY

22                QUESTIONS ON RE-DIRECT?

23          BY MR. ROBERTSON:

24                JUST VERY BRIEFLY, COMMISSIONER.

25          BY COMMISSIONER BARDEN:

1 SURE.

2 RE-DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

3 Q. MR. DENT, I JUST HAVE REALLY ONE QUESTION FOR YOU.

4 AGAIN, DR. BELMAR WAS THE FIRST DOCTOR THAT YOU SAW  
5 AFTER YOUR ACCIDENT; IS THAT CORRECT?

6 A. YES, SIR.

7 Q. ALL RIGHT. NOW, IF HER FIRST RECORD ON MAY THE 8TH,  
8 2012, INDICATES THAT YOU HAD PAIN GOING DOWN YOUR  
9 RIGHT LEG, WOULD YOU AGREE THAT YOU PROBABLY TOLD  
10 HER THAT?

11 A. YEAH, I MIGHT HAVE.

12 Q. OKAY.

13 A. BECAUSE I DID AT THE TIME.

14 Q. SO, IF DR. BELMAR IS CORRECT ABOUT WHAT YOU SAID,  
15 THEN YOU HAD RIGHT LEG PAIN -- PAIN GOING DOWN YOUR  
16 RIGHT LEG RIGHT FROM THE START; IS THAT CORRECT?

17 A. MM-HMM.

18 BY COMMISSIONER BARDEN:

19 IS THAT A YES?

20 RE-DIRECT EXAMINATION RESUMED BY MR. ROBERTSON:

21 Q. IS THAT A YES?

22 A. YES.

23 BY COMMISSIONER BARDEN:

24 THANK YOU.

25 BY MR. ROBERTSON:

1                   NOTHING FURTHER, YOUR HONOR.

2           BY COMMISSIONER BARDEN:

3                   OKAY. ANYTHING ELSE, MS. SNYDER?

4           BY MS. SNYDER:

5                   NO, MA'AM.

6           BY COMMISSIONER BARDEN:

7                   ALL RIGHT. THAT CONCLUDES THIS PROCEEDING.

8                   THANK Y'ALL VERY MUCH.

9           (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS  
10           CONCLUDED AT THE HOUR OF 11:09 A.M.)

CERTIFICATE OF NOTARY PUBLIC  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
COLUMBIA, SOUTH CAROLINA  
WCC FILE NO. 1205879

EMPLOYEE/CLAIMANT: JAMES L. DENT

EMPLOYER: EAST RICHLAND COUNTY PUBLIC SERVICE

INSURER: STATE ACCIDENT FUND

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 51 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF JAMES L. DENT TAKEN ON THE 7TH DAY OF FEBRUARY, 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 12TH DAY OF APRIL, 2014.

\_\_\_\_\_  
JAN L. WHITWORTH  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 2-04-2024

\* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

**Matthew C. Robertson**

---

**From:** Love, Kristi [klove@wcc.sc.gov]  
**Sent:** Wednesday, February 19, 2014 8:33 AM  
**To:** Matt Robertson (mrobertson@pfmcdlaw.com); psnyder@saf.sc.gov  
**Subject:** DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS.doc  
**Attachments:** DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS.doc

## REQUEST FOR PROPOSED ORDER

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

WCC #: 1205879

DATE OF HEARING: February 7, 2014

PLACE OF HEARING: Columbia, SC

CLAIMANT: James Dent

EMPLOYER: East Richland County Public Services

CARRIER: State Accident Fund

CLAIMANT'S ATTY: Matt Robertson

DEFENDANTS' ATTY: Page Snyder

### FINDINGS OF FACT

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affects his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected). Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is . years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #2, page 22; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).

*Commissioner's Notes for Decision and Order*

Page 1 of 4

P.203

9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" a surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting—he admitted at the hearing that he has no problem using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned—even from Claimant's IME; (b) Claimant's IME admits that *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15, and 24; Claimant's APA #4, page 35; Defendants' APA, page 14 and 16).
17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation, and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.

20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "the lung cancer is not playing any role" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including but not limited to pages 36-37; Claimant's APA #5, page 38).
21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (i.e., *Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 40%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of the accident.
26. Defendants to receive credit for overpayment from the date of maximum medical improvement.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.

**INSTRUCTIONS:** Attorney Page Snyder to prepare proposed Order unless otherwise agreed upon by the parties. Proposed Order shall include **VERBATIM** Findings of Fact attached hereto, **unless there is a mistake, in which case, it may be corrected.** **ATTORNEYS ARE RESPONSIBLE FOR PROOFING ORDERS PRIOR TO SUBMISSION.** Any other Findings of Fact not inconsistent with those attached hereto may also be included. Proposed Order shall be submitted within 35 days of the date of these order instructions. If you need a transcript order it *immediately* from court reporter Jan Whitworth *in writing* at Post Office Box 551, Roebuck, South Carolina 29376. Provide a copy of the proposed order to opposing counsel or *pro se* claimant **at least five (5) days prior to the time** one is submitted to the Commission. **IN YOUR COVER LETTER TO ME, PLEASE INCLUDE A STATEMENT THAT THE OPPOSING PARTY HAS NO OBJECTION TO THE ORDER AS WRITTEN.**



The Commission now requires the proposed order be e-mailed to [klowe@wcc.sc.gov](mailto:klowe@wcc.sc.gov) and all parties in Word format.

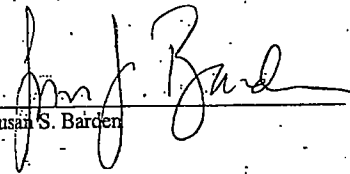
*Commissioner's Notes for Decision and Order*

Page 3 of 4

P.205

FORMAT for DECISION & ORDER:

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

  
Susan S. Barden

South Carolina Workers' Compensation Commission

**Matthew C. Robertson**

---

**From:** Love, Kristi [klove@wcc.sc.gov]  
**Sent:** Thursday, March 27, 2014 2:31 PM  
**To:** Matt Robertson (mrobertson@pfmcdlaw.com)  
**Cc:** psnyder@saf.sc.gov  
**Subject:** FW: DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS  
**Attachments:** DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS.doc

---

**From:** Love, Kristi  
**Sent:** Thursday, March 27, 2014 2:30 PM  
**To:** psnyder@saf.sc.gov; Cook, Matthew R.  
**Subject:** DENT, JAMES 2014 PROPOSED ORDER INSTRUCTIONS

E-mail to follow.

## REQUEST FOR PROPOSED ORDER

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

WCC #: 1205879

DATE OF HEARING: February 7, 2014.

PLACE OF HEARING: Columbia, SC

CLAIMANT: James Dent

EMPLOYER: East Richland County Public Services

CARRIER: State Accident Fund

CLAIMANT'S ATTY: Matt Robertson

DEFENDANTS' ATTY: Page Snyder

### FINDINGS OF FACT

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affects his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected). Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #2, page 22; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).

*Commissioner's Notes for Decision and Order*

Page 1 of 4

P.208

9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" a surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting—he admitted at the hearing that he has no problem using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned—even from Claimant's IME; (b) Claimant's IME admits that *"I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity"* [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15, and 24; Claimant's APA #4, page 35; Defendants' APA, page 14 and 16).
17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation, and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.

20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "the *lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including but not limited to pages 36-37; Claimant's APA #5, page 38).
21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (*i.e.*, *Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of the accident.
26. Defendants to receive credit for overpayment from the date of maximum medical improvement.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$916.09, yielding a compensation rate of \$610.75.

**INSTRUCTIONS:** Attorney Page Snyder to prepare proposed Order unless otherwise agreed upon by the parties. Proposed Order shall include **VERBATIM** Findings of Fact attached hereto, **unless there is a mistake, in which case, it may be corrected. ATTORNEYS ARE RESPONSIBLE FOR PROOFING ORDERS PRIOR TO SUBMISSION.** Any other Findings of Fact not inconsistent with those attached hereto may also be included. Proposed Order shall be submitted within 35 days of the date of these order instructions. If you need a transcript order it *immediately* from court reporter Jan Whitworth *in writing* at Post Office Box 551, Roebuck, South Carolina 29376. Provide a copy of the proposed order to opposing counsel or *pro se* claimant **at least five (5) days prior to the time** one is submitted to the Commission. **IN YOUR COVER LETTER TO ME, PLEASE INCLUDE A STATEMENT THAT THE OPPOSING PARTY HAS NO OBJECTION TO THE ORDER AS WRITTEN.**



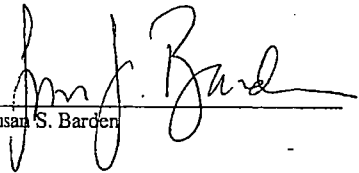
The Commission now requires the proposed order be e-mailed to [klove@wcc.sc.gov](mailto:klove@wcc.sc.gov) and all parties in Word format.

*Commissioner's Notes for Decision and Order*

Page 3 of 4  
P.210

FORMAT for DECISION & ORDER:

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



Susan S. Barden

South Carolina Workers' Compensation Commission

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission  
Appellate Panel

RECEIVED

DEC 10 2015

SC Court of Appeals

Appellate Case No.: 2015-001702

James Dent, ..... Appellant,

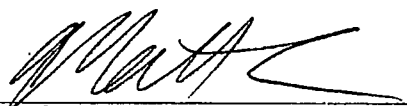
v.

East Richland County Public Service  
District, Employer, and State Accident Fund,  
Carrier, ..... Respondents.

CERTIFICATE OF COUNSEL

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

Dated: 12-7-15

  
Matthew C. Robertson  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

Attorney for Appellant

P.212

THE STATE OF SOUTH CAROLINA  
in the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission  
Appellate Panel

RECEIVED

DEC 10 2015

SC Court of Appeals

Appellate Case No.: 2015-001702

James Dent, ..... Appellant,

v.

East Richland County Public Service  
District, Employer, and State Accident Fund,  
Carrier, ..... Respondents.

PROOF OF SERVICE

I certify that I have served the RECORD ON APPEAL on  
the Respondents by depositing a copy of it in the United  
States Mail, postage prepaid, on December 10, 2015,  
addressed to its attorney of record, Page P. Snyder, State  
Accident Fund at Post Office Box 102100, Columbia, South  
Carolina 29221-5000.



Matthew C. Robertson  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

Attorney for Appellant

**THE STATE OF SOUTH CAROLINA**

In the Court of Appeals

\_\_\_\_\_  
**APPEAL FROM SOUTH CAROLINA**  
Workers Compensation Commission  
Appellate Panel  
\_\_\_\_\_

**RECEIVED**

DEC 30 2015

**SC Court of Appeals**

Appellate Case No.: 2015-001702  
\_\_\_\_\_

James Dent, Employee, ..... Appellant,

v.

East Richland County Public Service  
District, Employer, and State Accident  
Fund, [ ] Carrier..... Respondents.

\_\_\_\_\_  
**FINAL BRIEF OF APPELLANT**  
\_\_\_\_\_

**MATTHEW C. ROBERTSON**  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211  
**ATTORNEY FOR APPELLANT**

## TABLE OF CONTENTS

|                                                                                                                                                                                                                           |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Table of Authorities .....                                                                                                                                                                                                | ii |
| Statement of Issues on Appeal .....                                                                                                                                                                                       | 1  |
| Statement of the Case .....                                                                                                                                                                                               | 2  |
| Statement of the Facts .....                                                                                                                                                                                              | 3  |
| Standard of Review .....                                                                                                                                                                                                  | 8  |
| Arguments:                                                                                                                                                                                                                |    |
| I. <u>DID THE WORKERS' COMPENSATION COMMISSION<br/>ERR IN FAILING TO FIND THAT THE APPELLANT IS<br/>PERMANENTLY AND TOTALLY DISABLED PURSUANT<br/>TO SECTION 42-9-10 OR 42-9-30(21) OF THE ACT?</u> .....                 | 9  |
| II. <u>DID THE WORKERS' COMPENSATION COMMISSION<br/>ERR AS A MATTER OF LAW IN FINDING THAT<br/>THE CLAIMANT'S DISABILITY IS MORE A RESULT<br/>OF SMALL CELL LUNG CANCER THAN HIS WORK-<br/>RELATED BACK INJURY?</u> ..... | 16 |
| Conclusion .....                                                                                                                                                                                                          | 22 |

## **TABLE OF AUTHORITIES**

### **CASE LAW AUTHORITY**

|                                                                                                     |    |
|-----------------------------------------------------------------------------------------------------|----|
| <i>Beckman v. Sysco Columbia, LLC,</i><br>408 S.C. 501, 759 S.E.2d 750 (S.C.App. 2014) .....        | 21 |
| <i>Coleman v. Quality Concrete Products, Inc.,</i><br>245 S.C. 625, 142 S.E.2d 43 (1965). ....      | 10 |
| <i>Fields v. Owens Corning Fiberglas,</i><br>301 S.C. 554, 393 S.E.2d 172 (1990) .....              | 10 |
| <i>Fowler v. Abbott Motor Co.,</i><br>236 S.C. 226, 113 S.E.2d 737 (1960) .....                     | 22 |
| <i>Hendricks v. Pickens County,</i><br>335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999) .....          | 10 |
| <i>Jennings v. Chambers Development Co.,</i><br>335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999) ..... | 8  |
| <i>Lark v. Bi-Lo, Inc.,</i><br>276 S.C. 130, 276 S.E.2d 304 (1981) .....                            | 8  |
| <i>McLeod v. Piggly Wiggly Carolina Co.,</i><br>280 S.C. 466, 318 S.E.2d 38 (S.C.App. 1984) .....   | 18 |
| <i>Miller v. State Rooting Co.,</i><br>312 S.C. 452, 441 S.E.2d 323 (1994) .....                    | 8  |
| <i>Scruggs v. Tuscacora Yarns, Inc.,</i><br>294 S.C. 47, 362 S.E.2d 319 (S.C. App. 1987). ....      | 15 |
| <i>Tiller v. National Health Care Ctr. of Sumter,</i><br>334 S.C. 333, 513 S.E.2d 843 (1999) .....  | 9  |
| <i>Wynn v. Peoples Natural Gas Co.,</i><br>238 S.C. 1, 118 S.E.2d 812 (1961) .....                  | 9  |
| <i>Youmans v. Coastal Petroleum Co.,</i><br>333 S.C. 195, 508 S.E.2d 43 (S.C. App. 1998) .....      | 9  |

**STATUTORY AUTHORITY**

|                                                             |      |
|-------------------------------------------------------------|------|
| <u>S.C. CODE ANN. §1-23-380(G) (1976, as amended)</u> ..... | 8, 9 |
| <u>S.C. CODE ANN. §42-9-10 (1976, as amended)</u> .....     | 9    |
| <u>S.C. CODE ANN. §42-9-30(21) (1976, as amended)</u> ..... | 9    |

### **STATEMENT OF ISSUES ON APPEAL**

- I. Did the Workers' Compensation Commission err in issuing an Order failing to find that the Claimant's back injury has rendered him permanently and totally disabled under Section 42-9-10 or 42-9-30(21) of the South Carolina Workers' Compensation Act where the Commission's findings of fact are not supported by substantial evidence in the record?
- II. Did the Workers' Compensation Commission err as a matter of law in failing to find that the Claimant's back injury has rendered him permanently and totally disabled under Section 42-9-10 or 42-9-30(21) of the South Carolina Workers' Compensation Act?
- III. Did the Workers' Compensation Commission err in finding that the Claimant's disability is caused by his diagnosis of small cell lung cancer rather than his work-related back injury, where such a finding is not supported by substantial evidence in the record?
- IV. Did the Workers' Compensation Commission err as a matter of law in finding that the Claimant's disability is caused by his diagnosis of small cell lung cancer rather than his work-related back injury?

