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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SC WORKERS COMPENSATION COMMISSION

Appellate Panel:
Commissioner Andrea Pope Roche
Commissioner Derrick L. Williams
Commissioner David W. Huffstetler

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SC Court of Appeals

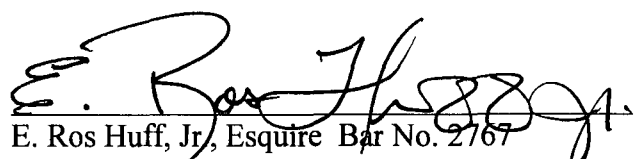
Bernard D. Lee,..... Respondent,

v.

Bondex Inc. and Great American Alliance Insurance Company,Appellants.

RECORD ON APPEAL ON BEHALF OF BONDEX INC. & GREAT AMERICAN
ALLIANCE INSURANCE COMPANY
Volume I

August 3, 2012



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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC File No.: 0906951

BERNARD D. LEE,

EMPLOYEE
CLAIMANT/APPELLANT,

v.

BONDEX INC,

EMPLOYER/RESPONDENT,

and

GREAT AMERICAN ALLIANCE
INS. CO.,

CARRIER,
RESPONDENT/DEFENDANTS.

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

Appellate Panel Decision and Order filed

10/12, 2011

APPEARANCES:

Claimant/Appellants represented by
Ann McCrowey Mickle of Columbia, South Carolina

Defendants/Respondents represented by
E. Ros Huff, Jr., of Irmo, South Carolina

Notice of Appeal
due
11/8/11
CCW

STATEMENT OF CASE

On June 2, 2009 claimant, Bernard Lee, sustained an injury by accident during the course and scope of his employment with Southern Felt (dba Bondex) while lifting/maneuvering a large industrial hood into place. Mr. Lee alleged injuries to his neck, left shoulder, and back. Mr. Lee reported the accident to his supervisor, an accident report was completed, and he presented to University Hospital for emergency medical treatment. The defendants initially admitted the claim and began providing medical treatment through their designated and authorized company doctor(s), Jeffrey Broder of North Augusta Urgent Care and James Bethea of Columbia Orthopaedic Specialists.

On July 29, 2009 the defendants canceled Mr. Lee's follow up appointment with Dr. Bethea and refused to provide additional workers' compensation benefits. On July 30, 2009 claimant filed a Form 50 requesting the following benefits: a) a finding of compensability with regard to the neck, left shoulder, left arm, and whole back; b) payment of all temporary compensation owed through the present and continuing; c) future medical treatment to affected body parts; and d) payment of all causally related medical treatment received to date. In response, the defendants filed a Form 51 admitting that an incident occurred, but denying the nature and extent of claimant's injuries. A hearing was scheduled before Commissioner Lyndon on November 3, 2009. After a lengthy pre-trial hearing both parties entered into a consent order in which the defendants agreed to provide Mr. Lee with a lump sum payment of \$5,000.00 (Five Thousand Dollars), MRI(s), and follow up treatment with Dr. Ty Carter of Carolina Musculoskeletal. Initially the defendants failed to comply with the Order and on December 23, 2009 claimant filed a Form 40 and Motion for penalties. Prior to the call of the Motion Hearing the defendants authorized the MRI and medical treatment with Dr. Carter.

On January 25, 2010 Mr. Lee presented to Dr. Carter who recommended continued medical treatment to the left shoulder through Dr. Timothy Shannon, another orthopaedic in his

practice. The defendants refused to provide the medical treatment recommended by Dr. Carter. As a result, Mr. Lee sought his own medical treatment through Dr(s) Al Souidi and Shannon.

On February 16, 2010 claimant filed a Form 50 requesting the following benefits: a) a finding of compensability with regard to the neck, left shoulder, left arm, and whole back; b) payment of all temporary compensation owed through the present and continuing; c) future medical treatment to affected body parts; and d) payment of all causally related medical treatment received to date. In response, the defendants filed a Form 51 admitting an incident, but denying nature and extent of claimant's injuries.

A Hearing on claimant's Form 50 and defendants' Form 51 was scheduled for August 12, 2010 before the Honorable Avery Wilkerson. After a pre-trial of the case, the Commissioner urged the parties to secure an MRI with contrast to further delineate claimant's medical condition and treatment options. The defendants agreed to provide the MRI with contrast and the hearing was rescheduled to August 23, 2010. On August 20, 2010 a telephone conference was scheduled by Commissioner Wilkerson to review the status of the completion of the MRI, per his instructions. The defendants advised the Commission that the MRI had not yet been performed. The Commissioner Ordered the defendants to provide the MRI with contrast and the Hearing was rescheduled again for September 7, 2010. On September 1, 2010 (12 days after the MRI with contrast was ordered by the Commissioner and 6 days before the hearing) claimant underwent the MRI with contrast. Claimant received the MRI report from the defendants' attorney at the hearing. The MRI with contrast revealed a left labral tear.

On September 7, 2010 the Hearing was once again scheduled before Commissioner Wilkerson. Claimant was represented by Ann McCrowey Mickle of Mickle & Bass, LLC. The defendants were represented by E. Ros Huff of the Huff Law Firm. At the call of the case claimant requested the following benefits: a) a finding of compensability with regard to the neck, left shoulder, left arm, whole back, and right arm/shoulder due to overuse; b) payment of all

temporary compensation owed through the present and continuing; c) future medical treatment to affected body parts; and d) payment of all causally related medical treatment received to date. In response the defendants denied claimant sustained a compensable injury by accident. The defendants further requested the record be left open, in accordance with Section 42-17-30 of the South Carolina Code, to depose the radiologist who performed the MRI with contrast on the issue of causation. The Single Commissioner granted defendants motion to leave the record open. In response claimant requested the record be left open so Dr(s) Carter and Shannon could review the MRI and provide a similar opinion. In response the defendants requested the record be left open for their IME doctors to review the MRI with contrast and provide an opinion on causation. Both requests were granted.

Medical questionnaires were submitted from Dr(s) Bethea, Carter, Thomas, Robinson, Thesing, and Westerkam. The defendants elected not to depose the radiologist but relied on his questionnaire response.

The record was opened and testimony was taken from claimant and Mr. Lowell Simkpins, a witness for the defendants. The employer's representative was designated as Janice Napier, of the Bondex Human Resources Department.

On December 31, 2010 the Commissioner Wilkerson issued his Order denying the compensability of the claim.

SINGLE COMMISSIONER'S

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Single Commissioner made the following FINDINGS OF FACT AND CONCLUSIONS OF LAW, to which the claimant presently take exception:

8. The Claimant testified that he was lifting and 800-1500 pound hood with one arm, that it subsequently fell on him pinning him down, which caused him to suffer from an injury

to his left shoulder, neck and back. I find that the Claimant is not credible, that even if the hood weighed 800 pounds there is no way that the Claimant could have lifted an 800 pound hood with one arm.

9. Mr. Lowell Simpkins testified that he and three other men, including the Claimant, were putting a machine back together with the use of a forklift. Mr. Simpkins stated that the Claimant was never bearing the weight of the hood with his arms, and that the Claimant and the other men were helping to position the hood holes over bolts. I find that Mr. Simpkins is very credible. I believe his testimony and find as a fact as he testified regarding work on the machine.

10. The Claimant has seen various medical providers for his conditions and Dr. James Thesing, Dr. James Bethea, and Dr. Daniel Westerkam all opine to a reasonable degree of medical certainty that the Claimant's left shoulder labral tear is not causally related to the work incident on June 2, 2009. Dr. Ty Carter, Dr. James Thesing, and Dr. Charles Thomas opine to a reasonable degree of medical certainty that the Claimant's left shoulder labral tear is causally related to the incident that occurred on June 2, 2009. I find as a fact that the medical evidence shows that the Claimant's medical condition is not causally related.

11. That the Claimant did not sustain an injury by accident arising out of and in the course of his employment. I base this finding upon the very credible testimony of Lowell Simpkins.

12. Based on the greater weight of the evidence, I find that the labral tear in the left shoulder is not causally related to the work incident on June 2, 2009 and I further find that it could not have been caused the way the Claimant described the incident. This is based upon the credible testimony of Lowell Simpkins and the medical evidence of Dr. Thesing, Dr. Bethea, and Dr. Westerkam.

13. I find that the Claimant's claim is not compensable, therefore the Claimant is not entitled to benefits under the Workers' Compensation Act.

CONCLUSIONS OF LAW

9. Under Section 42-1-160 the Claimant did not sustain an accidental injury arising out of and in the course and scope of his employment, therefore is not entitled to benefits under the South Carolina Workers' Compensation Act.

10. Under Section 42-3-180 and 42-17-40 the Claimant did not carry his burden of proof by submission of proof that would entitle him to benefits under the Workers' Compensation Act.

FORM 30 GROUNDS FOR APPEAL

Within the statutory period, the claimant filed a Form 30 "Application for Review." In their Application for Review, the claimant set forth the following grounds for review:

1. Did the Commissioner err in finding that the claimant failed to prove that he suffered an injury by accident on June 2, 2009?

2. Did the Commissioner err when he failed to properly consider all of the evidence, to include but not be limited to the MRI with contrast that was ordered by him? (See Order in Commission's file)

3. Did the Commissioner err when he failed to properly consider the Accident Report prepared by the employer simultaneous with the injury which details the report of the accident? (Claimant's APA 1)

4. Did the Commissioner err when he failed to consider the opinions of the "authorized" doctors (Dr(s) Carter, Shannon, Thesing and Thomas) who opined that the injuries were consistent with the history of the accident?

5. Did the Commissioner err in failing to find the defendants responsible for all causally related medical treatment?

6. Did the Commissioner err in failing to award temporary total benefits when the claimant testified that the Janice Napier, the HR Director, told him not to return to work because he was restricted from working around hazardous equipment?

7. Did the Commissioner err AS A MATTER OF LAW in failing to award temporary total benefits where the employers representative was at the hearing and failed to refute the claimant's allegations that she told him not to return to work?

8. Did the Commissioner err in failing to properly award medical benefits, mileage, prescriptions and all statutory benefits to which the claimant was entitled?

9. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 8 (page 16 of the Order) which state in part that the claimant's testimony regarding his description of the accident was not credible?

10. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 9 (page 16 of the Order) in its entirety as they are contrary to the greater weight of the evidence?

11. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 10 (page 16 and 17 of the Order) that the medical evidence showed that the claimant's medical condition was not causally related to the accident?

12. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 11 (page 17 of the Order) which finds that there was no injury by accident based upon the testimony of Lowell Simpkins?

13. Did the Commissioner err IN FINDING AS A FACT the allegations of paragraph 12 (page 17 of the Order) which states that the greater weight of the evidence supports that allegation that: 1) the labral tear was not related to the accident; 2) could not have been caused in the way described by the claimant and; 3) Dr. Thesing's opinion and other medical evidence cited supported the denial of the claim?

14. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 13 (page 17 of the Order) which states that the claim is not compensable and the claimant not entitled to benefits under the Worker's Compensation Act?

15. Did the Commissioner err in CONCLUDING AS A MATTER OF LAW paragraphs 9 and 10 of the CONCLUSIONS OF LAW on page 18 which state/conclude: 1) that there was no accident and; 2) claimant was not entitled to benefits; and 3) that the claimant did not sustain his burden of proof?

16. Did the Commissioner err in FINDING AS A FACT paragraph 6 of page 11 that the claimant failed to show up for his next scheduled appointment with Dr. Bethea when the record clearly indicates that the carrier denied the claim and benefits were cancelled?

17. Did the Commissioner err in failing to award the compensability of all body parts injured in this accident to include but not be limited to the neck, both shoulders/upper extremities, and back?

FULL COMMISSION APPELLATE REVIEW

A Full Commission Appellate Review was set for May 16, 2011 before Commissioners Williams, Huffstetler and Roche.

Section 42-17-50 of the South Carolina Code Annotated states that in an appellate review the Appellate Panel shall review the award, weigh the evidence as presented at the initial hearing and, if good ground be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with, or inconsistent with, those of the Hearing Commissioner.

REVIEW OF THE EVIDENCE OF THE CASE

After hearing the arguments of counsel, reviewing the Commission's file which included but was not limited to the transcript below and the APA submissions, we hereby make the following pertinent evidentiary review:

Accident Reports and 12-A:

On June 2, 2009 claimant's supervisor, Lowell Simpkins, completed an accident report which states: (Claimant's APA p. 1).

Employee stated he was trying to install the front top door on the #3 card machine by lifting it with his hands and shoulder. He said he guess he was pushing to hard on the door and he said he damaged his left shoulder and neck. He stated he was in a lot of pain with pain going down his back.

The accident report indicates that Mr. Lee took Goody Powder and applied Biofreeze, a pain relieving gel. Additionally, the accident report states, "Sent to University Hospital ER." (Claimant's APA p. 1).

On June 3, 2009 the employer completed a Form 12(A) indicating that claimant's injury/illness/exposure occurred on Employer's premises while installing a door on a machine. The 12(A) references pain in the left shoulder and neck.

University Health Care System Emergency Room

On June 3, 2009 Mr. Lee presented to the University Health Care System Emergency Room. The "Clinician History of Present Illness" states, "Source is a poor historian. Patient was injured by machine hood fell on his shoulder. No history to suggest any head injury. The patient states that this problem is job related." (Claimant's APA p. 2). Additionally, University Hospital completed a "Worker's Compensation Flowsheet" which indicates that the triage nurse identified the injury as work related, the registrar verified workers' compensation, and the registrar ascertained a contact person, Albert Martin. (Claimant's APA p. 5).

Dr. Jeffrey Broder of North Augusta Urgent Care

The defendants initially admitted the claim and began providing medical care through Dr. Jeffrey Broder of North Augusta Urgent Care. **On June 5, 2009 Mr. Lee presented to Dr. Broder with complaints of shoulder pain after attempting to bring a metal cover down. Dr. Broder noted, "Injured left arm Wednesday at work." (Claimant's APA p. 8).** Dr. Broder provided prescription medication and recommended a physical therapy appointment. Additionally, Dr. Broder provided work restrictions in the form of no left handed work. The defendants authorized physical therapy. (Claimant's APA pp. 8-11).

On June 9, 2009 Mary Shaw contacted Dr. Broder's office and approved physical therapy to be scheduled thru the Align Network. (Claimant's APA p. 11).

On June 12, 2009 Mr. Lee presented to Dr. Broder with neck and back pain. Dr. Broder noted, "Left shoulder pain not improved. Keep physical therapy appointments as scheduled. Ice as much as possible." Dr. Broder provided restrictions in the form of no gripping, twisting, and/or forceful turning of the left hand. (Claimant's APA pp. 12-13).

On June 19, 2009 Dr. Broder recommended an MRI of the left shoulder. (Claimant's APA p.14). On June 23, 2009 Janice Napier, in human resources for the employer, contacted Dr. Broder's office and indicated that the carrier approved the MRI of the left shoulder. (Claimant's APA p. 16). On July 1, 2009 Dr. Broder recommended continued medical treatment through an orthopaedic specialist. (Claimant's APA p. 18). The carrier authorized orthopaedic treatment through Dr. James Bethea.

All of the processing forms completed by Dr. Broder's office indicate that Mr. Lee sustained a work related injury. (Claimant's APA p. 9, p. 13, p. 15, p. 17, p. 18).

Sports Plus Physical Therapy

On June 17, 2009 Mr. Lee presented to Paula K. Bolton, PT, of Sports Plus Physical Therapy with a burning pain in the left side of the neck and shoulder. **The "Physical Therapy**

Evaluation" indicates that on June 2, 2009 while at work, a 700 lb hood fell between Mr. Lee's neck and left shoulder. Ms. Bolton performed range of motion testing to the left shoulder before noting, "Left shoulder external rotation and internal rotation limited; all motions painful throughout left shoulder testing." (Claimant's APA p. 20). On June 25, 2009 Michelle Maynard, PTA, noted back pain. On June 29, 2009 Ms. Bolton noted increased left shoulder and back pain. (Claimant's APA p. 19). On July 1, 2009 Ms. Maynard noted increased complaints of pain. (Claimant's APA p. 25). On July 7, 2009 Ms. Maynard indicated that Mr. Lee had met 0% of his goals from his initial evaluation and continued to experience pain throughout the left shoulder. Additionally, Ms. Maynard noted pain in the cervical spine and midback. (Claimant's APA p. 26). On July 9, 2009 Ms. Maynard noted continued pain. On July 14, 2009 Ms. Bolton noted continued pain in the whole left side. (Claimant's APA p. 27). On July 28, 2009 Ms. Bolton noted continued pain in the left shoulder, neck, and upper back. She noted constant and sharp pain and indicated that physical therapy provided no benefit. Additionally, internal and external range of motion testing were limited. (Claimant's APA p. 28). On July 28, 2009 Ms. Bolton noted difficulty lifting the left arm and constant sharp pain around the left shoulder joint. (Claimant's APA p. 29).

Dr. Richard Six of University Open MRI

On June 26, 2009 Dr. Richard Six, a radiologist, reviewed an MRI without contrast of claimant's left shoulder before noting medial arch impingement and fluid in the biceps tendon sheath. Dr. Six diagnosed acromioclavicular joint arthropathy with mild impingement and bicipital tendonitis. (Claimant's APA p. 30).

Dr. James Bethea of Columbia Orthopaedic Specialists

On July 16, 2009 the carrier authorized treatment with Dr. James Bethea. Mr. Lee presented to Dr. James Bethea with continued pain in the left shoulder, neck and back. **Dr. Bethea noted, "This is a 29 year old male who states that he was involved in an accident at work June 2, 2009 in which he injured his left shoulder, but also his neck and lower back."** Dr. Bethea diagnosed impingement syndrome in the left shoulder and neck and back pain. He provided an injection to the left shoulder and recommended continued physical therapy. Dr. Bethea restricted Mr. Lee from pushing, pulling, lifting, and carrying with his left upper extremity to 15 lbs and any overhead work with the left upper extremity. Dr. Bethea recommended 500 mg of Naproxen be taken twice a day. (Claimant's APA pp. 31-33). Mr. Lee was advised to follow up in 14 days. (Claimant's APA p. 34).

The carrier then denied the claim and refused to authorize any additional treatment.

Aiken Regional Medical Center

On July 28, 2009 Mr. Lee presented to the Aiken Regional Medical Center with 10/10 pain in his neck, back and shoulders following a work related injury after an 800 lb machine fell on his shoulder. Mr. Lee was advised to follow up with either Dr. Bethea or Dr. Carter. (Claimant's APA pp. 41-49).

Dr. Sylva Al-Soudi of Margaret J. Weston Community Health Center

On August 6, 2009 Mr. Lee presented to Dr. Sylva Al Soudi with neck, back and shoulder pain. **Dr. Al Soudi noted, "Hurt at work."** (Claimant's APA p. 52). Dr. Al Soudi placed Mr. Lee out of work from August 3, 2009 through August 18, 2009. (Claimant's APA p. 53). On October 5, 2009 Mr. Lee returned to the Margaret J. Weston Community Health Center for a follow up appointment on his back and neck. Dr. Al Soudi recommended an MRI to the left shoulder and noted, "Patient not claustrophobic." (Claimant's APA p. 54). On November

11, 2009 Dr. Al Soudi recommended an MRI of the left shoulder with contrast. (Claimant's APA p. 58).

Dr. Timothy Shannon of Carolina Musculoskeletal Institute

Dr. Timothy Shannon is board certified in orthopaedic surgery. (Claimant's APA p. 129). He is a member of the American Academy of Orthopaedic Surgeons. (Claimant's APA p. 130).

On August 18, 2009 Mr. Lee presented to Dr. Shannon with pain in his left shoulder, right shoulder, low back and neck. Dr. Shannon noted, "He states that he and other people were attempting to lift a metal hood by forklift when it came down and the lip of the hood struck him on the left side of his neck and superior aspect of his shoulder." With regard to the right shoulder and right side of the neck, Dr. Shannon noted, "...he has started to have some problems with his right side of his neck and his right shoulder, he thinks because of increased use of the right shoulder due to the left shoulder problems." (Claimant's APA p. 64). Dr. Shannon diagnosed a neck sprain, low back sprain sustained at the time of the injury, and left shoulder pain. Dr. Shannon noted as follows: (Claimant's APA p. 65)

To a reasonable degree of medical certainty, based on the patient's history alone, these problems are probably due to the on the job injury of June 2, 2009. Pain and dysfunction in the left shoulder and on the left side of the neck could lead to secondary overuse of the right side of the neck and the right shoulder, to a reasonable degree of medical certainty.

Dr. Shannon provided an injection to the left shoulder and recommended MRI(s) to the neck and low back. (Claimant's APA p. 65). Mr. Lee's "New Patient/Problem Telephone Questionnaire" repeatedly indicates that Mr. Lee was injured at work. (Claimant's APA p. 59 and p. 60). Dr. Shannon restricted Mr. Lee from the following activities: *a) continuous pushing/pulling; b) frequent bending/stooping, squatting/crouching; overhead reaching with left*

shoulder, driving, and/or sedentary lifting over ten pounds; c) infrequent crawling, light lifting less than 20 lbs; d) operation of hazardous equipment, and lifting over 20 lbs. Dr. Shannon noted, "Restrictions apply to bilateral upper extremities, neck, and back." (Claimant's APA p. 68).

Mr. Lee later testified that he took this work excuse to Janice Napier in the personnel department. She then advised him to remain out of work until she heard from him. He also testified that Ms. Napier later advised him not to return to work as they could not accommodate his restrictions. Ms. Napier was present at the hearing as a witness and the defendants' representative. She never refuted the claimant's testimony on this issue.

On October 15, 2009 Dr. Shannon opined as follows: (Claimant's APA p. 73):

It is my opinion, "most probably and to a reasonable degree of medical certainty" (greater than 50% probability) that Mr. Lee suffers from neck pain, left shoulder pain, and low back pain as a direct result of his work accident of June 2, 2009.

