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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
David W. Huffstetler, Commissioner
Susan S. Barden, Commissioner

W.C.C. File No. 0922023

Kimberly Mahaffey **Appellant,**

v.

Onetone Telecom, Inc. and
State Auto Insurance Companies **Respondents.**

RECORD ON APPEAL
VOLUME 2 OF 2

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SC Court of Appeals

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Kimberly Mahaffey,)
)
 Claimant,)
 vs.)
)
 One Tone Telecorp,)
)
 Employer,)
 and)
)
 State Automobile Mutual)
 Insurance Company,)
)
 Insurance Carrier,)
 Defendants.)

WCC File No.: 0922023

COPY

DEPOSITION OF KIMBERLY DAWN MAHAFFEY

Tuesday, November 2, 2010

PURSUANT to Notice and/or agreement between the parties, the deposition of **Kimberly Dawn Mahaffey**, called by the Defendant, was taken commencing at the hour of 11:56 a.m. on Tuesday, November 2, 2010, at the Law Offices of Larry C. Brandt, P.A., 3691 Blue Ridge Boulevard, Walhalla, South Carolina.

SUE N. HAYNIE, Reporter

Irveta J. Shouse/GWC

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BY Alton L. Martin, Jr, Esquire

.....On behalf of the Employer

STIPULATIONS:

This deposition is taken pursuant to the Federal Rules of Civil Procedure; reading and signing of the deposition by the witness are hereby waived.

EXHIBITS:

Defendant's Exhibit Number 1, Work Injury Incident Report Form, is attached hereto as part of this record.

INDEX OF EXAMINATION

By Mr. Martin Page 3
By Mr. Brandt Page 38

1 KIMBERLY DAWN MAHAFFEY, having first been duly sworn
2 to tell the truth, testified on his oath as follows:

3 EXAMINATION

4 By Mr. Martin:

5 Q: All right, ma'am. My name is Al Martin. We just
6 met. What I'm going to be doing today is taking your
7 deposition and this is in relation to a workers' compensation
8 claim that you have with your, your prior employer. During the
9 deposition, I'm going to ask you a whole bunch of questions and
10 I'm not always clear when I ask my questions, so if you'll just
11 tell me, "I didn't get that," you won't offend me at all and
12 I'll be glad to ask it a different way.

13 A: Okay.

14 Q: If during the deposition you need to stop and take a
15 break, just let me know, you're welcome to take a break. I
16 don't think the deposition will last more than about an hour or
17 so. During the deposition, you see the court reporter speaking
18 into a mouth piece there, and what she's doing is repeating
19 everything that you and I and your attorney say and so if
20 you'll speak up real loud and clear and give a good verbal
21 response like you're doing so far, that'll be great.

22 A: Okay.

23 Q: Try and avoid saying uh-huh and uh-uh. I'm real
24 prone to do that myself and that can be difficult for her later
25 on when she's typing everything up. All right. That having

1 been said, why don't we go ahead and get started. What is
2 your full name?

3 A: Kimberly Dawn Mahaffey.

4 Q: And what is your date of birth?

5 A: October 14, 1970.

6 Q: Well, you just had a birthday. Happy Birthday.

7 A: Thank you.

8 Q: And what is your current address?

9 A:

10 Q: All right.

11 A:

12 Q: What's the zip there?

13 A: 29678.

14 Q: And is that a house or apartment or what?

15 A: It's a house.

16 Q: And who lives with you there?

17 A: My mother and father.

18 Q: And how long have you lived there?

19 A: Eight years this year.

20 Q: What is your marital status?

21 A: Divorced.

22 Q: And is that just one time?

23 A: Yes.

24 Q: Do you have any children?

25 A: No.

1 Q: Tell me about your education.

2 A: I completed high school.

3 Q: And where was that?

4 A: Seneca Senior High.

5 Q: And what year was that?

6 A: 1988.

7 Q: Have you ever gotten any additional education? Gone
8 to Piedmont Tech or Tri-Tech or any of those?

9 A: No, I have not.

10 Q: Have you ever done any additional training for
11 employment, like sometimes people have to get a forklift
12 driver's license or if you're doing a lot of phone work you
13 might have to take some kind of in-house course or anything
14 like that?

15 A: No, I haven't.

16 Q: Okay. Have you ever served in the military?

17 A: No.

18 Q: What jobs have you held since you got out of Seneca
19 High School in '88?

20 A: I started in fast foods. I went to work at J.P.
21 Stevens as a folder and then I went into accounting and office
22 work from there on out.

23 Q: Now, the fast food places, that was right when you
24 got out of high school?

25 A: Yes.

1 Q: And where all did you work?

2 A: Subway and Arby's.

3 Q: And were those both in Seneca?

4 A: Yes, they were.

5 Q: Any other fast food places you worked?

6 A: I worked at McDonald's in high school.

7 Q: Okay. Any others?

8 A: I think I worked at Hardee's in high school as well.

9 Other than that, no.

10 Q: And about how long was it before you went to work at

11 J.P. Stevens?

12 A: About two years, I believe.

13 Q: And where was the J.P. Stevens plant that you were

14 working at?

15 A: The one in Clemson that shut down.

16 Q: And how long did you work there?

17 A: A little over a year, I believe.

18 Q: And you said you were a folder?

19 A: Yes.

20 Q: Tell me what that involved.

21 A: We folded fitted sheets to be packaged.

22 Q: Let's see. After J.P. Stevens, what did you do?

23 A: I worked day shift at ALPEAK Broadcasting, which was

24 the Seneca radio station and I actually worked night shift for

25 Helping Hands Children's Home.

1 Q: And how long did you do that?

2 A: About two years.

3 Q: And what did you do after that?

4 A: After that, I would have went to work for S&S South.

5 Q: And where are they?

6 A: In Seneca.

7 Q: And what do they do?

8 A: They bolt fabric for craft departments and other
9 things for craft departments. I worked in their shipping and
10 billing department.

11 Q: Was that a desk job?

12 A: Yes.

13 Q: When you switched over to doing this more office
14 work, did you go anywhere to get any training to do that?

15 A: It was in-house training.

16 Q: Okay. How long were you with them?

17 A: Almost three years.

18 Q: And then what happened, where did you go next?

19 A: I received a job offer with CG Roxane.

20 Q: With who?

21 A: CG Roxane. Crystal Geyser water, bottled water
22 company.

23 Q: And ...

24 A: They're in Salem.

25 Q: And you went to work with them?

1 A: Yes.

2 Q: And how long did you work there?

3 A: Two years.

4 Q: And then where did you go next?

5 A: It's hard to remember. Next I went to work for
6 International Kitchen Supply or, no, I'm sorry. A real estate
7 office, I worked part-time for a real estate office.
8 Waterlinks Property Group.

9 Q: Who?

10 A: Waterlinks Property Group.

11 Q: And how long were you there?

12 A: About six months before they closed the office.

13 Q: And where did you go after that?

14 A: That's when I went to work for International Kitchen
15 Supply.

16 Q: And what did you do for them?

17 A: Their shipping and receiving.

18 Q: And how long were you there?

19 A: Almost a year.

20 Q: And where are they located?

21 A: In West Union.

22 Q: And where did you go after that?

23 A: After that I went to Contracting Decors.

24 Q: And what do they do?

25 A: He owns a construction company. I did his assistant

1 bookkeeping.

2 A: Contracting Decors.

3 A: Yes.

4 Q: And how long were you with them?

5 A: About four months.

6 Q: And where are they located?

7 A: In Seneca.

8 Q: And then where did you go from there?

9 A: From there I went, took part-time work at M&M Tax
10 Service for the tax season.

11 Q: And where are they located?

12 A: In Seneca.

13 Q: And how long were you there?

14 A: Three months during the tax season.

15 Q: And then where did you go next?

16 A: That's when I went to work for One Tone.

17 Q: And how long were you there?

18 A: Two and a half years.

19 Q: All right. And I think you said you left there
20 October 4 of this year.

21 A: October 4 of this year.

22 Q: And where are you now?

23 A: National Tax Service.

24 Q: And where are they located?

25 A: In Clemson.

1 Q: And what do you do for them?

2 A: Assistant bookkeeping and payroll.

3 Q: And do you have any other jobs currently?

4 A: Currently, no.

5 Q: Okay. Were there any periods during your employment
6 there that you would have had a gap, where you would have been
7 out of work for a period of time?

8 A: Yes.

9 Q: Tell about that.

10 A: Umm.

11 Q: You want me to go through them for you?

12 A: I was laid off of work or out of work for about two
13 years before I went to work at S&S South, I think it was a year
14 and a half, before I went to work at S&S South.

15 Q: Okay. Were you able to draw unemployment during
16 that?

17 A: Yes.

18 Q: Any other times that you drew unemployment?

19 A: After I left International Kitchen Supply. It was a
20 lay off. And Contracting Decors, I was laid off.

21 Q: Any other gaps you remember?

22 A: When I left CG Roxane.

23 Q: Was that a lay off?

24 A: No. That was an agreed leaving. I had work injury
25 there and the settlement was an agreed leaving.

1 Q: What kind of work injury did you have?

2 A: I had slipped and hurt my knee and had an ACL repair
3 surgery.

4 Q: And which knee was that?

5 A: My right knee.

6 Q: That's the same one you hurt in the accident with
7 One Tone?

8 A: Yes it is.

9 Q: Okay. Any other times that you would have filed
10 unemployment besides when you were laid off before S&S South
11 and then when you were laid off by International Kitchen Supply
12 and laid off by Contracting Decors?

13 A: No.

14 Q: What do they pay you now at National Tax Service?

15 A: Ten dollars an hour.

16 Q: And how, is that a 40-hour a week job or do you have
17 to work?

18 A: Between 32 and 40.

19 Q: And who would your supervisor be there?

20 A: Gina Chapman.

21 Q: Who is your family doctor?

22 A: Henry Ramirez.

23 Q: Who is he with?

24 A: Upstate Medical Associates.

25 **MR. BRANDT:** He's a Physician's Assistant, not a

1 doctor.