### STATEMENT OF THE CASE

This claim went before the Hearing Commissioner pursuant to Form 50 filed by the Claimant/Appellant, Mr. James L. Dent on September 20, 2013. Therein, Mr. Dent alleged injuries by accident to the back, right leg and left leg, occurring on May 1, 2012 and arising out of and in the course of his employment with East Richland County Public Service. Specifically, the Appellant alleged that he injured his back while attempting to singlehandedly move a heavy manhole cover. Appellant further alleged that he is permanently and totally disabled as a result of the accident both as a result of complete loss of earning capacity and as a result of a 50% or greater loss of use of his back to perform work. The Respondent/Defendants admitted the accident of May 1, 2012. However, the Defendants denied that the Appellant has sustained permanent and total disability and argued that the claim should be limited to the lumbar spine only.

The claim was heard by the Hearing Commissioner on February 7, 2014 in Columbia, South Carolina. On April 14, 2014, the Hearing Commissioner issued her Decision and Order, finding, *inter alia*, that the Appellant suffered an admitted injury to the back, that the Appellant's right leg is affected by the Appellant's back injury and that the Appellant's left leg is not affected; that Appellant's right leg is "only minimally affected"; that this is a "one body part" (i.e. Singleton) case; that Appellant's disability stems primarily from his cancer condition; that Appellant is entitled to an award of 35% permanent partial disability to the back.<sup>1</sup>

---

<sup>1</sup> The Hearing Commissioner initially awarded the Appellant 40% permanent partial disability to the back but lowered her award to 35% without explanation after the first proposed Order was submitted by counsel for the Defendants. See R., pp. 203 - 210.

Pursuant to timely Form 30, the Appellant petitioned the Full Commission for review of the Hearing Commissioner's findings of fact and conclusions of law. The case was heard by the Full Commission and remanded to the Hearing Commissioner for consideration of two recent cases on point in further review of her finding that the case is a "one body part" case. In response, the Hearing Commissioner issued Remand Order, withdrawing her finding that this is a "one body part" case but still finding that the Appellant is not permanently and totally disabled as a result of his back injury.

The Appellant then appealed the Hearing Commissioner's remand Order back to the Full Commission. The case was heard by the Full Commission on May 18, 2015 and the Full Commission issued its Order on July 10, 2015 fully affirming the Hearing Commissioner's decision. From the Full Commission's Order, the claimant has taken this appeal.

#### **STATEMENT OF THE FACTS**

The Appellant testified that he has been diagnosed with small cell lung cancer and that his cancer is in remission. His last session of chemotherapy was in December 2013. (R., p. 160). The Appellant fifty-eight years of age and his date of birth is November 4, 1955. He is married with three children. Mr. Dent currently resides at 1002 Lower Branch Lane in Elgin, SC. (R., pp. 162-163). He has lived at that address for twenty-three years. Mr. Dent stated that he did graduate from high school but his grades were poor. He agreed that he probably graduated with a "D" average. (R., p. 163).

The Appellant further testified that he previously worked for a company called J. B. White's. His job with J. B. Whites was to deliver furniture. Mr. Dent stated that was definitely a heavy labor job which required a large amount of lifting. He also had to do a lot of loading and

unloading of trucks. (R., pp. 163-164). His next job was with Blyco Glass Company. In that position, Mr. Dent installed glass in frames. He was required to stack large, heavy windows. The windows he lifted in that job weighed over one hundred pounds. (R., pp. 165-166). He later worked for a company called Wometco Vending. In that job, Mr. Dent installed vending machines. He was required to move the vending machines on hand trucks and then maneuver them into the right position. His job with Wometco required a good deal of heavy lifting, pushing and pulling. (R., pp. 166-167).

Mr. Dent further testified that he went to work for the East Richland County Public Service District in 1985. The Appellant worked for the Employer for twenty-seven years until he was injured in 2012. (R., pp. 167-168). His job at the Public Service District was to maintain sewer lines. When he first started, that was a general labor job. In the course of his duties there, Mr. Dent was required to dig up sewer lines, lay pipe and unstop sewer lines. He had to dig up ditches, which entailed quite a bit of bending and stooping. He would be on his feet the entire time he was digging the ditches. He does not believe he could do that type of work any longer as a result of his back injury. (R., pp. 168-169). With regard to laying pipe, Mr. Dent would be required to carry the pipe from a truck to the ditch. The piping weighed between forty and fifty pounds. Mr. Dent testified that he does not believe he could carry the pipe with his current back condition. (R., pp. 169-171).

In order to unstop a sewer line, Mr. Dent would use little jet machines that go up in the line and do it. This was like a tube that Mr. Dent would put in the line to hopefully unstop it. This entailed quite a bit of pushing and pulling on his part. But if the machines did not work, he had to dig up the line with a shovel. Mr. Dent stated that he does not believe he could do that

part of his job any longer due to his back condition. (R., pp. 170-171). Mr. Dent also had to lift manhole covers in the street. After lifting and removing the manhole cover, he would have to climb down a ladder to get in and out of the sewer. Because of his back condition, the Appellant does not believe he could do the climbing any longer and he emphatically stated that he can no longer lift or move manhole covers. (R., pp. 172-173).

Mr. Dent further testified that he was eventually promoted to foreman of his own crew with the Public Service District. However, he was still required to perform heavy labor tasks after becoming a foreman. It was considered a working supervisor position and he would also have to fill in and perform the duties of crew members who called in sick or did not show up for work. (R., p. 173). As a result of his back injury, Mr. Dent believes he is unable to return to work performing the duties required of his position.

The Appellant further testified that on May 1, 2012, he was working around a ditch and he was trying to move a manhole cover back into place when his back went out. At that moment, he immediately felt a sharp pain and went to his knees. The Appellant's supervisor, Jack, was there on the job site when the accident occurred and Jack witnessed the incident. (R., pp. 174-175). The Appellant was hurting in his lower back, all the way across, at that time.

Mr. Dent was first sent to a doctor, Dr. Belmar, about a week after the accident occurred. Dr. Belmar prescribed medications for him and that was about it. (R., pp. 175-176). He was later sent to see a specialist, Dr. Brett Gunter. Mr. Dent remembers being sent for physical therapy, where he did exercises and got heat treatments. He does not believe the physical therapy provided him with lasting relief of his back symptoms. (R., pp. 176-177). Mr. Dent also received steroid injections from Dr. Gunter. He stated that the injections provided relief for

about two weeks and then the effect of the injections would wear off. The Appellant discussed the possibility of having surgery done on his back but Mr. Dent felt he was unable to undergo surgery at that time because of the status of his cancer and treatment for that condition. (R., p. 177).

The Appellant stated that he recalls being sent by Dr. Gunter for a work hardening evaluation, which entailed tests to see what he could lift, how long he could walk on a treadmill, etc. However, he could not complete the tests. The Appellant stated he had to stop because of back pain and shortness of breath. (R., pp. 178-179). Afterwards, the Appellant's understanding from Dr. Gunter was that the work hardening program would not do him any good. Mr. Dent is aware of the fact that Dr. Gunter opined he could only perform Medium level work. (R., p. 182). The Appellant further testified that he agrees with the assessment of Dr. Forrest that he has sustained more than fifty percent loss of use of his back for work purposes as a result of his injury with East Richland. (R., p. 183).

The Appellant further testified that he still has pain in his lower back. He stated that the pain goes down his right leg. He sometimes has pain in his left leg as well but the pain is mostly in his right leg. He feels that the pain in his lower back is around an eight out of ten. The Appellant also experiences numbness or weakness in his right leg. Mr. Dent stated that he has instability in his right leg as a result and it sometimes feels as if it is going to give way. In fact, he stated that he had fallen "the other night" due to the weakness in his right leg and injured his arm as a result. (R., pp. 183-184). Mr. Dent's understanding is that his back injury's effect on his sciatic nerve is the cause for the pain, weakness and instability in his right leg. (R., p. 185).

Mr. Dent stated that he often has trouble sleeping. The Appellant is still taking

medications for his lower back, including Percocet. He has difficulty standing for long periods of time and he also has trouble sitting for long periods of time. (*Id.*). The Appellant stated that he can only walk a short distance, such as between the witness chair and the door to the hearing room, before his back makes him stop to rest. He has difficulty making long trips in his car, but he does get out and walk around when he is able. (R., p. 186). He is unable to do his own yard work and he no longer goes fishing as he used to do. The Appellant stated that he no longer drives a vehicle because he is afraid of "falling out." He stated that he is not sure whether that was an effect of his cancer treatment or was related to his back. (R., pp. 187-188).

The Appellant further testified that he has done heavy labor his entire life and that he has never done a job in his life that did not require heavy labor. Mr. Dent does not believe he could return to any of the type of work he has done in the past. He stated that he would not be able to lift or move large vending machines, lift one hundred pound materials and windows or lift and deliver furniture. He would not be able to go back to doing most of the tasks for which he was responsible in his twenty-seven year employment with the East Richland Public Service District. The Appellant testified that he cannot dig or climb in and out of ditches. (R., pp. 189-190).

Mr. Dent further stated that he would not be able to do a job which requires him to use a computer, complete paperwork or do arithmetic. He is not qualified to do a desk job and he feels there are no jobs within his physical restrictions that he is capable of performing. (R., pp. 191-192). He feels this disability from work stems from his back injury. Finally, the Appellant agrees that he complained of right leg pain in his very first visit with Dr. Belmar if her record from that visit so indicates. (R., pp. 192-198).

### **STANDARD OF REVIEW**

The Administrative Procedures Act establishes the “substantial evidence” rule as the standard for judicial review of agency decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). The Administrative Procedures Act provides for judicial review upon exhaustion of all administrative remedies, but states that the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. S.C. CODE ANN. §1-23-380(G) (1976, as amended).

For purposes of this review, the Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings and decisions are “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record” or they are “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” S.C. CODE ANN. §1-23-380(G)(5)-(6) (1976, as amended). Thus, under the substantial evidence standard, a decision of the South Carolina Workers’ Compensation Commission must be affirmed if the factual findings are supported by substantial evidence in the record. *Jennings v. Chambers Development Co.*, 335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion reached by the administrative agency in order to justify its action. *Miller v. State Roofing Co.*, 312 S.C. 452, 441 S.E.2d 323 (1994). 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. Tiller v. National Health Care CR., 334 S.C. 333, 513 S.E.2d 843 (1999).

This Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse if the decision is affected by an error of law. Youmans v. Coastal Petroleum Co., 333 S.C. 195, 508 S.E.2d 43 (S.C. App. 1998). However, the Court of Appeals applies a *de novo* standard of review to questions of law. Again, the Court may reverse or modify a decision if the findings and conclusions of the agency are affected by error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. CODE ANN. §1-23-380(6) (Supp. 2003).

### ARGUMENTS

#### **I. DID THE WORKERS' COMPENSATION COMMISSION ERR IN FAILING TO FIND THAT THE APPELLANT IS PERMANENTLY AND TOTALLY DISABLED PURSUANT TO SECTION 42-9-10 OR 42-9-30(21) OF THE ACT?**

The Commission erred both in its fact finding and as a matter of law in failing to find that the Appellant is permanently and totally disabled. Under the Act, when an employee's incapacity from work resulting from a work-related injury is total, the employer is required to pay weekly compensation equal to sixty-six and two-thirds percent of the employee's average weekly wages for a period not to exceed five hundred weeks. S.C. CODE ANN. §42-9-10 (1976, as amended). The generally accepted test of total disability is the inability to perform services other than those that are "so limited in quality, dependability, or quantity that a reasonable, stable market for them does not exist." Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961).

An award under the general disability statutes must be predicated upon a showing of loss

of earning capacity. Fields v. Owens Corning Fiberglas, 301 S.C. 554, 393 S.E.2d 172 (1990); see also Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999). In a workers' compensation case, the employee alleging a general disability has the burden of proving that he or she has lost earning capacity. Consequently, an employee will not be deemed to be totally disabled unless he is capable of performing other work that is continuously available to him. Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (1965).

Here, the overwhelming preponderance of the evidence in the record shows that the Appellant is unemployable and his earning capacity has been completely destroyed by the work-related injury suffered to his lower back. Nevertheless, the Commission amazingly failed to find that he is permanently and totally disabled under Section 42-9-10 of the Act. The Appellant would submit that substantial evidence does not exist in the record to support the Commission's decision.

In the case at bar, the greater weight of the evidence shows that there is no reliable market of employment available to the Appellant. The authorized treating physician, Dr. Gunter, opined that he would recommend medium duty at best, but further indicated that the Appellant does not believe he could perform any work more than sedentary. (R., p. 123). The Commission chose to give great weight to the medium duty restrictions imposed by the authorized treating physician. (R., 50). However, as discussed *infra*, there is no evidence in the record to support the Commission's fantasy that Mr. Dent could ever be qualified for medium duty.

Mr. Dent is fifty-eight years of age and his entire work history has been in occupations classified as heavy and/or very heavy labor. The Commission itself states in Finding of Fact ¶4, "Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c)

installing vending machines. *These jobs are all considered heavy or very heavy.*” (Emphasis added). (R., pp. 48-49). For the last twenty-seven years of his career, the Appellant worked for the Defendant, East Richland Public Service District, in a very heavy labor position. This man has never performed a Medium duty position in his life; his entire work history consists of heavy labor. Every expert in the record is in agreement that the Appellant cannot return to his previous position or any heavy labor job.