Dr. Shannon went on to note: (Claimant's APA p. 73).

It is further my opinion, "most probably and to a reasonable degree of medical certainty" (greater than 50% probability) that as a result of Mr. Lee's pain and dysfunction in the left shoulder and left side of the neck that he now suffers from pain and problems in his right shoulder and right side of his neck which was caused by secondary overuse of his right arm and right shoulder.

Dr. Charles B. Thomas – Defendants 1st Independent Medical Evaluation

On October 22, 2009 Ms. Lee presented to Dr. Thomas with neck, back and left shoulder pain. Dr. Thomas noted, "...a hood weighing 800 pounds fell on him striking him between his left shoulder and his neck." (Defendants' APA p. 137). During the physical examination Dr. Thomas indicated, "The left shoulder shows extreme limitation actively of motion." Dr. Thomas recommended MRI(s) to the cervical, thoracic and lumbar spine. (Defendants' APA pp. 136-141).

December 8, 2009 Consent Order

On December 8, 2009 after an extensive pre-trial conference with Commissioner Lyndon, both parties entered into a Consent Order in which the defendants agreed to provide claimant with a lump sum payment of \$5,000 (Five Thousand Dollars). Additionally, the defendants agreed to send Claimant for MRIs and follow up treatment with Dr. Ty Carter. (Claimant's APA pp. 101-102). Defense counsel drafted the Order.

Dr. Ty Carter of the Carolina Musculoskeletal Institute

Per the Consent Order, on January 25, 2010 Mr. Lee presented to Dr. Ty Carter with pain in his neck, left shoulder, and low back. Dr. Carter noted, "...he was involved in a work related accident on June 2, 2009." Following a physical examination Dr. Carter indicated that Mr. Lee was suffering from a left shoulder issue. As a result, he recommended follow up treatment through Dr. Shannon. Dr. Carter restricted Mr. Lee from engaging in work with the left upper extremity. (Claimant's APA pp. 84-85).

On May 25, 2010 Mr. Lee returned to Dr. Shannon with burning pain in the left shoulder, left neck, and back. Dr. Shannon diagnosed low back pain, neck pain, and left upper extremity pain all due to the on the job injury of June 2, 2009. Dr. Shannon recommended electrodiagnostic testing to eliminate a peripheral nerve compression or detect subtle cervical radiculopathy. Additionally, Dr. Shannon recommended that Mr. Lee be restarted on physical therapy. (Claimant's APA p. 75). Dr. Shannon indicated that Mr. Lee was not at maximum medical improvement with regard to the left shoulder and all medical treatment being recommended was causally related to and necessary because of Mr. Lee's June 2, 2009 work related injury. (Claimant's APA p. 79). Dr. Shannon provided work restrictions in the form of no lifting, no use of the left shoulder/arm, and no overhead work. (Claimant's APA p. 79).

Dr. W. Daniel Westerkam - Defendants 2nd Independent Medical Evaluation

On June 10, 2010, immediately prior to the hearing, the carrier set up an Independent Medical Evaluation of Mr. Lee with Dr. Westerkam. Dr. Westerkam noted as follows: (Claimant's APA p. 87).

Mr. Lee is a 30 year old gentleman who was working for Bondex and was attempting to position a hood along with three other gentleman while at work on June 2, 2009. The hood apparently weighs anywhere between 300 and 700 pounds. A forklift is supposed to position the hood, but there apparently was some problem with the forklift. **There was some indication that the hood struck the patient's left shoulder and neck.**

Dr. Westerkam diagnosed myofascial pain in the left shoulder, neck and scapular region. Dr. Westerkam recommended home exercise and provided a 5% permanent impairment to the spine. Notably, Dr. Westerkam provided a diagnosis and a rating, but did not state that the claimant was at maximum medical improvement. (Claimant's APA p. 87).

Dr. William Robinson of the Margaret J. Weston Community Health Center

On July 20, 2010 Mr. Lee presented to Dr. William Robinson of the Margaret J. Weston Community Health Center with pain in the shoulder, neck and back. Dr. Robinson noted, "Work related injury." (Claimant's APA p. 88).

Forklift Repair Bill and photographs

Claimant testified that the forklift malfunctioned and its' failure to hold the weight of the hood properly, caused/contributed to his injuries. In support of that contention, claimant's counsel subpoenaed the forklift records which indicated that on June 3, 2009 the employer requested the repair of the mast extension and hydraulic cylinders of the forklift. Additionally, the employer requested a rental forklift. On June 8, 2009 the employer was billed \$555.00 for forklift repair. (Claimant's APA pp. 116-127). The defendants denied that the malfunctioning forklift caused or contributed to the claimant's injuries.

As part of the claimant's case in chief, Bernard Lee offered the following testimony:

Mr. Lee is thirty years old. He graduated from Midland Valley High School in 1998 and received a certificate in welding from Aiken Tech. Mr. Lee has one minor child. Mr. Lee's work history includes work at East Central Regional Hospital, Abigail Mills, BAE, and Aiken Staffing. He has a prior work related injury (2004) that resulted in surgery to his right hand. (Hearing Transcript pp 29-32).

Mr. Lee began working at Bondex in 2008 through Aiken Staffing. He was hired full time by Bondex in June of 2008. (Hearing Transcript pp 32-33). After he was hired at Bondex, Mr. Lee engaged in heavy work (pushing, pulling and lifting of up to 100 lbs) and did not experience any problems with his left shoulder. (Hearing Transcript 39, lines 14-21).

On June 2, 2009 at 8:00 pm Mr. Lee, Tom Harris, and Al Martin were instructed by Lowell Simpkins, their supervisor, to attach a hood to a card machine. (Hearing Transcript p 40, lines 23-25; p. 41, lines 1-3; p. 47, lines 1-6). Mr. Simpkins operated the fork lift and Al Martin, Tom Harris and himself attempted to lift/slide the hood into place. (Hearing Transcript p. 56, lines 7-25; p. 57, lines 1-25; p. 58, lines 1-25; p. 59, lines 1-6). The hydraulic system on the forklift was damaged and unable to lift the hood. Mr. Lee testified that the hydraulic lift would fall all the way to the ground and fluid shot all over the floor, so much so that a mop had to be used to clean the fluid up. (Hearing Transcript p. 58, lines 2-22). When the forklift was unable to lift the hood, Mr. Simpkins instructed Mr. Harris and Mr. Lee to climb a ladder and lift the back of the hood while he attempted to attach the shock to the machine. (Hearing Transcript p. 58, lines 23-25; p. 59, lines 1-9; p. 60, lines 1-21). Mr. Lee never weighed the hood he was attempting to lift but indicated that it was heavy, which is why a forklift was used to lift the hood. (Hearing Transcript p. 61, lines 9-14). Mr. Lee attempted to hold the hood when the hood fell and struck him on the left shoulder. (Hearing Transcript p. 64, lines 8-23). The hood stayed

on Mr. Lee's left shoulder until he lifted it just enough to slide out from under it. (Hearing Transcript p. 66, lines 15-25).

Immediately after the accident Mr. Lee advised his supervisor, Mr. Simpkins, that he was experiencing pain in his left shoulder. (Hearing Transcript p. 67, lines 7-13). Mr. Lee attempted to return to work, but continued to experience pain. Mr. Martin brought Mr. Lee Biofreeze and Goody Powder and Mr. Lee continued to attempt to work through the pain. (Hearing Transcript p. 68, lines 10-24). The pain continued to increase and Mr. Lee once again advised Mr. Simpkins that he was experiencing pain. Mr. Simpkins escorted Mr. Lee to the office where an accident report was completed. Mr. Simpkins advised Mr. Lee to go to the hospital. (Hearing Transcript p. 68, lines 24-25; p. 69, lines 1-5).

Mr. Lee attempted to drive to the hospital, but he was in too much pain. As a result, Mr. Lee drove home, woke up his dad, and his dad drove him to University Hospital. Mr. Lee advised University Hospital that a hood fell from a machine and hit his left shoulder. (Hearing Transcript p. 69, lines 22-25; p. 70, lines 1-6).

After treating at University Hospital Mr. Lee attempted to return to work with a brace on his arm when Nancy Bowers, of the Human Resources Department at Bondex, advised him to follow up with Dr. Broder, the company doctor. (Hearing Transcript p. 70, lines 15-25). Mr. Lee advised Dr. Broder that he was hurt at work and Dr. Broder provided Naprosyn, Skelaxin, and the restriction of no right handed work. Additionally, Dr. Broder recommended physical therapy. At that point Mr. Lee was experiencing pain in neck, back and left shoulder. (Hearing Transcript p. 71, lines 6-25; p. 72, lines 1-4). Mr. Lee continued working light duty while undergoing physical therapy. (Hearing Transcript p. 75, lines 14-19). Mr. Lee underwent an open MRI and was eventually referred to an orthopaedic. (Hearing Transcript p. 74, lines 17-25). All of Mr. Lee's appointments were authorized by the workers' compensation carrier. (Hearing Transcript p. 74, lines 20-25). On July 16, 2009 Mr. Lee presented to Dr. Bethea who

provided a cortisone shot and Naproxen. Mr. Lee scheduled a follow up appointment in two weeks (Hearing Transcript p. 76, lines 1-11). Mr. Lee continued working light duty work, lifting 15 to 25 pound canisters and cleaning machines. Mr. Lee testified that he did not miss any work from the date of accident to the date he treated with Dr. Bethea. (Hearing Transcript p. 76, lines 20-25; p. 77, lines 12-25; p. 78, lines 1-25).

In July of 2009 the Carrier refused to provide additional medical treatment and Mr. Lee sought his own medical treatment to his back, neck, and left shoulder through the Margaret J. Weston Community Health Center. (Hearing Transcript p. 80, lines 3-20). Mr. Lee indicated that the treating physician at the Margaret J. Weston Community Health Center referred him to Dr. Shannon, an orthopaedic. (Hearing Transcript p. 81, lines 2-25). Mr. Lee presented to Dr. Shannon and was provided with light duty restrictions including no overhead work, no pushing and pulling, and no operation of hazardous equipment. Mr. Lee provided Ms. Napier with Dr. Shannon's work restrictions and she advised him not to return to work. (Hearing Transcript p. 82, lines 1-25; p. 83, lines 1-25; p. 84, lines 1-16).

Mr. Lee testified that he was on short term disability for approximately six weeks. (Hearing Transcript p. 87, lines 21-24). Mr. Lee indicated that his health insurance was canceled and, in order to receive additional medical treatment, he would have to go to the health center and pay out of his own pocket on a sliding scale. (Hearing Transcript p. 88, lines 20-25; p. 89, lines 1-5). Mr. Lee testified that he attended three different IMB(s) scheduled by the defendants. (Hearing Transcript p. 89, lines 11-18).

Mr. Lee began to develop problems with his right arm while working one armed light duty work. Mr. Lee testified that each morning he advised Ms. Napier that his right arm was swollen. (Hearing Transcript p. 89, lines 19-25; p. 90, lines 1-9).

During Mr. Lee's testimony both parties and the Single Commissioner agreed that the sole issue for determination was whether an accident occurred. (Hearing Transcript p. 93, lines 1-16).

Mr. Lee last worked on August 18, 2009. He requested additional medical treatment to the left arm and all body parts found compensable by the Commission. (Hearing Transcript p 94, lines 15-25; p. 95, lines 1-6).

Defendants offered the testimony of Lowell Simpkins

Lowell Simpkins is a two year employee of Bondex and was Mr. Lee's supervisor at the time of the accident. Mr. Simpkins testified that on June 2, 2009 he was using a forklift to position the hood on the frame of the machine. Mr. Simpkins indicated that the fork lift lifted the hood and Mr. Lee, Mr. Martin, and Mr. Harris wiggled/guided the hood into place. Mr. Simpkins testified that the forklift held the weight of the hood and not the employees. Mr. Simpkins testified that he noticed the leaking hydraulic fluid sometime after 10:00 pm when it was brought to his attention. He testified that according to the claimant's report, the injury occurred before the 10:00 pm break and that he was not aware of an injury. Additionally, Mr. Simpkins testified that the hood never fell from the forklift and he did not hear the claimant yell or scream. (Hearing Transcript p. 144, lines 2-25; p. 145, lines 5-25).

Mr. Simpkins testified that he filled out an accident report on the date of accident and wrote exactly what claimant told him. (Hearing Transcript p. 149, lines 1-2). Mr. Simpkins testified that claimant came to him after the 10:00 pm break and complained of pain in his arm while putting up the hood. (Hearing Transcript p. 165, lines 21-25).

Mr. Simpkins testified that the forklift being used was leaking hydraulic fluid, and that as a result of the fluid leaking, the forklift would come down. Mr. Simpkins testified that he would place his foot on the gas and it would make the forklift stay up. (Hearing Transcript p. 159, lines

13-21). Mr. Simpkins testified that the forklift was working at the time of the accident. (Hearing Transcript p. 163, line 2).

Mr. Simpkins indicated that Mr. Lee continued to work for a period of time after the accident. That at some point, he offered light duty work to Mr. Lee including running the front end, opening bales, putting up bales. Mr. Simpkins indicated that Mr. Lee complained of arm pain so he advised Mr. Lee to take off old labels and place new labels on pallets. (Hearing Transcript p. 141, lines 16-25).

Mr. Simpkins did not refute nor add comment to Mr. Lee's contention that Janice Napier, in the personnel department, took Mr. Lee out of work.

Mr. Simpkins testified that prior to the accident; Mr. Lee worked with the company as an employee or was placed with the company as a temporary staff employee for over a year. That during that period of time, he never observed an injury to the claimant's shoulder nor did he ever complain of problems with that shoulder. (Hearing Transcript p. 171, lines 13-23).

Defendants' Motion at the Conclusion of the Hearing

At the conclusion of the hearing the defendants requested the record be left open, in accordance with Section 42-17-30 of the South Carolina Code, to depose the radiologist who performed the MRI with contrast. The Single Commissioner granted defendants motion to leave the record open. In response claimant requested the record be left open so Dr(s) Carter and Shannon could review the MRI and provide an opinion regarding causation of claimant's left labral tear. In response the defendants requested the record be left open for their IME doctors to review the MRI with contrast and provide an opinion on causation. Both requests were granted.

Medical questionnaires were submitted from Dr(s) Bethea, Carter, Thomas, Robinson, Thesing, and Westerkam. The defendants elected not to depose the radiologist but relied on his questionnaire response. (Post-Hearing Transcript pp 3-15).

FINDINGS OF FACT OF THE APPELLATE PANEL

Based upon a review of the evidence, the majority of the Appellate Panel of the South Carolina Workers' Compensation Commission hereby **REVERSES** the Order of the Single Commissioner which denied the compensability of the claim and makes the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW** as set forth below:

1. We find that the South Carolina Workers' Compensation Commission has jurisdiction over both the subject matter of and the parties to this action.

2. We reverse the **FINDINGS OF FACT** of the Single Commissioner regarding the compensability of this claim and denial of benefits; and substitute the included and herein referenced **FINDINGS OF FACT**.

3. We find that Mr. Lee was thirty years old at the time of the hearing. He graduated from Midland Valley High School in 1998 and received a certificate in welding from Aiken Tech. Mr. Lee has one minor child. Mr. Lee's work history includes work at East Central Regional Hospital, Abigail Mills, BAE, and Aiken Staffing. He has a prior work related injury (2004) that resulted in surgery to his right hand.

4. We find that in 2008 claimant began working at Bondex through a staffing agency. In June of 2008 claimant was hired full time by Bondex. While at Bondex claimant engaged in heavy lifting, pushing, and pulling and did not experience any problems with his left shoulder until his June 2, 2009 work related injury.

5. The claimant's average weekly wage is \$568.61 with a corresponding compensation rate of \$379.09. We base this finding upon stipulations of the parties.

6. We find that on June 2, 2009 the claimant, Tom Harris, and Al Martin were instructed by Lowell Simpkins, their supervisor, to maneuver the hood of an industrial card machine into place with the help of a forklift. By various accounts, the hood weighed between 500 to 1500

pounds. Pictures of the hood were entered into the record. During the process of maneuvering the hood into place claimant used his arms to help lift and guide the hood and sustained injuries to his neck, back, and left shoulder.

7. After the hood was attached and during the same shift as the injury, claimant advised his supervisor, Mr. Simpkins, that he was experiencing left shoulder pain. In response Mr. Simpkins gave him Biofreeze and Goody Powder for pain.

8. The following twelve (12) different accident reports, forms, and/or medical providers documented claimant's injuries as originating during the course and scope of his employment with Bondex:

- a. On June 2, 2009 the Employer completed an accident report documenting claimant's left shoulder injury.
- b. On June 3, 2009 the employer completed a 12(A) indicating that claimant's injury/illness/exposure occurred on Employer's premises while installing a door on a machine. The 12(A) references pain in the left shoulder and neck.
- c. On June 3, 2009 claimant presented to University Hospital with pain in the left shoulder/scapular region. The medical record states, **"The patient states that this problem is job related. Problem occurred at machine hood fell and struck the patient in the left upper shoulder...."**
- d. On June 5, 2009 claimant presented to Dr. Broder, the company doctor, with left shoulder pain. Dr. Broder's medical record states, **"Left shoulder pain for two days. States he was trying to bring a metal cover down...."**
- e. All of the processing forms completed by Dr. Broder's office indicate that Mr. Lee sustained an on the job injury.
- f. On June 17, 2009 Mr. Lee presented to Paula K. Bolton, PT, of Sports Plus Physical Therapy with a burning pain in the left side of the neck and shoulder.

The "Physical Therapy Evaluation" indicates that on June 2, 2009 while at work, a 700 lb hood fell between his neck and left shoulder.

- g. On July 16, 2009 Mr. Lee presented to Dr. James Bethea with continued pain in the left shoulder, neck and back. Dr. Bethea noted, "This is a 29 year old male who states that he was involved in an accident at work June 2, 2009 in which he injured his left shoulder, but also his neck and lower back."
- h. On July 28, 2009 Mr. Lee presented to the Aiken Regional Medical Center with 10/10 pain in his neck, back and shoulders following a work related injury after an 800 lb machine fell on his shoulder.
- i. On August 6, 2009 Mr. Lee presented to Dr. Sylva Al Soudi with neck back and shoulder pain. Dr. Al Soudi noted, "Hurt at work."
- j. On August 18 2009 Mr. Lee presented to Dr. Shannon with pain in his left shoulder, right shoulder, low back and neck. Dr. Shannon noted, "He states that he and other people were attempting to lift a metal hood by forklift when it came down and the lip of the hood struck him on the left side of his neck and superior aspect of his shoulder." Additionally, Mr. Lee's "New Patient/Problem Telephone Questionnaire" completed by Dr. Shannon's office repeatedly indicates that Mr. Lee was injured at work.
- k. On June 10, 2010 Mr. Lee presented to Dr. Westerkam with pain in the left shoulder and arm. Dr. Westerkam noted as follows:

Mr. Lee is a 30 year old gentleman who was working for Bondex and was attempting to position a hood along with three other gentleman while at work on June 2, 2009. The hood apparently weighs anywhere between 300 and 700 pounds. A forklift is supposed to position the hood, but there apparently was some problem with the forklift. There was some indication that the hood struck the patient's left shoulder and neck.

1. On January 25, 2010 Mr. Lee presented to Dr. Ty Carter with pain in his neck, left shoulder, and low back. Dr. Carter noted, "...he was involved in a work related accident on June 2, 2009."

8. The defendants rely on the testimony of Lowell Simpkins, claimant's supervisor, to deny that claimant sustained an injury during the course and scope of his employment at Bondex. Mr. Simpkins testified that on June 2, 2009 he was using a forklift to position the hood on the frame of the machine. Mr. Simpkins indicated that the fork lift raised the hood and Mr. Lee, Mr. Martin, and Mr. Harris maneuvered/guided the hood into place. Mr. Simpkins testified that he noticed the forklift was leaking hydraulic fluid only after Mr. Lee reported his injuries. He testified that he did not notice the hydraulic fluid leaking while they were attempting to attach the hood into place.

9. Lowell Simpkins was questioned by claimant's counsel about whether Mr. Lee was injured prior to reporting to work on that shift. Mr. Simpkins confirmed that Mr. Lee had worked for Bondex for approximately one year and he never observed him having any problems with the left shoulder prior to the work related accident.

10. Claimant testified that he has been experiencing pain in his neck and left shoulder since his June 2, 2009 work related accident.

11. Lay testimony and evidentiary submissions support the claimant's report of a work related accident producing injuries to claimant's neck and left shoulder/arm. We find that on June 2, 2009, claimant sustained a compensable injury by accident to his to his neck/left upper extremity/shoulder during the course and scope of his employment with Bondex.

12. The medical records indicate that on June 19, 2009 the company doctor, Jeffrey Broder, ordered an open MRI of claimant's shoulder. Claimant testified that he was not claustrophobic. On June 26, 2009 Dr. Richard Six, a radiologist, reviewed an MRI without contrast of claimant's left shoulder before noting medial arch impingement and fluid in the

biceps tendon sheath. Dr. Six diagnosed acromioclavicular joint arthropathy with mild impingement and bicipital tendonitis. After the case was denied claimant's personal doctor, Sylva Al-Soudi, questioned why an open MRI would be requested.

13. On September 16, 2010 Dr. Thomas opined that an open MRI is a more detailed/thorough imaging procedure more likely to reveal abnormalities in the shoulder. On September 17, 2010 Dr. Carter opined that an open MRI is a more detailed/thorough imaging procedure more likely to reveal abnormalities in the shoulder. On September 21, 2010 Dr. Theising, the radiologist who reviewed claimant's September 6, 2010 MRI with contrast, opined that an open MRI is a more detailed/thorough imaging procedure more likely to reveal abnormalities in the shoulder. A preponderance of the medical evidence indicates that an open MRI, which Mr. Lee finally received on September 6, 2010, is a more detailed/thorough imaging procedure more likely to reveal abnormalities in the shoulder than a closed MRI. This finding is based on the medical opinions of Dr(s) Carter, Robinson, and Theising.