2 Q: Okay. And how long has he been your primary person
3 to go to?

4 A: About four years.

5 Q: And was he with Upstate Medical Associates during
6 that entire four year period?

7 A: No. He's been there about a year. He was with Dr.
8 Hanahan. I'm not sure what his office was called.

9 Q: Is Dr. Hanahan still in practice?

10 A: Yes.

11 Q: Where is he located?

12 A: He is in Seneca.

13 (Off the Record)

14 Examination Resumed by Mr. Martin:

15 Q: For whoever wants to answer it, Dr. Hanahan, where
16 is, is he still practicing in a separate practice by himself?

17 A: I don't think that he is.

18 MR. BRANDT: But he sold it to the hospital. He
19 doesn't own his practice anymore. I mean, the hospital is
20 gobbling up everybody who'll sell out to them. And there's
21 only two, I think, Dr. Booker and Dr Campbell in Westminster
22 are the only two doctors, actual doctors' practice left that's
23 independent of the hospital anymore here. I mean, they're
24 eating up everybody. But Ramirez's practice is my
25 understanding is separate from the hospital, just not, he's

1 not, but I think he owns it. McAlpine is the control doctor,
2 but I don't know if she has an interest in the practice, but
3 Hanahan is still practicing.

4 Q: Before you started seeing Dr. Ramirez four years
5 ago, who was your family doctor?

6 A: Prior to that would have been Seneca Medical
7 Associates and that would be whoever you could see.

8 Q: Where were they located?

9 A: They're in Seneca.

10 Q: Are they still doing ...

11 A: Yes.

12 Q: Okay. Where are they located, if you know, like the
13 street?

14 A: I believe its North Radio Station Road.

15 Q: And how long were they your family doctors?

16 A: Probably 10 or 15 years.

17 Q: Do you have any ongoing medical issues that you
18 treat for, like with a regular medication or that sort of
19 thing?

20 A: Asthma.

21 Q: And who treats you for that?

22 A: Ramirez.

23 Q: And what medication are you on for that?

24 A: Symbicort and Singulair and Albuterol.

25 Q: Where do you get your prescriptions?

1 A: Usually mail order with my insurance.

2 Q: Any other ongoing medications like that?

3 A: No.

4 Q: Or medical problems?

5 A: No.

6 Q: And Dr. Ramirez is the one who prescribes the
7 Symbicort, the Singulair and the Albuterol?

8 A: Yes, he is.

9 Q: Have you ever been involved in any car accidents?

10 A: A long time ago, yes.

11 Q: And tell me about that.

12 A: The first one I remember, a lady sideswiped my
13 parents' car, I was in the back seat. No injuries.

14 Q: You don't have to wait on me to write, go right
15 ahead.

16 A: I had one in high school. A young man ran a stop
17 sign and hit me.

18 Q: Were you injured in that?

19 A: I hit my head. That was it.

20 Q: And where would you have gone to get treated for
21 that?

22 A: Oconee Hospital.

23 Q: Do you remember if you had to follow up with any
24 doctors?

25 A: No, I didn't.

1 Q: And any other car accidents?

2 A: I was rear-ended in front of Oconee Hospital.

3 Q: And when was that?

4 A: I was working at --- I don't even remember where I
5 was working. I was on the job at the time. I think it was in,
6 in the middle '90s. I don't remember when exactly.

7 Q: Did you get injured?

8 A: I did have a slight whiplash.

9 Q: And where did you get treated for that?

10 A: At Oconee Hospital.

11 Q: Anywhere else?

12 A: No. I just took therapy there.

13 Q: Any other car accidents?

14 A: No.

15 Q: I'm going to ask you about any accidents you had at
16 work. You mentioned the one with the water company where you
17 had the ACL injury to your right knee. Any others?

18 A: That's it.

19 Q: You mentioned this in the mid '90s you were on the
20 job when you had the whiplash. Did you have any kind of
21 workers' comp claim for that?

22 A: No. It was strictly through the insurance.

23 Q: The one involving your right ACL, tell me what
24 happened there.

25 A: I was in the filter room and wet room and slipped

1 while trying to turn on the valves and twisted my knee.

2 Q: And where did they send you for treatment?

3 A: They sent me to Henry Ramirez.

4 Q: And then did he refer you out from there?

5 A: I took about six months of physical therapy before
6 he referred me.

7 Q: And then where did he refer you?

8 A: He sent me for an MRI first, and then referred me to
9 Blue Ridge Orthopaedics.

10 Q: And did they do surgery on you?

11 A: Yes.

12 Q: And what all did they do?

13 A: They replaced, repaired my ACL and I had a slight
14 tear in my meniscus. They repaired it.

15 Q: Do you remember which doctor?

16 A: Dr. McCallum.

17 Q: And how did that workers' comp case end?

18 A: We settled with a clincher and I no longer worked
19 for CG Roxane after that.

20 Q: Was it called a voluntary resignation? Does that
21 sound right?

22 A: Yes.

23 Q: So if that case was resolved on a clincher, did that
24 end any future medical treatment for your knee that they would
25 pay for?

1 A: Yes.

2 Q: Did they have any hardware that they put in your
3 knee when they did the surgery?

4 A: I have some bolts that are in my knee.

5 Q: And what do the bolts go into, into you bone or?

6 A: Yes.

7 Q: How many do you have, if you know?

8 A: Two bolts, I believe.

9 Q: And that was the only other work accident that
10 you've had?

11 A: Yes.

12 Q: Any other accidents that you've had or injuries that
13 you've had where you've had to go get medical treatment?

14 A: No injuries.

15 Q: Any other accidents of any kind?

16 A: In high school, I had cut a, cut my hand and I have
17 also had my, my right hand has been burned.

18 Q: When did that happen?

19 A: I don't remember the exact year, late '90s.

20 Q: Any other accidents?

21 A: No.

22 Q: Are you currently receiving any medical treatment?

23 A: Only for my asthma and for the injuries I have now.

24 Q: And who's providing that?

25 A: For the injuries, Dr. McCallum.

1 Q: And Dr. Ramirez is doing the asthma?

2 A: Yes, he is.

3 Q: And what are the injuries that you have now?

4 A: I have a torn meniscus in my right knee and I have a
5 complete tear of the rotator cuff in my right shoulder.

6 Q: Any other injuries that you're treating for with Dr.
7 McCallum?

8 A: He's just doing some pain management on pain that I
9 have in my left knee and my left shoulder, because they're not
10 as severe.

11 Q: Does he have you on any type of medication?

12 A: I'm taking Naproxen twice a day.

13 Q: Anything else?

14 A: Nothing else.

15 Q: Now where do you get that prescription filled?

16 A: I've been getting it filled at Walmart in Seneca.

17 Q: When do you believe you suffered the torn meniscus
18 in your right knee?

19 A: When I had my fall at One Tone on July 21 of 2009.

20 Q: Tell me about what happened.

21 A: There was a phone cord stretched across the office
22 about knee height, and we had to step over it to leave the
23 office and I caught my foot and fell.

24 Q: And tell me how you fell.

25 A: I fell on all fours, hands and knees.

1 Q: Did any part of you hit first or was it all pretty
2 much at once?

3 A: Hit mostly on my right side.

4 Q: And did you land on your knees and then on your
5 hands or did you land on your hands and then on your knees or
6 do you remember the sequence of events?

7 A: No, I don't remember it exactly.

8 Q: What did you land on?

9 A: The floor.

10 Q: And did, was that your hands and your knees both hit
11 the floor?

12 A: Yes.

13 Q: Who was present when that happened?

14 A: My manager, Kimberly Smagala.

15 Q: Was there anyone else there?

16 A: Not anyone that witnessed it.

17 Q: Did she witness the accident?

18 A: Yes, she did.

19 Q: And what happened when you hit the ground?

20 A: I thought I was going to pass out.

21 Q: And then how long did that last?

22 A: Kimberly helped me get up and I sat there for about
23 20 or 30 minutes.

24 Q: What time of day was it?

25 A: A little after 6 p.m.

1 Q: And while you were sitting there, what happened?

2 A: She got me some water, I believe, and told me to
3 just sit there until I felt better.

4 Q: Anything else?

5 A: I just sat there trying to catch my breath.

6 Q: So you sat there for about 20 or 30 minutes, and
7 then what happened?

8 A: I did tell her that I felt like I was hurt, that I
9 felt sick to my stomach.

10 Q: What else?

11 A: Seth Chea came by and asked what happened.

12 Q: And what else?

13 A: Kimberly told him that I had fallen over the cord
14 that she had pulled across the office.

15 Q: What else?

16 A: He made a joking comment about it and went on to his
17 office.

18 Q: And was this all during the 20 minutes while you
19 were sitting?

20 A: Yes.

21 Q: And what else?

22 A: Kimberly had told me to go home when I felt like and
23 just rest and prop up my feet and that I should be okay.

24 Q: And then what?

25 A: After I felt a little better, I went on home.

1 Q: And that's about how long after the accident?

2 A: It was around 6:30.

3 Q: So about 30 minutes?

4 A: It was a few minutes after six when I left, so it
5 was around 20 minutes.

6 Q: Okay. And from the time you fell until the time you
7 left, was about ...

8 A: Was about 20 minutes.

9 Q: What comment did Seth make?

10 A: He put up his fingers like a cross and either said
11 no injuries here or no falls here. I was a little foggy in my
12 brain and I don't know exactly what he said, it's something
13 about no falls or injuries.

14 **MR. BRANDT:** Let the record reflect that when she,
15 well, how about you describe the gesture in the record or I
16 will.

17 Q: You just crossed your fingers there like a, the sign
18 of a cross?

19 A: Yes.

20 **MR. BRANDT:** The index finger at both hands?