Moreover, in his IME report, Dr. Leonard Forrest opined, “Clearly he can’t return to work at his prior job. However, I don’t think he’d be able to work even at a lesser level on any regular basis; again, this is purely with regard to the work-related injury.” (R., p. 97). Dr. Forrest further stated, “Also, to be considered is the fact that Mr. Dent has worked doing such manual labor work for his whole career. Even though he has a high school education, I don’t see him being able to learn new skills to work at a different job that would be a sedentary one; for example. Even at that, I’m not convinced he would be able to even do sedentary-level work on a full-time basis.” *Id.* In addition, Dr. Forrest opined, “As for impairment rating, in my opinion this is a class 3 motion segment lesion and I would ascribe a 21% permanent impairment rating for the result of the work incident that occurred on May 1, 2012.” *Id.*

In letter dated July 1, 2013, physical therapist Deborah Antley, who had attempted to assess Mr. Dent for the possibility of entering a work-hardening program stated, that the findings during the Work Conditioning Evaluation showed Mr. Dent was able to lift 10 to 20 lbs only on an occasional basis and this would support the conclusion that he is only able to perform sedentary to limited light work. (R., p. 85). In response to this opinion, the Commission speculates that Mr. Dent’s evaluation results were the results of “conditioning” rather than his

injury.

In fact, the Commission offers no substantive evidence to support its implicit finding that the Appellant is able to perform medium level work other than the fact that he is a high school graduate. (R., p. 48). However, the vocational evidence in the record, which shows that the Appellant has very limited academic function, graduated high school with a “D average” and was eligible for special education classes, proves Dr. Forrest’s suspicion that the Appellant’s high school diploma is more or less worthless in assisting him to perform anything other than heavy labor. (R, pp. 98-99, 117-118,120)

In its Order, the Commission indicates that it considered the vocational report submitted by the Appellant but gave “more weight” to the opinion of Dr. Gunter that the Appellant can perform Medium duty work. (R., p. 51). However, the flaw in the Commission’s reasoning is that Dr. Gunter gave a purely medical opinion without considering the other vocational factors affecting the Appellant’s ability to perform Medium duty work.

Thus, the Commission chose to completely disregard the unrefuted<sup>2</sup> conclusion of vocational expert Harriet Fowler that the Appellant is not qualified even for Medium level work. In essence, by its own admission, the Commission relied solely on the limited medical opinion of Dr. Gunter rather than considering the other vocational evidence in the record when, in fact, Dr. Gunter’s opinion should have been viewed as just one piece of the evidence to be considered in the entire picture of the claimant’s vocational potential. The obvious question then becomes, what did the unrefuted vocational evidence reveal?

---

<sup>2</sup> The Respondents chose not to submit evidence in the form of an expert vocational opinion to challenge the conclusions of Ms. Fowler.

On September 13, 2013, the Appellant was administered the Wide Range Achievement Test-Revision 3 by vocational expert Harriet Fowler. "He scored at 3<sup>rd</sup> at arithmetic, 4<sup>th</sup> grade level in spelling, and at 5<sup>th</sup> grade level in reading." (R., p. 117). Although the Commission attempts to minimize the impact of this evidence by suggesting that the Appellant has suffered memory loss as a result of cancer treatments and noting that his wife had to assist him in answering certain questions, Ms. Fowler researched his high school records at the request of counsel and found his achievement testing in high school to be at a similarly low level of functioning to the extent that Ms. Fowler is of the opinion that his achievement scores were not lowered by his cancer treatment. (R., p. 120). This evidence is unrefuted.

Ms. Fowler further opined that the Appellant "is and will be unable to obtain or maintain substantial gainful employment" due to factors such as advancing age, educational and functional academic levels including illiteracy, work history, and severe physical limitations. (R., p. 118). Further, the Appellant's testimony indicates that, although he was graduated from high school with a diploma, he maintained mostly a D average and he was eligible for special education classes.

The Commission completely disregarded this evidence even though Ms. Fowler's expert testimony is **uncontradicted** as the Defendants chose not to submit any report or conclusions from a vocational expert of their own. This is very troubling as the results of Ms. Fowler's analysis indicate that the Appellant is unemployable as he is neither qualified nor capable of performing medium, light or sedentary duty.

Finally, the Appellant's lay testimony indicates that he is incapable of returning to any type of employment that he has ever done in the past and further that there is no job he is capable

of performing physically for which he would be qualified. Again, the Appellant testified that he has done heavy labor his entire life and that he has never done a job in his life that did not require heavy labor. His testimony touched on the job duties he has performed in each of his jobs and plainly indicated that he would not be able to perform those physical tasks since his back injury. He would not be able to go back to doing most of the tasks for which he was responsible in his twenty-seven year employment with the East Richland Public Service District. Mr. Dent further stated that he would not be able to do a job which requires him to use a computer, complete paperwork or do arithmetic. (R. pp. 189-192). Defendants produced no evidence to refute the Appellant's lay testimony.

To justify its decision to minimize the Appellant's level of disability, the Commission apparently relied on three dubious factors: (1) impairment ratings; (2) the Appellant's refusal of surgery; and (3) the Appellant's diagnosis in 2012 of small cell lung cancer. As far as impairment ratings are concerned, Dr. Gunter opined a 10% permanent partial impairment of the Appellant's whole person according to the AMA Guidelines. (R., p. 51).

However, Dr. Gunter offered no explanation of how he arrived at that figure under the Guidelines. Nevertheless, without explanation of the rationale for its decision, the Commission found Dr. Gunter's rating to be more credible than that of Dr. Forrest despite the fact that Dr. Forrest clearly indicated his 21% rating was based on his diagnosis of a class 3 motion segment lesion. Moreover, the Commission's reliance on the impairment rating of Dr. Gunter did not seem to deter the Commission in finding of a 35% partial permanent disability to the claimant's back.

With respect to the Appellant's refusal of surgery, the Commission seems to suggest that

the Appellant's level of disability must be smaller than he claims because he was treated "conservatively." The Commission then proceeds to cast doubt on the Appellant's credibility in its Finding of Fact ¶12 by speculating that a person with pain complaints of 8 or 9 on a scale of 1-10 would not refuse surgery. However, fear of surgery is neither probative of the Appellant's disability nor of his credibility. In fact, this should not even be considered a relevant factor in the case.

In *Scruggs v. Tuscacora Yarns, Inc.*, 294 S.C. 47, 362 S.E.2d 319 (S.C. App. 1987), the Court of Appeals found that Scruggs was justified in refusing surgery where she 61 years old at the time of the hearing and had a heart problem. Mrs. Scruggs testified she had seriously considered surgery, but in light of her age and other factors, felt it would not benefit her. The Court of Appeals found that she was justified in refusal of surgery under the circumstances, that she was at maximum medical improvement and that she was permanently and totally disabled.

Here, the Appellant had equally compelling reasons for his fear of surgery at the time it was discussed with Dr. Gunter. Obviously, the Appellant's fear of back surgery was related to his cancer and treatment thereof at that time. In addition, there is nothing in the record to suggest that Dr. Gunter ever opined that the Appellant would actually benefit from surgery. Dr. Gunter merely states, "[H]e would not consider a surgical alternative should one be offered." (R., p.124).

Incredibly, the Commission next found, "[E]ven though Appellant testified that his cancer is in remission, Appellant has not expressed an interest in undergoing surgery." However, there is absolutely no evidence in the record to suggest that the Appellant has been offered back surgery since his cancer went into remission. Hence, and particularly in light of the higher

courts' ruling in Scruggs, the Appellant would submit that his fear and/or refusal of surgery is in no way probative to the issue of his permanent disability.

Thus, we have an injured worker who is 58 years of age and has suffered, under the Commission's estimation, at least a 35% disability to his spine. He has a 27 year work history with the Employer in this case, performing heavy labor. The evidence in the record shows that he has always performed heavy labor. The IME doctor who examined the Appellant believes he is capable of sedentary duty only. The vocational evidence shows that his academic abilities are, and always have been, severely limited and that he is not qualified for any employment other than heavy duty labor, which every expert agrees he is incapable of performing as a result of his back injury. Finally, the claimant's lay testimony proves that he is unable to return to work in any job he has ever performed.

In light of the foregoing arguments, the Appellant would submit that the Commission's Order is not supported by substantial evidence in the record and respectfully requests that this Court reverse the Commission's decision and instead find that the Claimant is permanently and totally disabled under Section 42-9-10 and/or 42-9-30(21) of the Act.

**II. DID THE WORKERS' COMPENSATION COMMISSION ERR AS A MATTER OF LAW IN FINDING THAT THE CLAIMANT'S DISABILITY IS MORE A RESULT OF SMALL CELL LUNG CANCER THAN HIS WORK-RELATED BACK INJURY?**

The Workers' Compensation Commission erred egregiously in finding that the Appellant's total disability is a result of his small cell lung cancer rather than his work-related back injury. In a particularly disturbing decision, the Commission found in Finding of Fact ¶26, "Although the undersigned greatly sympathizes with Appellant, we find that Appellant's

disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Appellant has undergone.” (R., p. 51). This finding is not supported by substantial evidence in the record and amounts to nothing more than pure speculation by the Commission. Moreover, this conclusion is a clear result of legal error.

After going out of work due to his on-the-job back injury, Mr. Dent was diagnosed with small cell lung cancer. (R., p. 160). As justification for the conclusion that Mr. Dent’s disability stems from his cancer condition, the primary evidence cited by the Commission is the fact that he reported to a physical therapist that he had decided to retire and the “first reason” he gave for that decision was his lung cancer. (R., p. 84).

Needless to say, there is no evidence that the physical therapist accurately recorded the correct order in which the Appellant’s reasons for retirement were listed. Nevertheless, the Appellant admittedly did mention that he was retiring due to lung cancer and his back condition. However, the idea that the condition which he may have mentioned first in that conversation was lung cancer and, therefore, lung cancer should be considered the “primary” cause for his disability is preposterous. If the Appellant had happened to mention his low back condition first in that lone statement, would the Commission’s analysis have been different?

Moreover, this particular finding is contradicted by the fact that the work hardening therapist, when explaining reasons why testing would be limited, listed the Appellant’s low back condition before his lung cancer. (R., p. 85). This was the physical therapist’s own statement and not something allegedly said by the Appellant at a therapy visit. Therefore, if the order in which his conditions are listed is even remotely probative, why is the expert’s statement somehow less persuasive than an offhand remark made by the Appellant to his therapist at one of

his appointments? The obvious answer is that neither statement is particularly probative as to the “primary” cause for the Appellant’s disability and even if they were, the physical therapist’s statement should clearly carry more weight.

Further, in Finding of Fact ¶26, the Commission stated, “[I]n determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.” The Appellant would submit that such a parsing between the Appellant’s back injury and small cell lung cancer constitutes a medically complex problem and, therefore, would require expert testimony to form the basis of the Commission’s finding on this issue. See McLeod v. Piggly Wiggly Carolina Co., 280 S.C. 466, 318 S.E.2d 38 (S.C.App. 1984). However, the only expert testimony in the record to the medical cause of Mr. Dent’s disability is that of Dr. Forrest, a board certified spinal surgeon.

In fact, the Defendants deposed the Appellant months before the hearing took place and discovered that he had been under the care of an oncologist. They had ample opportunity to subpoena the records of the Appellant’s oncologist, Dr. Wise, and/or to depose that specialist, in order to enter evidence that lung cancer is purportedly the “primary” cause for the Appellant’s current level of disability. However, that was not done and the Defendants produced no expert evidence which would support the Commission’s finding.

Again, the only expert evidence regarding whether the Appellant is disabled due to his back or due to his lung cancer was offered by Dr. Forrest who opined, “In fact, the lung cancer is not playing any role in my opinion currently, which is that Mr. Dent is unable to return to work at any level.” (R., p. 96). This expert opinion is uncontradicted by any other expert testimony or opinion in the record. However, addressing the opinion of Dr. Forrest, the Commission stated,

“during the very same time frame Appellant saw his IME, Appellant reported that his cancer had metastasized to the lymph nodes and an adrenal gland.” As a result, the Commission, despite its inability to rely on any expert evidence offered by the Defendants to refute Dr. Forrest’s opinion, instead relies on speculation to find that his opinion “not persuasive.” (R., pp. 50-51).

Along the same vein, the Commission comments in Finding of Fact ¶25, “Appellant’s vocational expert ‘parrot’ [sic] Dr. Forrest’s inaccurate statement that Appellant’s cancer plays no role in Appellant’s inability to return to work. Appellant relies upon the use of a cane that no workers’ compensation physician prescribed.” (Emphasis added) (*Id.*) First, the Appellant would submit that the Appellant’s vocational expert is not a medical doctor and, therefore, is not qualified to offer expert medical opinions of her own. Thus, “parroting” the medical opinions of the actual medical experts in the case, and thereby relying on the medical evidence available to her, is exactly what a vocational expert is expected to do.

Further, regarding the Appellant’s use of a cane, the Appellant would submit that the fact that he uses a cane that “no workers’ compensation physician has prescribed”<sup>3</sup> is completely irrelevant. However, the Commission makes an incredible leap in logic to include a purely speculative finding that the cane is related to Mr. Dent’s cancer diagnosis and/or treatment. To wit, the Commission states in Finding of Fact ¶20, “Notwithstanding Appellant’s testimony to the contrary, we find that Appellant’s use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy.” As its basis for this finding, the Commission cites “the medical evidence in its entirety”, of which there is none to support the conclusion, and the Hearing Commissioner’s own “observations” which gives rise to the dubious proposition that a

---

<sup>3</sup> See Commission Order, July 10, 2015.

Commissioner with no medical training can look at a person and determine exactly why that person uses a cane even when he never used the cane while in her presence.<sup>4</sup>

In addition to the aforementioned statement, Dr. Forrest further noted in his report, “I want to emphasize that in my opinion Mr. Dent’s inability to work is on the basis of his work injury and in my opinion that would be true whether or not he had the small cell lung cancer.” (R., p. 95). Significantly, the Commission failed to even acknowledge this evidence. However, again, the only expert testimony in the record indicates that the Appellant would be permanently and totally disabled solely from his back condition, regardless of his cancer.

Moreover, perhaps the most significant evidence of all relating to this issue is Mr. Dent’s own lay testimony that his lung cancer is currently in remission. As a result, regardless of what may have been the case “during the very same timeframe” as referenced by the Commission, the only direct evidence offered regarding Mr. Dent’s condition as of the date of the hearing were Dr. Forrest’s expert opinions and the Appellant’s uncontradicted lay testimony that his cancer is in remission and that his back condition is solely responsible for his inability to work. Thus, while the Commission perceived a duty to “parse the (a) back condition from (b) cancer and its residuals,” its Order represents an abject failure to correctly and fairly do so.

Further, the Commission states in Finding of Fact ¶28 that its award of 35% permanent partial disability to the back is based in part on “(a) Appellant’s pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Appellant’s expert cannot find any weakness or neurological deficit with regard to either lower extremity.” This constitutes yet another erroneous finding. First, the Act does not require an impairment rating in evidence to

---

<sup>4</sup> Mr. Dent did not present with a cane at the hearing of his case.

show that a body part has been affected by the injured worker's accident. *See, e.g., Beckman v. Sysco Columbia, LLC*, 408 S.C. 501, 759 S.E.2d 750 (S.C.App. 2014).