14. On October 15, 2009 Dr. Shannon noted as follows:

It is my opinion, "most probably and to a reasonable degree of medical certainty" (greater than 50% probability) that Mr. Lee suffers from neck pain, left shoulder pain, and low back pain as a direct result of his work accident of June 2, 2009.

On September 20, 2010 Dr. Thomas opined as follows:

It is my expert medical opinion most probably and to a reasonable degree of medical certainty (greater than 50% probability) that the findings on the September 2, 2010 MRI arthrogram with contrast (a superior labral tear, anterior to posterior without detachment of the labrum) are consistent with Mr. Lee's left shoulder complaints of the last year and the mechanism of his June 2, 2009 work related injury.

On September 17, 2010 Dr. Carter opined as follows:

It is my expert medical opinion most probably and to a reasonable degree of medical certainty (greater than 50% probability) that the findings on the September 2, 2010 MRI arthrogram with contrast (a superior labral tear, anterior to posterior without

detachment of the labrum) are consistent with Mr. Lee's left shoulder complaints of the last year and the mechanism of his June 2, 2009 work related injury.

On September 16, 2010 Dr. Robinson opined as follows:

It is my expert medical opinion most probably and to a reasonable degree of medical certainty (greater than 50% probability) that the findings on the September 2, 2010 MRI arthrogram with contrast (a superior labral tear, anterior to posterior without detachment of the labrum) are consistent with Mr. Lee's left shoulder complaints of the last year and the mechanism of his June 2, 2009 work related injury.

On September 21, 2010 Dr. Thesing opined as follows:

On September 13, 2010 the defendants forwarded a questionnaire to my attention regarding whether or not the tear in Mr. Lee's left shoulder (shown in the MR arthrogram of September 2, 2010) is causally related to Mr. Lee's June 2, 2009 work related injury. I have only provided medical treatment in the form of an arthrographic injection and MR arthrogram. As a result, I will defer to Mr. Lee's treating physicians regarding the causation of the tear in Mr. Lee's left shoulder.

Four physicians (Dr(s) Carter, Shannon, Robinson and Thomas) indicate that claimant's left labral tear is causally related to his June 2, 2009 work related accident. Two physicians (Dr(s) Westerkam and Bethea) indicate that the left labral tear is not causally related to claimant's June 2, 2009 work related accident. We find the testimony of Dr(s) Carter, Shannon, Robinson and Thomas to be more persuasive on the issue of causation.

15. We find that claimant's left labral tear is causally related to his June 2, 2009 work related injury by accident. This finding is based on the claimant's testimony and a preponderance of the medical evidence.

16. On October 15, 2009 Dr. Shannon addressed the causation of claimant's neck pain when he noted as follows:

It is my opinion, "most probably and to a reasonable degree of medical certainty" (greater than 50% probability) that Mr.

Lee suffers from neck pain, left shoulder pain, and low back pain as a direct result of his work accident of June 2, 2009.

17. On August 18, 2009 Dr. Shannon restricted claimant from engaging in the following activities: a) operation of hazardous equipment; b) occasional lifting less than 20 lbs; c) occasional crawling; d) frequent bending, stooping, squatting, crouching, overhead left shoulder work, operation of an automobile, and lifting less than 10 lbs; e) and continuous pushing or pulling. Claimant provided Ms. Napier, human resources at Bondex, with the work slip. Ms. Napier indicated that she needed to follow up with Jay Nicholson, the vice president of Bondex, before Mr. Lee would be permitted to return to work. That evening Ms. Napier contacted Mr. Lee and advised him that no work was available within his restrictions.

18. The defendants listed Janice Napier as a witness but failed to call her to testify. Davis v. By-Pass Auto Parts, Inc. (403 SE 2d 133, 304 SC 75) states, "The Commission could properly rely upon the presumption that the unexplained failure to call a material witness under a party's control raises adverse inferences." The defendants did not call Ms. Napier as a witness. Thus the inference is that her testimony would have been adverse to the position taken by the defendants.

19. It is uncontroverted that claimant provided his employer with Dr. Shannon's August 18, 2009 work note and was not offered light duty work. As a result, we find that claimant is entitled to temporary compensation from August 18, 2009 through the present and continuing (minus a credit for the \$5,000.00 already paid by the defendants) in accordance with the Act.

20. We find that on June 2, 2009 claimant sustained a compensable injury by accident during the course and scope of his employment with Bondex.

21. We find that claimant has proven that that his neck/left shoulder/upper extremity (including the left labral tear) injuries are causally related to his June 2, 2009 work related injury.

22. We find that the claimant submitted evidence of injuries to other body parts however we elect to hold all other injuries alleged by claimant (low back and right shoulder/arm) in abeyance pending further review.

23. We find that the claimant is not at maximum medical improvement (MMI) with regard to his neck/left shoulder/upper extremity.

24. We further find that the defendants are to provide claimant with additional medical treatment to his neck/left shoulder/upper extremity through Dr(s) Shannon and Dr. Carter.

25. We find that the defendants shall be responsible for payment/reimbursement of all causally related medical treatment (including but not limited to mileage and prescription reimbursements) received to date.

CONCLUSIONS OF LAW OF THE APPELLATE PANEL

Based upon the above FINDINGS OF FACT, the majority of the Full Commission Panel makes the following CONCLUSIONS OF LAW:

1. That the parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. That jurisdiction and venue as stipulated by the parties are both proper in this case pursuant to S.C. Code Ann. Sections 42-3-180 (1976) and 42-17-20 (1976).
3. We reverse the Single Commissioner's Conclusions of Law set forth in this Order and conclude that the claimant has sustained a compensable injury-by-accident to his neck, left shoulder/upper extremity consistent with Section 42-1-160 of the South Carolina Code. Specifically, we further conclude that claimant's neck/left shoulder pain and left labral tear are causally related to his June 2, 2009 work related injury.

4. That the claimant is in need of medical evaluation/treatment and surgery for his neck, left shoulder/upper extremity consistent with Section 42-15-60 of the South Carolina Code and Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E. 2d 593 (S.C. App 1999).

5. That further evaluation/treatment of the claimant's neck/left shoulder/upper extremity would tend to lessen claimant's period of disability, consistent with Section 42-15-60 of the South Carolina Code and Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E. 2d 593 (S.C. App 1999).

6. That claimant is entitled to temporary total compensation from August 18, 2009 through the present and continuing (minus a credit for the \$5,000.00 already paid by the defendants) in accordance with Section 42-9-10 of the South Carolina Code.

7. That the defendants are responsible for payment/reimbursement of all causally related medical treatment associated with claimant's June 2, 2009 work related injury.

AWARD

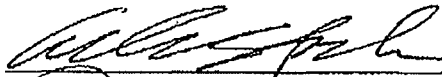
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the defendants are responsible for payment of and/or reimbursement of all causally related medical treatment received to date and other statutory benefits. (mileage, prescriptions)
2. That the defendants shall provide causally related medical treatment to the claimant's neck/left shoulder/upper extremity through Dr(s) Shannon and Carter, including but not limited to surgery to the claimant's shoulder. FURTHER, a decision regarding the remaining body parts alleged by the claimant to be injured in this accident shall be held in abeyance pending further review.
3. That the defendants shall provide temporary total disability payments to the claimant beginning on August 18, 2009, and continuing (minus a credit for the \$5,000.00

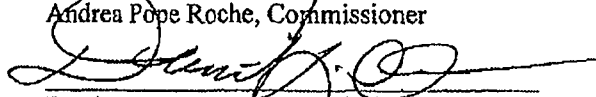
already paid by the defendants per previous Order of the Commission) until further Order of the Commission and/or an agreement of the parties.

AND IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION




Andrea Pope Roche, Commissioner



Derrick L. Williams, Commissioner

I affirm the Order of the Single Commissioner:



Commissioner Huffstetler

CERTIFICATE OF SERVICE

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

This 12 day of October, 2011
By Valerie D. Della

Administrative Assistant to the Commissioner

Ann McCrowery Middle
E. Ros Huff Jr.
Tyler Bathrick

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Bernard Lee v Bondex
SCWCC: 0906951
Commissioner: Wilkerson

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

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

_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

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

_____ Granted, X Denied. _____ Dismissed _____ Set for Hearing.

The Commission requests the order to be submitted as previously requested.

BEFORE THE;

_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

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

_____ Remand to Panel as indicated below.

_____ Barden	_____ Lyndon	_____ Williams
_____ Beck	_____ Roche	_____ Wilkerson
_____ Huffstetler		

_____ Remand for Order consistent with the Order of the Court.

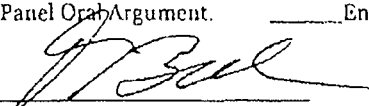
_____ Remand to the Hearing Commissioner.

_____ Remand to the Jurisdictional Commissioner.

_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.



T. Scott Beck, Chair

Columbia, South Carolina

 7/25 2011

CONCURRING:

Commissioner David Huffstetler

Commissioner Andrea C. Roche

CERTIFICATE OF SERVICE

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

This 26 day of July 2011.

By: Valerie D. Diller
SCWCC Judicial Department

E. Ros Huff
Ann McCrowey Mickle / Tyler Bathrick

CAW

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Bernard D. Lee,)
) WCC File No. 0906951
 Claimant/Employee,)
)
 vs.)
)
 Bondex, Inc.)
)
 Employer,) **ORDER**
)
 and)
)
 Great American Alliance Insurance Co.,)
)
 Carrier/Defendants.)
 _____)

HEARING: Held in Columbia, South Carolina on September 7, 2010

APPEARANCES: Claimant was represented by Ann C. Mickle, Esquire of Mickle and Bass

Defendants were represented by E. Ros Huff, Jr., Esquire of Huff Law Firm, LLC

PURPOSE OF HEARING: To determine the issues as set forth in the Form 50 and Form 51

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

ORDER FILED: December 31, 2010

*CIM's F30 due
1-13-11
CAW*

STIPULATIONS

At the commencement of the hearing, counsel for the respective parties stipulated that:

1. The purpose of the hearing was to determine the issues raised by the Forms 50 and 51.
2. Notice of the hearing was timely and properly served upon the parties of interest.
3. Venue was properly set in Columbia, South Carolina, pursuant to South Carolina Code Annotated Section 42-17-20.
4. The Commission's file was made part of the record in this matter with the exception of any self-serving declarations and unstipulated medical reports.
5. The average weekly wage is \$568.61 with the resulting compensation rate of \$379.09.

STATEMENT OF THE CASE

Claimant contends that on June 2, 2009 he sustained injuries arising out of the course and scope of his employment with Bondex. Claimant contends that he injured his left shoulder, neck, back and also his right arm due to overuse. The Claimant's position is that he has not reached maximum medical improvement and he seeks all causally related medical benefits, past, present and future, mileage and prescription benefits. In addition, the Claimant seeks temporary total disability from the last date he worked, August 18, 2009 and continuing. The Claimant admits that the Defendants are entitled to a credit of \$5,000 towards temporary total disability benefits which was paid pursuant to a Consent Order dated December 7, 2009. The Claimant also seeks approval for medical treatment with Dr. Ty Carter and Dr. Shannon for his injuries.

The Defendants deny that the Claimant suffered from a compensable injury by accident.

MEDICAL EVIDENCE

CLAIMANT'S APA

<u>Number</u>	<u>Name of Report or Physician</u>	<u>Date of Report</u>	<u>Page Numbers</u>
1	Accident Report	6/2/09	1
2	University Hospital	6/3/09	2-7
3	Dr. Jeffrey Broder	6/5/09 – 7/1/09	8-18
4	Sports Plus	6/5/09 – 7/28/09	19-29
5	University Open MRI	6/26/09	30
6	Dr. James Bethea	7/16/09	31-34
7	Aiken Regional Medical Center	7/18/09 – 7/28/09	35-51
8	Dr. Sylva Al-Soudi	8/6/09 – 10/5/09	52-58
9	Dr. Timothy Shannon	8/17/09 – 5/25/10	59-80
10	Dr. David Goltra	1/14/10	81-83
11	Dr. Ty Carter	1/25/10	84-85
12	Dr. W. Daniel Westerkam	6/10/10	86-87
13	Dr. William Robinson	7/20/10	88
14	Unpaid Medical Bills		89-98
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18	Curriculum Vitae of Dr. Timothy Shannon		128-131
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DEFENDANTS' APA

1	Sports Plus	6/30/09	134
2	Dr. Bethea	7/30/09	135
3	Dr. Charles Thomas	10/22/09	136-146
4	Aiken Regional Medical Center	1/25/01 – 9/28/09	147-281
5	Medical Summary		282-289
6	MRI Palmetto Imaging	9/2/10	

EXHIBITS SUBMITTED AFTER THE HEARING

1	Medical Questionnaire Dr. Charles Thomas	9/20/10
2	Medical Questionnaire Dr. James Bethea	9/15/10
3	Medical Questionnaire Dr. Ty Carter	9/17/10
4	Medical Questionnaire Dr. James Thesing	9/14/10
5	Medical Questionnaire Dr. Daniel Westerkam	9/9/10
6	Medical Questionnaire Dr. James Thesing	9/21/10

EVIDENCE OF THE CASE

At the hearing, the following testimony was elicited from the Claimant through both direct examination by his counsel, examination by the undersigned and cross-examination by defense counsel. Testimony was also elicited from witness, Mr. Lowell Simpkins for the Defendants.

1. Claimant is thirty years old (Hearing Transcript p. 28 ln 20-22), graduated from high school in 1998 (Hearing Transcript p. 29 ln 21 – 25), and has a welding certificate from Aiken Tech (Hearing Transcript p. 30 ln 1 – 3).
2. Claimant has one minor child which he is required to pay child support. (Hearing Transcript p. 29 ln 1-7).
3. Claimant's work history includes work at East Central Regional Hospital, watching over mental patients and providing them with activities (Hearing Transcript p. 31 ln 3-9). He also worked at Abigail Mills as a lead lineman for a year (Hearing Transcript p. 31 ln 10-14). The Claimant also worked for BAE welding military equipment. (Hearing Transcript p. 21 ln 19-23). The Claimant worked through Aiken Staffing and was placed at Rieter Automotive (Hearing Transcript p. 31 ln 24 – 25 and p. 32 ln 1 – 4).
4. Claimant originally started working for Bondex as a temporary employee through Aiken Staffing and then was hired by Bondex on June 23, 2008. He worked as a machine operator. (Hearing Transcript p. 32 ln 1 – 25 and p. 33 ln 1 – 5).
5. Claimant stated that on June 2, 2009 he came in for his shift right before 8:00pm and his supervisor, Lowell Simpkins said that they had to put a machine together. (Hearing Transcript p. 40 ln 7-25). His assignment was to use the forklift and put between 500-800 pound rolls back on the machine. (Hearing Transcript p. 41 ln 23 – 25 and p. 42 ln 1 – 3).
6. The Claimant testified that at the time of the injury he was lifting between 800-1500 pound hood up on the machine. (Hearing Transcript p. 46 ln 18) He said that Lowell Simpkins was on the forklift and Al Martin, Tom Harris and himself were lifting the hood. (Hearing Transcript p. 54 ln 4-9).

7. The Claimant testified that the forklift would not lift up the hood and hydraulic fluid was coming out of the forklift. (Hearing Transcript p. 58 ln 14-20). He further stated that he and the other two men were going to lift up the hood while Mr. Simpkins was going to attach the shock to the machine. (Hearing Transcript p. 60 ln 2-20). He said that the hood weighs about 2,000 pounds. (Hearing Transcript p. 61 ln 3).
8. The Claimant said that the sharp point of the back of the hood came down on his shoulder while he was trying to lift it. It caught his shoulder the first time, and he was on top of a ladder and it pinned him to the ladder. (Hearing Transcript p. 61 18-25).
9. The Claimant said that they didn't finish the job, that he had to pick the hood up off of himself and then he climbed back down the ladder. (Hearing Transcript p. 65 ln 25). He said that he picked it up enough to ease out from up under it using one hand, his right hand. (Hearing Transcript p. 66 ln 15-23).
10. The Claimant testified that he told Lowell that his shoulder didn't feel right. (Hearing Transcript p. 67 ln 7-8). He kept trying to work. (Hearing Transcript p. 67 ln 22). He said that he pain started shooting down his back and Al Martin brought him some Biofreeze and Goody powder. (Hearing Transcript p. 68 ln 8-12). Then he told Lowell that he needed to go to the hospital. (Hearing Transcript p. 69 ln 1). His dad took him to the doctor and when he went back to work they sent him to the company doctor. (Hearing Transcript p. 70 ln 1 - 24).
11. The Claimant testified that he continued to work doing light duty jobs, which was loading fiber on a table and he had to wet it down. (Hearing Transcript p 77 ln 10-19). He also testified that twice a week he was cleaning the machines. (Hearing Transcript p. 78 ln 13-19).

12. On cross examination, the Claimant testified that while on light duty, when the bale is wrapped up he tried to take apart the bale. (Hearing Transcript p. 99 ln 19 – 25 and p. 100 ln 1). He then put the fiber on the table. (Hearing Transcript p. 100 ln 14-15).
13. On cross-examination, the Claimant testified that when the hood fell on his left shoulder and pinned him, he had used the forklift. The forklift messed up on the first shift and he was working the second shift. (Hearing Transcript p. 108 ln 13-23). That his supervisor said they were going to work with what they had. He testified that they were using the forklift the whole time, you can't do it without the forklift. Everything in the plant revolves around the forklift. The forklift was used to lift the hood up and suspend it above the machine. He was not lifting the hood. The forklift brought the hood over and it came down to the machine and sat on a lip. (Hearing Transcript p. 109 ln 1 – 25). The Claimant said that they were holding the hood in the air and it was not attached to the forklift. (Hearing Transcript p 112 ln 6-18).
14. The Claimant testified that he had his father drive him to the hospital, which is approximately 45 minutes from his house and it was at the hospital until about 2:00am. (Hearing Transcript p. 118 ln 6 – 17). The hospital records show that he arrived at the hospital at 3:00am. (APA p. 2).
15. The Claimant indicated that he told the hospital that a hood from a machine fell and hit his left shoulder. (Hearing Transcript p. 120 ln 24 – 25 and APA p. 2). Patient was struck by a hood (APA p. 2).
16. The Claimant said that on the day the accident happened he did not have any abrasions or cuts on his shoulder. (Hearing Transcript p. 122 ln. 4).

17. The Claimant testified that when he went to Sports Plus, he indicated that a 700 pound hood fell on him between his neck and left shoulder. (Hearing Transcript p. 123 ln 2-8 and APA p. 20). He did not tell Sports Plus that he was lifting or pulling or pushing. (Hearing transcript p. 123 ln 11 – 16).
18. The Claimant testified that a hood fell on him. (Hearing Transcript p. 126 ln 1 – 2).
19. The Defendants called Lowell Simpkins to the stand and he testified that he is a supervisor with Bondex. (Hearing Transcript p. 140 ln 19-24).
20. Mr. Simpkins testified that he offered the Claimant light duty, which consisted of him running the front end. Mr. Simpkins would put up bales, open the bales, and all the Claimant would do is push the fiber onto the tables. (Hearing Transcript p. 141 ln 9-14). Mr. Simpkins said that the Claimant complained of his arm hurting, so he asked the Claimant to take off old labels and put new labels on the pallets. The Claimant said that his arm was hurting and he couldn't do that. (Hearing Transcript p. 141 ln 16 – 25).
21. Mr. Simpkins identified the fiber that the Claimant was asked to work with. He assigned the Claimant to do the fiber job of loading the tables up out of the bales of this type of fiber. Mr. Simpkins testified that he drove the forklift to bring the Claimant the bales. (Hearing Transcript p. 142 ln 11 – 25).
22. Mr. Simpkins stated that he cut the wire off of the bales and that this fiber did not have to be wet down. He further stated that he did not assign the Claimant with work that required him to wet fiber down because they weren't running anything but this type of fiber as identified at the hearing. (Hearing Transcript p. 143 ln. 1 – 17).
23. Mr. Simpkins testified that on June 2nd, he was driving a forklift to lift a hood up. (Hearing Transcript p. 144 ln 2 – 25). Mr. Simpkins stated that no one was required to lift

the hood, that the forklift does all of the lifting and putting it in place. He further said that the hood never fell off of the forklift. (Hearing Transcript p. 145 ln 5-11). Mr. Simpkins said that he lowered the hood in place and they wiggled the arms to get it to go into the groove to let the bolts go through. He did not hear the Claimant scream or yell. (Hearing Transcript p 145 ln 19-24).

24. Mr. Simpkins filled out an incident report on the date of the accident. He indicated that the Claimant told him what happened and he wrote down exactly what the Claimant said. (Hearing Transcript p. 149 ln 1-2). Mr. Simpkins said that the Claimant did not tell him that a hood he was working on that night fell on him between his neck and his shoulder and pinned him against a machine. (Hearing Transcript p. 149 ln 15-21).

25. Mr. Simpkins testified on cross examination that the forklift they were using that night was leaking hydraulic fluid, and that as a result of the fluid leaking the forklift would come down. But he would put on the gas and it would make the forklift stay up. (Hearing Transcript p. 152 ln 4 – 20).

26. Mr. Simpkins identified the fiber that they use to make products at the plant. He also indicated that they use other kinds of fiber, polyester, lomax and kermel. (Hearing Transcript p. 159 ln 13-21). Mr. Simpkins said that Mr. Lee was working with polyester type fiber while he was on light duty. (Hearing transcript p. 160 ln 7-11).