21 A: Yes.

22 Q: And then he walked on off after that, you said it
23 was, was he laughing when he said that?

24 A: He was joking about it.

25 Q: And he was just there for a second?

- 1 A: And went into his office.
- 2 Q: Okay. Did you talk to him again that evening?
- 3 A: No.
- 4 Q: Did you, well, let me ask you this. What happened
5 next after that when you went home?
- 6 A: I went home and told my parents that I had fallen.
- 7 Q: And then what?
- 8 A: I got out an ice pack for my shoulder and my knee
9 that were hurting me the most.
- 10 Q: And then what?
- 11 A: I took it easy the rest of the night with my legs
12 propped up and.
- 13 Q: Then what happened after that?
- 14 A: Nothing much happened after that. I went to bed and
15 I did take some Aleve for the pain.
- 16 Q: Anything else that evening?
- 17 A: Not that I remember.
- 18 Q: Then what was the next thing related to the, this
19 issue that occurred?
- 20 A: The next morning when I went, I went in, I told
21 Kimberly how sore I was and that I felt like something was
22 hurt.
- 23 Q: And what happened?
- 24 A: When I asked her about going to the doctor, she told
25 me that I don't want to do that, that they're looking for

1 someone to fire right now.

2 Q: And then what?

3 A: I asked her about filling out an incident report and
4 she made the comment, "I don't believe, we do those here."

5 Q: Okay. And then what?

6 A: I found an incident report online and filled it out
7 and offered it to her.

8 Q: Okay. And then what?

9 A: She told me to just go ahead and keep it.

10 Q: And then what?

11 A: And then I just continued to work.

12 Q: And did you have any more problems?

13 A: Yes. I was in pain for several days with some
14 swelling.

15 Q: Okay. And then what?

16 A: I did ask on one other occasion about going to the
17 doctor.

18 Q: And when was that?

19 A: It was, I think, the end of that same week.

20 Q: And who was that that you asked?

21 A: Kimberly, again.

22 Q: And what happened?

23 A: She told me if I felt I needed to, to go and file it
24 on my own insurance, but to not rock the boat.

25 Q: And then what?

1 A: And I didn't mention it any more to her.

2 Q: Did you mention it to any one else?

3 A: I mentioned the pain that I was having to other
4 people in the, that I worked with.

5 Q: And who was that?

6 A: It would have been Crystal Strickland, Denae Booth,
7 and Beth Moore.

8 Q: You said Crystal Strickland, Denae Booth, and Beth
9 Moore?

10 A: Beth Moore.

11 Q: And they were your co-workers?

12 A: Yes. Beth Moore eventually became a manager.

13 Q: And you would just mention to them what exactly?

14 A: About the pain that I was having, the stiffness I
15 would have after sitting a while. My, when my shoulder began
16 locking.

17 Q: When did that start?

18 A: That started about six or seven months ago, about
19 the time that I demanded to go to the doctor, which was in June
20 of this year.

21 Q: Were there any other times back in July of 2009 or
22 after that up until June of this year that you asked to go to
23 the doctor, besides the ones you told me about already?

24 A: I started asking again. It was in April, the very
25 end of April.

1 Q: And who did you have that discussion with?

2 A: I mentioned it to Beth Moore, who was the manager at
3 the time.

4 Q: And what did you mention to her exactly?

5 A: I told her that the pain was getting worse and that
6 my shoulder was starting to lock and I felt I needed to go to
7 the doctor.

8 Q: And what happened?

9 A: She said that she would take that to Seth Chea.

10 Q: Then what happened?

11 A: I think she sent him a message on Google Talk and he
12 said let me discuss it with Scott Loggins, who is the owner and
13 Mitzi Wurley, who was human resources.

14 Q: He said let me talk to Scott Loggins and Mitzi
15 Wurley?

16 A: Uh-huh (affirmative response).

17 Q: Was that something he sent her back on Google Talk?

18 A: Yes. We usually respond to each other on Google
19 Talk.

20 Q: Okay. And then what happened?

21 A: When I asked her about it after I hadn't heard
22 anything for about a week, she went to his office to ask him
23 about it.

24 Q: Then what happened?

25 A: She came back and told me that he told her we were

1 trying to nickel and dime the company to death and to let him
2 look into the situation.

3 Q: And then what happened?

4 A: He just kept telling her, I've still got to look
5 into the situation for a couple of weeks.

6 Q: And then what happened?

7 A: I'm getting close to my doctor's appointment on June
8 29. Scott Loggins asked for a meeting with our call center and
9 in that meeting he asked did anybody have any, he was asking
10 about complaints we had. He asked if anybody had any other
11 complaints and I spoke up in the meeting and told him that I
12 wanted to know when I could go to the doctor.

13 Q: And what happened?

14 A: He looked surprised at first and then said you can
15 go when you're ready, just make the appointment and have them
16 send the bill to me.

17 Q: And you said it was getting close to your
18 appointment on June 29 when you had this meeting. Did you
19 already have an appointment scheduled?

20 A: No. I didn't. It was, I just know it's close to
21 that date, because I called that afternoon to make the
22 appointment.

23 Q: Okay. And you called Henry Ramirez?

24 A: Yes.

25 Q: Let me go back a little bit. Was there any time

1 from July of 2009 up until this point that you had seen Henry
2 about your knee or your shoulder?

3 A: Not about those specifically. I did go to him about
4 pain in my foot and since then Dr. McCallum has, he thinks that
5 the pain in my foot is due to the way I'm walking because of
6 the pain in my knee.

7 Q: Besides Henry Ramirez, would you have seen any other
8 doctors between July of 2009 and June of 2010?

9 A: No.

10 Q: And how many times do you think you would have seen
11 Henry, besides the time you saw him about the pain in your
12 foot?

13 A: Maybe twice. I have to go for check ups for my
14 asthma about twice a year.

15 Q: So let's go back to where we were. June 29 or
16 thereabouts, you had this conversation with Scott Loggins
17 during the meeting?

18 A: Yes.

19 Q: And then you called that afternoon to make an
20 appointment with Henry Ramirez?

21 A: Yes.

22 Q: And then what happened?

23 A: They had to call my employer to make sure he was
24 going to pay for it and where to bill and then they called me
25 back to give me the date they would see me.

1 Q: Okay. And then what happened?

2 A: I went to the doctor's visit on June 29. He
3 determined that I at least had a sprain in my shoulder and knee
4 and wanted me to start physical therapy.

5 Q: And then what?

6 A: He gave me a prescription for Celebrex for the pain
7 and swelling?

8 Q: And where would you have gotten that?

9 A: I had that filled at Walmart.

10 Q: And that's the same one in Seneca?

11 A: Yes.

12 Q: And then after he saw you and determined you had a
13 sprain in the shoulder and prescribed the Celebrex and wanted
14 you to start physical therapy, what happened after that?

15 A: I went to turn in the physical therapy request and
16 they had to get approval from the workers' comp.

17 Q: And then what happened?

18 A: It was nearly a month later, almost, I believe, when
19 I got the workers' comp denial.

20 Q: And did you get that directly or did somebody tell
21 you about that or how did that work?

22 A: A lady from the workers' comp insurance called me
23 and then I received a letter in the mail shortly after that.

24 Q: Do you think that was some time in July?

25 A: I think it was.

1 Q: Okay. And then what happened after that?

2 A: After that, when I was denied, I came to see Larry
3 Brandt.

4 Q: And what happened at work after that, well, after
5 your visit with Henry Ramirez when he wanted you to have
6 physical therapy, what was going on at work?

7 A: Everything went back to normal. Everything was the
8 same. I did get called to the office to talk about it and
9 Scott Loggins had told me that he spoke with the insurance
10 company and told them he wanted the insurance to go ahead and
11 do the claim and they told him it wasn't his choice.

12 Q: Did Henry Ramirez put you on any kind of light duty?

13 A: He put me back to normal duty because I worked at a
14 desk.

15 Q: Did you have any other conversations or meetings
16 with Scott Loggins or anybody else?

17 A: I spoke to him on two or three occasions about the
18 insurance up until I was denied. I only had one conversation
19 with him after I was denied.

20 Q: The two or three before you were denied, those were,
21 what was the gist of those?

22 A: He was discussing that they were sending my incident
23 report to the insurance company, just keeping me up to date on
24 what was going on, that they were waiting on information or
25 they were sending information.

1 Q: Okay. And then after the denial, what conversation
2 did you have with him?

3 A: That was the conversation where he had told me that
4 he had spoke with them and he had told them that he wanted it
5 to go through, that they were accepting responsibility for the
6 fall, and that the insurance company told him that it wasn't
7 his choice.

8 Q: Any other conversations with him?

9 A: Not that I recall.

10 Q: After the denial, anything change at work?

11 A: No.

12 Q: Stayed the same. You continued doing normal duty?

13 A: Yes.

14 Q: Did you get any more medical treatment?

15 A: I did start seeing Dr. McCallum then.

16 Q: And how did you get to Dr. McCallum?

17 A: I was already a patient of his previously, so I just
18 called and requested an appointment.

19 Q: So you were not referred over to him by Henry
20 Ramirez or anybody else?

21 A: No, I wasn't.

22 Q: And what did Dr. McCallum do for you?

23 A: He sent me immediately for an MRI.

24 Q: And where did he send you for that?

25 A: I had the MRI on my knee at Oconee Medical Center

1 and then the MRI on my shoulder was done at Mountain View
2 Imaging.

3 Q: When was the knee MRI?

4 A: I don't remember the exact date. I believe it was
5 in August.

6 Q: And how about the shoulder?

7 A: It was in August as well.

8 Q: Was that the same day or ...

9 A: No. They were about a week apart maybe.

10 Q: Have you had an MRI done on your left knee or left
11 shoulder?

12 A: No, I haven't.

13 Q: Have you had injections in any of your joints, knees
14 or shoulders?

15 A: No, I haven't.

16 Q: When did you see Dr. McCallum the first time, as
17 best you recall?

18 A: I think it was the end of July.

19 Q: And that's when he immediately made the MRI
20 referrals?

21 A: Yes.

22 Q: Are you still seeing him?

23 A: Yes, I am.

24 Q: And when was the last time you saw him?

25 A: I believe it was in September.

1 Q: And you're handling that all under your health
2 insurance?

3 A: Yes, I am.

4 Q: What is he doing for you at this point?

5 A: Pain management.

6 Q: He doesn't have you undergoing any kind of therapy
7 right now?

8 A: He doesn't want me doing therapy at the time.

9 Q: And, Mr. Ramirez, he never diagnosed you with
10 anything, other than the sprain?

11 A: Yes.

12 Q: Did you see him again after that June 29 visit?

13 A: No, I haven't.

14 Q: Does Dr. McCallum have you on any restrictions?

15 A: Just normal duty as long as I'm at a desk.

16 Q: Have you been able to continue working at your new
17 job?

18 A: Yes.

19 Q: Okay. How was it that you decided to change
20 employment?

21 A: I had been looking, actually, for a while. They had
22 cut our hours and I needed full-time employment.

23 Q: When did they cut your hours?

24 A: About April or May of this year.

25 Q: And what did they cut them to?

1 A: They first cut out, I don't remember exactly, down
2 to 36 hours and then I think it was down to 32. We were off
3 one full day a week.