Next, the Appellant would submit that it is highly ironic that the Commission relies on straight leg tests and extraneous statements from Dr. Forrest's report to discount weakness and/or neurological deficits in the Appellant's leg(s). Meanwhile, the Commission finds Dr. Forrest's expert opinion regarding the Appellant's level of disability from his back injury *vis a vis* his lung cancer diagnosis to be "not persuasive." Nevertheless, the diagnosis of the authorized treating physician, whose opinions as to impairment rating and Medium work duty were accorded "great weight" by the Commission, is sufficient to establish the fact that the Appellant suffers from causally-related weakness and radiculopathy in his leg(s) regardless of the results of his straight leg test at an IME. *Id.*

In addition, the Commission's reliance on pain diagrams in evidence to minimize the Appellant's radicular symptoms is misplaced. The Commission apparently failed to notice that two of the pain diagrams depicted pain in the lower back and radicular symptoms of numbness, tingling or weakness going down the Appellant's leg (R., pp. 75, 84), exactly as described by the Appellant in his testimony and his statements made to providers. In addition, each of the remaining pain diagrams in the record are accompanied by a section on their respective reports designated as "radicular symptoms" in which pain, tingling and weakness are noted in one or both legs. (R., pp. 75, 84). Progressive Physical Therapy, the provider responsible for the pain diagrams, offers a definitive diagnosis of "Lumbar Radiculopathy." (R., pp. 79, 81).

Finally, the Commission's logic in downplaying the severity of the Appellant's back injury *vis a vis* his lung cancer is belied by the fact that the Commission awarded a 35%

disability to the claimant's back. Regardless, of whether his cancer has a role in his disability, it is simply impossible to imagine that Mr. Dent, with a 35% disability to his back, substantial academic handicaps, and a work history consisting entirely of heavy duty labor could return to work in any capacity at age 58.

In the case at bar, the Appellant easily met his burden of proving that he is permanently and totally disabled as a result of his lower back injury. Unfortunately, the Commission erroneously made an award of scheduled compensation based apparently in large part on its purely speculative finding that small cell lung cancer is the "primary" cause for Mr. Dent's disability. However, an award or decision of the Commission must not be based on surmise, conjecture or speculation. *See, e.g., Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960). Hence, to the extent that the Commission's decision is unsupported by even substantial evidence, much less a preponderance of the evidence in the record, the Appellant respectfully requests that the Appellate Panel apply its collective wisdom to reverse the Commission's Order and instead make an award of permanent and total disability in this case.

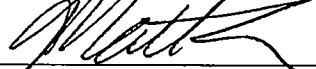
### **CONCLUSION**

The Commission erred as a matter of law in failing to find that the Appellant is permanently and totally disabled. The Appellant is fifty-eight years of age and his entire work history has been in occupations classified as heavy and/or very heavy labor, including a twenty-seven year career with the East Richland Public Service District, in a very heavy labor position. Every expert in the record is in agreement that the Appellant cannot return to his previous position or any heavy labor job. Moreover, as demonstrated *supra*, the Commission's findings and rationale in support of its decision to place the blame for Mr. Dent's proven total destruction

of work capacity on small cell lung cancer and thereby deny the Appellant an award of permanent and total disability is plainly erroneous, purely speculative and unsupported by substantial evidence in the record.

Therefore, in light of the foregoing arguments, the Appellant respectfully requests that this Court reverse the findings and conclusions of the Commission and instead find that the Appellant is entitled to an award of permanent and total disability either under Section 42-9-10 of the Act or 42-9-30(21) to the extent that he has sustained 50% or greater loss of use of the back.

**RESPECTFULLY SUBMITTED,**



**MATTHEW C. ROBERTSON**  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211  
mrobertson@pfmcdlaw.com  
**ATTORNEY FOR APPELLANT**

Columbia, South Carolina  
December 29, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission  
Appellate Panel

RECEIVED

DEC 30 2015

SC Court of Appeals

Appellate Case No.: 2015-001702

James Dent, Employee, ..... Appellant,

v.

East Richland County Public Service,  
District, Employer, and State Accident Fund,  
Insurance Carrier..... Respondents.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that this Brief complies with the requirements of Rule 211 of the South Carolina Appellate Court Rules.

  
MATTHEW C. ROBERTSON  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211  
mrobertson@pfmcldlaw.com  
ATTORNEY FOR APPELLANT

December 30, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**RECEIVED**

DEC 30 2015

\_\_\_\_\_  
**APPEAL FROM SOUTH CAROLINA**  
Workers Compensation Commission  
Appellate Panel

**SC Court of Appeals**

\_\_\_\_\_  
Appellate Case No.: 2015-001702  
\_\_\_\_\_

James Dent, Employee, ..... Appellant

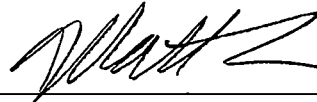
v.

East Richland County Public Service  
District, Employer, and State Accident  
Fund, Insurance Carrier..... Respondents.

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, Matthew C. Robertson, do hereby certify that on December 30, 2015, I served copy of ***Final Brief of Appellant*** in the above-captioned case upon counsel for the Respondent, Page P. Snyder, Esquire, by depositing a copy of same in the United States Mail with sufficient postage affixed and addressed to:

Page P. Snyder, Esquire  
The State Accident Fund  
Post Office Box 102100  
Charleston, South Carolina 29221-5000



**MATTHEW C. ROBERTSON**  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211  
mrobertson@pfmcdlaw.com  
**ATTORNEY FOR APPELLANT**

Columbia, South Carolina  
December 30, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

W.C.C. FILE NO. 1205879

APPELLATE CASE NO. 2015-001702

---

JAMES DENT, Appellant,

vs.

EAST RICHLAND COUNTY PUBLIC SERVICE DISTRICT, Employer,  
and STATE ACCIDENT FUND, Carrier, Respondents.

---

**FINAL BRIEF OF RESPONDENTS**

---

PAGE P. SNYDER, ESQUIRE  
S.C. BAR NO. 100239  
ATTORNEY FOR RESPONDENTS  
P.O. BOX 102100  
COLUMBIA, SC 29210  
(803) 896-5896

## TABLE OF CONTENTS

|                                    |    |
|------------------------------------|----|
| Table of Authorities.....          | II |
| Statement of Issues on Appeal..... | 1  |
| Statement of the Facts.....        | 2  |
| Standard of Review.....            | 5  |
| Argument.....                      | 6  |

DID THE WORKERS' COMPENSATION COMMISSION ERR IN  
FAILING TO FIND THAT THE APPELLANT IS PERMANENTLY  
AND TOTALLY DISABLED PURSUANT TO SECTIONS 42-9-10 OR  
42-9-30(21)?

DID THE WORKERS' COMPENSATION COMMISSION ERR AS A  
MATTER OF LAW IN FINDING THAT THE APPELLANT'S  
DISABILITY IS MORE A RESULT OF SMALL CELL LUNG  
CANCER THAN HIS WORK-RELATED BACK INJURY

|                 |    |
|-----------------|----|
| Conclusion..... | 10 |
|-----------------|----|

## TABLE OF AUTHORITIES

### CASES

|                                                                                                           |   |
|-----------------------------------------------------------------------------------------------------------|---|
| <i>Beckman v. Sysco Columbia, LLC</i> , 408 S.C. 501, 759 S.E.2d 750 (Ct. App. 2014).....                 | 7 |
| <i>Coleman v. Quality Concrete Products, Inc.</i> , 245 S.C. 625, 630, 142 S.E.2d 43, 45 (1965).....      | 6 |
| <i>Lark v. Bi-Lo, Inc.</i> , 276 S.C. 130, 134-35, 276 S.E.2d 304, 307 (1981).....                        | 5 |
| <i>Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n</i> , 282 S.C. 430, 319 S.E.2d 695, 696 (1984).....  | 5 |
| <i>Singleton v. Young Lumbar Company</i> , 236 S.C. 454, 114 S.E.2d 837 (1960).....                       | 7 |
| <i>Thompson v. South Carolina Steel Erectors</i> , 369 S.C. 606, 632 S.E.2d 874 (S.C. Ct. App. 2006)..... | 5 |

### STATUTES

|                                                      |         |
|------------------------------------------------------|---------|
| S.C. Code Ann. § 42-9-10 (1976, as amended).....     | 4, 6, 7 |
| S.C. Code Ann. § 42-9-20 (1976, as amended).....     | 4       |
| S.C. Code Ann. § 42-9-30(21) (1976, as amended)..... | 4, 6, 8 |

STATEMENT OF ISSUES ON APPEAL

DID THE WORKERS' COMPENSATION COMMISSION ERR IN FAILING TO FIND THAT THE APPELLANT IS PERMANENTLY AND TOTALLY DISABLED PURSUANT TO S. C. CODE SECTIONS 42-9-10 OR 42-9-30(21)?

DID THE WORKERS' COMPENSATION COMMISSION ERR AS A MATTER OF LAW IN FINDING THAT THE APPELLANT'S DISABILITY IS MORE A RESULT OF SMALL CELL LUNG CANCER THAN HIS WORK-RELATED BACK INJURY

### STATEMENT OF THE FACTS

The Appellant suffered an admitted injury to his lower back on May 1, 2012. While in the course and scope of his employment, Appellant attempted to move a manhole cover when he felt a sharp pain. (R. p. 175, lines 7-9). First, Appellant treated with Dr. Paula Belmar at Sentinel Health Partners. (See R. pp. 61-67, R. pp. 133-145). Over the course of her treatment of the Appellant, Dr. Belmar prescribed pain medication and made referrals for a spine x-ray, physical therapy, lumbar spine MRI, and a neurosurgical consultation. (*Id.*) On June 25, 2012, the Appellant underwent a lumbar spine MRI as ordered by Dr. Belmar. This MRI revealed a neoplasm in the lung. ((R. p. 147) The Appellant followed up with an oncologist and was diagnosed with small cell lung cancer sometime after the June 25, 2012 MRI. Appellant's cancer treatment consisted of chemotherapy and radiation therapy. (R. p. 129) He testified at the hearing that his cancer was in remission and that his last session of chemotherapy was in December 2013. (R. p. 160, lines 17-20).

With regard to his back injury, Dr. Belmar referred Appellant to a back specialist. On July 25, 2012, the Appellant began treatment with Dr. Brett Gunter of Columbia Neurosurgical Associates. (See R. pp. 123-132). Dr. Gunter ordered another MRI of the lumbar spine, this time with and without contrast. (R. p. 132). Records indicate the June 25, 2012 MRI was too poor quality for surgical evaluation and planning, and the new MRI would allow Dr. Gunter to better evaluate Appellant's lower back pain. (R. pp. 131-132). This MRI dated August 28, 2012 showed moderate spinal stenosis at L3-4 and L4-5 levels. (R. p. 129, R. p. 146). At his August 29, 2012 visit, Dr. Gunter indicated that he suffered from lumbar spondylosis with moderate stenosis. (R. p. 129).

Dr. Gunter ordered two lumbar epidural steroid injections which were administered by Dr. Eva Rawl. (R. pp. 125-128) At the hearing, Appellant testified that the injections provided relief for about two weeks and then the effect of the injections wore off. (R. p. 177, lines 6-18) Dr. Gunter also referred the Appellant to a work hardening program; however the evaluation for the program terminated prematurely due to the development of shortness of breath and pain. (R. p. 123, R. pp. 69, 82, R. pp. 178-79) Ultimately, Dr. Gunter placed Appellant at maximum medical improvement on May 8, 2013, assigning a permanent impairment rating of 10% to the whole person and released Appellant to work at a medium duty level. (R. p. 123) He also opined that the Appellant may require non-steroidal anti-inflammatory drugs for future medical treatment. (*Id.*)

Records from Appellant's treatment at Progressive Physical Therapy were also submitted into evidence. (R. pp. 68-87) Appellant attended physical therapy from January 6, 2013 to July 1, 2013. (*Id.*) It appears this treatment was periodically interrupted due to unrelated family issues. (R. pp. 20-21).

Appellant submitted into evidence a one-time independent medical examination performed by Dr. Leonard Forrest of Southeastern Spine Institute in Mt. Pleasant, South Carolina. This exam took place on July 8, 2013 and lasted approximately one to one and one half hours. R. pp. 92-97, R. p. 182, lines 19-21) Dr. Forrest opined that Appellant suffered a permanent impairment of 21% to the whole person as a result of the May 1, 2012 work accident. (R. p. 97). As to future medicals, Dr. Forrest opined that the Appellant would need continued pain medication and "additional medications may or may not be needed." (R. p. 96) He did not find surgery "playing a role for the work-

related situation” and he did not have much optimism as to the benefits of further injections. (*Id.*) Lastly, the Appellant offered a vocational evaluation performed by Harriet Fowler. (R. pp. 98-120) The Respondents did not submit a vocational evaluation because they assert that this is a single member claim under S.C. Code Ann. § 42-9-30(21) and the Appellant is barred from an award based upon the economic model of S.C. Code Ann. §§ 42-9-10 and 42-9-20. It appears that the vocational evaluation submitted by the Appellant more heavily relies upon a statement from the physical therapist dated July 1, 2013, rather than the opinion of the authorized treating physician as to the Appellant’s capacity for work. (R. pp. 98-120, R. p. 85)

Aside from the medical records from the authorized providers and the Appellant’s own medical and vocational opinions, the only other evidence is the testimony of the Appellant. Appellant testified as to his work history, medical treatment for both his work injury and small cell lung cancer, and his own opinions as to his injury and disability. Appellant also testified as to his employment status at the time of his injury. Appellant stated he was participating in the state’s TERI program at the time of his injury and he had been enrolled in the TERI program for the two years before his work accident. (R. p. 197, lines 11-25) Appellant continued to state he “figured” he would retire at the end of his TERI program. (*Id.*)

In short, the Appellant sustained a compensable work injury on May 1, 2012 to the lower back. He received conservative treatment in the form of physical therapy, pain medication, and two lumbar epidural steroid injections. Further treatment modalities were not provided as the Appellant stated to his authorized treating physician and to the Single Commissioner that he was not interested in surgical intervention. (R. p. 124, R. p.

177. lines 21-25) The authorized treating physician, a neurosurgeon, recommended a work hardening program. Appellant completed an evaluation for work hardening with his physical therapist and it was determined he was not a candidate for this program. (R. p. 82) This was due to the Appellant's shortness of breath and complaints of pain. (R. p. 123) Physical therapist Deborah Antley also stated she thought it unnecessary to complete the evaluation because the Appellant intended to retire after the close of his workers' compensation claim and did not plan to return to work. (R. p. 82). The authorized treating physician placed him at maximum medical improvement on May 8, 2013, approximately one year after his date of injury.