27. Mr. Simpkins testified that on the date of the accident, they were putting a machine back together. (Hearing Transcript p. 160 ln 17-25). The Claimant was assigned to help put the hood in place. He was up there to help guide it. There's an arm on each side, they guide it in place, and then they put a long bolt in it to hold the hood up there on the frame. The Claimant should be guiding the hood with the rope and his eyes. (Hearing Transcript p

162 ln 1-16). Mr. Simpkins said that the forklift was working at the time of the accident. (Hearing Transcript p. 163 ln 2). He said that the Claimant did not have to hold the hood or lift it at all. The hood is over five hundred pounds, you wouldn't have been able to lift it. (Hearing Transcript p. 164 ln 2 – 17). There were three guys there to guide it in place. (Hearing Transcript p. 164 ln 21 – 23). He said that you have to one person on each side and one person mainly just looking, and you have one man holding the rope on each side so that when he slings it in place they have it in the place where they want to and he lowers the frame down into the slots. (Hearing Transcript p. 165 ln 21-25 and p. 166 ln 1-3).

28. Mr. Simpkins testified that the Claimant never complained while they were putting the hood on. That the Claimant came to him after the ten o'clock break and said that he hurt his arm when they were putting the hood up. Mr. Simpkins asked if he needed to go to the emergency room and the Claimant said no, but came back to him later that night and said that he wanted to. (Hearing Transcript p 166 ln 4-14).

SUMMARY OF MEDICAL EVIDENCE

1. The Claimant went to the University Hospital on June 3, 2009. The Claimant complained that a hood from a machine fell and hit his left shoulder. X-rays were taken of the Claimant's left shoulder which all three views were unremarkable. The medical note also indicated that upon examination, the skin over the neck is intact without evidence of laceration or significant abrasion. (Claimant's APA 2 p. 2-7)
2. The Claimant was seen at North August Urgent Care by Dr. Jeffrey Broder on June 5, 2009 complaining of a left arm injury and left shoulder pain. The Claimant was referred

for physical therapy and he was treated for several more visits and then referred for an MRI. (Claimant's APA 3 p. 8-18)

3. On June 17, 2009 the Claimant went to Sports Plus for physical therapy and reported that on June 2, 2009 while at work a 700 pound hood fell between his neck and left shoulder. (Claimant's APA 4 p. 21)
4. On June 26, 2009 the Claimant underwent an open MRI of his left shoulder which showed acromioclavicular joint arthropathy with mild impingement and bicipital tendonitis. (Claimant's APA 5 p. 29)
5. Claimant sought treatment on July 16, 2009 with Dr. James Bethea at Columbia Orthopaedic Specialists. Dr. Bethea opined that the Claimant was suffering from impingement syndrome in the left shoulder. He recommended that the Claimant continue physical therapy for his left shoulder and further indicated that the neck and back pain do not represent any serious injury. Dr. Bethea advised that he should limit pushing, pulling, lifting and carrying with his left upper extremity to 15 pounds. He further said that he should not do any overhead work with his left upper extremity. (Claimant's APA 6 p. 31-34)
6. The Claimant failed to show up for his next scheduled appointment with Dr. Bethea on July 30, 2009. (Defendants' APA 2 p. 135)
7. On August 6, 2009 the Claimant went to see Dr. Slyva Al-Soudi at the Margaret J. Weston Community Health Center. Dr. Al-Soudi opined that the Claimant suffered from a muscle spasm. (Claimant's APA 8 p. 53)
8. The Claimant then went to Carolina Musculoskeletal Institute on August 18, 2009 and relayed that he was on a ladder with two other employees attempting to lift a hood on top

of a machine and the hood came down and landed between his neck and shoulder, pinning him down. Dr. Shannon indicates that he has neck pain due to a contusion of paraspinal muscles with perhaps element of a strain. Also has left shoulder pain and low back pain presumably secondary to paraspinal strain sustained at the time of injury. Dr. Shannon recommended an MRI of his neck and low back. (Claimant's APA 9 p. 59-65)

9. On October 22, 2009, the Claimant was sent for an evaluation by Dr. Charles Thomas. The Claimant relayed a history of an 800 pound hood striking him between his left shoulder and neck. Dr. Thomas diagnosis was left shoulder pain with a normal left shoulder MRI, neck pain, and low back pain. Dr. Thomas stated that the examinee demonstrates severe impairment of left shoulder range of motion either on a subjective or objective basis. Dr. Thomas recommended an MRI of the cervical, thoracic and lumbar spine to rule out spinal pathology. Dr. Thomas wrote the Claimant out of work. (Defendants' APA 3 p. 136-146)
10. The Claimant underwent an MRI of his lumbar spine without contrast on January 14, 2010 and it show no acute fracture or subluxation in the lumbar and lower thoracic spine. There is sacralization of the L5 vertebral body, but the remainder of the examination is normal. The cervical spine was unremarkable. There is straightening of the cervical spine which may be positional or related to muscle spasm. Mild degenerative disc change is noted at T1-2. (Claimant's APA 10 p. 81-83)
11. Dr. Ty Carter examined the Claimant on January 25, 2010 and indicates that the MRI of the cervical and lumbar spine are within normal limits. In addition, he found that the Claimant has reached MMI. (Claimant's APA 11 p. 84-85)

12. On May 25, 2010 the Claimant saw Dr. Shannon who found that he had full range of motion on his right upper extremity with no impingement signs. The Claimant also had no impingement signs on the left upper extremity without impingement signs. Dr. Shannon recommended electrodiagnostic studies. (Claimant's APA 9 p. 75-76)
13. On June 10, 2010 the Claimant was examined by Dr. W. Daniel Westerkam who opined that the Claimant appears to have myofascial pain involving the left shoulder, neck and scapular region. Dr. Westerkam further indicates that he cannot explain the severe limited range of motion and weakness from a physiological standpoint. He recommended that the Claimant not lift with his left upper extremity over shoulder height nor should he lift anything greater than 10 pounds. In addition, Dr. Westerkam gave him a 5% impairment rating to his cervical spine. (Claimant's APA 12 p. 86-87)
14. On September 2, 2010 the Claimant underwent an MRI which revealed a superior labral tear, anterior to posterior without detachment of the labrum.
15. Subsequent to the Claimant's medical treatment with various medical providers, both counsel for the Claimant and Defendants provided them with medical questionnaires to address causation. On September 20, 2010, Dr. Charles B. Thomas opined that in his expert medical opinion to a reasonably degree of medical certainty the findings of the September 2, 2010 MRI are consistent with the Claimant's left shoulder complaints of the last year and the mechanism of his June 2, 2009 work related injury. Dr. Thomas further stated that if there was no previous history of injury to the shoulder or medical treatment for the shoulder prior to the date of the injury then he probably sustained this on June 2, 2009.

16. Dr. Ty Carter indicates on September 17, 2010 that in his expert medical opinion to a reasonably degree of medical certainty the findings of the September 2, 2010 MRI are consistent with the Claimant's left shoulder complaints of the last year and the mechanism of his June 2, 2009 work related injury.
17. Dr. William Robinson opines on September 16, 2010 that in his expert medical opinion to a reasonably degree of medical certainty the findings of the September 2, 2010 MRI are consistent with the Claimant's left shoulder complaints of the last year and the mechanism of his June 2, 2009 work related injury.
18. Dr. James A. Thesing answered a medical questionnaire on September 21, 2010 in which he said that he has only provided medical treatment in the form of an arthrographic injection and MR arthrogram. As a result, he will defer to the Claimant's treating physicians regarding the causation of the tear in the Claimant's shoulder.
19. Dr. James Bethea opined on September 15, 2010 that based upon the treatment/evaluation he provided and upon review of any medical records, that to a reasonable degree of medical certainty the most probably cause, greater than 50%, of the tear in the Claimant's left shoulder shown on the MR arthrogram of September 2, 2010 was **not** caused by the event of June 2, 2009.
20. Dr. W. Daniel Westerkam opined on September 9, 2010 that based upon the treatment/evaluation he provided and upon review of any medical records, that to a reasonable degree of medical certainty the most probably cause, greater than 50%, of the tear in the Claimant's left shoulder shown on the MR arthrogram of September 2, 2010 was **not** caused by the event of June 2, 2009.

21. Dr. James A. Thesing opined on September 14, 2010 that based upon the treatment/evaluation he provided and upon review of any medical records, that to a reasonable degree of medical certainty the most probably cause, greater than 50%, of the tear in the Claimant's left shoulder shown on the MR arthrogram of September 2, 2010 was not caused by the event of June 2, 2009.

22. Dr. Charles Thomas opined on September 20, 2010 that that based upon the treatment/evaluation he provided and upon review of any medical records, that to a reasonable degree of medical certainty the most probably cause, greater than 50%, of the tear in the Claimant's left shoulder shown on the MR arthrogram of September 2, 2010 was caused by the event of June 2, 2009.

FINDINGS OF FACT

Based upon the testimony of the Claimant, the testimony of the witness Lowell Simpkins, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission's files relative to this claim, and the greater weight of the evidence, I find the following:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Jurisdiction and venue are proper. I base this upon the stipulations of the parties.
3. An employer/employee relationship existed on June 2, 2009, between the Claimant and the Employer. I base this finding upon the stipulations of the parties.

4. The Claimant gave notice of his injury within ninety days. I base this finding upon stipulation of the parties.
5. The Claimant is a thirty years old and graduated from high school in 1998. I base this finding upon the testimony of the Claimant.
6. The Claimant was employed with Defendant in June 2008, I base this finding upon the testimony of the Claimant and the Form 12A.
7. The Claimant's average weekly wage is \$568.61 with a corresponding compensation rate of \$379.09. I base this finding upon stipulation of the parties.
8. The Claimant testified that he was lifting an 800 – 1500 pound hood with one arm, that it subsequently fell on him pinning him down, which caused him to suffer from an injury to his left shoulder, neck and back. I find that the Claimant is **not** credible, that even if the hood weighed 800 pounds there is no way that the Claimant could have lifted an 800 pound hood with one arm.
9. Mr. Lowell Simpkins testified that he and three other men, including the Claimant, were putting a machine back together with the use of a forklift. Mr. Simpkins stated that the Claimant was never bearing the weight of the hood with his arms, and that the Claimant and the other men were helping to position the hood holes over bolts. I find that Mr. Simpkins is **very** credible. I believe his testimony and find as a fact as he testified regarding work on the machine.
10. The Claimant has seen various medical providers for his conditions and Dr. James Thesing, Dr. James Bethea, and Dr. Daniel Westerkam all opine to a reasonable degree of medical certainty that the Claimant's left shoulder labral tear is **not causally related** to the work incident on June 2, 2009. Dr. Ty Carter, Dr. James Thesing, and Dr. Charles

Thomas opine to a reasonable degree of medical certainty that the Claimant's left shoulder labral tear is causally related to the incident that occurred on June 2, 2009. I find as a fact that the medical evidence shows that the Claimant's medical condition is not causally related.

11. That the Claimant did not sustain an injury by accident arising out of and in the course of his employment. I base this finding upon the very credible testimony of Lower Simpkins.
12. Based on the greater weight of the evidence, I find that the labral tear in the left shoulder is not causally related to the work incident on June 2, 2009 and I further find that it could not have been caused the way the Claimant described the incident. This is based upon the credible testimony of Lowell Simpkins and the medical evidence of Dr. Thesing, Dr. Bethea, and Dr. Westerkam.
13. I find that the Claimant's claim is not compensable, therefore the Claimant is not entitled to benefits under the Workers' Compensation Act.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Under Section 42-17-20 jurisdiction and venue are proper.
3. Under Section 42-1-130 the Claimant was an employee.
4. Under Section 42-17-140, Bondex was an employer.
5. Under Section 42-1-150, an employer/employee relationship existed on June 2, 2009.

6. Under Section 42-1-40, the Claimant's average weekly wage is \$568.61 with a corresponding compensation rate of \$379.09.
7. Under Section 42-15-20 proper notice of the accident was given.
8. Under Section 42-15-40 a claim for benefits was timely filed with the South Carolina Workers' Compensation Commission.
9. Under Section 42-1-160 the Claimant did not sustain an accidental injury arising out of and in the course and scope of his employment, therefore is not entitled to benefits under the South Carolina Workers' Compensation Act.
10. Under Section 42-3-180 and 42-17-40 the Claimant did not carry his burden of proof by submission of proof that would entitle him to benefits under the Workers' Compensation Act.

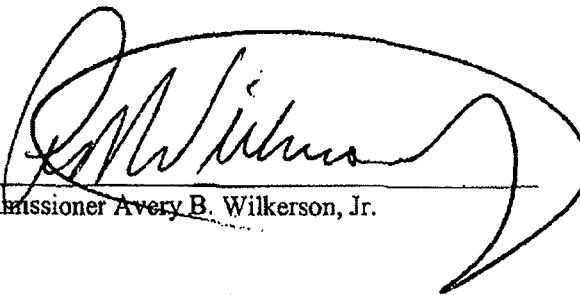
ORDER

IT IS THEREFORE ORDERED that the Claimant did not sustain a compensable work related accident on June 2, 2009 and his claim is denied.

IT IS FURTHER ORDERED that the Claimant is not entitled to workers' compensation benefits.

IT IS FURTHER ORDERED that no costs are assessed for this hearing

AND IT IS SO ORDERED.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
December 31, 2010

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

BERNARD LEE,)
)
Claimant,)
)
vs.)
)
BONDEX,)
)
Employer/Defendant.)
_____)

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

W.C.C. File No. 0906951

ORDER

A hearing was scheduled before me on Thursday, August 12, 2010 in the above referenced case. At that time, the parties argued their respective positions in Pre-trial conference. Based upon the arguments of counsel, the undersigned indicated that an MRI with contrast would be beneficial in determining and clarifying the medical issues in this case. The carrier's attorney therein agreed to provide an MRI with contrast to the claimant's left shoulder. The Commissioner further agreed to then reset the hearing for Monday, August 23, 2010.

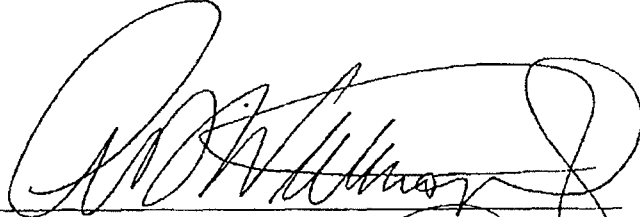
On Friday, August 20, 2010 a telephone conference was scheduled by the undersigned to review the status of the completion of the MRI. At that time, Ross Huff advised the Commission that the MRI with contrast had not been performed. Counsel for the parties acknowledged that an MRI with contrast had not been done, as previously agreed, but had conflicting reasons why it had not been done. Defense counsel indicated that his client needed a prescription from a physician for an MRI with contrast. Claimant's counsel contended that there was a previous request made by Mr. Lee's personal physician which had not been honored. (See MRI script referenced below) At all times therein, the claimant was prepared to undergo the MRI. The undersigned then advised the parties that pursuant to Section 42-17-30 of the S. C. Code of Laws, As Amended, he was ordering that the claimant be returned to a physician to order an MRI with contrast. This Commissioner specifically notes that on November 11, 2009 Dr. Al-

Soudi ordered an MRI with contrast. (Page 58, claimant's APA's) Therefore, an MRI with contrast shall be performed.

THEREFORE, PURSUANT TO SECTION 42-17-30 of the S. C. Code of Laws, As Amended:

- 1) The carrier shall provide an MRI with contrast to the claimant's left shoulder. In order to facilitate the scheduling of the MRI, the claimant may be returned to either physician named in this Order. However, the undersigned specifically notes that the MRI with contrast has already been requested by Dr. Al-Soudi. Therefore, it would probably be more expeditious to use that order or if necessary, return the claimant to another physician for an updated script; and,
- 2) This matter shall be reset for a hearing on September 7, 2010.

AND IT IS SO ORDERED.



The Honorable Avery Wilkerson
Commissioner
South Carolina Workers' Compensation Commission

August 28th, 2010

AMM
ERTH

This is to certify that a true and correct copy of this date served by certified mail to the undersigned and that all parties to this proceeding have received a copy hereof, post paid, in the event that the mail is addressed to the attorney or counsel for either party.

This 31 day of August, 2010
By Elaine M. Bell
Administrative Assistant to the Commissioner

7

08/23/2010 02:47 FAX 803 649 2231

MARGARET J WESTON

001

MARGARET J. WESTON MEDICAL CENTER

* 1211 University Lane
Aiken, SC 29801
(803) 648-4744
Fax (803) 649-2231

4645 Augusta Road
Clearwater, SC 29822
(803) 593-9283
Fax (803) 593-0607

214 Atomic Road
Jackson, SC 29831
(803) 471-9200
Fax (803) 471-9100

Name Bernard Lee Age _____
Address _____ Date 8/22/10

R Please do MRT of
Shoulder - Contrast

N.R. - 1 - 2 - 3 - 4 - 5 - P.R.N. _____
R Probable impaired
synovium

DISPENSE AS WRITTEN M.D. M. Robinson M.D. SUBSTITUTION PERMITTED

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC File No. 0906951

Bernard Lee, Employee
Claimant,

v.

Southern Felt dba Bodex, Employer
and
Great American
Insurance Company of NY, Carrier
Defendants,

CONSENT ORDER


Comes now E. Ros Huff, Jr., Esquire, counsel for the Employer/Carrier along with the consent of Tyler Bathrick, Esquire, counsel for the Claimant and consents to the following:

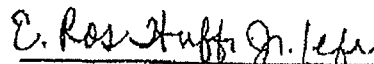
A hearing was scheduled before the undersigned Commissioner on January 19, 2010 in North Augusta, South Carolina to determine the issues as outlined in the Form 40 and the Defendants' subsequent response.

Prior to the hearing, the Claimant was been scheduled for an MRI with Dr. Ty Carter on January 14, 2010 and a follow up appointment with Dr. Carter on January 25, 2010 as agreed upon in the previous Consent Order signed by Commissioner Bryan Lyndon on December 7, 2009.

THEREFORE, the parties agree that the hearing scheduled for January 19, 2010 is no longer necessary. All other issues are hereby held in abeyance and will not be considered until further request is made by either party.

WE CONSENT:

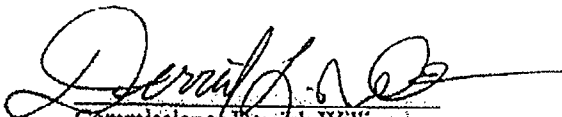

Tyler Bathrick, Esquire,
Attorney for the Claimant


E. Ros Huff, Jr., Esquire
Attorney for the Defendants

IT IS HEREBY ORDERED that the hearing scheduled for January 19, 2010 is cancelled as an agreement was reached by both parties.

IT IS FURTHER ORDERED that all issues are held in abeyance and the claim will be returned to general files until a hearing request is made by either party.

IT IS ORDERED!


Commissioner Derrick Williams

April 21, 2010
Columbia, S.C.

T.B
ERH

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.
This 27th day of April, 2010
By Rene B Smith
Administrative Assistant to the Commissioner

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Bernard Lee, Employee

Claimant,

v.

Southern Felt dba Bodex, Employer

and

Great American
Insurance Company of NY, Carrier

Defendants,

WCC File No. 0906951

CONSENT ORDER

Comes now E. Ros Huff, Jr., Esquire, counsel for the Employer/Carrier along with the consent of Ann Mickle, Esquire, counsel for the Claimant and consents to the following:

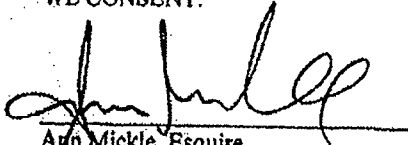
A hearing was held before the undersigned Commissioner on November 3, 2009 on which date the parties and their representatives appeared to determine the issues as outlined in the Form 50 and Form 51.

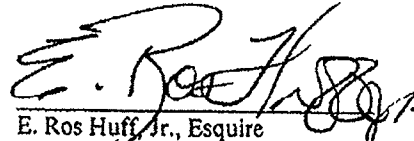
Prior to hearing arguments from both sides, the parties reached an agreement relative to the issues regarding medical treatment. Defendants have hereby agreed to pay the Claimant a lump sum payment of \$5,000. In addition, they have agreed to send the Claimant for an MRI and for follow up treatment with Dr. Ty Carter in Aiken, South Carolina.

All other issues are hereby held in abeyance and will not be considered until further request is made by either party.

THEREFORE, the parties agree that the hearing scheduled for November 3, 2009 is hereby postpone until a request is filed by either party.

WE CONSENT:


Ann Mickle, Esquire
Attorney for the Claimant


E. Ros Huff Jr., Esquire
Attorney for the Defendants

IT IS HEREBY ORDERED that this hearing is postponed as an agreement was reached by both parties.

IT IS FURTHER ORDERED that all issues are held in abeyance and the claim will be returned to general files until a hearing request is made by either party.

IT IS ORDERED:

December 7, 2009
Columbia, S.C.


Commissioner G. Bryan Lyndon

CERTIFICATE OF SERVICE

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

This 8th day of December, 2009

By Deborah Thomas
Administrative Assistant to the Commissioner

AM
ERH Jr

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0906951

Bernard Lee, Employee

Claimant,

v.