4 Q: Any other conversations regarding your accident or
5 anything like that from June of this year when you saw Dr.
6 Ramirez until you stopped working?

7 A: No.

8 Q: Any problems at work or anything like that?

9 A: No.

10 Q: Have you had any conversations with anybody, Seth
11 Chea, Kim Smagala, Scott Loggins, or anybody else at the
12 company since you left?

13 A: No, I haven't.

14 Q: Do you know what Dr. McCallum wants to do for you at
15 this point?

16 A: He wants to perform surgery on my left, I mean, on
17 my right shoulder first and repair the rotator cuff.

18 Q: Why does he want to do that first?

19 A: It's the most important. It's a complete tear and
20 it's causing me trouble lifting my arm above my head.

21 Q: And were you having trouble with it when you were
22 still at the phone company?

23 A: Yes.

24 Q: As far as lifting above your head and that sort of
25 thing?

1 A: Yes.

2 Q: And after he does the right shoulder surgery, has he
3 told you where he wants to go from there?

4 A: After the physical therapy and I've got most of my
5 use back in my shoulder, he wants to then do my right knee, a
6 arthroscopically to clean out the meniscus tear.

7 Q: Were you having any difficulty at work at the phone
8 company before you left?

9 A: No.

10 Q: And by that I mean, let me explain that a little
11 more, were you having any trouble with people in management?

12 A: In that setting, there was always trouble in
13 management. It was an us versus them situation.

14 Q: Had you been counseled or anything like that?

15 A: No.

16 Q: Anybody talk to you about your performance or
17 anything of that nature?

18 A: We had performance reviews.

19 Q: Was there anything, any problems brought up during
20 the course of any of your performance reviews?

21 A: Most of the problems brought up were in general.
22 They didn't point fingers at any particular person if there was
23 a situation. They mentioned Facebook activity. It didn't
24 matter if you were involved in it, they just wanted you to be
25 aware of it. The last one that I had, they were pleased with

1 my performance and the job that I was doing, but wanted me to
2 do better.

3 Q: Who did that evaluation?

4 A: Seth Chea.

5 Q: Who was your supervisor? Did you have more than one
6 supervisor?

7 A: In the time that I worked there, there were four or
8 five different supervisors in my department.

9 Q: Were they all there as supervisor at the same time
10 or they were one after another?

11 A: One after another.

12 Q: Who was your supervisor at the time of the accident?

13 A: Kimberly Smagala.

14 Q: And what was Seth Chea's job?

15 A: Vice President of Operations.

16 Q: And then in June, or I think you said April, is when
17 you mentioned to Seth that you wanted to go to the doctor or
18 you mentioned to Beth?

19 A: Beth Moore.

20 Q: She was the supervisor at that point?

21 A: Yes, she was.

22 Q: And Seth was?

23 A: Still Vice President of Operations.

24 Q: Okay. And who were your other supervisors?

25 A: Crystal Strickland and Nicki Ellenburg.

1 Q: And when were they your supervisors?

2 A: Nicki Ellenburg was my first supervisor.

3 Q: How about Crystal Strickland?

4 A: Crystal Strickland was a supervisor two different
5 times. She was my supervisor before Kimberly Smagala and then
6 she was taken away from that division and put back into that
7 position when I had left the call center, so she wasn't really
8 my supervisor, but she was over the supervisor of the same
9 department that I had been in.

10 Q: Okay. And you said when you left the call center.
11 Was there a time that you left the call center, but you were
12 still working for the company?

13 A: Yes. I went into a department called provisioning
14 and then they combined the provisioning and call center back
15 together.

16 Q: When were you in provisioning?

17 A: About a year after I came to work, I was moved to
18 provisioning. It was under Kimberly Smagala that I was moved
19 to provisioning.

20 Q: Was that before your accident?

21 A: Yes.

22 Q: What did they pay you?

23 A: Nine fifty an hour.

24 Q: Were you involved in making any complaints about the
25 company to any agencies?

1 A: There is a complaint that I am on where the
2 complaint to OSHA.

3 Q: And what was that about?

4 A: Mold in the building.

5 Q: And when was that complaint made?

6 A: I believe it was about three or four months before I
7 left, maybe June or July.

8 Q: Any other complaints?

9 A: No.

10 Q: Did you make a complaint to the Employment Security
11 Commission about your wage reduction or your hour reduction?

12 A: I filed to see if I could get unemployment with my
13 wage reduction.

14 Q: So when they reduced your hours, you filed something
15 with the Employment Security requesting unemployment for the
16 difference in the hours?

17 A: Yes.

18 Q: Any other complaints?

19 A: No.

20 Q: Did you file for unemployment when you left the
21 company?

22 A: No, I did not.

23 Q: The problem with the mold in the building, tell me
24 about that.

25 A: There had been different, a ceiling leak, a roof

1 leak, and an air conditioning leak and with both of those there
2 were mold. The one with the roof, there was mold in a light
3 and the one in the air conditioning, there was mold going down
4 the wall. And I didn't have breathing problems until then like
5 I do now. I had asthma, but it worsened. And we had mentioned
6 the mold and asked about cleaning it up and nothing was done
7 and two of us reported them to OSHA.

8 Q: Who was the other person?

9 A: Angela Carmona.

10 Q: Was there anybody else that filled a complaint about
11 the reduction in hours with you?

12 A: Angela Carmona and Crystal Strickland both filled
13 for unemployment.

14 Q: Do you remember if there was a problem with the
15 refrigerator at some point?

16 A: They have a small refrigerator that didn't work
17 properly and didn't cool properly.

18 Q: And what was the issue with that?

19 A: It was a very old, small refrigerator that ruined
20 food within a day and we asked about getting a new one.

21 Q: Was there a time that y'all decided to defrost it?

22 A: One of the girls was going to defrost it, yes.

23 Q: Did you bring in a dolly?

24 A: I brought one in my car, yes.

25 Q: Was that after June of this year?

1 A: Yes.

2 MR. MARTIN: That's all the questions I have. Thank
3 you ma'am. I appreciate you answering my questions.

4 -----

5 EXAMINATION

6 By Mr. Brandt:

7 Q: Kimberly, when you went to Upstate Medical
8 Associates, Henry Ramirez, did they call and get any kind of
9 approval for payment of their bill?

10 A: Yes, they did.

11 Q: Before they saw you?

12 A: Yes, they did.

13 Q: Do you know who they talked with?

14 A: They were supposed to talk to Scott Loggins.

15 Q: Do you know if that bill has been paid?

16 A: I do not, but I have not been billed for it.

17 Q: And did Henry Ramirez at first think you had a right
18 knee screw that was broken from your ACL repair?

19 A: Yes, he did.

20 Q: But that turned out not to be the case?

21 A: Yes. Correct.

22 Q: And besides that, it was a knee sprain and a
23 sprained acromioclavicular joint, is that correct?

24 A: Yes.

25 Q: That's what his assessment was. You stated that you

1 went to Dr. McCallum, called on your own and went down there.

2 A: Yes, I did.

3 Q: If his records said the right knee screw is broken,
4 will send to orthopedist and will send to Dr. McCallum, M.D.,
5 who did the surgery in 2004, do you know if he ever called him?

6 A: No.

7 Q: I'll show you the records from Henry Ramirez's
8 office.

9 A: Do I know if Henry ever called him?

10 Q: Yeah.

11 A: I do not know.

12 Q: You don't. But at least you went there by calling
13 on your own?

14 A: Yes, I did.

15 Q: Okay. This thing right here in front of you, what
16 is that?

17 A: That is the Incident Report that I created.

18 Q: Is that the one that you tried to give to the office
19 manager on the 22 ...

20 A: Yes, it is.

21 Q: ... of July 2009?

22 A: Yes, it is.

23 Q: That was, basically, the day after the work injury?

24 A: Yes, it was.

25 Q: And you signed that?

1 A: Yes, I did.

2 MR. BRANDT: I'd like to have that marked as an
3 exhibit.

4 MR. MARTIN: No objection.

5 (Exhibit 1 was marked for identification).

6 MR. BRANDT: Other than that, I don't have anything.
7
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23
24 (There being no further questions,
25 the deposition concluded at 1:10 p.m.)

STATE OF SOUTH CAROLINA)

: C E R T I F I C A T E

COUNTY OF GREENVILLE)

Be it known that I took the deposition of KIMBERLY DAWN MAHAFFEY;

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


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

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

That the foregoing transcript of 41 pages is a true and correct transcript of the testimony given in this matter;

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

WITNESS MY HAND AND SEAL this 18th day of November, 2010.


Sue N. Haynie
Notary Public for South Carolina
My Commission Expires: 12/19/11

WORK INJURY
INCIDENT REPORT
FORM

1. DATE REPORT PREPARED: 7/22/2009

2. DATE WORK INJURY OCCURRED: 7/21/2009

3. BODY PARTS INJURED IN WORK ACCIDENT:

Pain in both knees and shoulders – mostly on right side. Some soreness/stiffness in back

4. INDIVIDUAL(S) AT WORK WHO YOU NOTIFIED:

Witnessed by - Kimberly Smagala - Manager, Informed - Seth Chea - VP of operations

5. HOW DID YOU INJURE YOURSELF ON THE JOB:

a Phone chord was stretched across the office in call center/middle office. I tripped trying to step over chord. I tried to catch myself on counter and ended up landing on hands and knees. Sat in office for another 20 minutes trying to get over the feeling of being sick and passing out.