#### **STANDARD OF REVIEW**

The South Carolina Administrative Procedures Act establishes the standard of review for decisions by the South Carolina Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 307 (1981). An Appellate panel may reverse or modify the Workers' Compensation Commission's decision only if the Appellant'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, or substantial evidence on the whole record. *Thompson v. South Carolina Steel Erectors*, 369 S.C. 606, 632 S.E.2d 874 (S.C. Ct. App. 2006). Our Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "[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.” *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm’n*, 282 S.C. 430, 319 S.E.2d 695, 696 (1984).

### **ARGUMENT**

#### **1. DID THE WORKERS’ COMPENSATION COMMISSION ERR IN FAILING TO FIND THAT THE APPELLANT IS PERMANENTLY AND TOTALLY DISABLED PURSUANT TO SECTIONS 42-9-10 OR 42-9-30(21)?**

The Single Commissioner did not err in failing to find that the Appellant is permanently and totally disabled pursuant to S. C. Code Ann. §42-9-10 or §42-9-30(21). The Single Commissioner’s conclusion that the Appellant sustained thirty five percent (35%) permanent disability to the back is fully supported by the record. Each of the Single Commissioner’s thirty-two findings of facts related to the Appellant’s medical treatment and disability are supported by a citation to either APA submissions or the testimony of the Appellant. The Single Commissioner clearly considered all of the evidence in reaching her decision, even referencing the opinions of all of the physicians and experts submitted, and chose to rely more heavily upon some evidence than others. While Appellant characterizes the Single Commissioner’s decisions-making as implication and speculation, Respondents believe that the Single Commissioner reviewed, interpreted and weighed the entire body of evidence, citing to both parties’ APA submissions and the Appellant’s testimony, before reaching a conclusion.

It is the burden of the Appellant to prove that they are permanently and totally disabled pursuant to S.C. Code Ann. §42-9-10. *Coleman v. Quality Concrete Products, Inc.*, 245 S.C. 625, 630, 142 S.E.2d 43, 45 (1965). The Commissioner, in viewing the record as a whole, did not find that the Appellant met his burden in proving that he is permanently and totally disabled as a result of his work injury.

The Appellant relies upon *Beckman v. Sysco Columbia, LLC* in asserting that he is entitled to recover under S. C. Code Ann. §42-9-10.<sup>1</sup> *Beckman v. Sysco Columbia, LLC*, 408 S.C. 501, 759 S.E.2d 750 (Ct. App. 2014). This case is distinguishable because in *Beckman*, the injured worker received a permanent impairment rating which encompassed his injury to his back and his sacroiliac joint. *Beckman v. Sysco Columbia, LLC*, 408 S.C. 501, 759 S.E.2d 750, 751 (Ct. App. 2014). In the present case, no impairment has been assigned to any other body part, including either of the Appellant's lower extremities. Per *Singleton v. Young Lumbar Company*, "where the injury is confined to the scheduled member, and there is no impairment of any other party of the body because of such injury, the employee is limited to the scheduled compensation..." *Singleton v. Young Lumbar Company*, 236 S.C. 454, 471, 114 S.E.2d 837, 846 (1960).

The Appellant alleges that there is no evidence in the record to support the Commission's opinion that he can perform medium work. In fact, the authorized treating physician and the only medical doctor in the record to see the Appellant with any regularity opines that he is qualified to perform medium duty work. (R. p. 123) Any argument that this opinion of the Commission is not supported by the record can be dismantled by looking at the Respondents' first page of its submission of evidence. The matter of the physical demand category which the Appellant may be able to perform relies solely upon physical ability. These categories are outlined and defined by the Department of Labor's Dictionary of Occupational Titles. There is no reference to academic or vocational abilities in these definitions.

---

<sup>1</sup> *Beckman v. Sysco Columbia, LLC* is currently pending before the South Carolina Supreme Court. The matters were briefed and oral arguments were held at the Supreme Court on November 3, 2015.

There is not a work-hardening report or a functional capacity evaluation in evidence. Physical therapist, Deborah Antley, indicated in two separate letters that since the Appellant has been approved for disability and does not plan to return to work, the information gained from a functional capacity evaluation would be of limited use. (R. pp. 82, 85) The Commission was left to make a determination based upon the evidence in the record and the Single Commissioner's Findings of Fact indicate that she reviewed the opinions of Dr. Gunter, Dr. Forrest and Deborah Antley in making her determination that the Appellant can work medium duty. (See R. pp. 6, 8)

The vocational evaluation submitted by the Appellant places greater weight on the opinion of a one-time independent medical evaluation of a doctor three hours out of town over the neurosurgeon who spent more with the Appellant. Her evaluation seems incomplete as she does not consider the possibility that he is able to work medium duty. The Single Commissioner opined that the Appellant could work medium duty and this issue was affirmed by the three other commissioners at the Appellate Panel level. The Single Commissioner directly addresses the weight she gave to the vocational evaluation in Finding of Fact ¶25.

As to the argument that the Appellant is permanently and totally disabled pursuant to S. C. Code Ann. §42-9-30(21), there is a single opinion that the Appellant has sustained 50% or greater loss of use of his back. (R. p. 92) The fact that the Commission relied more heavily upon the opinion of the authorized treating physician than that of a one-time evaluation is not an error of law or fact, but rather a determination reached after reviewing the entirety of the evidence in the record.

**2. DID THE WORKERS' COMPENSATION COMMISSION ERR AS A MATTER OF LAW IN FINDING THAT THE APPELLANT'S DISABILITY IS MORE A RESULT OF SMALL CELL LUNG CANCER THAN HIS WORK-RELATED BACK INJURY?**

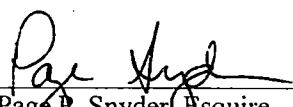
The Workers' Compensation Commission did not err in finding that the Appellant's disability is more a result of his lung cancer rather than his work-related back injury as there are numerous indications in the record to support this finding. First, the Appellant testified that he has problems with memory due to the chemical therapy received for his lung cancer. (R. pp. 160, lines 21-25, 161, lines 1-24) The Appellant went on to testify that he no longer drives. (R. p. 187, lines 5-6) He testified that he was scared he would "fall out," and that he was worried about fainting, but that his inability to drive did not stem from his back injury and that he "can mash the pedals pretty good." (R. p. 187, line 16-22) Additionally, the Appellant's own vocational evaluation begins by referencing the Appellant's memory problems as a result of radiation and chemotherapy. (R. p. 98) It states that the Appellant's wife reports that the Appellant constantly repeats himself and asks the same questions repeatedly. (*Id.*) The Appellant's wife reports that the two of them "do drills" before having to recollect with attorneys. (*Id.*) Additionally, the first reason stated for why the Appellant could not complete work hardening was dyspnea, or shortness of breath. (R. p. 85)

With the above information in evidence, the Commissioner found Dr. Forrest's opinion that the Appellant's lung cancer played no role in his ability to work unpersuasive. (R. pp. 7-8) The Commissioner is charged with reviewing all the evidence and making a determination as to weight of that evidence. It is clear that the Commissioner found that the opinion of Dr. Forrest was not persuasive in light of the body of evidence. This opinion was affirmed by the Appellate Panel.

**CONCLUSION**

For the foregoing reasons, Respondents contend that the Order of the Appellate Panel South Carolina Workers' Compensation Commission should be affirmed.

Respectfully submitted.

  
\_\_\_\_\_  
Page B. Snyder, Esquire  
Attorney for Respondent  
State Accident  
SC Bar No. 100239  
P.O. Box 102100  
Columbia, SC 29221  
(803) 896-5896  
psnyder@saf.sc.gov

November 10, 2015

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

W.C.C. FILE NO. 1205879

APPELLATE CASE NO. 2015-001702

---

JAMES DENT, Appellant,

vs.

EAST RICHLAND COUNTY PUBLIC SERVICE DISTRICT, Employer,  
and STATE ACCIDENT FUND, Carrier. Respondents.

---

---

I certify that I have served the Respondents' Final Brief on Appellant on December 23, 2015  
by depositing a copy of it in the United States Mail, postage prepaid, to 1315 Elmwood Avenue,  
Columbia, South Carolina 29201.

STATE ACCIDENT FUND

BY:

  
ERIN FARTHING, ESQUIRE  
S.C. BAR NO. 76151  
ATTORNEY FOR RESPONDENT  
P. O. BOX 102100  
COLUMBIA, SC 29210  
(803) 896-5896

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

James Dent, Appellant,

v.

East Richland County Public Service District, Employer,  
and State Accident Fund, Carrier, Respondents.

Appellate Case No. 2015-001702

---

Appeal From The Workers' Compensation Commission

---

Opinion No. 5548

Heard February 8, 2017 – Filed March 28, 2018

---

**REVERSED**

---

Matthew C. Robertson, of McDaniel Law Firm, of  
Columbia, for Appellant.

Page Snyder Hilton, of the State Accident Fund, of  
Columbia, for Respondents.

---

**LOCKEMY, C.J.:** James Dent appeals the South Carolina Workers' Compensation Commission Appellate Panel's (Appellate Panel) order, arguing the Appellate Panel erred in (1) failing to find he is totally and permanently disabled, and (2) finding his disability is primarily the result of his lung cancer and not his work-related back injury. We reverse.

**FACTS/PROCEDURAL BACKGROUND**

James Dent was employed by the East Richland County Public Service District (the District) as a sewer line maintenance foreman.<sup>1</sup> On May 1, 2012, Dent sustained an admitted injury to his lower back in the course of his employment while attempting to move a manhole cover.

Dent was initially treated by Dr. Paula Belmar. Dent complained to Dr. Belmar of low back pain which radiated down his right leg. Dr. Belmar noted Dent's back pain and lumbar radiculopathy<sup>2</sup> in her assessment and prescribed Dent pain medication and made referrals for physical therapy and an MRI. On June 25, 2012, Dent underwent a lumbar spine MRI which revealed a neoplasm in the lung. Dent was subsequently diagnosed with lung cancer.<sup>3</sup>

In July 2012, Dent began treatment with Dr. Brett Gunter. Dr. Gunter ordered a second MRI to evaluate Dent's lower back pain. The MRI revealed moderate spinal stenosis at L3-4 and L4-5. Dr. Gunter diagnosed Dent with lumbar spondylosis with moderate stenosis and lumbar radiculopathy. He ordered physical therapy and lumbar epidural steroid injections.<sup>4</sup> Dr. Gunter also referred Dent to a work hardening program. Following an evaluation, it was determined Dent was not a candidate for the program due to shortness of breath and back pain. The physical therapist who performed the evaluation and observed Dent's physical abilities over a period of several months, found Dent would be limited to performing sedentary to limited light physical demand labor.

---

<sup>1</sup> Dent is fifty-eight years old. He was employed by the District for twenty-seven years.

<sup>2</sup> Lumbar radiculopathy is the "compression and irritation of nerve roots in the lumbar region, with resultant pain in the lower back and lower limbs." *Lumbar Radiculopathy*, Mosby's Dictionary of Medicine, Nursing & Health Professionals (10th ed. 2017).

<sup>3</sup> Dent's cancer was treated with chemotherapy and radiation. His last chemotherapy treatment was in December 2013. As of the time of oral argument in this case, Dent's cancer was in remission.

<sup>4</sup> Dent stated to Dr. Gunter he would not consider a surgical alternative should one be offered.

On May 8, 2013, Dr. Gunter opined Dent had reached maximum medical improvement (MMI) with a 10% permanent impairment to the whole person and released Dent to work at a medium duty level. Dr. Gunter further opined Dent may require non-steroidal anti-inflammatory drugs for future medical treatment.

On July 8, 2013, Dent received an independent medical exam (IME) from Dr. Leonard Forrest. Dr. Forrest noted Dent suffered pain in his back and right leg and opined Dent had lost more than 50% of the use of his back and suffered a 21% impairment to the whole person as a result of his work accident. Dr. Forrest further opined Dent could not return to work—even sedentary work—as a result of his injury. According to Dr. Forrest, Dent's inability to work was not a result of his lung cancer.

In November 2013, Dent received a vocational evaluation from Harriet Fowler. Fowler opined,

given [Dent's] advancing age . . . , education and functional academic levels including illiteracy, work history and attendant skills (all heavy and very heavy categories and lower skilled), and significant and severe physical limitations it is clearly more likely than not that [Dent] is and will be . . . unable to obtain or maintain substantial gainful employment.

On September 20, 2013, Dent filed a Form 50 alleging he was permanently and totally disabled as a result of his work accident. Dent alleged he suffered compensable injuries to his back, right leg, and left leg. The District and the State Accident Fund (collectively, Respondents) subsequently filed a Form 51, admitting an injury to Dent's back and denying any injury to Dent's legs.

A hearing was held before the Single Commissioner on February 7, 2014. At the hearing, Dent alleged he was entitled to permanent total disability (PTD) due to either (1) loss of earning capacity under section 42-9-10 of the South Carolina Code (2015) or (2) a 50% or more loss of use of the back under subsection 42-9-30(21) of the South Carolina Code (2015). Dent testified his lower back pain rates as an eight out of ten and radiates down his right—and sometimes, left—leg. Dent also testified he has numbness and weakness in his right leg and difficulty sitting and standing for long periods of time. According to Dent, the physical therapy and steroid injections he was prescribed did not provide him with any lasting pain relief. Dent further testified he has been employed as a heavy laborer his entire

working career and does not believe he could return to the type of work he previously performed.

Respondents argued Dent only sustained an injury to his back as a result of his work accident and was not totally and permanently disabled. Respondents asserted Dr. Gunter's 10% impairment rating should be accorded the greatest weight and argued Dent could perform work within the restrictions placed by his medical providers. Respondents further asserted Dent's lung cancer was a disabling factor which eclipsed his back injury.

In an April 14, 2014 order, the Single Commissioner held (1) Dent sustained a work-related injury to his back; (2) Dent's right leg was affected by his back injury; (3) this was a "'one body part' (*i.e. Singleton*) case"<sup>5</sup>; (4) Dent's disability stemmed primarily from his lung cancer; (5) Dent had reached MMI and was entitled to an award of 35% permanent partial disability (PPD) pursuant to subsection 42-9-30(21); and (6) Dent was entitled to further medical treatment for his back. The Single Commissioner found Dr. Forrest's 21% impairment rating was not persuasive given Dent "was treated conservatively, and did not undergo surgery."