Southern Felt dba Bodex, Employer

and

Great American
Insurance Company of NY, Carrier

Defendants,

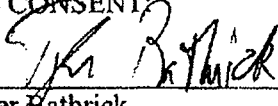
CONSENT ORDER

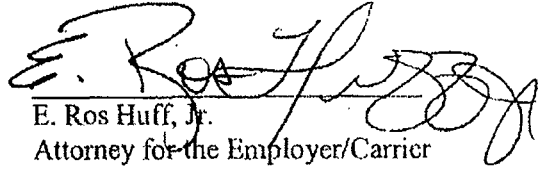
To the South Carolina Workers' Compensation Commission, comes now the Defendants by and through their attorney, E. Ros Huff Jr., Esquire along with the Claimant through his attorney, Tyler Bathrick, Esquire and consents to the following:

1. That by subpoena dated June 19, 2009, the Claimant demanded production of certain materials including but not limited to video footage of the Claimant's job site or video footage of the Claimant recorded since the date of the accident.
2. That on June 30, 2009 the Defendant served the Claimant and the Commission with a Motion to Quash in regards to any video footage in possession of the Defendants.
3. That a hearing was set for August 19, 2009 and then reset for August 27, 2009 in front of Commissioner Susan Barden in Aiken, South Carolina to determine the merits of the Defendants' motion.

4. That the Defendant are not now nor have they been in possession of job site footage or video surveillance of the Claimant either on the date of accident or at any time since.
5. That the Defendants are in possession of certain video footage of the Claimant's job site and have agreed to hand this footage over to the Claimant through his attorney.
6. That the hearing set for August 27, 2009 is no longer necessary and should be removed from the judicial docket.
7. That all other issues are held in abeyance.

WE CONSENT:


 Tyler Bathrick
 Attorney for the Claimant


 E. Ros Huff, Jr.
 Attorney for the Employer/Carrier

IT IS HEREBY ORDERED that this hearing is cancelled pursuant to the consent agreement by both parties.

IT IS FURTHER ORDERED that this file will be returned to general filing until such time as a request for hearing is made by either party.

IT IS ORDERED!

Columbia, South Carolina
 August 28, 2009


 Commissioner Susan Barden

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

This 28th day of August, 2009.
 By Kristi Love
 Administrative Assistant to the Commissioner

TB
 RH



Ann McCrowey Mickle*
J. Alan Bass*
Tyler A. Bathrick
Gretchen Rogers

930 Oakland Avenue
Rock Hill, SC, 29730
803-980-0083
803-328-2525 (fax)

1116 Blanding Street
Columbia, SC, 29201
803-929-0029
803-929-1024 (fax)

1039 44th Avenue North
Suite 102
Myrtle Beach, SC, 29577
843-839-2501
843-839-2507 (fax)

January 12, 2011

Ms. Virginia Crocker
Judicial Director
SC Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

Re: Bernard Lee v. Bondex
Our file: WC2009-252 RH
SCWCC file: 0906951

Dear Ms. Crocker:

Enclosed please find the original and three (3) copies of Claimant's Form 30 along with three (3) copies of the Decision and Order in the above referenced matter. By copy of this correspondence I am serving E. Ros Huff, Jr., attorney for the defendant and my client with a copy of the same. I am also enclosing our check in the amount of \$150.00 to cover the filing fee.

If you have any questions, please do not hesitate to contact me. With kindest personal regards, I remain,

Yours very truly,

MICKLE & BASS, LLC.

By: 

Ann McCrowey Mickle

AMM/jmb
Enclosures: Form 30, Decision and Order
cc: E. Ros Huff, Esquire
Mr. Bernard Lee

*former SC Workers' Compensation Commissioner
www.MickleAndBass.com



Claimant's Name: Bernard Lee SSN: 251 - 45 - 2204 Employer's Name: Bondex, Inc.
Address: 172 Old Cherokee Indian Road Address: 2 Maxwell Drive
City: Graniteville State: SC Zip: 29829 City: Trenton State: SC Zip: 29847
Home Phone: (803) 663 - 0560 Work Phone: () - Insurance Carrier: Great American Alliance Ins. Co.
Preparer's Name: Ann McCrowey Mickle Law Firm: Mickle and Bass, LLC. Preparer's Phone #: (803) 929 - 0029

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by claimant employer (check one) Date of injury: June 2, 2009

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

1. Did the Commissioner err in finding that the claimant failed to prove that he suffered an injury by accident on June 2, 2009?
2. Did the Commissioner err when he failed to properly consider all of the evidence, to include but not be limited to the MRI with contrast that was ordered by him? (See Order in Commission's file)
3. Did the Commissioner err when he failed to properly consider the Accident Report prepared by the employer simultaneous with the injury which details the report of the accident? (Claimant's APA 1)
4. Did the Commissioner err when he failed to consider the opinions of the "authorized" doctors (Dr(s) Carter, Shannon, Thesing and Thomas) who opined that the injuries were consistent with the history of the accident?
5. Did the Commissioner err in failing to find the Defendants responsible for all causally related medical treatment?

• SEE ATTACHED – ADDITIONAL GROUNDS FOR APPEAL.

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to E. Ros Huff, Jr., Esquire

Huff Law Firm, LLC, P.O. Box 1935, Imo, SC 29063 Name

on the 17th day of January, 2011 by first class mail personal service certified mail.

[Signature] Attorney for the Claimant 1/12/11
Preparer's Signature Title Date

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

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

RESPONSE TO FORM 30
1/19/11
[Signature]

Continued: Additional Grounds for Appeal

- 7. Did the Commissioner err in failing to award temporary total benefits when the claimant testified that the Janice Napier, the HR Director, told him not to return to work because he was restricted from working around hazardous equipment?**
- 8. Did the Commissioner err AS A MATTER OF LAW in failing to award temporary total benefits where the employers representative was at the hearing and failed to refute the claimant's allegations that she told him not to return to work?**
- 9. Did the Commissioner err in failing to properly award medical benefits, mileage, prescriptions and all statutory benefits to which the claimant was entitled?**
- 10. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 8 (page 16 of the Order) which state in part that the claimant's testimony regarding his description of the accident was not credible?**
- 11. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 9 (page 16 of the Order) in its entirety as they are contrary to the greater weight of the evidence?**
- 12. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 10 (page 16 and 17 of the Order) that the medical evidence showed that the Claimant's medical condition was not causally related to the accident?**
- 13. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 11 (page 17 of the Order) which finds that there was no injury by accident based upon the testimony of Lowell Simpkins?**
- 14. Did the Commissioner err IN FINDING AS A FACT the allegations of paragraph 12 (page 17 of the Order) which states that the greater weight of the evidence supports that allegation that: 1) the labral tear was not related to the accident; 2) could not have been caused in the way described by the claimant and; 3) Dr. Thesing's opinion and other medical evidence cited supported the denial of the claim?**
- 15. Did the Commissioner err in FINDING AS A FACT the allegations of paragraph 13 (page 17 of the Order) which states that the claim is not compensable and the claimant not entitled to benefits under the Worker's Compensation Act?**
- 16. Did the Commissioner err in CONCLUDING AS A MATTER OF LAW paragraphs 9 and 10 of the CONCLUSIONS OF LAW on page 18 which state/conclude: 1) that there was no accident and; 2) claimant was not entitled to benefits; and 3) that the claimant did not sustain his burden of proof?**
- 17. Did the Commissioner err in FINDING AS A FACT paragraph 6 of page 11 that the claimant failed to show up for his next scheduled appointment with Dr. Bethea when the record clearly indicates that the carrier denied the claim and benefits were cancelled?**
- 18. Did the Commissioner err in failing to award the compensability of all body parts injured in this accident to include but not be limited to the neck, both shoulders/upper extremities, and back?**

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BERNARD LEE,)
)
Claimant,)

W.C.C. File No. 0906951

vs.)

CERTIFICATE OF SERVICE BY MAIL

BONDEX,)
)
Employer/Defendant.)

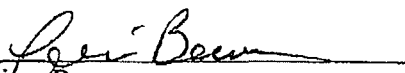
The undersigned employee of *Mickle & Bass, LLC* does hereby certify that she has served a copy of the below referenced document(s) in the above captioned case on the below referenced individuals, entity, employer/carrier by depositing the same by first class postage in the United States mail on the 12th day of January, 2011.

Documents served: Form 30

Parties served:

Ms. Virginia Crocker
Judicial Director
SC Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

E. Ros Huff, Jr., Esquire
Huff Law Firm, LLC
P.O. Box 1935
Irmo, SC 29063


Jaime Bacon

Columbia, South Carolina

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0906951
Carrier File # 564551282
Carrier Code # 372
Employer FEIN _____

Bernard Lee 251-45-2204
Claimant's Name SSN
172 Old Cherokee Indian Road Graniteville SC 29829
Address City State Zip
803-663-0560 803-663-6693
Home Phone Work Phone

Southern Felt d/b/a Bondex
Employer's Name
1695 Edgefield Road North Augusta SC 29860
Address City State Zip
Great American Alliance Insurance
Insurance Carrier

E. Ros Huff, Jr. (803) 252-2232
Preparer's Name Phone #

The date of injury reported on the Form 12A is: 06/02/09
Check applicable section(s). The employer's representative requests a hearing to:
 I. Stop payment of compensation. Compensation payments are current as of _____ date and shall continue until _____ date otherwise ordered or until a Form 17 is signed by the claimant. A Form 17 was offered and refused on _____ date

The basis of the stop payment hearing is (check one):

- (a) The authorized health care provider states the claimant has reached maximum medical improvement.
- (b) The authorized health care provider states the claimant is able to return to the same or other suitable job and has assigned an impairment rating, if any, and the same or suitable job has been offered to the claimant.
- (c) The authorized health care provider states the claimant is unable to return to the same or other suitable job and has assigned an impairment rating, if any.

II. Terminate temporary compensation suspended per R.67-505. Date suspended: _____

The basis for suspension of benefits is (check one):

- (a) The claimant refuses medical treatment.
- (b) The employer states the claimant is working, has worked for at least fifteen calendar days, and the claimant refuses to sign the Form 17. Requesting: Informal Conference Hearing

III. Pay compensation in the amount of \$ _____ To be determined, based on the following grounds: 5% impairment to the spine by W. Daniel Westerkam, MD on 6/15/10.

IV. Request Credit for overpayment of temporary compensation.

V. Reduce Payment of compensation from \$ _____ to \$ _____, based on the following grounds:

Compensation payments are current as of _____ date and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Ann M. Mickle, Esquire
Mickle & Bass, LLC 930 Oakland Avenue PO Box 10751 Rock Hill, SC 29731

On the 09th day of July, 2010 by first class postage, _____ certified mail, _____ personal service.

E. Ros Huff, Jr.
E. Ros Huff, Jr., Esquire-Preparer's Signature

Attorney for Employer/Carrier July 9, 2010
Title Date

Huff Law Firm, Post Office Box 1935, 7244 Woodrow Street, Irmo, South Carolina 29063
Address

The claimant may respond by writing the preparer at the address above and filing a copy of the response with the Commission's Judicial Department at the address at the top of the form. Refer to R.67-208, R.67-211, R.67-505, R.67-506, and R.67-601 - R.67-616. Questions about the use of this form should be directed to the Judicial Department at (803) 737-5675.

FILE

REHABILITATION and GERIATRIC SERVICES
COLUMBIA, SC
INDEPENDENT MEDICAL EXAMINATION

PATIENT NAME: BERNARD LEE
MR#:

DATE: 06/10/2010
RM#:

DATE OF INJURY: 06/02/2009

SOCIAL SECURITY NUMBER: 251452204

EMPLOYER: Bondex

CLAIM NUMBER: 564551282

DATE OF BIRTH: 04/30/1980

HISTORY OF PRESENT ILLNESS: Mr. Lee is a 30-year-old gentleman who was working for Bondex and was attempting to position a hood along with three other gentlemen while at work on 6/02/2009. The hood apparently weighs anywhere between 300-700 pounds. A forklift is supposed to position the hood, but there apparently was some problem with the forklift. There was some indication that the hood struck the patient's left shoulder and neck. It is unclear with what amount of force this occurred. Subsequently the patient complained of severe pain and was seen at the University Hospital and underwent an evaluation. He had x-rays which were essentially negative and was given some pain medications. The patient subsequently followed up at North Augusta Urgent Care with Dr. Broder and was started in physical therapy and given Naprosyn. Naprosyn apparently caused some drowsiness. The patient had followup visits with North Augusta Urgent Care. He was instructed to take Tylenol during the day and Naprosyn at night. The patient was placed on light duty. The patient complained of pain in the neck and shoulder region radiating down the arm. The patient had very limited range of motion. Notes from Sports Plus Physical Therapy were reviewed, as well as from North Augusta Urgent Care. The patient had open MRI of the shoulder which showed no tear in the rotator cuff. There was some acromioclavicular joint arthropathy with mild impingement and some bicipital tendonitis. The patient continued with Sports Plus Physical Therapy without any significant improvement and started to complain of some headaches, as well as the right shoulder hurting. Eventually the patient was referred to Columbia Orthopedic Specialists. The patient's diagnosis was impingement syndrome. The patient also was seen at Margaret Weston Community Health Center by Dr. Sylva Al-Soudi. The patient was diagnosed with muscle spasm and bursitis. He also was seen by Dr. Shannon, who noted the patient to have pain in the shoulder and neck region and frequent headaches. He also had some indication of depression. The patient had an IME done by Dr. Charles Thomas and MRIs of the cervical and thoracic spine were then ordered. The results were reviewed and there were no significant abnormalities noted. The patient presents today complaining of severe pain in the shoulder and arm region with very limited range of motion and weakness. The patient does not take any pain medications at this point. He is no longer participating in a rehab program. He has not worked even light duty since 7/28/2009.

PAST MEDICAL HISTORY: Significant for hypertension.

SOCIAL HISTORY: The patient denies any tobacco, alcohol or drug use. He used to smoke.

FAMILY HISTORY: Noncontributory.

REVIEW OF SYSTEMS: The patient denies fevers, chills, night sweats, chest pain, shortness of breath, nausea or vomiting. He does occasionally have some numbness and tingling going down the arm. The pain is mostly in the shoulder, scapula and neck region. He occasionally has headaches.

PATIENT NAME: BERNARD LEE

INDEPENDENT MEDICAL
EXAMINATION

MR#:

Page 2

PHYSICAL EXAMINATION:

General: The patient is 6 feet tall. He weighs 190 pounds. He is well-developed, well-nourished gentleman in no acute distress.

HEENT: Pupils equal, round and reactive to light. Extraocular movements intact.

Neck: Supple. There is some tenderness along the left trapezius and along the medial border of the left scapula and supraspinatus muscle. There is some tenderness over the left subacromial bursa. The right shoulder has full range of motion. The left shoulder can only abduct 10 degrees, flex 10 degrees. No internal or external rotation noted.

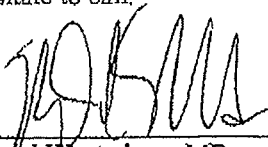
Chest: Clear to auscultation.

Cardiac: Regular rate and rhythm.

Abdomen: Soft, nontender, nondistended with positive bowel sounds.

Neurologic: Sensation is intact through both upper extremities to light touch. DTRs are 2+ and symmetric at the biceps, 1+ at the brachial radialis and triceps bilaterally. Manual muscle test reveals wrist extension, grip and triceps with 5/5 strength. The patient has no movement at the biceps or at the deltoid. The patient also has limited left shoulder shrug.

IMPRESSION: This is a 30-year-old gentleman that had an injury that occurred on 6/02/2009. He has received appropriate medical treatment by several different physicians. The workup to date has been negative. To a reasonable degree of medical certainty, the patient appears to have myofascial pain involving the left shoulder, neck and scapular region. I cannot explain the severe limited range of motion and weakness in the biceps and deltoid from a physiological standpoint. I think the patient should at this time continue a home exercise program working with wall walks and range of motion, as well as nonsteroidal anti-inflammatories. This can be over-the-counter ibuprofen. I think the patient can return to work. I would recommend that he not lift the left upper extremity above shoulder height, but he should have no restrictions with the right upper extremity or lower extremities. He can sit and stand and walk a full eight hour day. He should not lift anything greater than 10 pounds with the left upper extremity. The patient appears to have an impairment based on the American Medical Association Guide to Evaluation of Permanent Impairment 5th Edition, page 392, diagnostic related estimate category for the cervical spine II on table 15-5. This would give him a 5% spine impairment. If there are any questions regarding this recommendation or if there is additional information which may change or alter these findings, please do not hesitate to call.



W. Dantel Westerkam, MD
Physical Medicine and Rehabilitation

6/15/10 09/10
Date/Time

WW/am1885

dd: 06/13/2010 03:20 PM

dt: 06/14/2010 12:24 AM

JobID: 2590023

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



WC Case #: 0906951
Carrier File #: 564551282
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Bernard Lee SSN: 251-45-2204 Employer's Name: Southern Felt d/b/a Bondex
Address: 172 Old Cherokee Indian Road Address: 2 Maxwell Drive
City: Graniteville State: SC Zip: 29829 City: Trenton State: SC Zip: 299860
Home Phone: 803-663-0560 Work Phone: () - Insurance Carrier: Great American Insurance
Date of Injury: 6/2/09
Preparer's Name: E. Ros Huff, Jr. Law Firm: Huff Law Firm, LLC Preparer's Phone #: (803) 252-2232

Date of Injury or Illness: 6/2/09

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

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Admit an incident but deny injury and demand proof as to nature and extent of injuries.
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** 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:
This issue to be determined by SCWCC.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
Form 50 is insufficient to admit and demand proof. Form 50 only requests an accounting and does not specifically set forth dates claimant is entitled to TTD.
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:

9. It is **Admitted / Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 568.61 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: At this time no affirmative defenses are known, however, the defendants reserve the right to amend and raise any and all defenses once discovered.
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: Ann Mickle, Esquire

Address: Mickle & Bass, LLC, 930 Oakland Avenue, PO Box 10751, Rock Hill, SC, 29731

on the 17th day March, 2010 by first class mail personal service certified mail electronic mail

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

E. Ros Huff, Jr. Attorney for Employer/Carrier roshuff@colalaw.com March 17, 2010
Preparer's Signature Title Email Date

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

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing

FILE



Ann McCrowey Mickle*
J. Alan Bass*

Tyler A. Bathrick
Gretchen Rogers

930 Oakland Avenue
Rock Hill, SC, 29730
803-980-0083
803-328-2525 (fax)

February 16, 2010

1116 Blanding Street
Columbia, SC, 29201
803-929-0029
803-929-1024 (fax)

Mr. Virginia Crocker
Judicial Director
SC Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

1039 44th Avenue North
Suite 102
Myrtle Beach, SC, 29577
843-839-2501
843-839-2507 (fax)

Re: Bernard Lee v. Bondex
Our file: WC2009-252 RH
SCWCC file: 0906951
Hearing Requested: Yes

Dear Ms. Crocker:

Enclosed find the original and one copy of the Form 50 in the above referenced case that I am filing with the Commission and serving upon E. Ros Huff, Esquire with a certificate of service by mail. Please note that we are requesting a hearing in this matter. By copy of this letter, I am also advising my client of the same. I have also enclosed our check in the amount of \$25.00 to cover the filing fee.

Please return a filed copy of this document in the self addressed stamped envelope provided for your convenience. If you have any questions in these regards, please do not hesitate to contact me. With kindest personal regards, I am,

Very truly yours,

MICKLE & BASS, LLC.

By: 
Ann McCrowey Mickle

AMM/emw
Enclosures
cc: E. Ros Huff, Esquire ✓
Mr. Bernard Lee

*former SC Workers' Compensation Commissioner
www.MickleAndBass.com

SC Workers' Compensation Commission

1612 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715



WCC File #: 0906951

Carrier File #: _____

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Bernard Lee SSN: 251-45-2204 Employer's Name: Bondex
 Address: 172 Old Cherokee Indian Road Address: 2 Maxwell Drive
 City: Graniteville State: SC Zip: 29829 City: Trenton State: SC Zip: _____
 Home Phone: (803) 663 - 0560 Work Phone: () - Insurance Carrier: Great American Alliance Ins. Co.
 Preparer's Name: Ann McCrowey Mickle Law Firm: Mickle & Bass, LLC Preparer's Phone #: (803) 980 - 0083

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 6-2-09

- Injury Illness Repetitive Trauma
- 1a. The claimant sustained an injury to neck, left shoulder, left arm and whole spine (cervical, thoracic, lower back) with radiating pain (Part(s) or Body Injured) on 6-2-09 (month/day/year) in Edgefield county, state of South Carolina.
- 1b. Body part(s) affected are: neck, left shoulder, left arm and upper, lower, mid back with radiating pain.
Briefly describe how the accident occurred: Instructed to lift 400 lb piece of equipment.
- 2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
- 3. The relationship of employer and employee existed at the time of the injury.
- 4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
- 5. Notice of the accidental injury was given to the Employer on 6-2-09 (month/day/year) in the following manner: verbally.
- 6. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination for treatment for: See 1(a) and (b)
- 7. Due to injury, the claimant requests temporary total benefits because of lost compensable time from work and wages for the period of: (claimant request an accounting)
- 8. Due to the Injury, the Claimant had permanent disability of the following nature and extent (check one):
 (1) General Disability: Total (2) Specific Disability: Total
 (3) Wage Loss Partial Partial
- 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____
- 10a. At the time of the injury, the Claimant was paid weekly wages of (Claimant requests a Form 20), 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: Bondex.
- 11a. Further grounds or unusual aspects of claim: _____
- 11b. List names and addresses of all physicians or other medical specialties who have seen or treated the Claimant as a result of the accident: University Hospital, 1350 Walton Way, Augusta, GA 30901; Dr. Jeffrey Broder, North Augusta Urgent Care, 1201 W. Avenue, N. Augusta, SC 29841; Dr. James Bethia, Columbia Orthopaedics Specialists, 1301 Taylor Street, Suite 3-0, Columbia, SC 29202; Aiken Regional Medical Centers, 302 University Parkway, Aiken, SC 29801; Sports Plus Physical Therapy, 170 University Parkway, Aiken, SC 29801; Dr. Sylvia Al-Soudi, Margaret J. Weston Community Health Centers, 1211 University Lane, Aiken, SC 29801; Dr. Timothy Shannon, Carolina Musculoskeletal Institute, 410 University Parkway, Suite 1000, Aiken, SC 29801; University Open MRI, 3610 Wheeler Road, Augusta, GA 30909.
- 11c. To the best of your knowledge, did you have any prior permanent disability: none known at this time. If yes, describe: _____
- 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. I am filing a claim. I am not requesting a hearing at this time.
- 13b. I am requesting a hearing. A \$25 fee is required.
- 14. Estimated time needed for hearing: 30 minutes

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

[Signature]
Preparer's Signature

Attorney for Claimant
Title

amickle@mickleandbass.com
Email

2-15-10
Date

[Handwritten]
Mickle
2/15/10
[Signature]

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

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

STATE OF SOUTH CAROLINA)

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

COUNTY OF EDGEFIELD)

BERNARD LEE,)

W.C.C. File No. 0906951

Claimant,)

vs.)