Kimberly Mahaffey
SIGNATURE OF INJURED WORKER



kmahaffey

From: kmahaffey [kmahaffey@1tone.net]
Sent: Wednesday, June 30, 2010 1:57 PM
To: 'Mitzi Worley'
Subject: RE: Injury

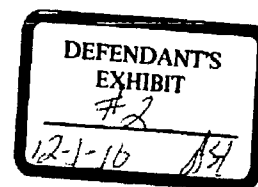
Attached is the work injury form I downloaded and offered to Kim Smagala at the time. If you need more info please let me know.

My Cell phone is 247-2301

From: Mitzi Worley [mailto:mworley@1tone.net]
Sent: Wednesday, June 30, 2010 1:47 PM
To: 'kmahaffey'
Subject: Injury

Please email me the date that your injury happened as well as a description of what happened. Also include a contact number for you.

Thanks,
Mitzi



10/29/2010

**WORK INJURY
INCIDENT REPORT
FORM**

1. DATE REPORT PREPARED: 7/22/2009

2. DATE WORK INJURY OCCURRED: 7/21/2009

3. BODY PARTS INJURED IN WORK ACCIDENT:

hurting in both knees and shoulders – mostly on right side.

4. INDIVIDUAL(S) AT WORK WHO YOU NOTIFIED:

Kimberly Smagala - Manager, Seth Chea - VP of operations

5. HOW DID YOU INJURE YOURSELF ON THE JOB:

a Phone chord was stretched across the office in call center/middle office. I tripped trying to step over chord. I tried to catch myself on counter and ended up landing on hands and knees. Sat in office for another 20 minutes trying to get over the feeling of being sick and passing out.

SIGNATURE OF INJURED WORKER

My Computer

Work Injury Report Form 7.22.doc Properties



General Custom Summary



Work Injury Report Form 7.22.doc

Type of file: Microsoft Word Document

Opens with: Microsoft Office Word

Location: C:\Documents and Settings\Kimberly\Desktop

Size: 25.0 KB (25,600 bytes)

Size on disk: 28.0 KB (28,672 bytes)

Created: Saturday, January 23, 2010, 1:06:11 PM

Modified: Wednesday, June 30, 2010, 1:57:06 PM

Accessed: Today, November 02, 2010, 4:38:56 PM

Attributes: Read-only Hidden

OK

Cancel

Apply

CC lists

Work Injury Report Fo...

start

My Documents

Scott Mita - Microsoft

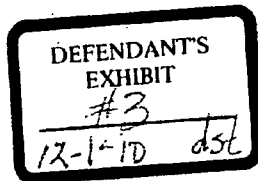
Main Identity

From: "Mitzi Worley" <mworley@1tone.net>
To: "Scott Loggins" <sloggins@1tone.net>
Sent: Thursday, November 04, 2010 9:07 AM
Subject: FW: Last paycheck

From: Kimberly [mailto:kdmahaffey@bellsouth.net]
Sent: Wednesday, November 03, 2010 5:29 PM
To: mworley@1tone.net
Subject: Last paycheck

I have not received my last paycheck. Was it sent Friday as it should have been?

Also, I have not received a Hipaa certificate or offer of continuation on my insurance.



11/4/2010

Main Identity

From: "Kimberly" <kdmahaffey@bellsouth.net>
To: "Scott Loggins" <sloggins@1tone.net>
Sent: Friday, November 05, 2010 11:37 AM
Subject: Re:

The email you are referring to was concerning my 10/15 check which I did pick up on 10/15. The 10/15 check should have been my last check and should have included my 2 days in October and any vacation owed as per SC DOL laws - the final check is to be paid within 48 hrs OR on the next pay day, which was 10/15.

My address has not changed so please mail the check to me immediately. This check should also contain my 4 days of vacation owed me as I did put in a notice of resignation, which Onetone chose not to accept.

From: Scott Loggins <sloggins@1tone.net>
To: kdmahaffey@bellsouth.net
Sent: Thu, November 4, 2010 4:34:57 PM
Subject:

Ms Mahaffey,

I was sent a email from Mitzi that you had originally sent to her on October 5th stating that you did not want your final check mailed and that you would pick it up between 4:30 and 5 pm on the 29th. I have your check in my office and will be glad to put it in the mail. If the address in your employee file has changed then please forward me the correct mailing address. I will also include the Cobra paperwork necessary to continue your insurance coverage. If you have any questions I would ask that you contact me directly as I will be your Point of Contact for all future matters. I will list my contact information below.

864-985-3906 - email
 direct phone line

Thank you,
Scott Loggins
OneTone Telecom, Inc.

11/5/2010

Main Identify

From: "Mitzi Worley" <mworley@1tone.net>
To: "Scott Loggins" <sloggins@1tone.net>
Sent: Thursday, November 04, 2010 9:07 AM
Subject: FW: Checks

From: Kimberly [mailto:kdmahaffey@bellsouth.net]
Sent: Tuesday, October 05, 2010 12:02 AM
To: mworley@1tone.net
Subject: Checks

Mitzi,

I am writing to ask that you do not mail my final 2 checks. I will come by on 10/15 between 4:30 and 5pm and the same time on 10/29 for my final check.

Thanks,
Kimberly M

11/5/2010

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Kimberly Mahaffey,)
)
 Claimant,)
)
 vs.)
)
 Onetone Telecom, Inc.,)
)
 Employer,)
 and)
)
 State Automobile Mutual)
 Insurance Company,)
)
 Insurance Carrier,)
 Defendants.)
 _____)

APPELLANT'S BRIEF

WCC File No.: 0922023

SCWCC
JUN 09 2011
JUDICIAL

SUMMARY OF TESTIMONY/EVIDENCE

Kimberly Mahaffey testified at the hearing that she fell in the presence of Ms. Smagala who helped her get up. She stated that she fell over a phone cord that was stretched across the walking aisle about knee high and, immediately after she fell, she felt like she was going to pass out and was hurting in her knees and shoulder. (T.,p.11, ll.8-22) She said she told Ms. Smagala about her pains (T.,p.12, l.23-p.13, l.4), although Ms. Smagala says that her only complaint at the time was that she felt dizzy (Smagala Depo., p.9, ll.23-25; p.10, ll.13-16). Ms. Smagala does state, however, that the following day she came into work "complaining or moaning about some pain." (Smagala Depo., p.11, ll.8-9) Ms. Mahaffey testified that after she fell, she was hurting in her right knee the most, although the left knee was also hurting. (T.,p.13, ll.1-9) She does not recall complaining

about her shoulders at the time of the accident. (T.,p.13, II.15-18) After she got up from the fall, she sat in a chair for a little while before collecting herself before she was able to leave. (T.,p.12, II.15-18) According to Ms. Mahaffey she sat in the chair for about twenty to twenty-five minutes (T.,p.13, II.22-25), although Ms. Smagala testified it was only two or three minutes. (Smagala Depo., p.9, I.23-p.10, I.1) Ms. Mahaffey reported for work the next day and continued to work on a regular basis until she quit to take another job on October 4, 2010. (T.,p.14, II.6-16; p.10, I.22-p.11, I.5) Ms. Mahaffey testified that the following day she told another fellow employee and Kimberly Smagala that she thought that she needed to go to the doctor, but Ms. Smagala informed her they were looking for people to fire and not to rock the boat. (T.,p.14, II.8-25) Ms. Smagala, of course, denies this. Ms. Mahaffey also testified that she asked Kimberly Smagala about filing an incident report but she was told that they didn't have one. She then created the form that has been admitted into evidence as Claimant's Exhibit #3 on July 7, 2009 and filled it out that day stating that she was hurting, had pain in her shoulders and knees. (T.,p.15, II.1-23) She testified that she offered the form to Kimberly Smagala but was told to keep it. She also asked about going to the doctor, but Ms. Smagala told her that she needed to file it under her own insurance and not complain about it. (T.,p.15, I.24-p.16, I.2) Ms. Mahaffey did not go to the doctor about her injuries until in or about June 2010 when she saw Henry Ramirez, a Physician's Assistant. (T.,p.26, II.6-15) She then went to Dr. McCallum, an orthopedic, on or about August 11, 2010 (CL. APA #2, p.14) She states that she finally went to the doctor because the condition was getting worse and the pain was becoming unbearable. (T.,p.16, II.16-24)

Ms. Mahaffey testified that she asked Ms. Smagala several times about going to the doctor but each time Ms. Smagala would tell her not to complain about it and discouraged her from seeking medical attention for her injuries. (T.,p.16, l.25-p.17, l.4) At some point in early 2010, Ms. Smagala was replaced as Ms. Mahaffey's supervisor by Beth Moore who then went to higher management and asked for permission for Ms. Mahaffey to go to the doctor. (T.,p.17, ll.6-7) She also had a conversation with Mr. Loggins, President of the company, who told her to go to the doctor and the company would pay for it. (T.,p.17, ll.8-23) At that time, the Human Resources Manager, Ms. Mitzi Worley, asked Ms. Mahaffey for a description of the accident and, at that time, Ms. Mahaffey gave the incident report (T.,p.18, ll.19-25) which she had tried to give to Ms. Smagala the day after the accident to Ms. Worley. Ms. Mahaffey testified that she had not had any kind of traumatic event between the date of a previous injury and repair to her right knee and the date of her fall on July 21, 2009 and that she has not had any other falls or traumatic experiences or injuries to her knees or shoulders since July 21, 2009. (T.,p.21, ll.9-25; T.,p.22, l.1;7) It is of note here that the Record is totally void of any evidence of any other injuries to the right knee or right shoulder other than those received in the July 21, 2009 accident. **Defense Exhibit #2** was placed into evidence by the Employer and is an email sent from Mitzi Worley asking Ms. Mahaffey to provide a description of what happened when she fell at work and a contact number. (T.,p.29, ll.1-25) The Employer also offered into evidence some printout of some kind by the IT Director of the company, Keith Nichols, indicating that the form may have been created on January 23, 2010, not July 22, 2009. (T.,p.30, ll.8-25) The medical records (**Ramirez, APA #1**) and the records of Dr. McCallum (**APA # 2**) were

also entered in the record and they clearly diagnose a torn rotator cuff in Claimant's right shoulder and a torn meniscus in her right knee. Dr. McCallum further stated that, in his opinion to a reasonable degree of medical certainty, the injuries for which he was/is treating her were caused from the fall at work of approximately one (1) year previously. (APA #2, p.2; T.,p.32, l.16-p.33, l.2) Ms. Mahaffey testified that her knees and shoulder had gotten progressively worse since the accident occurred. In response to the issue raised by the Employer as to when the incident form was created, Ms. Mahaffey explained that she originally created it on July 21, 2009 but, because of trouble with her computer, her manager at the time, Beth Moore, told her to reload the Windows program on her computer which required removing all information onto a flash drive and then reloading the computer. She stated that she did this on Saturday, January 23, 2010. She further stated that her manager, Beth Moore, gave her directions to not wait for the IT guy as it had been two (2) weeks since they had complained so they decided to reload it themselves. She stated that "I used my laptop to do my work and I reloaded my desktop while she was reloading the computer." (T.,p.58, l.23-p.59, l.16; p.62, l.8-p.63, l.12)