Dent subsequently appealed the Single Commissioner's findings to the Appellate Panel. Following a hearing, the Appellate Panel remanded the case to the Single Commissioner for clarification regarding its finding that Dent's right leg was affected by his back injury but that this was a "one body part" case requiring application of the rule in *Singleton*. On remand, the Single Commissioner issued an order on February 24, 2015, withdrawing her finding that this was a "one body part" case but still denying Dent was totally and permanently disabled as a result of

---

<sup>5</sup> In *Singleton v. Young Lumber Company*, 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960), Singleton suffered an injury to a scheduled member, his leg, and no other condition was claimed to have contributed to his disability. Singleton argued the injury to his leg was so disabling that he should be found totally disabled. *Id.* at 468, 114 S.E.2d at 844. The court held that because the injury was confined to a scheduled member, compensation must be determined under the scheduled injury statute as provided by the legislature. *Id.* at 473, 114 S.E.2d at 846. Thus, an impairment involving only a scheduled member is compensated under the scheduled injury statute and not the general disability statute. *Id.* The court held, "To obtain compensation in addition to that scheduled for the injured member, [Singleton] must show that some other part of his body is affected." *Id.* at 471, 114 S.E.2d at 845.

his back injury. The Appellate Panel affirmed the Single Commissioner's February 2015 order in full on July 10, 2015. This appeal followed.

## STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act establishes the substantial evidence standard for judicial review of decisions by the [Appellate Panel]." *Murphy v. Owens Corning*, 393 S.C. 77, 81, 710 S.E.2d 454, 456 (Ct. App. 2011) (citing S.C. Code Ann. § 1-23-380 (Supp. 2011)). "Under the substantial evidence standard of review, this court may not substitute its judgment for that of the [Appellate Panel] as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." *Id.* at 81-82, 710 S.E.2d at 456. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." *Taylor v. S.C. Dep't of Motor Vehicles*, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006) (quoting *S.C. Dep't of Motor Vehicles v. Nelson*, 364 S.C. 514, 519, 613 S.E.2d 544, 547 (2005)). "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence." *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008).

## LAW/ANALYSIS

Dent argues the Appellate Panel erred in failing to find he was permanently and totally disabled pursuant to either section 42-9-10 or subsection 42-9-30(21) of the South Carolina Code (2015).

"South Carolina provides three methods to obtain disability compensation: 1) total disability under S.C. Code Ann. § 42-9-10; 2) partial disability under S.C. Code Ann. § 42-9-20; and 3) scheduled disability under S.C. Code Ann. § 42-9-30." *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 105, 580 S.E.2d 100, 102 (2003). "The first two methods are premised on the economic model, in most instances, while the third method conclusively relies upon the medical model with its presumption of lost earning capacity." *Id.*

### I. Section 42-9-10

First, Dent contends the Appellate Panel erred in failing to find PTD under section 42-9-10 of the South Carolina Code (2015). We agree.

Section 42-9-10 provides for PTD "[w]hen the incapacity for work resulting from an injury is total." S.C. Code Ann. § 42-9-10(A) (2015). In *Wynn v. Peoples Natural Gas Company of South Carolina*, 238 S.C. 1, 11-12, 118 S.E.2d 812, 817-18 (1961), our supreme court stated:

Disability in compensation cases is to be measured by loss of earning capacity. Total disability does not require complete helplessness. Inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment. On the other hand the rule in most states is that an employee who is capable of performing other work that is continuously available to him will not be deemed totally disabled because he is unable to resume the duties of the particular occupation in which he was engaged at the time of his injury. The generally accepted test of total disability is inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.

(internal citations omitted). The burden is on the employee to prove he or she is totally disabled under section 42-9-10. *Coleman v. Quality Concrete Prods., Inc.*, 245 S.C. 625, 630, 142 S.E.2d 43, 45 (1965).

"The policy behind allowing a claimant to proceed under the general disability § 42-9-10 and § 42-9-20 allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section." *Brown v. Owen Steel Co.*, 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994). "When, however, a scheduled loss is not accompanied by additional complications affecting another part of the body, the scheduled recovery is exclusive." *Id.* As stated in *Singleton*, "Where the injury is confined to the scheduled member, and there is no *impairment* of any other part of the body because of such injury, the employee is limited to the scheduled compensation [pursuant to section 42-9-30]. . . . To obtain compensation in addition to that

scheduled for the injured member, claimant must show that some other part of his body is *affected*." 236 S.C. at 471, 114 S.E.2d at 845 (emphasis added).

In *Colonna v. Marlboro Park Hospital*, 404 S.C. 537, 546, 745 S.E.2d 128, 133 (Ct. App. 2013), this court, after reviewing *Singleton* and other case law, held a claimant must prove not only that another body part was *affected* by an injury to a scheduled member, but that another body part was *impaired or injured* for section 42-9-10 to apply. In *Colonna*, the claimant sought workers' compensation benefits for a compensable injury to her ankle and right foot. 404 S.C. at 541, 745 S.E.2d at 130. To address the pain in the claimant's ankle and foot, a spinal cord stimulator was implanted in her back. *Id.* at 542, 745 S.E.2d at 131. The claimant asserted the stimulator affected her back, and thus she should be entitled to proceed under section 42-9-10. *Id.* at 545, 745 S.E.2d at 133. The court found the substantial evidence in the record did not support a finding that the claimant suffered an additional injury or impairment to the back. *Id.* at 547, 745 S.E.2d at 134. The court noted none of the medical evidence indicated the claimant ever complained of back pain to her doctors. *Id.* While the court recognized that the claimant testified lifting heavy objects caused her back pain and the implantation of the stimulator hindered her ability to drive, it found it was constrained by its limited standard of review when faced with conflicting testimony. *Id.* Thus, the court deferred to the Commission's finding that the implantation of the stimulator did not constitute a separate injury to her back. *Id.* at 548, 745 S.E.2d at 134.

Here, unlike in *Colonna*, Dent presented sufficient evidence to support his claims that his back injury has caused additional injury or impairment to his leg. Dent complained of persistent pain, numbness, and weakness in his right leg to his doctors, and Drs. Belmar and Gunter both diagnosed Dent with lumbar radiculopathy. The Appellate Panel also found Dent's right leg was affected by his back injury. We find the evidence of Dent's leg pain in the record is substantial evidence of an injury affecting Dent's right leg. Thus, Dent was entitled to proceed under section 42-9-10.

In addition, the record contains substantial evidence that Dent is permanently and totally disabled under section 42-9-10 due to an incapacity for work. In finding Dent was not permanently and totally disabled, the Appellate Panel relied primarily on Dr. Gunter's imposition of medium duty work restrictions. However, we find substantial evidence does not support a finding that Dent is qualified for medium duty or even sedentary work. Dent's entire work history consists of heavy labor including sewer line maintenance, furniture delivery, and glass and vending machine installation. All of the experts in the record agree Dent cannot return to

his previous employment or any heavy labor job. Dr. Forrest also opined Dent would not be able to perform sedentary work. Dr. Forrest concluded that although Dent has a high school education, he did not foresee Dent being able to learn new skills to work a sedentary position. In addition, Dent's physical therapist, who actually observed and tested his physical capacities, found Dent was only capable of sedentary work.

The opinions of Dr. Forrest and the physical therapist are supported by the results of Dent's vocational evaluation. In the evaluation, Fowler opined Dent is and will be unable to obtain or maintain substantial gainful employment due to factors such as advancing age, educational and functional academic levels including illiteracy, work history, and severe physical limitations. Fowler further noted that although Dent has some memory loss related to the effects of chemotherapy and radiation, he would still likely be unable to obtain gainful employment without any memory loss. Fowler found Dent scored at a 3rd grade level in arithmetic, a 4th grade level in spelling, and a 5th grade level in reading. This finding supports Dent's testimony that he would not be able to do a job that requires him to use a computer, complete paperwork, or do arithmetic. In making her determination regarding Dent's capacity for work, Fowler considered the opinions of Dr. Belmar, Dr. Gunter, Dr. Forrest, and the physical therapist. She gave greater credence to the findings of Dr. Forrest and the physical therapist, noting they had more specific training in rehabilitation and determining physical abilities than Dr. Gunter, a neurologist. Fowler further noted Dr. Forrest's evaluation reflected Dent's "most current condition."

A finding that a claimant can perform sedentary or medium duty work does not constitute evidence that such work is available to the claimant. Although Dr. Gunter opined Dent could work at a medium duty level, we note a transferable skills capacity analysis, which analyzed over 12,000 job titles in the United States economy and their respective requirements, revealed there were no jobs titles that would be within Dent's current transferable abilities. As our supreme court found in *Wynn*, "[i]nability to perform common labor is total disability for one who is not qualified by training or experience for any other employment." Accordingly, based on the record as a whole, we hold substantial evidence supports a finding that Dent is unable to work and is entitled to a permanent, total disability award pursuant to section 42-9-10. See *Coleman*, 245 S.C. at 630, 142 S.E.2d at 45 (holding the burden is on the employee to prove he or she is totally disabled, specifically that he or she is unable to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist).

Accordingly, we reverse the Appellate Panel's determination that Dent was not permanently and totally disabled.

## **II. Subsection 42-9-30(21)**

Dent also contends the Appellate Panel erred in failing to find PTD under subsection 42-9-30(21) of the South Carolina Code (2015). Given that resolution of the prior issue is dispositive of this appeal, the court need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when disposition of a prior issue is dispositive).

## **III. Lung Cancer**

Finally, Dent argues the Appellate Panel erred in finding his disability was primarily the result of his lung cancer. Specifically, Dent contends the Appellate Panel's finding is based on speculation and not supported by substantial evidence in the record. We agree.

The Appellate Panel found, "Although the undersigned greatly sympathizes with [Dent], we find that [Dent's] disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation [Dent] has undergone." In support of this finding, the Appellate Panel cited Dent's (1) statement to physical therapy personnel that he planned to retire due his lung cancer; (2) use of a cane; and (3) memory loss.

The only expert medical testimony in the record regarding whether Dent is disabled due to his back injury or his lung cancer is Dr. Forrest's testimony that "the lung cancer is not playing any role in my opinion currently, which is that Mr. Dent is unable to return to work at any level." The Appellate Panel found Dr. Forrest's opinion was unpersuasive primarily due to information contained in Dent's work hardening evaluation. In the evaluation, Dent's physical therapist stated Dent planned to retire "[d]ue to lung cancer and back injury." The Appellate Panel placed great weight on the physical therapist's listing of lung cancer as the first reason for Dent's decision to retire. However, the record is not clear whether Dent listed lung cancer first to the therapist or whether that is simply the order she chose to record the information. Additionally, we note the physical therapist reversed the order in a letter to Dent's attorney stating, "[g]iven [Dent's] medical conditions of known low back injury . . . and lung cancer . . ." the testing involved in a functional capacity evaluation would be limited.

The Appellate Panel also relied on Dent's use of cane to support its finding that his disability was a result of his lung cancer. The Appellate Panel concluded Dent's use of a cane was "attributable to his weakened condition from cancer, radiation and chemotherapy." There is no medical evidence in the record to support this determination; therefore, we find it is speculative for the Appellate Panel to find Dent's use of a cane is related to his cancer diagnosis or treatment.

Further, while we recognize Dent testified he has memory loss due to the chemotherapy he received for his lung cancer, we note Fowler opined in Dent's vocational evaluation that Dent would be unable to obtain and maintain employment even without memory issues. Fowler further opined Dent's lung cancer did not play a role in her determination that Dent is unable to return to work.

Finally, we note the record does not include any evidence from Dent's oncologist or any other medical expert supporting the Appellate Panel's determination regarding Dent's lung cancer. Accordingly, we hold the Appellate Panel's finding that Dent's disability is primarily the result of his lung cancer is not supported by substantial evidence; thus, we reverse the Appellate Panel as to this issue.

## **CONCLUSION**

The Appellate Panel's finding that Dent is not totally and permanently disabled due to his work injury is

**REVERSED.**

**HUFF, J., concurs.**

**THOMAS, J., dissenting:** I respectfully dissent because I believe we are constrained by our standard of review to affirm the Appellate Panel's finding that Dent was not permanently and totally disabled (PTD) under section 42-9-10 of the South Carolina Code (2015). The Appellate Panel determined Dent was not PTD under section 42-9-10 because he could perform medium duty work and, thus, had not lost his earning capacity. *See Fields v. Owens Corning Fiberglas*, 301 S.C. 554, 555, 393 S.E.2d 172, 173 (1990) (explaining a finding of disability under section 42-9-10 "must be predicated upon a showing of a loss of earning capacity"). The Appellate Panel based its decision on Dr. Gunter's recommendation that Dent could perform medium duty work and assignment of a

10% impairment rating to Dent's back. The Appellate Panel explained it considered a vocational report and a report from Dr. Forrest, which both suggested Dent could not perform medium duty work, but it gave greater weight to Dr. Gunter's opinions and recommendations. Dr. Gunter was one of Dent's treating physicians.

Under the circumstances of this case, we are constrained to affirm because our standard of review requires us to determine only whether substantial evidence supports the Appellate Panel's decision. Here, Dr. Gunter's opinion that Dent could perform medium duty work constitutes substantial evidence supporting the Appellate Panel's decision. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (noting we presume the findings of the Appellate Panel are correct and will set them aside only if unsupported by substantial evidence); *Taylor v. S.C. Dep't of Motor Vehicles*, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006) (explaining substantial evidence is not "evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action"). Although the opinions from Dr. Forrest and the vocational report conflict with Dr. Gunter's opinion, we defer to the Appellate Panel when the evidence conflicts. *See Hall v. United Rentals, Inc.*, 371 S.C. 69, 80, 636 S.E.2d 876, 882 (Ct. App. 2006) ("Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive."); *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 435, 458 S.E.2d 76, 78 (Ct. App. 1995) ("Where the medical evidence conflicts, the findings of fact of the [Appellate Panel] are conclusive."). The Appellate Panel chose to place more weight on Dr. Gunter's opinions, which was in its discretion as the factfinder. *See Harbin v. Owens-Corning Fiberglas*, 316 S.C. 423, 427, 450 S.E.2d 112, 114 (Ct. App. 1994) ("The existence of any conflicting opinions between the doctors is a matter left to the [Appellate Panel].").

Further, I find the majority's reliance on the "transferable skills capacity analysis," which is located within the above-mentioned vocational report, is misplaced. The analysis was based on the opinions of Dr. Forrest and a report from a physical therapist. Dr. Forrest claimed Dent was "unable to return to work at any level," and the physical therapist agreed. Thus, the analysis searched for potential jobs for Dent based on criteria that assumed he could not physically perform any manual labor or even a sedentary job. Predictably, such an analysis returned zero potential jobs for Dent. However, as noted above, the Appellate Panel considered the claims of Dr. Forrest and the physical therapist and rejected their reports in favor of the opinion from another treating physician, Dr. Gunter. Dr. Gunter's opinion was that

Dent was physically capable of performing medium duty work. Accordingly, under the Appellate Panel's finding that Dent could perform medium duty work, a job analysis would only be relevant if performed with the criteria set for someone who could perform medium duty work. Said another way, if Dent could perform medium duty work, then a job analysis that assumed Dent could not perform any type of work would render an inaccurate analysis of whether Dent had meaningful employment opportunities. Thus, the job analysis within the vocational report carried little, if any, weight because it did not assess whether Dent had any employment opportunities based on his ability to perform medium duty work as found by the Appellate Panel and supported by Dr. Gunter's opinion. As a result, I believe the majority's reliance on the job analysis within the vocational report is misplaced.