CERTIFICATE OF SERVICE BY MAIL

BONDEX,)

Employer/Defendant.)

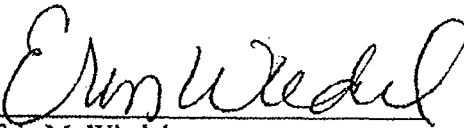
The undersigned employee of *Mickle & Bass, LLC* does hereby certify that she has served a copy of the below referenced document(s) in the above captioned case on the below referenced individuals, entity, employer/carrier by depositing the same by first class postage in the United States mail on the 16th day of February, 2010.

Documents served: FORM 50

Parties served:

Ms. Virginia Crocker
Judicial Director
SC Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

E. Ros Huff, Jr., Esquire
Huff Law Firm, LLC
P.O. Box 1935
Irmo, SC 29063


Erin M. Wiedel

Rock Hill, South Carolina



WCC File #: 0906951
 Carrier File #: 564551282
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: Bernard Lee SSN: 251-45-2204 Employer's Name: Southern Felt d/b/a Bondex
 Address: 172 Old Cherokee Indian Road Address: 2 Maxwell Drive
 City: Graniteville State: SC Zip: 29829 City: Trenton State: SC Zip: 299860
 Home Phone: 803-663-0560 Work Phone: () - Insurance Carrier: Great American Insurance
 Date of Injury: 6/2/09
 Preparer's Name: E. Ros Huff, Jr. Law Firm: Huff Law Firm, LLC Preparer's Phone #: (803) 252-2232

Date of Injury or Illness: 6/2/09

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

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Admit an incident but deny injury and demand proof as to nature and extent of injuries.
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** 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:
This issue to be determined by SCWCC.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
Form 50 is insufficient to admit and demand proof.
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:

9. It is **Admitted / Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: At this time no affirmative defenses are known, however, the defendants reserve the right to amend and raise any and all defenses once discovered.
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: Tyler Bathrick, Esquire

Address: Mickle & Bass, LLC, 930 Oakland Avenue, PO Box 10751, Rock Hill, SC, 29731
 on the 27th day of August, 2009 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: Attorney for Employer/Carrier Email: roshuff@colalaw.com Date: 8.31.09

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.

MICKLE & BASS, LLC.

Ann Mickle
Former S. C. Workers' Compensation
Commissioner
1996 - 2002

J. Alan Bass
Former S. C. Workers' Compensation
Commissioner
2002 - 2008

Associates:
Tyler Bathrick

COLUMBIA:
1116 BLANDING STREET
2ND FLOOR
COLUMBIA, SC 29201
(803) 929-0029

ROCK HILL:
980 OAKLAND AVENUE
P.O. BOX 10761
ROCK HILL, SC 29731
(803) 980-0083
(803) 928-2525 FAX

MYRTLE BEACH:
1089 4TH AVENUE NORTH
SUITE 108
MYRTLE BEACH, SC 29577
(843) 839-2501
(843) 839-2607 FAX

Reply to: Rock Hill office

July 30, 2009

The Honorable Virginia L. Crocker
Judicial Director
SC Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

Re: Bernard Lee v. Bondex
Our file: WC2009-252 RH
SCWCC file: 0906951
Hearing Requested: Yes

Dear Ms. Crocker:

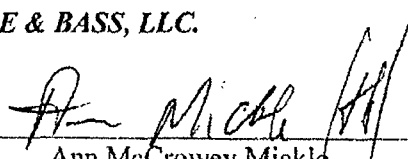
Enclosed find the original and one copy of a Form 50 in the above-referenced case that I am filing with the Commission and serving upon E. Ros Huff, Esquire with a certificate of service by mail. Please note that we are **requesting a hearing** in this matter. By copy of this letter, I am also advising my client of the same. I have also enclosed our check in the amount of \$25.00 to cover the filing fee.

Please return a filed copy of this document in the provided self addressed envelope for our records. If you have any questions in these regards, please do not hesitate to contact me. With kindest personal regards, I remain,

Yours very truly,

MICKLE & BASS, LLC.

By: _____


Ann McCrowey Mickle

AMM/emw
Enclosure: Form 50
cc: E. Ros Huff, Esquire
Mr. Bernard Lee, Esquire

SC Workers' Compensation Commission

1612 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715



WCC File #: 0906951
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Bernard Lee SSN: 251-45-2204 Employer's Name: Bondex
Address: 172 Old Cherokee Indian Road Address: 2 Maxwell Drive
City: Graniteville State: SC Zip: 29829 City: Trenton State: SC Zip: _____
Home Phone: (803) 663 - 0560 Work Phone: () - - Insurance Carrier: Great American Alliance Ins. Co.
Preparer's Name: Ann McCrowey Mickle Law Firm: Mickle & Bass, LLC Preparer's Phone #: (803) 980 - 0083

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 6-2-09

- Injury Illness Repetitive Trauma
- 1a. The claimant sustained an injury to neck, left shoulder, left arm and upper, lower, mid back with radiating pain (Part(s) or Body Injured) on 6-2-09 (month/day/year) in Edgefield county, state of South Carolina.
- 1b. Body part(s) affected are: neck, left shoulder, left arm and upper, lower, mid back with radiating pain.
Briefly describe how the accident occurred: attempting to lift 400 lb. piece of metal machine.
- 2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
- 3. The relationship of employer and employee existed at the time of the injury.
- 4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
- 5. Notice of the accidental injury was given to the Employer on 6-2-09 (month/day/year) in the following manner: verbally.
- 6. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination for treatment for: See 1(a) and (b)
- 7. Due to injury, the claimant requests temporary total benefits because of lost compensable time from work and wages for the period of: (claimant request an accounting)
- 8. Due to the injury, the Claimant had permanent disability of the following nature and extent (check one):
 (1) General Disability: Total (2) Specific Disability: Total
 (3) Wage Loss Partial Partial
- 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____
- 10a. At the time of the injury, the Claimant was paid weekly wages of (Claimant requests a Form 20), 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: Bondex.
- 11a. Further grounds or unusual aspects of claim: _____
- 11b. List names and addresses of all physicians or other medical specialties who have seen or treated the Claimant as a result of the accident: N. Augusta Urgent Care, 1201 W. Avenue, N. Augusta, SC 29841; University Hospital, 1350 Walton Way, Augusta, GA 30901; Dr. James Bethea, Columbia Orthopaedics Specialists, 1301 Taylor Street, Suite 3-0, Columbia, SC 29202
- 11c. To the best of your knowledge, did you have any prior permanent disability: none known at this time If yes, describe: _____
- 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. I am filing a claim. I am not requesting a hearing at this time.
- 13b. I am requesting a hearing. A \$25 fee is required.
- 14. Estimated time needed for hearing: 30 minutes

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

Ann Mickle
Preparer's Signature

Attorney for Claimant
Title

amickle@mickleandbass.com
Email

7-30-09
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

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

Handwritten signature/initials

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BERNARD LEE,)
)
Claimant,)

W.C.C. File No. 0906951

vs.)

CERTIFICATE OF SERVICE BY MAIL

BONDEX,)
)
Employer/Defendant.)

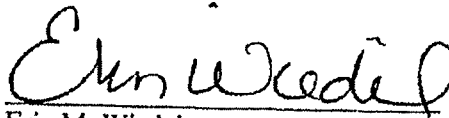
The undersigned employee of *Mickle & Bass, LLC* does hereby certify that she has served a copy of the below referenced document(s) in the above captioned case on the below referenced individuals, entity, employer/carrier by depositing the same by first class postage in the United States mail on the 30th day of July, 2009.

Documents served: FORM 50

Parties served:

Ms. Virginia Crocker
Judicial Director
SC Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

E. Ros Huff, Jr., Esquire
Huff Law Firm, LLC
P.O. Box 1935
Irmo, SC 29063


Erin M. Wiedel

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER - 0906951

BERNARD D. LEE,)	
)	
CLAIMANT,)	FULL COMMISSION
)	
VS.)	HEARING BEFORE
)	
BONDEX, INC.,)	PANEL B
)	
EMPLOYER,)	
)	
GREAT AMERICAN ALLIANCE)	
INSURANCE COMPANY,)	
)	
CARRIER,)	
)	
DEFENDANTS.)	
)	

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE NADINE A. GARRETT, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
2:48 PM ON MAY 16, 2011, AT SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION, 1333 MAIN STREET, COLUMBIA,
SOUTH CAROLINA.

NADINE A. GARRETT
COURT REPORTER
POST OFFICE BOX 1205
IRMO, SOUTH CAROLINA 29063
803-834-3410

APPEARANCES

FOR THE APPELLANT/CLAIMANT

ANN MCCROWEY MICKLE, ESQUIRE
MICKLE & BASS, LLC
1116 BLANDING STREET, SECOND FLOOR
COLUMBIA, SC 29201
(803) 929-0029

FOR THE RESPONDENT/CARRIER

E. ROS HUFF, JR., ESQUIRE
HUFF LAW FIRM, LLC
POST OFFICE BOX 1935
IRMO, SOUTH CAROLINA 29063
(803) 252-2232

NADINE A. GARRETT
COURT REPORTER
POST OFFICE BOX 1205
IRMO, SOUTH CAROLINA 29063
803-834-3410

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NADINE A. GARRETT
COURT REPORTER
803-834-3410

1 COURT REPORTER: Today's date is May 16, 2011.
2 This is South Carolina Workers' Compensation Case No.
3 0906951. This is the case of Bernard Lee versus
4 Bondex, Inc. And Great American Alliance Insurance
5 Company is the Carrier.

6 The Appellate is the Claimant, represented by
7 Attorney Ann Mickle. The Respondent is represented by
8 Attorney Ros Huff.

9 Each side is allowed ten minutes for oral
10 argument and the Appellant three minutes three minutes
11 in reply. You are requested to argue the grounds of
12 exception and stay within the record.

13 COMMISSIONER WILLIAMS: Ms. Mickle.

14 MS. MICKLE: May it please the Court, Your Honor.
15 These are the documents that I'll be referencing from
16 the Commission file.

17 COMMISSIONER ROCHE: Thank you.

18 MS. MICKLE: You are welcome. May it please the
19 Court, Your Honors. Ann Mickle on behalf of the
20 Claimant, Bernard Lee in this case.

21 I am here because I am baffled, quite frankly, by
22 the decision in this case as I do not believe that
23 it's based on the evidentiary record. And that's what
24 I'd like to review with you, the evidentiary record.
25 But in order to do that and to obtain some sense of

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1 clarity in terms of understanding the decision, I'm
2 going to set it up.

3 The Claimant was there represented - Mr. Lee was
4 there represented by me. Actually, we were in this
5 room. The Defendants were represented by Mr. Huff.
6 His representative at the table was Ms. Napier, which
7 becomes important later. We had one witness. We
8 called one witness, the Claimant. They called one
9 witness, the Claimant's supervisor. And then the
10 fourth person I think that was in the room was
11 Mr. Steve Anthony, the adjustor, who remained in the
12 room throughout the entire preceding.

13 This, to me, was a pretty straightforward
14 Workers' Compensation case. The Claimant was injured
15 on June 2, 2009. At the time he was working for
16 Bondex. He came in I believe on the second shift,
17 which starts at 8:00 at night. They were reassembling
18 a machine that had been torn apart by the previous
19 shift. The hood on the machine - there weren't many
20 women that worked in this plant because all of the
21 labor was heavy. You've got some pictures in the file
22 of the machine that I'm talking about. It ran the
23 length of this building. But the part that they were
24 working on had a hood that was almost the size of this
25 ceiling. And they were using a forklift to maneuver

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1 the hood in place and attach it to the number three, I
2 think, card machine.

3 My client, together with three of his coworkers,
4 were trying to attach the hood by maneuvering it while
5 the forklift you was carrying, you know, the majority
6 of the weight. My client testified that the forklift
7 was malfunctioning, that the hydraulic fluid was
8 squirting out of it and was causing the hood to go up
9 and down. And so, he and the other workers were
10 taking the weight of this forklift - I'm sorry, the
11 hood, which by testimony there was a range of 500, 800
12 1500, 2000 pounds. Nobody knew, but that's where you
13 got the picture in there of the hood of how much this
14 thing weighed. I subpoenaed the records. The records
15 did show that the hydraulic lift was malfunctioning,
16 that it was repaired, that it cost \$1350 or something
17 to repair it and the dates matched up. And so, he
18 testified that he reported that his shoulder, neck,
19 back, mainly his left shoulder were injured while they
20 were doing this maneuver.

21 If you will turn to the third page of our
22 exhibits, you will see the accident report. He
23 properly reported the accident, as he's required to
24 do, to the supervisor, who was the only other witness
25 who testified, Lowell Simpkins. Lowell Simpkins gave

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1 him - and you noted on the treatment, it says, "I gave
2 him Goody Powder, rub with this stuff, this
3 Biofreeze." He gave him packs of that. He also says
4 he sent him to the hospital at 1:45 a.m. So, there is
5 a proper accident report.

6 We get to the emergency room department. The
7 things that we look for, indicia credibility, did he
8 report it at the emergency room that he was injured on
9 the job. "Patient states that a hood from a machine
10 fell and hit his left shoulder." That's highlighted.
11 On down the page, "Patient was struck by a hood."
12 That's highlighted. He was treated in the emergency
13 room for the left shoulder and the injuries that he
14 sustained that were reported in the accident report.

15 The employer then authorizes Dr. Broder, that's
16 North Augusta Urgent Care. I've included that report.
17 This is the report of the first visit. Company
18 contact called. They authorized the treatment for the
19 left arm injury. Second page is the doctor's
20 handwritten notes. "Injured left arm Wednesday at
21 work." The treatment recommendations are made. He
22 sends him to therapy. He gets no better. Then the
23 Carrier authorizes - he authorizes Dr. Bethea.

24 Dr. Bethea takes a history again, work related at
25 work June 2, which he injured his left shoulder, his

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1 neck and his lower back. Dr. Bethea, who says he was
2 kindly sent here for a consultation, made some
3 recommendations to include on the following page -
4 well, his impression was impingement syndrome, left
5 shoulder, neck and back pain. We're moving right
6 along. He also recommends that he continue with
7 physical therapy for the left shoulder. He also gives
8 him restrictions. It is at that point in the case
9 that the Carrier just denies the claim.

10 I then file for a hearing. While we are waiting
11 on the hearing, Claimant continues to work. He works
12 up until August 18, 2009, which is the form that you
13 see here. While he continues to work, he is getting
14 treatment on his own through the - I think it's called
15 the Margaret J. Weston Community Health Center. He
16 goes to Margaret J. Weston, then he's referred to
17 Dr. Ty Carter. And he starts getting treatment on his
18 own. He gets this restriction from Dr. Carter, which
19 includes - you see the restrictions regarding lifting.
20 But it also includes a restriction regarding operating
21 hazardous equipment. He takes that restriction in to
22 Ms. Napier, who is sitting at the table with the
23 Defendants as their employer rep. Ms. Napier then
24 says to him, "Let me talk to the vice president of the
25 company. With this restriction I'm not sure that we

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1 can accommodate you." I've got pages in the
2 transcript, which I have also included here where
3 there was nobody - Ms. Napier never refuted this
4 conversation.

5 So, he goes out of work per Ms. Napier's
6 recommendations. He continues to treat. We are
7 waiting on a hearing. Dr. Broder of North Augusta had
8 already ordered an MRI. Strangely enough it was an
9 open MRI. My argument is - and even that open MRI,
10 he's not overweight, he's about 5'11". His weight is
11 also in the record, maybe 150 pounds, 160. No reason
12 really for an open MRI. But it's in the File. It's
13 ordered by Dr. Broder, their company doctor. It shows
14 impingement.

15 We move right along and we are moving towards a
16 hearing. At the same time he's going on his own to
17 Community Health Center. They see open MRI, a guy
18 that's still having serious problems with the left.
19 They note "Patient is not claustrophobic. Why are we
20 doing this open MRI?" They also suggest on the next
21 page "MRI should be with contrast."

22 So, we get to a hearing. This has a large
23 procedural history. The first hearing is with
24 Commissioner Lyndon. At that hearing - we actually go
25 to a hearing. Commissioner Lyndon pre-tries the case.

NADINE A. GARRETT
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1 As a result of that pretrial, an order is issued which
2 says - a consent order, "Defendants agree to pay \$5000
3 and they also agree to provide the MRIs that were
4 recommended by" - they got an IME after Dr. Bethea.
5 They got an IME by a Dr. Charles Thomas. That IME
6 said, "We need some more diagnostic MRI's to the low
7 back and to the neck." Made some recommendations
8 about the shoulder. Never once was compensability
9 called into question, causation called into question.
10 That's their report, their IME. It's in the file.
11 So, we get this consent order. They are then required
12 to provide the MRI. They do after we do another Form
13 40, sort of forcing the issue after we have an order.

14 We then come back to, for the first time, try to
15 the case with Commissioner Wilkerson. One of the
16 requests that I was making with Commissioner Wilkerson
17 is for this MRI with contrast among other things,
18 compensability, temporary total, medical, all of those
19 things. But the MRI with contrast was one of the
20 requests. Commissioner Wilkerson said, "Well,
21 wouldn't this further define the issues? Wouldn't
22 this sort of be an up or down case based on the MRI?"
23 "Yes, Commissioner." The parties agree to do the MRI
24 with contrast for a better picture. He's not
25 claustrophobic. He's not overweight.

NADINE A. GARRETT
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1 The MRI comes back and the MRI shows, no
2 surprise, a labral tear consistent with the complaints
3 that he's been making all year around. Now, we have a
4 diagnostic tool that has confirmed a tear. The first
5 MRI confirmed impingement. The second MRI confirmed a
6 tear.

7 Then we - after we got that back, we reconvened
8 again for the hearing on the merits with Commissioner
9 Wilkerson. The parties are aligned, as we just
10 discussed. My client testifies, as I just mentioned
11 to you. He says that he was lifting this hood. I've
12 also included the invoice on the next page from the
13 hydraulic system.

14 COMMISSIONER WILLIAMS: Finish that last thought.

15 MS. MICKLE: And you've got the supervisor's
16 transcript testimony, page 152, the hydraulic fluid,
17 how it says that it was going - the hood was going up
18 and down. I will go back into that when -

19 COMMISSIONER WILLIAMS: Okay.

20 MR. HUFF: My I approach to hand my exhibits up,
21 please?

22 COMMISSIONER WILLIAMS: Sure.

23 MR. HUFF: Ann, I'm going to leave your copies on
24 your table here.

25 MS. MICKLE: Thank you, Ros.

NADINE A. GARRETT
COURT REPORTER
803-834-3410

1 MR. HUFF: You are welcome. Commissioners, if I
2 could, I would start off by saying that basically what
3 we had - and it was clear this is a denied claim. I
4 think it went to the issue of compensability, was
5 there an accident.

6 I'm going to kind of jump ahead a little bit.
7 There are medical questionnaires that were done by
8 both parties. Some questionnaires say it's causally
9 related to an accident. Other questionnaires say it's
10 not causally related to the accident. There's
11 multiple forms.

12 In this particular case it boiled down to
13 credibility. The parties asked that the Commissioner
14 listen carefully to the testimony. And when he gives
15 the order instruction sheet, if he would be so kind as
16 to address the issue of credibility. Commissioner
17 Wilkerson, who sat in on this hearing that took about
18 two and a half hours, it was a long hearing. I know
19 today you all have multiple hearings and the time is
20 limited. But he sat there for two and a half hours -

21 COMMISSIONER HUFFSTETLER: Time is not limited.

22 MR. HUFF: Pardon, sir?

23 COMMISSIONER HUFFSTETLER: Time is not limited.

24 You get all the time you need. If you tell us that
25 you need it, we will schedule it for you.

NADINE A. GARRETT
COURT REPORTER
803-834-3410

1 MR. HUFF: Yes, sir. Thank you. In this
2 particular case Commissioner Wilkerson was able to
3 look at the demeanor of the witnesses, the inflection
4 in their voices, if there were any pauses - he could
5 look at credibility. And this is what it boils down
6 to. It boiled down to credibility. Who did he
7 believe? And in his order instructions he said
8 specifically, "The parties want me to make a ruling on
9 credibility and I'm going to. I find that the
10 Claimant is not credible." He even said on one page
11 of the opinion here that this accident could not
12 happen the way he said it happened. It just couldn't
13 happen that way. He also, unfortunately for the
14 Claimant, came in front of a Commissioner that knew
15 about hydraulic equipment, farm equipment. And that's
16 what Wilkerson said, "I'm not an expert in it, but I'm
17 familiar with it." He heard the testimony.