Scott Loggins testified that he was the President of Onetone and that Kimberly Mahaffey had never mentioned an accident or injury to him until sometime in June of 2010. He stated that she complained that she had fallen in July 2009 and was injured and wanted to go to the doctor. He then told her that if she had fallen and needed to go see a doctor, he would pay for it. He further stated, "as we have with other employees in the past, people have minor bruises and things happen around the office and that anytime anyone had a complaint or injury of any nature I have paid for an initial doctor visit to, you know,

help save on the insurance costs." In other words, he was avoiding the workers' compensation claim by merely paying for it out of the company coffer. Scott Loggins even says "regarding the injury that he told Ms. Mahaffey that if she was hurt, go to the doctor." Then after she went to the doctor, he realized there was going to be on going issues; that it wasn't just a simple go to the doctor for a bruise, everything is ok, just get checked out," and admitted that this concerned him and he reported the injury to his workers' compensation carrier. (T.,p.64, II.21-23; p.66, II.3-15; p.67, I.16-p.68, I.2) Mr. Keith Nichols, the IT person with Onetone testified that **Defendant's Exhibit #2** indicates that the work injury incident form was created on Saturday, June 23, 2010, at 1:06 P.M. and was modified on Wednesday, June 30, 2010. He stated that employees only have access to Microsoft software if they bring in their own personal copy, that he would not provide them with it. (T.,p.85, II.17-23). He further admitted that if Ms. Mahaffey had reloaded her computer with the Microsoft program, "if she wiped everything out," she would have had to have downloaded her own files and save them in order to be able to put those back on the "machine." When asked how that would have affected **Defendant's Exhibit #2**, he answered that "whatever date she put it back on the computer, if that is, in deed, what happened." Then in response to the question: "So that would be the creation date?" he replied, "Yes sir." (T.,p.86, II.2-13). He candidly admitted that if she loaded Microsoft to her computer on January 23, 2010, his examination of the computer would only show a modification date, that it wouldn't show how it was modified, and that he could not tell how it was done. He further stated that if you pull it up and you change anything at all on the document, whether it be spacing or add a sentence, a modification would occur. (T.,p.87,

I.4-p.88, I.4) When asked specifically if he could say that the document was not on that computer prior to January 2010, he answered, "Not unless it was reformatted, no sir." (T.,p.,88, II.1-4) Although Mr. Nichols denied receiving any kind of written request for work on the computer, he stated that if somebody had mentioned it to him verbally he would not have necessarily required anything in writing (T.,p.89, II.7-13). He candidly admitted that Ms. Mahaffey could have reloaded her computer with Windows without his knowledge. (T.,p.89, I. 24-p.90, I.1) (T.,p.90)

While Mr. Nichols was testifying, Commissioner Beck did an "in court" experiment with his computer and then asked certain questions of Mr. Nichols which, at best, says nothing. (T.,pp.90-92). Commissioner Beck stated that he took a file from his computer with Windows XP to another computer that had Windows 7 system and then brought it back to his computer and it still showed the date the document was originally created under his property section. Commissioner Becks' experiment, however, did not take it off of a Windows program via a flash drive and completely reload the Windows program in his computer before he brought it back, therefore, his experiment had no validity whatsoever to the facts in this case and did not even come close to reflecting what actually happened in the reload of Ms. Mahaffey's computer. When Mr. Nichols was specifically asked the question: **"Would it matter if you transferred it to a machine and copied it to a flash drive and then took the flash drive back over to the original one?"** **He answered: "I am not sure on that. I would have to check and see if it does that."** (T.,p.94, II.4-10) And when further asked, **"But you can't say today?"** **His answer was: "No sir."**

(T.,p.94, II.4-10) Mr. Brandt recalled Ms. Mahaffey to explain exactly how it was done and she stated that she came back with a flash drive from another computer. (T.,p.96, I.21-p.97, I.1) She stated that she copied the documents to a flash drive on another computer, reloaded the Windows, and then put the documents back on the computer from the flash drive. (T.p.,94, II.4-10) She further stated that Beth Moore, her supervisor at the time, was the one who requested IT to come and reload her computer and was present when she reloaded her computer on January 23, 2010. (T.,p.97, II.2-5) She further stated that she still had the flash drive but wasn't sure if it was the one in her pocketbook at the hearing or the one she had at home. (T.,p.99, II.11-16) Mr. Martin specifically stated that if he could get a copy of the flash drive, he thought it would have the actual or initial creation date on it, to which Mr. Brandt stated he didn't have any objection to providing it. Mr. Brandt also opined that if the Commissioner was going to hold the record open to retrieve the flash drive, then it should also hold the record open for the taking of the deposition of Beth Moore, Ms. Mahaffey's manager. Commissioner Beck then curtly informed Mr. Brandt that he had had the opportunity "to get her here today," to which Mr. Brandt responded, "well I didn't know this issue was coming up today." He further informed the Court that his client didn't have the flash drive with her and pointed out that the Employer had not asked for its production. Mr. Martin simply responded "that's fine" and Commissioner Beck then closed the hearing without allowing the flash drive to be retrieved and/or Beth Moore to be deposed. (T.,p.99, I.17-p.100, I.16)

CLAIMANT'S GROUNDS FOR REVIEW

(As Stated in Form 30)

1. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when the greater weight of the evidence clearly shows that she did.
2. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when his finding is not supported by substantial evidence.
3. The Hearing Commissioner erred in finding that the Claimant did not suffer any compensable injuries by accident to her shoulders, knees or any other body parts from the accident on July 21, 2009 and is, therefore, not entitled to any benefits when the only credible evidence shows that she, at least, injured her right shoulder and right knee as a result of the July 21, 2009 accident.
4. The Hearing Commissioner erred in finding that Claimant has failed to carry her burden of proof when there is substantial evidence which clearly proves her claims even if the testimony of Claimant is completely disregarded.
5. The Hearing Commissioner erred in placing significance on the issue of when the incident report (**Def. Exh. #2**) was created as there is substantial evidence which shows that she suffered injury to, at least, her right shoulder and right knee, notwithstanding Claimant's testimony concerning same and/or consideration being given to the incident report (**Def. Exh. #2**).
6. The Hearing Commissioner erred in finding that the incident report was created on January 23, 2010, not July 21, 2009, when there is no credible or substantial evidence whatsoever that it was created on January 23, 2010.
7. The Hearing Commissioner erred in finding that the incident report was created on January 23, 2010, not July 21, 2009, when Keith Nichols testified that, if Claimant saved her own files, wiped everything out of her computer, uploaded microsoft and then put it back on the computer, the date she put it back on the computer would be the creation date (**T.,p.86, II.4-19**); that he could not say that the document was not on Claimant's computer prior to January 23, 2010 (**T.,p.88, II.1-4**), and that he could not say what would show as the origination date if the file was copied on a flash drive and then taken from the flash drive back over to the original computer (**T.,p.94, II.4-10**).

8. The Hearing Commissioner erred in conducting his in-hearing experiment with his own computer as it did not replicate what Claimant testified that she did in downloading her files to a flash drive, reinstalling Windows on her computer, and then reloading the file on the computer via the flash drive.
9. The Hearing Commissioner was clearly in error and was unfairly prejudiced against Claimant as a result of the issue that was raised concerning the origination date of the incident report (Def. Exh. #2) as there was no credible evidence whatsoever that the document was created on any other date other than as Claimant testified.
10. The Hearing Commissioner erred in finding that Claimant lacked credibility as there was no substantial evidence whatsoever to impeach her.
11. The Hearing Commissioner erred in finding that Claimant's explanation for not advising her doctor of her symptoms on her visit to him on March 19, 2010 to be unreasonable and contrary to common sense as there is no substantial evidence to support that finding.
12. The Hearing Commissioner erred in finding that Claimant has failed to carry her burden of proving compensable injury to her shoulders and knees, particularly her right shoulder and right knee, therefore, denying her request for benefits under the South Carolina Worker's Compensation Act as there is no substantial evidence to refute her claims.
13. The Hearing Commissioner erred in finding that Claimant had failed to carry her burden of proving compensable injury to her shoulders and knees and, as such, denying her request for benefits under the South Carolina Worker's Compensation Act inasmuch as the only credible evidence is that the injuries, at least as to her right shoulder and right knee, were proximately caused by the fall of July 21, 2009.
14. The Hearing Commissioner erred in finding that Claimant, under S.C. Code §42-1-160, was not entitled to any benefits under the worker's compensation act and is not entitled to past and future medical treatment for her shoulders and knees pursuant to §42-15-60 when her claims are, in fact, supported by substantial evidence.
15. The Hearing Commissioner erred in denying worker's compensation benefits to Claimant inasmuch as the claim has been clearly proven by all of the other evidence and the admissions of the Employer/Carrier even if the testimony of Claimant is disregarded.
16. The Hearing Commissioner erred in failing to consider the testimony of Janice Mahaffey, mother of Claimant, whose testimony was stipulated to by Employer without reservation or challenge to her credibility and which fully corroborated Claimant's claim of injuries resulting from Claimant's fall at work on July 21, 2009.