Accordingly, substantial evidence supports the Appellate Panel's determination that Dent could perform medium duty work and had not lost his earning capacity, and thus, I would affirm the Appellate Panel's ruling that Dent was not PTD under section 42-9-10.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission  
Appellate Panel

---

Appellate Case No.: 2015-001702 (Opinion No. 5548, Filed March 28, 2018)

---

James Dent, Employee ..... Appellant,

vs.

East Richland County Public Service District, Employer and  
State Accident Fund, Carrier ..... Respondents.

---

**RESPONDENTS' PETITION FOR REHEARING**

---

**STATEMENT OF THE CASE**

Pursuant to the provision of Rule 221(a), SCACR, East Richland County Public Service District and its carrier the South Carolina State Accident Fund (together "Respondents"), through their undersigned counsel, respectfully petition this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended by the Court as set forth herein.

In accordance with the South Carolina Workers' Compensation Act, the Respondents provided proper and adequate medical care and treatment to James Dent ("Appellant") following an admitted low back injury on May 1, 2012. (R. 59). Initial care was provided through Dr. Paula Belmar, who ordered a lumbar spine MRI that incidentally revealed a neoplasm in the lung. (R. 61-67, 147). Thereafter, the Appellant was referred to a back specialist for his

admitted workers' compensation injury and an oncologist for his unrelated, newly discovered lung neoplasm.

Subsequently, the Appellant presented to Dr. Brett Gunter for further evaluation of his lumbar spine, who ordered a repeat MRI that revealed moderate spinal stenosis at L3-4 and L4-5. (R. 123-32, 146). Simultaneously, the Appellant was diagnosed with small cell lung cancer and began months of chemotherapy and radiation treatments. (R. 129). Meanwhile, Dr. Gunter ordered physical therapy and two lumbar epidural steroid injections. (R. 125-28).

Later, Dr. Gunter ordered a work hardening program, but the Appellant complained of shortness of breath and was unable to complete the April 10, 2013 evaluation for the program. (R. 82-83). The Appellant was continuing to receive chemotherapy for his unrelated lung cancer at this time. (R. 161:12-16). At the program evaluation, the Appellant indicated to the physical therapist that he did not plan to return to work and, instead, planned to retire as soon as his workers' compensation claim closed. (R. 82).

Dr. Gunter placed the Appellant at maximum medical improvement on May 8, 2013, assigning a 10 percent permanent impairment rating to the whole person for the low back injury and releasing the Appellant to work in a medium duty capacity. (R. 123). Dr. Gunter did not assign a separate impairment rating for any other body part. (R. 123). He indicated only that the Appellant may require NSAIDs for future medical treatment. (R. 123).

Upon arrangement by his counsel, the Appellant underwent a one-time independent medical evaluation by Dr. Leonard Forrest on July 8, 2013, which lasted a mere hour and a half. (R. 92-97, 182:19-21). Based on this short exam, Dr. Forrest assigned a 21 percent impairment rating to the whole person, opined that the Appellant would need to continue taking Percocet but "additional medications may or may not be needed," and indicated that the Appellant could not

return to work at any level (R. 96-97). While Dr. Forrest's notes documents that the Appellant complained of back pain that traveled down the right leg, Dr. Forrest nowhere assigned a separate impairment rating to either leg. (R. 92-97). The Appellant also procured a vocational evaluation in November 2013, which heavily relied upon physical therapy notes instead of those produced by the authorized treating physician. (R. 98-120).

The Respondents never obtained their own vocational evaluation because the Appellant only sustained an injury to a single body part and should therefore be barred from recovery beyond the schedule, rendering any vocational evaluation superfluous. See, e.g., Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960). The Respondents maintain that any further disability is a result of the unrelated lung cancer, for which the Appellant continued chemotherapy treatments all the way through December 2013—many months after he already reached maximum medical improvement for his work-related injury. (R. 161:12-16).

By Decision and Order dated April 14, 2014, Commissioner Susan S. Barden held that the Appellant sustained a single member injury to the back. (R. 9-11). The Commissioner further held that the Appellant's right leg was only minimally affected and the record contained no impairment rating for the leg. (R. 6-11). As a one body part claim, the Commissioner held that the Appellant was thus only entitled to an award for 35 percent loss of use of the back pursuant to the statutory schedule in Section 42-9-30 and causally-related future medical treatment for the back. (R. 9-11). The Commissioner also concluded that any disability stemmed from the Appellant's unrelated lung cancer. (R. 8).

The Appellant appealed to the Full South Carolina Workers' Compensation Commission, which remanded only for clarification regarding the Commissioner's finding that the right leg was "affected" but that this was "a one body part" claim. (R. 9-12). By Order on Remand, the

Commissioner withdrew language in Findings of Fact #16 and 22, which stated, respectively that the “Claimant’s right leg is only minimally affected” and “this is a ‘one body part’ (i.e. *Singleton*) case.” (R. 6, 8). Otherwise, the Commissioner reaffirmed her previous findings that “there is no impairment rating in evidence as far as either leg is concerned—even from Claimant’s IME” and any permanency award required her to “parse the (a) back condition from (b) cancer and its residuals” only. (R. 31, 33). Ultimately, the Commissioner again concluded that the Appellant was not permanently and totally disabled under Section 42-9-10 and was entitled to an award for loss of use of the back only under Section 42-9-30. (R. 34-36). The Appellate Panel affirmed. (R. 53).

The Appeal to this Court followed. In its reversal, this Court inverted the substantial evidence standard of review to make its own findings that the Appellant sustained a separate injury to the right leg, was permanently and totally disabled under Section 42-9-10 due entirely to the work-related injury, and was not disabled because of the unrelated lung cancer for which the Appellant continued to treat after his release from care for his work-related injury. Dent v. E. Richland Cnty. Pub. Serv. Dist., No. 2015-001702, 2018 WL 1513963, at\*3-6 (S.C. Ct. App. Mar. 28, 2018).

Because this Court did not apply the proper standard of review in its decision to reverse the Full South Carolina Workers’ Compensation Commission, the Respondents respectfully request the Court grant their Petition for Rehearing and issue an opinion affirming the Full Commission based on the proper application of the “substantial evidence” standard.

## ARGUMENT

### **I. THE COURT SHOULD REHEAR THIS CASE BECAUSE IT APPLIED THE INCORRECT STANDARD OF REVIEW APPLICABLE TO APPEALS FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION.**

This Court should grant the Respondents' Petition for Rehearing because it previously applied an "inverted" version of the substantial evidence standard of review, which effectively resulted in nothing short of a de novo review by this Court. As well-settled precedent makes clear, such a review is prohibited here. Thus, the Court should re-examine this case through the appropriate lens, or else, face the potential of another remand from the Supreme Court with instructions to issue a new ruling applying the correct standard of review. See Nero v. S.C. Dept. of Transp., No. 2017-001970, 2018 WL 1614332, at \*1-2 (S.C. Apr. 4, 2018) (remanding workers' compensation case to this Court with instructions to issue a new ruling applying the correct standard of review).

#### **A. THE INVERSE OF THE SUBSTANTIAL EVIDENCE STANDARD CONSTITUTES A LOGICAL FALLACY.**

In South Carolina, the Administrative Procedures Act establishes the "substantial evidence" standard for judicial review of decisions by the South Carolina Workers' Compensation Commission and other state agencies. Lark v. Bi-Lo, 276 S.C. 130, 133-34, 276 S.E.2d 304, 305-06 (1981) (citing S.C. Code Ann. § 1-23-380) (stating the Commission "is clearly an 'agency'" within the meaning of S.C. Code Ann. § 1-23-310 et seq.). See also Frame v. Resort Servs., Inc., 357 S.C. 250, 593 S.E.2d 491 (S.C. Ct. App. 2002); Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (S.C. Ct. App. 2002); Lockridge v. Santens of Am., Inc., 344 S.C. 511, 544 S.E.2d 842 (S.C. Ct. App. 2001).

Under this standard, the Court of Appeals' review "is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law." Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (S.C. Ct. App. 2006) (citing S.C. Code Ann. § 1-23-380) (emphasis added). See also Hartzell v. Palmetto Collision, LLC, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016) (same); Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007) (same); Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005) (same); Gibson v. Spartanburg Sch. Dist. #3, 338 S.C. 510, 517, 526 S.E.2d 725, 729 (S.C. Ct. App. 2000) (same); Hendricks v. Pickens Cnty., 335 S.C. 405, 411, 517 S.E.2d 698, 701 (S.C. Ct. App. 1999) (same). "The commission's decision *must* be affirmed if the factual findings are supported by substantial evidence in the record." Jennings v. Chambers Dev. Co., 335 S.C. 249, 516 S.E.2d 453, 458 (S.C. Ct. App. 1999) (quoting Minor v. Philips Prods., 329 S.C. 321, 494 S.E.2d 819 (1997)) (emphasis added).

"Substantial evidence" is "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached." Lark, 276 S.C. at 135, 276 S.E.2d at 306 (quoting Laws v. Richland Cnty. School Dist. No. 1, 270 S.C. 492, 243 S.E.2d 192 (1978)). See also Shealy v. Aiken Co., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (same); Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004); Jones v. Georgia-Pacific Corp., 355 S.C. 413, 586 S.E.2d 111 (2003)) (same); DeBruhl v. Kershaw Cnty. Sheriff's Dept., 303 S.C. 20, 24, 397 S.E.2d 782, 785 (S.C. Ct. App. 1990) (same). This means that, even if this Court disagrees with the decision of the Full Commission, the Court must, nonetheless, affirm if the decision is support by substantial evidence. Jennings, 335 S.C. at 516 S.E.2d at 458.

Basic propositional logic dictates that the inverse of a conditional statement cannot be inferred from that conditional statement. The conditional statement here is simply that if there is substantial evidence in the record to support the Commission's decision, then the Court must affirm. Jennings, 335 S.C. at 516 S.E.2d at 458. Pursuant to basic tenants of logical reasoning, then from this statement **one cannot infer also that if there is substantial evidence in the record to support the opposite decision, then the Court must reverse.** This proscription from logic holds firm no matter the degree to which the Court *wishes* the Commission would have reached that opposite decision.

But here, the Court did make this inference and thereby committed a logical fallacy. First, the Court re-examined the Record in search of "substantial evidence" to support its desired, opposite decision. See, e.g., Dent, 2018 WL 1513963, at\*4 (identifying evidence in the Record of pain in the leg and labeling as "substantial evidence" of injury). In certain aspects, the search for "substantial evidence" to support its desired decision proved decidedly strained—a fact remarked upon by the dissent. Compare Dent, 2018 WL 1513963, at\*5 ("[W]e note a transferable skills capacity analysis ... revealed there were no job titles that would be within [Appellant's] current transferable abilities."), with Id. at \*7 (Thomas, J., dissenting) ("[T]he majority's reliance on the 'transferable skills capacity analysis,' which is located within the above-mentioned vocational report, is misplaced . . . the analysis searched for potential jobs for [Appellant] based on criteria that assumed he could not physically perform any manual labor or even a sedentary job. Predictably, such an analysis returned zero potential jobs.").

Next, upon this new "substantial evidence" basis, the Court reversed the Appellate Panel's decision. Because this means of reversal endorsed a logical fallacy, produced a result not allowed by all the case law cited herein, and reduced the proper standard of review to a mere

shell of the required deference to the agency in this case; the Court should grant the Petition and restore the deference due to the Full Commission's determination.

**B. THE INVERSE OF THE SUBSTANTIAL EVIDENCE STANDARD IMPROPERLY ALLOWED THE COURT TO RE-WEIGH THE EVIDENCE AND ACT AS FACT FINDER.**

Not only does the inverted substantial evidence standard yield a logical fallacy, but it also opened the door for the Court to impermissibly engage in fact-finding and re-weighing of evidence to find support for the decision that the Court wished the Commission had reached on its own. But, it is well-settled that the Appellate Panel of the Commission—not the Court of Appeals—serves as the ultimate fact finder. Hartzell, 415 S.C. at 622, 785 S.E.2d at 197; Shealy, 341 S.C. at 455, 535 S.E.2d at 442 (citing Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986)); Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (S.C. Ct. App. 2005) and Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. Ct. App. 1999)); Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377 380, 440 S.E.2d 401, 403 (S.C. Ct. App. 1994); DeBruhl, 303 S.C. at 24, 397 S.E.2d at 785. As such, the Appellate Panel makes “the final determination of witness credibility and the weight to be accorded evidence.” Shealy, 341 S.C. at 455, 535 S.E.2d at 442 (citing Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969). See also Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing cases); Rogers, 312 S.C. at 380, 440 S.E.2d at 403.

Despite the above case law, the Court of Appeals nevertheless engaged in a re-weighing of the evidence when it relied upon, and repeatedly cited to, the opinions of Dr. Forrest, the physical therapist, and the Appellant's vocational expert over the opinion of the authorized treating physician, Dr. Gunter, upon which the Appellate Panel of the Commission chose to rely and afforded the most weight. See, e.g., Dent, 2018 WL 1513963, at\*5 (“Although Dr. Gunter

opined Dent could work at a medium duty level, we note a transferable skills capacity analysis...."). The Court, in turn, re-labeled this evidence as more persuasive than that relied on by the Appellate Panel.

After this re-weighting of the evidence, the Court took on the prohibited roll of fact finder and made its own specific findings that contradict those made by the Appellate Panel such as: "We find the evidence of Dent's leg pain in the record is substantial evidence of an injury affecting Dent's right leg." *Id.* at\*4. The Court also impermissibly found that "the record contains substantial evidence that Dent is permanently and totally disabled under section 42-9-10 due to an incapacity for work." *Id.* at\*5. Then, the Court again declared that, "based on the record as a whole, we hold substantial evidence supports a finding that Dent is unable to work and is entitled to a permanent, total disability award pursuant to section 42-9-10." *Id.* However, these findings must be withdrawn because the Appellate Panel of the Commission—not the Court of Appeals—serves as the ultimate fact finder. *See, e.g., Hartzell*, 415 S.C. at 622, 785 S.E.2d at 197.