18 The Claimant said that this piece of equipment
19 that was holding the hood - and the hood was not as
20 big as this room. I would say the hood is probably
21 honestly about the size of where the three of you all
22 are sitting. It's about that wide and from there to
23 the back of the wall and it fits down. He got a big
24 huge forklift dropping it down. Then when it drops
25 down, to bolt it down you have these holes that must

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1 match up so you can put a bolt in it. So, you had
2 people on each side with a rope and they were
3 shimmying it, moving it to get it to where they can
4 put the bolts in it. At no time did anybody lift this
5 other than the equipment. But this man said with
6 three people standing within 20 or 30 feet of him that
7 this hood came down, hit him between the neck and
8 shoulder, and pinned him against the piece of
9 equipment for a period of time. He said what he
10 called - even though he says I don't know the exact
11 weight, he said it's between 1500 pounds to 2000
12 pounds. There's other testimony that says 7- or 800
13 pounds. But he said, "While I'm on the ladder with
14 this piece of equipment on me with one hand, with
15 superhuman strength, I picked it off my body." And
16 the Commissioner said, "Hmm." And the Commissioner
17 even questioned him, "Are you saying that you did this
18 with one hand and it was 1000, 1500 pounds? He said,
19 "Yes, it was."

20 Now what's also interesting, if you look at the
21 medical records that I handed up to you. And it's
22 under - it's on page 3 of the APAs. If you look at
23 the examination that was done by the doctors
24 neurologically, "Symmetric reflexes, normal strength
25 and tone, good coordination, multiple skeletal, nerve

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1 cervical spine exam was full range of motion, no
2 boning or significant soft tissue tenderness, no
3 significant muscle spasms. Skin, the skin over the
4 neck is intact without evidence of laceration or
5 significant abrasion. Soft tissue, the rest of the
6 soft tissue exam is normal." There was no physical
7 finding when he went to the hospital and claimed -
8 anybody can claim they got hurt on the job. People do
9 it all the time. Some say they got hurt on the job
10 and they're really were hurt on the job. Some say
11 they were hurt on the job when they were not hurt on
12 the job for whatever reason. They may have a
13 preexisting condition. They may need surgery. I
14 don't know.

15 But this Commissioner looked at all the evidence.
16 The Claimant said that this piece of equipment at the
17 hearing fell on him. He uses the words fell on him.
18 But if you look at his Form 50, and I brought this up
19 at the hearing, he says nothing about any equipment
20 falling on him. The story in the Form 50 is that,
21 "I'm lifting this piece of equipment." But at the
22 hearing, "It fell on me is when I got hurt." He goes
23 to the doctor and says some equipment fell on him.

24 But the interesting thing is Commissioner
25 Wilkerson even asked certain questions to see that he

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1 was clear. And listening to the forklift driver,
2 which is on page 140 through about 149, Mr. Simpkins,
3 he had been there for two years, all the weight was on
4 the forklift strap holding the hood. Now, the
5 Claimant's testimony went both ways. He said at all
6 times the forklift was holding all the weight. He
7 said that. Another time he said, "No, it wasn't
8 holding all the weight. We were holding all the
9 weight. Me and two other men. Three of us were
10 shimmying it and lifting it and moving it. All the
11 weight was off the forklift." I think the
12 Commissioner said if it weighed 1500 to 2000 pounds,
13 three people couldn't move it. If it weighed 800
14 pounds, could three people move it? I don't know.

15 But if you are sitting there with a forklift -
16 and this man said, yes, I noticed later on that there
17 was some - after this accident happened. You see this
18 thing allegedly happened and then they went to break
19 and he came back. He said, "After that I noticed that
20 there was some hydraulic fluid leaking." But when
21 it's leaking a little bit, doesn't mean it's not
22 working. He said at all times this machine was
23 working. And if it felt like it wasn't working as
24 strong as it should, I just hit the gas and the gas
25 keeps it working. He said this thing never fell. It

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1 was never dropped. It never hit him.

2 Not only that, he said, there's three men
3 standing within 20 or 30 feet of him. I'm on the
4 forklift. And I asked him, "Did you hear anybody
5 scream or yell out like they got hurt?" It's on Page
6 145. "We lowered him in place and wiggled the arms to
7 get them to go into this groove to let the bolts go
8 through." "At any time while you were doing that, did
9 you hear any type of scream or yell from Mr. Lee that
10 would indicate that the hood fell on him?" "No."
11 "Did you hear anybody scream or yell out like they
12 were hurt?" "No, never heard anything. They did
13 their work."

14 And then it boils down to credibility. Do you
15 believe that he could lift that 1000 pound, 2000 pound
16 hood with one hand? If it really fell on him, not
17 only did it fall on him, it pinned him to the
18 equipment, don't you think the man would have yelled
19 out and said I need help? There's no yelling out.
20 When he goes to the emergency room, there's nothing
21 physically they can - outwardly they can find anything
22 wrong with this man.

23 It boils down to credibility. And this
24 Commissioner sat there and heard this lengthy, I think
25 it's like a 180, 200 page transcript, heard all the

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1 testimony, had an opportunity to look at their
2 demeanor and even asked questions. Let me see if I
3 can find that one thing here. Bear with me. I think
4 I can find it pretty quickly. I can't seem to find
5 that part of it. But there's a part where
6 Commissioner Wilkerson actually asked the questions
7 and even made the comment, "It can't happen the way
8 you said it happened, sir. It's just not that way."
9 So, that's basically our argument is credibility.

10 If I happen to find that page number, I will at
11 least, if you have no objection, let me just give you
12 the page number. And I will answer any questions you
13 all may have. Thank you.

14 MS. MICKLE: May it please the Court, Your Honor.
15 A credibility finding should never be used to justify
16 a result. Credibility findings should never be used
17 to justify a result. The evidence in the case should
18 be used to justify the result.

19 I would ask you to go to the transcript pages
20 that I handed up. His supervisor, Lowell Simpkins,
21 testified about the fluid shooting out of the machine
22 and that it would come down. That's page number 152.
23 My client testified that they had to push, pull,
24 maneuver this thing into place. The supervisor also
25 testified, transcript - this is the evidence.

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1 Credibility findings should be based on evidence, not
2 on the result you are seeking to get. The supervisor
3 also testified.

4 COMMISSIONER HUFFSTETLER: You said that three
5 times.

6 MS. MICKLE: Yes, sir.

7 COMMISSIONER HUFFSTETLER: You seem to be saying
8 that the Commissioner had an end result in mind.

9 MS. MICKLE: I'm baffled. And that's why I'm -

10 COMMISSIONER HUFFSTETLER: You said three times
11 you should not use credibility to get to a result.

12 MS. MICKLE: I believe that.

13 COMMISSIONER HUFFSTETLER: You seem to be saying
14 that the Commissioner had an answer in mind before he
15 heard the case. Is that what you are saying?

16 MS. MICKLE: No. I'm saying that credibility
17 should be based on the evidence.

18 And the second piece of evidence that I want you,
19 to base it on is the supervisor also testified that he
20 had worked with this gentleman for a year prior to
21 this accident and that there were no prior shoulder
22 complaints. And that's on page 171 of the transcript.
23 As it relates to - and those are evidentiary findings.
24 Credibility should be based on those types of things,
25 the supervisor's testimony of no prior shoulder

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1 injuries, the first report of injuries, which was
2 properly made, all the doctors' reports, which
3 indicate an injury, the second MRI, which was done
4 with contrast, which shows that there was a tear, the
5 hydraulic fluid, when I subpoenaed the personnel
6 records and I got those records showing that the thing
7 was - the forklift was malfunctioning.

8 What I'm asking for is a finding of
9 compensability for the left shoulder, reserve the
10 other body parts for further hearing. I'm asking for
11 medical treatment, all causally-related medical
12 treatment to be reimbursed. I'm asking for temporary
13 total from August 19, 2009 to the present based upon
14 my client's testimony that Ms. Napier sent him home
15 when he brought the work excuse that I've included in
16 here. Ms. Napier was here. She was the employer rep.
17 She did not - she could have been called. She was not
18 called. And so, the assumption is that her testimony
19 would have been supportive or favorable to us. So,
20 I'm asking that the temporary total start as of that
21 day. And I'm asking for the surgery that has been
22 recommended by multiple doctors.

23 We have four doctors that have said that after
24 reviewing the MRI, the second MRI, Dr. Thesing the
25 radiologist said he would defer on causation and that

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1 he would defer on that. He told Ros that causation
2 was in his favor. He said he would defer on causation
3 to the authorized treater. Dr. Carter said, "Yes,
4 causation." Dr. Thomas said, "Yes, causation." The
5 community healthcare doctor said, "Yes, causation."
6 Thank you.

7 MR. HUFF: It's Page 115 and 116 of the record.
8 Thank you.

9 COMMISSIONER WILLIAMS: That will conclude this
10 hearing.

11 (THE HEARING CONCLUDED AT 2:12 PM.)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

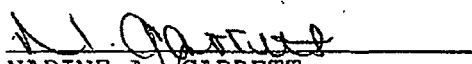
BE IT KNOWN THAT I TOOK THE FOREGOING
 WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT REPRESENTS A TRUE,
 ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO
 GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY
 SKILL AND ABILITY;

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 19th DAY OF JULY,
 2011.



 NADINE A. GARRETT
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES AUGUST 11, 2016

NADINE A. GARRETT
 COURT REPORTER
 803-834-3410

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0906951

BERNARD D. LEE)
 CLAIMANT,)
 VS.)
 BONDEX, INCORPORATED)
 EMPLOYER,)
 AND)
 GREAT AMERICAN)
 ALLIANCE INS CO)
CARRIER.)

SC WORKERS' COMPENSATION COMMISSION
 HEARING OF
 BERNARD D. LEE
 VS
 BONDEX, INCORPORATED

This is the Transcript of the South Carolina workers' Compensation Hearing of Bernard D. Lee versus Bondex, Incorporated, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 9:00 A.M., Tuesday, September 7, 2010, at South Carolina workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

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BY

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ALSO PRESENT:
Ms. Janice Napier

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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STIPULATIONS

Commissioner Wilkerson: Today's date is the 7th day of September, 2010. We're here in reference to worker's Comp file 0906951. The Employee is Bernard Lee and his Attorney is Ann Mickle. The Employer on this case is Bondex, Incorporated, and their Carrier is Great American Alliance Insurance Company, and their Carrier -- excuse, their Attorney is Ros Huff. The date of the accident on this case is 6/2 of '09. The average weekly wage on this case is five sixty-eight sixty one (\$568.61) and the comp rate is three seventy-nine oh nine (\$379.09). Let's see, we're here on a Form 50/51. This hearing was originally supposed to be heard on 8/12. We had asked that an additional MRI be done of this gentlemen's shoulder, and so we're back here today to hear the entire case. So, at this time, Ms. Mickle, I'll ask you to put your position -- your official position on the record. We've talked this morning, as well as on 8/12; so, let's get everything on the record before we get started -- or excuse me, now that we have gotten started. Ms. Mickle: May it please the Court, Your Honor. Commissioner Wilkerson: Please.

1 Ms. Mickle: Ann Mickle on behalf of Bernard Lee,
2 and just as a reminder of the last time we
3 convened this hearing on 8/12/10, you indicated
4 that you would probably read the medicals; so I
5 passed up your copy of our APA's at that point in
6 time.

7 Commissioner Wilkerson: Right. I've got both --
8 I have -- I think I have both of them, actually.

9 Ms. Mickle: Okay. Good. Just making sure.

10 Commissioner Wilkerson: Sure, I still have --
11 yes, thank you.

12 Ms. Mickle: Okay.

13 Commissioner Wilkerson: I've got them all marked
14 up, so.

15 Ms. Mickle: And you should also have in the file
16 -- and it's a part of the Commission's file and I
17 think your -- you made it a part of the record in
18 your opening remarks or typically you do. The
19 previous Order of Commissioner Lyndon, which is in
20 the file, and that's from the November 2nd or 3rd
21 of 2009 --

22 Commissioner Wilkerson: Right.

23 Ms. Mickle: -- hearing. But as to the facts in
24 this case, Your Honor. I represent Bernard Lee;
25 he was injured in a work-related accident on June

1 2nd, 2009. At that time, an accident report was
2 filled out on the same day, and that's part of our
3 APA submissions and you will see it on page 1 of
4 our APA submissions. It's dated June 2nd, 2009,
5 and signed by a supervisor by the name of Lowell.
6 I can't make out the last name, but it provides
7 what was the details of the accident on that
8 particular machine at that time.

9 Mr. Huff: His last name is Simpkins.

10 Ms. Mickle: For the record, Ros has indicated
11 that the last name is Simpkins.

12 Commissioner Wilkerson: Okay.

13 Ms. Mickle: But this was an accident, a lifting
14 accident, at work and Mr. Lee will describe that
15 accident. As a result of that accident, Mr. Lee
16 injured his left shoulder, his neck, his low back,
17 and then he developed an over-use problem with his
18 right shoulder.

19 Commissioner Wilkerson: Right.

20 Ms. Mickle: The company sent him -- he went to
21 the emergency room, which was authorized by his
22 supervisor, after they filled out the accident
23 report. And then he started treating with the
24 company doctor, Dr. Broder. Dr. Broder ordered
25 physical therapy, medication. The left shoulder

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at the time was the primary shoulder, as indicated in the records. It wasn't getting any better and so he was referred by the company -- and you'll see authorizations on each of these but there are lines for authorizations. He was referred by the company to Dr. James Bethea, who I'm sure you're familiar with. Dr. James Bethea noted the problems that he was sent there for, the problems with his left shoulder and at that time opined in his records that he felt that there was some type of impingement going on in that left shoulder and, specifically, his finding on page 32 of the APA's was impingement syndrome, left shoulder. It has always been a left shoulder injury case, regardless of what the problem ultimately was, whether it was a tear or impingement, it was always left shoulder. He also noted the neck and the back pain that he was complaining of. He did an injection to the left shoulder, also ordered additional physical therapy, put him on restrictions of limited -- limited pushing, pulling, lifting, carrying with the left upper extremity; fifteen (15) pounds, no overhead work, and provided medications and a follow up appointment. It is at that point in time that the

1 workers' Comp carrier denied the claim. Mr. Lee
2 then went on his own to the Community Healthcare
3 Center. At the Community Healthcare Center, he
4 made these same complaints and they started to
5 treat him. With regard to the complaints for the
6 left shoulder, they noted -- and this is Dr.
7 Al-Soudi at the time, one of the doctors that was
8 seeing him there, noted that he wasn't
9 claustrophobic, page 56, and why an open MRI --
10 and in 56, 57, 58 recommended that a -- an MRI
11 with contrast be done; that was not done. The
12 case remained in a denied posture. The Carrier
13 then sent Mr. Lee for a -- an IME. The case, of
14 course, staying in a denied posture. And even
15 their IME recommended MRI's for the neck, the --
16 the back and recommended other treatment. We then
17 -- from there, we get to Commissioner Lyndon --
18 taking you through the time line. Commissioner
19 Lyndon hears us in November of 2009, and we
20 pre-try the case, and he indicates, listen, I'm
21 going to find this case compensable but at that
22 time Ros agreed, on behalf of his client, to pay
23 the sum of five thousand dollars (\$5,000.00). He
24 didn't want to call it temporary total --
25 Mr. Huff: Let me interrupt, if I could; I have to

1 interrupt. I didn't agree to anything. I do
2 whatever my client tells me; my client did that
3 and --

4 Ms. Mickle: -- agreed on behalf of his client.
5 Commissioner Wilkerson: She said on behalf of
6 your client, so.

7 Ms. Mickle: Yes.

8 Commissioner Wilkerson: Yes.

9 Ms. Mickle: Five thousand dollars (\$5,000.00) is
10 reflected in the Order, plus the MRI and that's
11 codified in an Order signed by Commissioner
12 Lyndon. That was not done; so, we filed another
13 Form 40 to get Commissioner Lyndon's Order
14 complied with. And then, before the -- before we
15 had that hearing, Ros, and I'll state directly
16 what was entered in on behalf of his client,
17 entered into a Consent Order to provide the MRI.
18 The MRI's were done. The case remained in a
19 denied posture. My client continued to treat. He
20 treated with Dr. Ty Carter and Dr. Shannon. Dr.
21 Carter saw him primarily for the neck, back and
22 some for the shoulder just -- but Timothy, Dr.
23 Shannon, Timothy Shannon, in the office, his same
24 office, saw him for the shoulder. And, with
25 regard to the neck and back, really said that

1 there was nothing further that could be done but
2 he was referring him -- or would refer to Dr.
3 Timothy Shannon for the shoulder but, again, it
4 remained a shoulder problem. The case still
5 remained in a denied posture. We're coming to the
6 summer at this point. The carrier sends -- I
7 think this would be the third (3rd) IME with a Dr.
8 Westerkam, a physical -- a Physiatrist. Dr.
9 Westerkam looked at the neck, back and shoulder
10 and says -- does not use the word MMI at all.
11 This says, "Notes the problems that he continues
12 to have with his shoulder". He gives some
13 restrictions, I think permanent restrictions, for
14 the shoulder. Does not make a finding of MMI and
15 -- and no finding of MMI, and that report is in
16 your records. Then we, again, coming around the
17 clock, come up for a hearing before you and we
18 pre-try the case. There is an open MRI in -- in
19 there, which, you know, for my purposes and my
20 argument, had very little value when there was
21 really -- that's not the best diagnostic tool
22 unless you have an overweight -- that's typically
23 when those are done, when there is an overweight
24 -- someone too large to get into a regular MMI --
25 or a regular MRI equipment. And so, there was an

1 order, the one that I pointed out, Dr. Al-Saudi,
2 for the MRI with contrast, which was never done
3 because the case was in a denied posture. You
4 indicated that that would be very -- that would be
5 definitive for you. Mr. Huff agreed, on behalf of
6 his client, and so the case was reset for ten (10)
7 days later. During that ten (10) days an MRI was
8 scheduled but the MRI was not with contrast. We
9 had a conference call with you. An order was
10 generated from that conference call resetting this
11 for a hearing today and providing that the MRI
12 should be with contrast. The MRI with contrast
13 was done -- this is -- this is Tuesday; so, the
14 MRI with contrast was done on Thursday of last
15 week. We received that report Monday morning,
16 probably around nine o'clock or so. And that
17 report, as you see, indicates a superior labral
18 tear, anterior to posterior without detachment of
19 the labrum, which is consistent with the
20 complaints that he has had when you go around the
21 calendar year from the beginning of this accident,
22 and the treatment that he has had from the
23 beginning of this accident, to the present. In
24 support of -- I'll just point out pages 65 and
25 pages 73, where Dr. Ty Carter or Dr. Shannon --

1 they're in the same office -- has indicated, to a
2 reasonable degree of medical certainty,
3 essentially that the problems that he's had -- had
4 with his shoulder are causally related to the
5 accident. And so, Your Honor, what we are asking
6 for -- and he did also receive, after he was
7 terminated from his employment -- well, they
8 didn't have any light duty and there were some
9 other reasons as well, but what we are asking for
10 today is a finding of compensability with regard
11 to the left arm, right arm overuse; and that's in
12 those same pages, the causation to the right arm,
13 the neck and the low back, that he is not at MMI
14 for those body parts, that two (2), all causally
15 related medical treatment be paid for and provided
16 by the Carrier, that's the causally related
17 medical treatment that has incurred in the past;
18 that's Dr. Ty Carter -- which includes but is not
19 limited to, Dr. Ty Carter, Dr. Shannon, the visits
20 with the Community Health Center, all of that,
21 mileage, prescription benefits. We're asking for
22 temporary total benefits from what we believe was
23 the last day he worked, which we think was on or
24 around August 18th. And then we're asking for --
25 Commissioner Wilkerson: August 18th of this year?

1 Ms. Mickle: -- August 18th of last year.

2 Commissioner Wilkerson: But -- but he was -- but
3 he was already paid five thousand dollars
4 (\$5,000.00) for something. So, I've got to --
5 where do I stick that five thousand dollars
6 (\$5,000.00)?

7 Ms. Mickle: In my opinion, you give them a credit
8 for the five thousand dollars (\$5,000.00) against
9 what they should have paid.

10 Commissioner Wilkerson: But -- but I thought that
11 five thousand dollars (\$5,000.00) was from a
12 specified period up until like March or April of
13 this year; am I wrong on that?

14 Ms. Mickle: The Consent Order -- Ros did not want
15 to label it as --

16 Commissioner Wilkerson: All right. I agree.

17 Ms. Mickle: -- on behalf of his clients,
18 temporary total --

19 Commissioner Wilkerson: I understand.

20 Ms. Mickle: -- he didn't want to label that. He
21 didn't want to put brackets on it, but if you --
22 if you divide it by the comp rate, it will take
23 you from the date of the accident all the way on
24 around to the end of January.

25 Commissioner Wilkerson: In January, okay, not

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March/April.

Ms. Mickle: But, for purposes of -- of just outlining our position --

Commissioner Wilkerson: Okay.

Ms. Mickle: -- and in answering your question, because it's not labeled --

Commissioner Wilkerson: No.

Ms. Mickle: -- as what -- as any ameba or any specific thing in the Order, in my opinion, it would be a credit towards the temporary total and they would get a credit and that -- it would -- the credit would take them to about the end of -- end of January, I think, or whatever the math is. And then we would ask, Your Honor, that we get -- now that we've got a definitive diagnosis, we've always known that it was a problem with his shoulder, with all of their authorized doctors and -- and their IME's. We would like him follow up with Dr. Shannon and Dr. Carter for treatment because they have provided the previous treatment.

Commissioner Wilkerson: Is the only doctors that are not authorized would be the Health -- Community Health Center?

Ms. Mickle: The Community Health Center is not authorized.

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Commissioner wilkerson: Right.

Ms. Mickle: Dr. Carter was authorized for, like, one (1) of the two (2) visits.

Commissioner wilkerson: Right. I saw that.

Ms. Mickle: But the rest -- and Dr. -- maybe Dr. Shannon, but the rest of the visits would not technically be authorized --

Commissioner wilkerson: Okay. That's what I thought.

Ms. Mickle: -- because he asked to be sent back. They did not but we have multiple letters making that request to be sent to the doctor --

Commissioner wilkerson: Right.

Ms. Mickle: -- they didn't do it. So, there are visits that would be unauthorized and we're asking that those visits be paid for, milage and temporary total and not at MMI.