17. The Hearing Commissioner erred in refusing to hold the record open for Claimant to produce the flash drive upon motion of Employer's attorney and/or the taking of the deposition of Beth Moore upon motion of Claimant's attorney inasmuch as an accurate determination of the origination date of the incident report (Cl. Exh. #2) was considered by the Hearing Commissioner to be an important aspect of the case and obviously affected his opinion concerning Claimant's credibility and his decision to deny her benefits under the worker's compensation act.

STANDARD OF REVIEW/CONTROLLING LAW

The Commission Appellate Panel is the ultimate fact finder in worker's compensation cases and is not bound by the single Commissioner's findings of fact. Even the final determination of witness credibility and the weight to be accorded evidence in worker's compensation cases is reserved to the Appellate Panel.

In reviewing the findings of the single Commissioner, the Commission Appellate Panel must review the evidence as a whole and determine if there is substantial evidence of the following: [1] that an accident occurred; [2] that Employer was notified of the accident; [3] that claimant sustained an injury; [4] that the injury was caused by the accident; and [5] that the claim was submitted or filed within two (2) years of the date of the accident. If the substantial evidence is that these five (5) facts exist, the Commission Panel has no alternative but to find that the claim is compensable and the Employer is required to provide medical care to treat the injury.

In reviewing the record, the Appellate Panel is guided by the substantial evidence standard which prohibits it from considering a mere scintilla of evidence to decide an issue and/or viewing the evidence blindly from one side of the case. A decision may not rest upon surmise, conjecture or speculation but must be based upon substantial evidence and

be decided in a manner in which reasonable minds are guided without regard to "gut feelings," philosophical principles or personal feelings toward the claimant. Although expert testimony is not necessarily binding upon the Appellate Panel, the law is clear that if there is no competent or substantial evidence contradicting the expert testimony and the matters attested to are not within common knowledge, the Commission Panel must accept the opinion of the expert without freedom to disregard it [Etheridge v. Monsanto Co., 349 S.C. 451, 652 S.E.2d 679 (Ct.App. 2002); Frat v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (S.Ct. 2004); Lizee v. S.C. Dept. of Mental Health, 367 S.C. 122, 623 S.E.2d 860 (Ct.App. 2005); Pack v. S.C. Dept. of Transportation, 381 S.C. 526, 673 S.E.2d 461 (Ct.App. 2009)].

S.C. Code §42-15-20 provides that every injured employee or his representative shall, immediately on the occurrence of an accident or as soon thereafter as is practicable, give or cause to be given to the Employer a notice of the accident; however, it does not require that the injured employee give notice of specific injuries which may accrue from that accident. Once notice of the accident is given to the Employer and pursuant to S.C. Code §42-15-40, a claimant then has two (2) years to file his/her claim with the Commission.

DISCUSSION

Claimant has raised seventeen (17) grounds for review; however, for discussion purposes they may be broken down into four (4) broad categories as follows:

- 1: Is the individual Commissioner's Decision supported by substantial evidence? (Grounds 1, 2, 3, 4, 12, 13, 14)
- 2: Is the creation date of the incident report material to a determination of the case? (Grounds 5, 6, 7, 8, 9)
- 3: Was the Hearing Commissioner's determination that Claimant's testimony was not credible justified and did that determination unjustly affect and/or influence his decision to deny Claimant compensation for her claim? (Grounds 8, 9, 10, 11, 12, 13, 15, 16)
- 4: Was the Commissioner's refusal to hold open the record for the taking of the deposition of Beth Moore and obtaining the flash drive an abuse of discretion, especially when the Commissioner obviously placed great importance upon the date the document was created? (Ground 17)

QUESTION #1:

IS THE INDIVIDUAL COMMISSIONER'S DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?

It is submitted by Claimant that not only does the substantial evidence in the record as a whole clearly establish the validity of her claim, but that the only credible evidence material to this matter clearly establishes an accident, an injury and the causal relation of that injury to the accident. Even if Claimant's testimony is disregarded in its entirety, the accident (the fall on July 2, 2009) and notice thereof is not refuted by the Employer and, in fact, is expressly admitted and proven by the testimony of other supervisors and/or managers of the Employer, particularly, Kimberly Smagala and Kunnieth Chea, Director of Operations. There is no doubt that Claimant tripped over a phone cord about a foot or

so off the floor which had been stretched across a walkway in the place of her employment when she was leaving her work station at the end of the day. Ms. Smagala, her supervisor, witnessed the fall and Mr. Chea was told about it by another employee (Smagala Depo., p. 7-p. 10, l. 16; Chea Depo., p. 12, ll. 9-19). Then, approximately thirteen (13) months after the accident occurred and well within the statute of limitations for filing a claim, Claimant was diagnosed with injuries to her right shoulder and right knee (attested by the records of McCallum APA #2) who opined that the injuries for which he was treating her were, to a reasonable degree of medical certainty, proximately caused by the fall that she had in her employment approximately one (1) year earlier. There is absolutely no evidence in the record to refute those three (3) things: (1) accident; (2) injury; and (3) proximate cause, and the Employer admits timely notice and filing of the claim. Furthermore, there is a stipulation of testimony of Janice Mahaffey, Claimant's mother, that Kimberly Mahaffey had continuously complained of pain in her shoulders and her knees since the date of the accident. The Hearing Commissioner received the stipulation without objection from the Employer and did not even consider the effect of that testimony in any way whatsoever for he does not mention it nor make a finding that it was not credible in stating the basis of his ruling. It is, therefore, submitted that the only credible evidence supports the claim, requires that the Hearing Commissioner's Decision be reversed, the claim be declared compensable and the Employer ordered to provide the appropriate medical care as required by the statutory law.

QUESTION #2:
**IS THE CREATION DATE OF THE INCIDENT REPORT MATERIAL TO A
DETERMINATION OF THE CASE?**

It is respectfully submitted that the Hearing Commissioner was in error and abused his discretion in ascribing such importance to the date that the incident report was actually created that he lost his objectivity and was moved by caprice, passion and prejudice against the Claimant to such an extent that he arbitrarily found that her testimony was not credible and totally ignored all of the other evidence that proved her claim. There is no doubt that the incident report was created by Claimant and it was, at least, created as early as January 22, 2010, notwithstanding Claimant's claim that it was created the day after the accident, to-wit: July 22, 2009. Either way, it was created and given to Employer well within the statute of limitations period for filing claims and, whether or not it was created on July 22, 2009 or on January 22, 2010, it falls clearly within the statute of limitations period for filing a claim and is proof that Claimant was complaining of problems with her shoulders and knees months before she went to Ramirez in April 2010.

It is further submitted that there is no credible evidence that it was created on any other date than the date that the Claimant states that she created it, to-wit: July 22, 2009. Mr. Nichols, the IT guy for the Employer, came in and offered testimony that there was some indication that the document was created in January 2010, not on July 22, 2009 as Claimant claims, but his testimony is worth little as he did not know what had happened with the computer, how the document was placed on the computer and, until the hearing, did not even know that Claimant had removed all of the files from her computer onto a flash drive, reloaded her computer with Windows and then reloaded the files back onto the

computer from the flash drive. In fact, he candidly admitted that if that happened, he could not say when the form was created. (T.,p.94, II.4-10) He also admitted that he couldn't say the document was not on the computer prior to January 2010. (T.,p.88, II.1-4)

The Hearing Commissioner, Commissioner Beck, became distracted by the document and lost sight of the other evidence supporting the claim. The real substance of that document is that Claimant is filing a claim for her injuries that she received on July 21, 2009 and that she was having pain in her shoulders and knees as a result of the accident long before she sought medical attention for them. There is no contest to the fact that the Employer had knowledge of the accident at the moment it occurred as it was witnessed by Ms. Mahaffey's supervisor, Ms. Smagala, and Kimberly Mahaffey's mother fully corroborated her complaints of pain in her shoulders and knees from the date of the accident; however, Commissioner Beck stepped out of his role as an impartial arbiter and conducted an "in court" experiment with his own computer which did not even come close to duplicating what was done in the downloading of the files to a flash drive, reloading Windows and then reloading the computer with the documents. Commissioner Beck was clearly influenced by his experiment and accorded it great weight even though Mr. Nichols, the computer guy at Onetone, said that if Claimant did what she said she did, then he did not know what would show as the creation date, whether it would be the date that it was reloaded or some prior date. (T.,p.94, II.4-10) As a result, there is no proof that the document was not created as Ms. Mahaffey claims and there is no justification for Commissioner Beck to rule that her testimony was not credible. Notwithstanding, however, the creation date is simply immaterial to the issues of whether or not Claimant is entitled

to be compensated and to receive medical care for her injuries that she received in an accident, the occurrence of which is not refuted. It is clear, Commissioner Beck relied heavily upon the testimony in regards to the creation date to impeach Claimant's credibility but, again, even if the creation date of January 2010 is accepted, rather than the July 22, 2009 date, the effect of the document is that she had a serious injury and/or problems long before she ever went to Mr. Ramirez in April 2010 and/or to Dr. McCallum in August 2010.

It is, therefore, submitted that the Decision of Commissioner Beck in regards to Claimant's claim cannot stand and this Appellate Panel should overrule Commissioner Beck and declare the claim compensable.

QUESTION #3:

WAS THE HEARING COMMISSIONER'S DETERMINATION THAT CLAIMANT'S TESTIMONY WAS NOT CREDIBLE JUSTIFIED AND DID THAT DETERMINATION UNJUSTLY AFFECT AND/OR INFLUENCE HIS DECISION TO DENY CLAIMANT COMPENSATION FOR HER CLAIM?