It is immaterial that this Court can identify substantial evidence in the record to support its own factual findings. Reversing on these findings turns the substantial evidence standard on its head in an attempt to legitimize the inverse of that standard, despite well-established case law to the contrary. As this Court well-knows, it "may not substitute its judgement 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). *See also Grant*, 372 S.C. at 200, 641 S.E.2d at 871; *Hendricks*, 335 S.C. at 410, 517 S.E.2d at 701. The substantial evidence test specifically prohibits "a substitution of judicial judgment for agency judgement." *Hartzell*, 415 S.C. at 622, 785 S.E.2d at 197 (quoting *Holmes*

v. Nat'l Serv. Indus., Inc., 395 S.C. 305, 308-09, 717 S.E.2d 751, 752 (2001). But, the inverse of the substantial evidence rule that the Court applied here instituted that very substitution.

Such a substitution is, furthermore, inappropriate because even "[w]here there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive." Gadson, 368 S.C. at 221-22, 628 S.E.2d at 266 (citing Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (S.C. Ct. App. 2002)). See also Hall v. United Rentals, Inc., 371 S.C. 69, 80, 636 S.E.2d 876, 882 (S.C. Ct. App. 2006); Rogers, 312 S.C. at 380, 440 S.E.2d at 403. In fact, even "[t]he existence of any conflicting opinions between the doctors is a matter left to the [Appellate Panel]." Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 427, 450 S.E.2d 112, 114 (S.C. Ct. App. 1994). In short, [t]he findings of an administrative agency are presumed correct." Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing Anderson v. Bapt. Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001); Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). See also Rodney v. Michelin Tire Corp., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (same); Kearse v. State Health & Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995) (same).

Therefore, the Court was in error in disregarding the Appellate Panel's findings in favor of making its own, new factual findings. See, Hartzell, 415 S.C. at 623, 785 S.E.2d at 197 (the court "must not engage in fact-finding that would disregard the Commission's factual findings"). As made plain by the very definition of "substantial evidence" as previously cited, the prohibition against fact-finding by the Court of Appeals controls even where evidence in the record leads the Court to believe that "reasonable minds could have reached a different conclusion based on the record" before it. Id. (finding the Commission's findings were supported by substantial evidence while specifically noting that other evidence in the record

could allow reasonable minds to have reached the opposite conclusion). Therefore, the Court should grant the Petition for Rehearing, disengage as fact finder, and re-assume its proper role upon review.

**C. THE INVERSE OF THE SUBSTANTIAL EVIDENCE STANDARD EQUATES TO THE DE NOVO STANDARD RESERVED FOR REVIEW OF JURISDICTIONAL QUESTIONS.**

Interestingly, by engaging in fact-finding and re-weighing of the evidence, the Court's inversion of the substantial evidence standard of review is—for all intents and purposes—a de novo review by this Court. But, our Supreme Court has repeatedly made clear that only in the review of jurisdictional questions should the de novo standard be applied instead of the substantial evidence standard. See, e.g., Nero, 2018 WL 1614332, at \*1 (holding the substantial evidence standard applies to review of non-jurisdictional issue); Hartzell, 415 S.C. at 622, 785 S.E.2d at 197; Shatto v. McLeod Reg'l Med. Ctr., 406 S.C. 470, 753 S.E.2d 416 (2013) (applying the de novo standard to review of jurisdictional issue); Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 297, 676 S.E.2d 700, 701 (2009) (applying the de novo standard to review of jurisdictional issue).

Only in those jurisdictional cases may the Court of Appeals “take its own view of the preponderance of the evidence.” Wilkinson, 382 S.C. at 299, 676 S.E.2d at 702 (citing S.C. Workers' Comp. Comm'n v. Ray Covington Realtors, Inc., 318 S.C. 546, 547, 459 S.E.2d 302, 303 (1995)). See also Hernandez-Zuniga v. Tickle, 374 S.C. 235, 244, 647 S.E.2d 691, 695 (S.C. Ct. App. 2007) (“Our precedent lucidly establishes that an appellate court reviews jurisdictional issues by making its own findings of fact without regard to the findings and conclusions of the Appellate Panel.”). Otherwise, the Supreme Court will reverse and remand the case back to the Court of Appeals with instructions to issue a new decision under the proper

standard of review. See Nero, 2018 WL 1614332, at \*1-2 (remanding workers' compensation case to this Court with instructions to issue a new ruling applying the correct standard of review issue).

Here, although this Court labeled its review as the "substantial evidence" standard of review, it in fact did "take its own view of the preponderance of the evidence" when it reweighed the evidence and made its own findings contrary to those made by the Appellate Panel. For this reason, the Respondents respectfully request that the Court grant its Petition and apply the true and correct version of the substantial evidence standard of review without regard to the decision that the Court would have made if it had been in the Commission's position.

**II. THE COURT OF APPEALS SHOULD HAVE REVERSED, IF AT ALL, ONLY BECAUSE THE COMMISSIONER SHOULD NEVER HAVE REMOVED SPECIFIC LANGUAGE IN HER ORIGINAL ORDER FINDING THAT THIS IS "A ONE BODY PART" CLAIM.**

Even though the misapplication of the appropriate standard of review is sufficient reason, alone, to grant the Respondents' Petition and rehear this case; the Court should also grant the Respondents' request because the Commissioner's original finding that this is a "one body part" claim is well-founded. As precedent makes plain, radiculopathy is simply not considered a separate injury within the South Carolina Workers' Compensation Act. Thus, the removal of the Commissioner's language constituted an error of law.

Again, the Court of Appeals' review "is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law." Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (S.C. Ct. App. 2006) (citing S.C. Code Ann. § 1-23-380). See also Hartzell v. Palmetto Collision, LLC, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016) (same); Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007)

(same); Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005) (same); Gibson v. Spartanburg Sch. Dist. #3, 338 S.C. 510, 517, 526 S.E.2d 725, 729 (S.C. Ct. App. 2000) (same); Hendricks v. Pickens Cnty., 335 S.C. 405, 411, 517 S.E.2d 698, 701 (S.C. Ct. App. 1999) (same). And here, an error of law was made by Order on Remand when the Commissioner withdrew her specific holding that this was a “one body part” claim despite controlling case law on the subject. (R. 6, 8, 31, 33). Yet, on Appeal, this Court made new and separate findings that the Appellant sustained injury to second body part—the leg based on radiculopathy due to the admitted back injury—without regard to that case law which supported the Commissioner’s “one body part” claim finding.

South Carolina precedent plainly prohibits characterizing radiculopathy as a separate body part in workers’ compensation cases. See, e.g., Fishburne v. ATI Sys. Int’l, 384 S.C. 76, 89, 681 S.E.2d 595, 601 (S.C. Ct. App. 2009) (affirming Commission’s order that specifically stated 10 percent award for loss of use of the back under the schedule in Section 42-9-30 encompassed any right lower extremity radiculopathy and noting that claimant presented no evidence of a separate injury to her right leg). See also Clemmons v. Lowe’s Home Ctrs., Inc., 412 S.C. 366, 384-85, 772 S.E.2d 517, 527 (S.C. Ct. App 2015) (affirming that impairment rating for loss of use of the back under Section 42-9-30 includes any radicular symptoms to the right leg, and therefore finding no error in no award for myelopathy as a separate neurological injury), *rev’d on other grounds*, 420 S.C. 282, 803 S.E.2d 268 (2017) (taking no issue with Court of Appeals’ affirming that loss of use of the back encompassed radicular symptoms and finding error only in concluding that that loss of use of the back did not give rise to the presumption stated in Section 42-9-30); Bolds v. UTI Intergated Logistics., Inc., No. 2011-UP-162, 2011 WL 11733649, at \*1 (S.C. Ct. App. June 2, 2011) (affirming award for loss of use of the back as a

scheduled member under Section 42-9-30 where back injury caused radiculopathy). The only case in which radiculopathy has been held to constitute an injury to a separate body part was Beckman v. Sysco Columbia, LLC, 408 S.C. 501, 759 S.E.2d 750 (S.C. Ct. App. 2014). This decision was stricken and de-published by our Supreme Court. 414 S.C. 538, 779 S.E.2d 554 (2015).

Unsurprisingly, medical definitions explicitly state that radicular symptoms emanated from the back. See e.g., Radiculopathy, Johns Hopkins Med. Health Library, [https://www.hopkinsmedicine.org/healthlibrary/conditions/nervous\\_system\\_disorders/acute\\_radiculopathies\\_134,11](https://www.hopkinsmedicine.org/healthlibrary/conditions/nervous_system_disorders/acute_radiculopathies_134,11) (last visited Apr. 9, 2018) (“Radiculopathy describes a range of symptoms produced by the pinching of a nerve root in the spinal column.”). Accordingly, this Court has relied on such medical definitions to support its basis for repeatedly limiting awards to a single body part—the back—regardless of the extent of radiculopathy present. See, e.g., Clemmons, 412 S.C. at 372 n.1, 772 S.E.2d at 520 n.1 (quoting Stedman's Medical Dictionary 1187 (24th ed.1982)) (Radiculopathy is a “[d]isease of the spinal nerve roots.”); Bolds, 2011 WL 11733649, at \*1 n.2 (quoting Medline Plus, <http://www.nlm.nih.gov/medlineplus/ency/article/000442.htm> (last visited May 18, 2011)) (“Radiculopathy refers to any disease that affects the spinal nerve roots.”).

Thus, radiculopathy complaints do not equate to injury to a separate body part in South Carolina. Regardless of whether that radiculopathy is experienced in the left or right leg, by all medical definitions, those symptoms are caused and emanate from an injury to the back and are indicative of a back injury only. Here, the Appellant exhibit that precise condition clinically and all medical evidence in the Record supports that he only ever sustained an injury to his back. (R. 61-119, 123-48). Indeed, the Record is devoid of any impairment rating to either leg to support a

separate injury to either body part. (R. 61-119, 123-48). Even from Claimant's own IME did not produce evidence of any injury to a second body part despite radicular complaints. (R. 92-97). In accordance with precedent, this case constitutes nothing more than "a one body part" claim as was originally found by the Commissioner.

Moreover, when an injury is confined to a single scheduled member, compensation is limited to that provided under the schedule in Section 42-9-30 and the claimant cannot recover under the general disability statute in Section 42-9-10. Singleton, 236 S.C. at 473, 114 S.E.2d at 846. See also Wigfall v. Tideland Utils. Inc., 354 S.C. 1000, 101-02, 580 S.E.2d 100, 104 (2003) (reaffirming holding in Singleton that a claimant is limited to scheduled compensation when the injury is confined to a single scheduled member). As this Court previously held, a claimant must prove not only that another body part was affected by an injury to a scheduled member, "but that another body part was impaired or injured for section 42-9-10 to apply." Colonna v. Marlboro Park Hosp., 404 S.C. 537, 546, 745 S.E.2d 128, 133 (S.C. Ct. App. 2013) (citing Singleton).

But here, the Appellant failed to establish a second body part was injured. Thus, it was error to remove the Commissioner's original findings that the "Claimant's right leg is only minimally affected" and "this is a 'one body part' (i.e. *Singleton*) case." (R. 6, 8). Both findings are plainly in line with case law. In stark contrast, bringing this case under the Section 42-9-10 umbrella for further analysis, as this Court ultimately did, is violative of case law. In turn, extraneous evidence (such as the vocational evaluation obtained by Appellant) is immaterial to the legal analysis and, at best, is a red herring meant to muddle this Court's inquiry where Section 42-9-10 does not apply.

In sum, the Commissioner's specific language in her original Order that this is "a one body part" claim is supported by the entirety of the Record and comports with more than 50 years' of precedential case law. On this basis—and on this basis alone—may the Court reverse the Appellate Panel's decision.

### CONCLUSION

For the foregoing reasons, the Respondents respectfully request that this Court grant their Petition for Rehearing regarding Dent v. E. Richland Cnty. Pub. Serv. Dist., No. 2015-001702, 2018 WL 1513963, at\*1-6 (S.C. Ct. App. Mar. 28, 2018), which improvidently reversed the decision of the Appellate Panel of the Workers' Compensation Commission.

First, the Court of Appeals misapplied the substantial evidence standard of review, which constituted a logical fallacy, allowed the Court to engage in fact finding, and resulted in nothing short of the de novo standard of review strictly reserved for questions regarding jurisdiction.

Second, the Court of Appeals should have reversed—if at all—only because the Commissioner should never have removed specific language in her original order finding that this is "a one body part" claim. Precedent makes patent that such a finding was well-founded. Radiculopathy does not constitute separate injury to either of the lower extremities within the South Carolina Workers' Compensation system. Therefore, only one body part was implicated here and Section 42-9-10 is entirely inapplicable.

Thus, Respondents request the Court grant the Petition for Rehearing and issue a new opinion affirming the Order of the Full South Carolina Workers' Compensation Commission.

Respectfully submitted,



---

TURNER PADGET GRAHAM & LANEY, P.A.

David H. Keller, Esquire

200 E. Broad Street

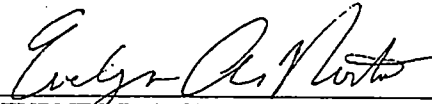
P.O. Box 1509 (29602)

Greenville, South Carolina 29201

Telephone: (864) 552-4622

(864) 552-4620 (facsimile)

dkeller@turnerpadget.com



---

TURNER PADGET GRAHAM & LANEY, P.A.

Evelyn A. Norton, Esquire

200 E. Broad Street

P.O. Box 1509 (29602)

Greenville, South Carolina 29201

Telephone: (864) 552-4619

(864) 552-4620 (facsimile)

enorton@turnerpadget.com

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission  
Appellate Panel

Appellate Case No.: 2015-001702 (Opinion No. 5548, Filed March 28, 2018)

James Dent, Employee ..... Appellant,

vs.

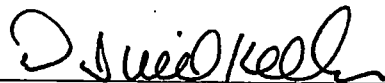
East Richland County Public Service District, Employer and  
State Accident Fund, Carrier ..... Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Respondents' Petition for Rehearing on counsel for the Appellant by depositing a copy of the same in the United States Mail, postage prepaid, on April 12, 2018, addressed to the following:

Matthew C. Robertson, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201  
Attorney for Appellant

TURNER PADGET GRAHAM & LANEY, P.A.

  
David H. Keller, Esquire  
200 E. Broad Street  
P.O. Box 1509 (29602)  
Greenville, South Carolina 29201  
Telephone: (864) 552-4622  
(864) 552-4620 (facsimile)  
dkeller@turnerpadget.com

# The South Carolina Court of Appeals

James Dent, Appellant,

v.

East Richland County Public Service District, Employer,  
and State Accident Fund, Carrier, Respondents.

Appellate Case No. 2015-001702

---

## 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.

  
\_\_\_\_\_  
Thomas C. Huff J.

I adhere to my dissent and would grant rehearing.

  
\_\_\_\_\_  
Paul W. Thomas J.

Columbia, South Carolina

**FILED**

cc:

May 29, 2018

Matthew C. Robertson, Esquire  
Page Snyder Hilton, Esquire  
David Hill Keller, Esquire  
Evelyn A Norton, Esquire  
Amy Bracy