The Hearing Commissioner, Commissioner Beck, made a specific finding that in his opinion the testimony of Claimant was implausible and entered up a finding that Claimant was not credible. His opinion was based upon the questions surrounding the incident report creation date and the fact that Claimant did not specifically complain to Henry Ramirez about her knees or shoulders when she saw him in March 2010 concerning another medical problem unrelated to the accident of July 21, 2009. (T.,p.57, ll.3-21) Commissioner Beck reasoned that she did not complain about her knees or shoulders because she was not having any trouble with them and that if she had been having trouble, she should have complained and received treatment from Mr. Ramirez. It is submitted, however, that Claimant's explanation of her failure to seek medical care is very plausible

under the circumstances and facts of this case. It is evident from the testimony of Ms. Smagala that she held animosity toward Claimant and management, and Scott Loggins, President of the company, was upset with her for filing an OSHA complaint alleging there was mold in the building which was disturbing her asthma, as well as his chastisement of her for talking with her lawyer in the call center. (T., p.68, ll.3-21; p.70, l.15-p.71, l.17; p.74, l.20-p.75, l.19) It is further submitted that the apparent high turnover of personnel as brought out by the Employer in an attempt to impeach Claimant is evidence that the employees at Onetone were not happy and felt pressure and intimidation from management well beyond what should be ordinarily expected in the business world. (Smagala Depo., p.17, l.4-p.22, l.12) Although Claimant did not complain of her knees or shoulders when she saw Henry Ramirez in March 2010, the incident report created by Claimant in which she was complaining of pain in her knees and shoulders was clearly in existence long before her appointment with Ramirez. Even under the best evidence submitted by Onetone, there is no doubt that the incident report and her complaints existed as of January 23, 2010, and those complaints were subsequently validated by expert medical diagnosis as shown in the records of Dr. McCallum. (CL. APA #2) Her injuries are very serious injuries and common knowledge tells us that they are the type of injuries that are consistent with trauma resulting from the described fall by Claimant, as well as Smagala, and, all of the evidence taken as a whole, particularly Dr. McCallum's opinion that those injuries were proximately caused by her fall at work approximately one (1) year earlier from the date he saw her, conclusively proves the requisite causal relation. There is absolutely no evidence, much less substantial evidence, to refute the doctor's findings

and his expert opinion as to the injury and the proximate cause. Even if no credibility is accorded Claimant's testimony, the record is still replete with substantial evidence that the five (5) things required to entitle her to the benefits under the worker's comp statute are, in fact, proven.

QUESTION #4:

WAS THE COMMISSIONER'S REFUSAL TO HOLD OPEN THE RECORD FOR THE TAKING OF THE DEPOSITION OF BETH MOORE AND OBTAINING THE FLASH DRIVE AN ABUSE OF DISCRETION, ESPECIALLY WHEN THE COMMISSIONER OBVIOUSLY PLACED GREAT IMPORTANCE UPON THE DATE THE DOCUMENT WAS CREATED?

The Hearing Commissioner's refusal to hold open the record to examine the flash drive which Claimant says she used to download the document and to accurately duplicate what had occurred in the reloading of the computer after the installation of the Windows program, together with his denial of Claimant's request to take the deposition of Beth Moore is, certainly, indicative of a desire to deny benefits based on an erroneous analysis of the evidence rather than a search for the truth. Although Claimant firmly believes that the date of the creation of the document is immaterial to a determination of the issues before the Commission and that, even if Claimant is held not to be credible, compensation still cannot be denied. The very nature of the worker's compensation scheme dictates that the statutes and the application of those statutes are to be broadly construed in favor of the compensability of claims rather than the non-compensability of them. In this case, however, a broad construction and/or application is not necessary. A simple and literal interpretation of the statutes, as well as all the credible evidence, clearly entitles Claimant to compensation. Even the evidence that the Hearing Commissioner accepted as truth fully supports and establishes the compensability of the claim; therefore, the Decision of the Hearing Commissioner should be reversed and the claim allowed or,

in the alternative, that the case be remanded for the discovery which was summarily and unjustly denied.

CONCLUSION

Based upon the above, it is respectfully submitted that Claimant has met the burden of proof in this case. There is no basis in the record upon which impeachment of Claimant's credibility to the point that her testimony should be totally disregarded can stand, for even if it is disregarded, the testimony of the Employer that the accident occurred, the records of the treating physician clearly establishing his medical diagnosis of injury to the shoulder and the knee, the stipulated testimony of Claimant's mother corroborating Claimant's constant complaints of shoulder and knee pain from the date of the accident to present date, and the opinion of the treating physician that, to a reasonable degree of medical certainty, the torn rotator cuff or labrum and the torn meniscus was/is the result of and proximately caused by the fall on July 1, 2009, proves the claim. There is no evidence whatsoever that her established injuries were caused by anything other than the fall on July 21, 2009 and the substantial evidence of the record, as a whole, dictates that the finding of the individual Commissioner be reversed and that the claim ruled to be compensable.

Respectfully submitted,

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WALHALLA, SC 29691

BY: 
LARRY C. BRANDT, ATTORNEY
FOR CLAIMANT

June 6th, 2011
Walhalla, South Carolina

STATE OF SOUTH CAROLINA)
)
)
Kimberly Mahaffey,)
)
Claimant,)
)
vs.)
)
Onetone Telecom, Inc.,)
)
Employer;)
)
and)
)
State Auto Insurance Companies,)
)
Carrier,)
_____)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

W.C.C. FILE # 0922023

RESPONDENT'S BRIEF

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND LARRY
BRANDT, ESQUIRE

SUMMARY OF THE EVIDENCE

Claimant was involved in a very minor accident on July 21, 2009, when she tripped over a phone cord while leaving work. She got up and she drove herself home a few minutes later. She did not seek any medical treatment. She reported to work the following day. She claims she asked for medical treatment and her supervisor told her not to "rock the boat." She said her supervisor told her to go to the doctor using her health insurance. Her supervisor testified she told Claimant the company would send her to the doctor if she was hurt and Claimant declined. Claimant did not seek any medical treatment from the company doctor or using her health insurance.

Claimant testified that she did not complain to her supervisor about her injuries again until April of 2010. She then claims to have complained about her problems to her new supervisor, Beth Moore. Beth Moore is no longer an employee of the Defendants and was not

called as a witness by the Claimant. There is no record in Claimant's Personnel file or Employment records that Claimant ever complained of problems to Ms. Moore.

Defendants admit that the Claimant did not complain about any injuries, nor did she go to any doctor until March 19, 2010. At that time, the Claimant's first medical visit of any kind since the accident in July of 2009, Claimant went to her family doctor using her health insurance. Her chief complaint was worsening of her asthma and swelling in her legs and right foot. Her family's doctor's notes specifically noted, "no musculoskeletal symptoms, normal movement of all extremities, strength was normal, gait and stance normal." (Claimant's APA #1, pg. 8) Her doctor prescribed Lasix for the swelling in her legs. Claimant admitted she did not mention anything to her doctor about problems with either of her knees or shoulders at this visit over seven (7) months after the accident.

Claimant testified she first sought medical treatment for her alleged injuries in June 2010. (Hr. Tr. 16, lines 16-24). Claimant testified that when she fell she tried to catch herself with both hands on her way down and this jarred her shoulder. In the medical report from Dr. McCallum, who eventually treated her, it reflects that Claimant reported falling onto her right shoulder. (APA #2, pg. 14) Dr. McCallum completed a medical questionnaire prepared by Claimant's attorney. According to the Questionnaire, the mechanism of injury was described as, "twisting her knee and falling onto her right shoulder." (APA #2, pg. 10) However, Claimant's testimony at the hearing and in her deposition was that she tripped and landed on both knees and hands. (Hrg. Tr. pg. 11, lines 18-19; pg. 31, lines 20-23)

In May of 2010, Claimant and another two co-workers were counseled for using Facebook at work and their hours were reduced. Shortly thereafter, Claimant and her two co-workers filed claims against the employer seeking Unemployment for their loss of hours. Their

claims were denied. Claimant also admitted that she and one of the same two co-workers made an anonymous complaint to OSHA alleging mold and dripping water from the air conditioning system. The claim resulted in a surprise inspection by OSHA. However, the complaint was found unsubstantiated and no violations were noted. In June of 2010, Claimant told her employer she needed medical treatment for the injuries she suffered in her July 21, 2009 accident. This is the first time that her employer received notice of any injuries related to the accident. Although she had received medical treatment from her own doctor in March, Claimant had never mentioned any injuries. Now, eleven months later, she claims to have injured both her knees and both shoulders in the accident.

Claimant produced an incident report that she claimed to have prepared herself on July 22, 2009, the day after the accident. She said she found the form on the Internet and attempted to give it to her supervisor. Her supervisor testified that this was false and Claimant never offered any such document.

The company IT Director testified that he had analyzed the Claimant's work station and he provided a screen shot which was marked as the third page of Exhibit 2. This reflected a creation date for Claimant's incident report of January 23, 2010, and a modification date of June 30, 2010. June 30, 2010, was the same day that Claimant e-mailed the document to the company HR Manager. Mr. Nichols, the IT Director, also testified that if the Claimant had only accessed and e-mailed the document on June 30th, it would not reflect that it had been modified. This was also contrary to the Claimant's testimony.

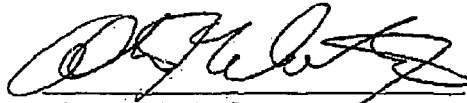
Not surprisingly, the Commissioner made a specific finding that the Claimant was not credible. Her allegation that she suffered a fall on July 21, 2009, and never missed a day of work, never complained about any problems, and never sought any medical treatment for 11

months, was questionable on its face. Add to that the evidence that Claimant was a disgruntled employee whose hours were reduced resulting in her filing an unemployment claim, an OSHA complaint, and a workers' compensation claim in quick succession, made her story more questionable. Finally, the testimony of her supervisor that she did not complain of any injuries or offer an incident report, the testimony of the IT Director that the incident report was not created until five months after the accident, and the medical records reflecting several different versions of how the Claimant allegedly injured her shoulders and knees made the Commissioner's decision that the Claimant was not credible an easy one.

CONCLUSION

Based on the foregoing, the decision of the Hearing Commissioner should be affirmed.

Respectfully submitted,



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August 12, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
David W. Huffstetler, Commissioner
Susan S. Barden, Commissioner

W.C.C. File No. 0922023

Kimberly Mahaffey **Appellant,**

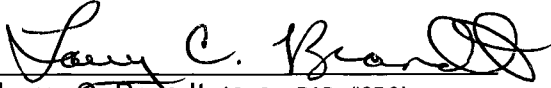
v.

Onetone Telecom, Inc. and
State Auto Insurance Companies **Respondents.**

CERTIFICATE OF COUNSEL

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

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BY: 
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September 27th, 2012