Commissioner wilkerson: Okay. Mr. Huff.

Mr. Huff: If I could, I'm going to move a little backwards away. If you'd look at page 64 and 65 of the APA's from Dr. Timothy Shannon, and you look at the exam of the upper extremity, it starts off with the right. He had a normal vascular exam, full range of motion of his shoulder, with no intrinsic shoulder affined. Left shoulder,

1 normal neurovascular exam, full range of motion,
2 no impingement signs, no instability or AC joint
3 signs. When you were examined by Shannon,
4 whatever problem it is with this tear, it's --
5 it's a minor tear; the exam comes back normal. If
6 you look at the MRI's that were done of -- of the
7 -- the neck and the back -- because this guy is
8 claiming right shoulder, left shoulder, neck,
9 thoracic, lumbar. He's claiming every body part
10 you can possibly think of in -- from the waist up
11 in the trunk area. All the examinations come back
12 negative or normal. When you look at the MRI's
13 that were done of the -- of the spine, the
14 cervical spine and the thoracic spine and the
15 lumbar spine, they're normal. If you look at the
16 MRI that was just recently done, it shows a small
17 tear. There was another MRI done; it does not
18 show a tear. I don't know where the tear came
19 from; I really don't. Today they're saying that
20 this was a lifting accident, is what they're
21 calling it, a lifting accident. But then if you
22 look at what was mentioned on Exhibit One, it
23 doesn't say he was lifting anything. He was
24 pushing. He uses the word pushing. He's pushing,
25 he is not lifting. Well, they were lifting it

1 with a forklift. Then, if you also look at the
2 fact that throughout the medicals and -- and they
3 are replete and I'll just go ahead and mention
4 them to you where they are. The MRI that was
5 first done on the left shoulder for comparison,
6 Commissioner, you can write this -- is page -- APA
7 page 30. If you look at page 3 of the APA's as
8 to what happened that day, which is the emergency
9 room, it says a hood fell and hit his left
10 shoulder. Not lifting, not pushing but a hood
11 fell and hit him. Not only does it say a hood
12 fell and hit him, it even says that the hood
13 pinned him for a short period of time. So, it
14 didn't just hit him and bounce off of him, it
15 pinned him against the machine, with other men
16 standing around him. But then, if you look at the
17 APA -- and it's page 3 -- the skin over the neck
18 is in tact without evidence of laceration or
19 significant abrasion. What we've got here is a
20 soft-tissue injury. Then the next thing, the
21 issue of the temporary total. There are several
22 pages that I'm going to give you, you can note
23 them for the work restrictions. Work restrictions
24 will be found on page 34 from Dr. Bethea; that's
25 7/16 of '09. There's work restrictions from Dr.

1 Shannon on 8/18/09, and that's page 68. There's
2 work restrictions given by Dr. Shannon on May
3 25th, 2010, on page 79, saying no lifting, no use
4 of left shoulder, no overhead work. That's all it
5 says. It doesn't say anything else that he can't
6 do, just those restrictions -- no lifting, no use
7 of left shoulder, arm, no overhead work. Page 9
8 and 10 of the APA's, there's work restrictions
9 from Dr. Broder. Page 18, work restriction from
10 Dr. Broder. The MRI of the lumbar and cervical
11 spine is 81 and 83 of the APA's, Commissioner, for
12 comparison. And then page 85, Dr. Carter also
13 gives some work restrictions. The employer had
14 work restrictions for this man within his
15 limitations; they offered him these work
16 restrictions. The work restrictions included
17 various things from sweeping to cleaning up the
18 bathrooms to putting a fiber material on a
19 conveyor belt where he could use his left arm or
20 right arm, at his pace, no quota that he had to
21 complete, no time frame that he had to complete.
22 Whatever restrictions he had, they gave him light
23 restrictions. He has never been terminated. It
24 was mentioned, he's not a terminated employee. He
25 is still drawing life insurance benefits through

1 the company. He's also on short-term disability
2 benefits. He has never been terminated. Our
3 position is, did the accident occur the way he
4 says it occurred and, if it did, what's the extent
5 of his injuries? The Form 50 makes no mention of
6 a right shoulder. The Form 58 does not say
7 they're amending their Form 50. There is a
8 mention -- there is mention on the top of the Form
9 58 of the right shoulder but it does not amend it.
10 So, the question is, did he have an accident and
11 what was the extent of his injuries, if any? I
12 made mention in the pre-hearing conference,
13 Commissioner, that we had a witness by the name of
14 Al Martin who was working with him at the site of
15 the accident up there on the hood. Mr. Martin has
16 come to two (2) previous hearings; he was
17 scheduled to be here today. We talked to him and
18 made sure -- I even went down and met with him
19 before this next hearing was coming up. We also
20 talked to him -- I didn't talk to him but my --
21 the employer talked to him at eleven o'clock last
22 night because he works the third (3rd) shift; he
23 said he would be here. When they left the plant
24 he was not there. They had contacted him on --
25 about three (3) or four (4) times and they still

1 cannot locate him. We don't know why he is not
2 here; I have no idea. We would request that the
3 record be left open for his deposition, if needed.
4 Also, there is the MRI that was just recently done
5 and we have that to compare with the previous MRI
6 that was done. And we would ask that the record
7 be left open for us to take James Thesing --
8 T-H-E-S-I-N-G's deposition regarding his opinion,
9 medical opinion, regarding the causation of the --
10 the tear. And I think that's basically what our
11 -- our position would be right now.

12 Commissioner Wilkerson: What's your position on
13 the -- leaving the record open for the MRI
14 doctor's deposition and for -- or and the
15 employee's deposition?

16 Ms. Mickle: I'll start with the employee, Al
17 Martin's, deposition, Your Honor. First of all,
18 I'd like the Commission to know why. I'd like a
19 response in terms of why he's not here today. Did
20 he get hit by a car? Did he oversleep? Did he
21 just choose not to come? Is he under subpoena to
22 be here today? Because if he's not under the
23 compulsion of a subpoena he doesn't have to be
24 here today. And then, my -- once those two (2)
25 questions are answered I'd like to know the answer

1 myself in order to make a more appropriate reply

2 --

3 Mr. Huff: That's fair.

4 Commissioner Wilkerson: That's fair.

5 Ms. Mickle: -- or response,

6 Commissioner Wilkerson: That's fair.

7 Ms. Mickle: And then, I'd also lift up for you to
8 think about, I would object at this point, without
9 knowing any of that, to his deposition -- to the
10 record being left open for his deposition because,
11 in this particular case when everything has been
12 denied and he's making -- he's bent over backwards
13 to accommodate. I would like you to see this
14 witness, to observe this witness, to hear this
15 witness, and to get the full flavor for this
16 witness. So, that would be my response with
17 regard to Mr. Al Martin, I think they said his
18 name was.

19 Mr. Huff: Yes, it was.

20 Ms. Mickle: My response to the deposition for the
21 radiologist, I think the record is replete with --
22 that this has been a shoulder case from the very
23 beginning. It is not unusual to not be able to
24 identify what the particular problem was, but it's
25 always been a shoulder case. And Mr. Huff

1 interestingly enough fast forwards to Dr. Shannon
2 to say no impingement but he bypasses his own
3 authorized doctor, Dr. Bethea, who saw him before
4 Dr. Shannon who said, in his opinion, on page 31,
5 based upon his physical examination and the MRI
6 scan at the time, which was an open MRI scan, AC
7 joint arthropathy with -- with -- with -- with --
8 mild impingement as well as tendonitis of the
9 biceps. So, it's always been a shoulder case.
10 And so, the questions is, is the shoulder injury
11 -- regardless of what that injury is, is it --
12 it's in the shoulder; it's not like it came back
13 in the hand or some other body part. Is the
14 shoulder injury causally related? And you've got
15 multiple opinions, even from their IME's, saying
16 that it was. And so, I would object because all
17 a Radiologist could -- he doesn't have the full --
18 he doesn't have what you have.
19 Commissioner Wilkerson: Okay.
20 Ms. Mickle: All -- all he --
21 Commissioner Wilkerson: I understand. And I
22 think what I said I'd do on that is, I'd wait till
23 the end of the hearing to officially rule on that.
24 I just wanted you put your position on the record
25 and then --

1 Ms. Mickle: -- and I did agree --
2 Commissioner Wilkerson: Yes. Yes, I understand.
3 Mr. Huff: And -- and I realize --
4 Ms. Mickle: -- on both of those things.
5 Mr. Huff: -- I realize, Commissioner, what
6 they're talking about earlier is an impingement or
7 a muscle strain, soft tissue muscle strain; that
8 is a far cry from a tear. There's no causal
9 connection as to the tear; that's why I think we
10 need the deposition. He had a soft-tissue injury,
11 fine, then he's going to have some problems. And
12 -- and Bethea says he thinks it could be
13 impingement, a mild impingement. Well, if the
14 rotator cuff is totally normal and you've got a
15 tear; that's not going to cause an impingement.
16 Commissioner Wilkerson: But -- but you would
17 agree that if Bethea found anything that would be
18 amazing in itself?
19 Mr. Huff: No.
20 Commissioner Wilkerson: Okay.
21 Mr. Huff: I think Bethea is a good treater.
22 That's just --
23 Commissioner Wilkerson: I'm not saying he's not a
24 good treater --
25 Mr. Huff: -- yes.

1 Commissioner Wilkerson: -- I'm just saying I've
2 seen his ratings that --

3 Mr. Huff: Yes.

4 Commissioner Wilkerson: -- ninety-eight percent
5 (98%) of them are zero (0) and the rest of them
6 are less than five percent (5%), so.

7 Mr. Huff: I will agree that --

8 Commissioner Wilkerson: Which is fine --

9 Mr. Huff: -- I will agree he's very conservative.

10 Commissioner Wilkerson: -- I'm fine with that.

11 That's part of the evidence.

12 Mr. Huff: I agree.

13 Commissioner Wilkerson: Okay.

14 Mr. Huff: I'm not going to -- I'm not going to
15 dispute that.

16 Commissioner Wilkerson: Yes. Okay.

17 Ms. Mickle: And -- and just in response to Your
18 Honor. Every doctor who has seen this gentlemen,
19 all three (3) of their IME's, and every treater
20 has found that there are problems with this
21 shoulder. They don't have MRI eyes. They have to
22 go based on signs, tinel signs, failing signs --
23 just they have to do -- go based on their testing.

24 Commissioner Wilkerson: Okay. What is your
25 position on the short-term disability that's --

1 that is -- has been paid and is currently being
2 paid? Is there an --

3 Ms. Mickle: It isn't currently being paid.

4 Commissioner Wilkerson: -- oh, it's not?

5 Ms. Mickle: I think it was paid for like six (6)
6 weeks or something like that.

7 Commissioner Wilkerson: -- okay. So, that --

8 Ms. Napier: It's not currently being paid.

9 Mr. Huff: It's not currently being paid.

10 Commissioner Wilkerson: -- okay. I thought I
11 heard you say he was currently --

12 Ms. Mickle: He stipulated --

13 Mr. Huff: No, not currently.

14 Commissioner Wilkerson: -- I thought you said it
15 was currently being paid.

16 Ms. Mickle: -- he did say that.

17 Commissioner Wilkerson: And he's not on long-term
18 disability either; is that correct? Just short
19 term for the six (6) weeks.

20 Mr. Huff: No.

21 Commissioner Wilkerson: Okay.

22 Ms. Mickle: He stipulated.

23 Commissioner Wilkerson: whatever. Okay, that's
24 fine. All right. Sounds good. Let's get the
25 Claimant sworn in and let's take his testimony

1 first. And -- and, Mr. Huff, you have some
2 witnesses outside or you don't have any witnesses
3 outside?

4 Mr. Huff: I do have several witnesses outside but
5 I may only use one (1) from outside.

6 Commissioner Wilkerson: That's fine. And, if we
7 can find out -- don't need to know right now --
8 about Mr. Martin's --

9 Mr. Huff: Okay. Mr. Anthony is making phone
10 calls.

11 Commissioner Wilkerson: -- that's fine -- about
12 Mr. Martin's status. Maybe I can clear that up
13 today, maybe I can't clear that part up today. I
14 mean, he's -- depends on what the -- depends on
15 what the situation is with Mr. Martin. But I will
16 need some type of sworn affidavit or something --

17 Mr. Huff: Yes, sir. Yes, Commissioner.

18 Commissioner Wilkerson: -- to make sure that that
19 is what took place and the whole nine (9) yards,
20 so. Sir, if you'd raise your right hand, we're
21 going to swear you in and you can sit -- just sit
22 comfortably and I'll have the Court Reporter swear
23 you in, and then we'll take your testimony.

24 whereupon;

25 BERNARD DERRICK LEE, being first duly sworn and

1 cautioned to speak the truth, the whole truth and
2 nothing but the truth, testified as follows:

3 Court Reporter: Please state your name for the
4 record.

5 Witness: Bernard Derrick Lee.

6 Court Reporter: Speak nice and loud for me, okay?

7 Witness: Okay.

8 Court Reporter: Thank you, sir.

9 Commissioner Wilkerson: Ms. Mickle.

10 Ms. Mickle: I -- I don't remember, do you have a
11 preference as far as where we stand?

12 Commissioner Wilkerson: I -- I was going to tell
13 you, there is better for the Court Reporter. I've
14 had -- I've had them come up here and stand right
15 there.

16 Ms. Mickle: What's best for you?

17 Commissioner Wilkerson: Whatever's -- whatever's
18 best for the Court Reporter and you feel
19 comfortable with, I'm fine with.

20 Ms. Mickle: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 By Ms. Mickle:

23 Q. Mr. Lee, obviously Commissioner Wilkerson has
24 introduced himself to you, and so you're talking really
25 to him, but you're answering my questions.

1 A. Oh, okay. Okay.

2 Q. I know this is not something that you do every day but
3 that's kind of the format right there.

4 A. Okay.

5 Q. Okay?

6 A. I'll look that way. Okay.

7 Commissioner Wilkerson: You can look this way for
8 a while and if you get tired look that way, okay?

9 witness: Oh, okay.

10 Commissioner Wilkerson: I'm a-okay.

11 witness: Yes, sir.

12 Q. All right. I need to take you, just for the record,
13 through a few preliminary questions.

14 Ms. Mickle: Ros, do you mind if I lead on --

15 Mr. Huff: As far as biographical, no objection.

16 Ms. Mickle: -- age, date?

17 Mr. Huff: No problem at all. You can just go
18 ahead state it for the record and I'll stipulate
19 to it if you want me to.

20 Q. Mr. Lee, you were born on April 30th, 1980, which makes
21 you thirty (30) years of age; is that correct?

22 A. Yes, ma'am.

23 Q. You -- in terms of your marital status, you are single;
24 is that right?

25 A. Yes, ma'am.

- 1 Q. And you do have one (1) dependant, a six (6) year old
2 girl, Jeniah Marie Lee --
- 3 A. Yes, ma'am.
- 4 Q. -- is that correct?
- 5 A. Yes, ma'am.
- 6 Q. For which you pay child support; is that --
- 7 A. Yes, ma'am.
- 8 Q. -- right? You're under a support order and that
9 support comes out of your check, and your employer
10 works with you to have that done?
- 11 A. Uh-huh. Yes, ma'am.
- 12 Q. And, as a matter of fact, I think -- is this Ms. Napier
13 right here?
- 14 Ms. Napier: Uh-huh.
- 15 A. Yes, ma'am.
- 16 Q. Ms. Napier has been kind enough to work with him on the
17 child support and provide letters for the court, just
18 letting them know what was going on in this case; is
19 that right?
- 20 A. Yes, ma'am.
- 21 Q. Thank you. In terms of your education, you went to
22 Midland Valley High School in Langley, South Carolina?
- 23 A. Yes, ma'am.
- 24 Q. And you graduated from high school in 1998?
- 25 A. Yes, ma'am.

- 1 Q. You've got a welding school -- you went to welding
2 school at Aiken Tech and got a certificate?
- 3 A. Yes, ma'am.
- 4 Q. Okay. You had a previous -- in terms of your previous
5 workers' comp claims, you had a previous injury to your
6 left arm; is that correct?
- 7 A. Left hand. Yes, ma'am.
- 8 Q. Left hand --
- 9 A. Yes, ma'am.
- 10 Q. -- I'm sorry. While working at East Central Regional,
11 a patient was fighting and you tried to break it up.
12 The patient fell on your left hand --
- 13 A. Yes, ma'am..
- 14 Q. -- and you broke it, and you were treated, and you had
15 surgery; I think that was in 2004?
- 16 A. Yes, ma'am.
- 17 Q. Can you put your hand up there (indicating)? Okay.
18 where was your surgery?
- 19 A. Right here (indicating).
- 20 Q. Okay. And there is a surgical scar right here
21 (indicating) --
- 22 A. Uh-huh.
- 23 Q. -- on your -- on the top side of your hand?
- 24 A. Yes, ma'am.
- 25 Q. Okay. All right. Other than that, can you think of

1 any other workers' Compensation claims that you've had?

2 A. No, ma'am, not at this time.

3 Q. Okay. And briefly, your work history is that you
4 worked at East Regional -- or East Central Regional
5 Hospital; is that correct?

6 A. Yes, ma'am.

7 Q. And what did you do there?

8 A. I watched over mental patients and provided them with
9 activities.

10 Q. All right. And you've worked at Abigail Mills as a
11 lead lineman --

12 A. Uh-huh.

13 Q. -- for about a year; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. You've worked at Sheet Metal Engineers --

16 A. Yes, ma'am.

17 Q. -- is that correct?

18 A. Yes, ma'am.

19 Q. You've worked at BAE. I'm not sure what the acronym
20 BAE stands for but it was formerly United Defense?

21 A. Yes, ma'am.

22 Q. Okay. And you've weld on military equipment?

23 A. Yes, ma'am.

24 Q. Then you've worked through Aiken Staffing; is that
25 correct?

- 1 A. Yes, ma'am.
- 2 Q. And they would place you at various places to include,
3 but not be limited to, Rieter Automotive, where you
4 were a machine operator?
- 5 A. Yes, ma'am.
- 6 Q. Okay. And, of course, you've worked with this present
7 employer; is that right?
- 8 A. Yes, ma'am.
- 9 Q. Do you recall when you started working for them?
- 10 A. For Bondex?
- 11 Q. Yes.
- 12 A. I think it was around -- I can't really remember the
13 month but it was in -- I think it was the end of 2008.
- 14 Q. Okay. All right. And --
- 15 A. You -- you mean through the -- through Aiken Staffing
16 or --
- 17 Q. Well --
- 18 A. -- got hired on permanently?
- 19 Q. -- well, let's -- let's clarify that. You started
20 working with them or were placed with them through
21 Aiken Staffing --
- 22 A. Yes.
- 23 Q. -- is that correct?
- 24 A. Yes, ma'am.
- 25 Q. And then, as a result of the placement, you moved from

1 a temporary employee -- or an employee of Aiken
2 staffing to an employee of Bondex.

3 A. Yes, ma'am.

4 Q. Is that correct?

5 A. Yes, ma'am.

6 Q. And then --

7 Commissioner Wilkerson: Let me ask you a
8 question. The jobs that he had indicated earlier,
9 which I think was six (6) jobs.

10 Ms. Mickle: Yes, sir.

11 Commissioner Wilkerson: Are all those since you
12 graduated from Tech or since you graduated from
13 high school?

14 A. From high school.

15 Commissioner Wilkerson: From high school?

16 A. Yes, sir.

17 Commissioner Wilkerson: Okay.

18 Q. And all of those jobs were standing jobs?

19 A. Yes, ma'am.

20 Q. Working with your hands, your arms --

21 A. Yes, ma'am.

22 Q. -- your back?

23 A. Yes, ma'am.

24 Q. Okay. All right. And that takes us to Bondex.

25 A. Yes, ma'am.

1 Q. You became a full-time employee of Bondex?

2 A. Yes, ma'am.

3 Q. Now, Bondex -- I have Southern Felt, doing business as
4 Bondex; is that right?

5 A. Yes.

6 Q. Okay. Your checks, when you would get them, did they
7 say Bondex or did they say Southern Felt?

8 A. They said Southern Felt -- I mean, they said Bondex.
9 They said Bondex.

10 Q. Bondex?

11 A. Yes, ma'am.

12 Q. Okay. And you answered to people at Bondex?

13 A. Yes, ma'am.

14 Q. Okay. All right.

15 Commissioner Wilkerson: when did he start to work
16 at Bondex?

17 Q. When did you start working at Bondex --

18 A. It was --

19 Q. -- I think --

20 Mr. Huff: The 12-A, First Report of Injury --

21 Commissioner Wilkerson: Right.

22 Mr. Huff: -- says June 23rd, 2008.

23 Commissioner Wilkerson: Okay. That's fine. I
24 was just trying to get a time --

25 Mr. Huff: -- one (1) year prior to the 6/2/2009.

1 Commissioner Wilkerson: -- okay. That's fine. I
2 Just wanted to get that on the record and keep
3 them in the right spot. Thank you.

4 Mr. Huff: You're welcome.

5 Q. Now, would that be about accurate; around June 23rd,
6 2008, you started working at Bondex?

7 A. Yes, ma'am. I think -- I think -- I think so.

8 Q. Okay. And what kind of work did you do at Bondex from
9 the time you started working there until the time of
10 your accident?

11 A. I was a -- a machine operator. I was a machine
12 operator and we had to -- and then they had a -- they
13 had a -- a person who did the baling stuff and then we
14 rotate; it was two (2) people that did that. So, one
15 week I ran the machine, and then the next week I ran
16 the hoppers, the hopper machines and I ran the -- the
17 -- the baler.

18 Q. Okay. And if you've not been out there to Bondex and
19 you're -- if I was telling my grandchild and trying to
20 explain it to them because they had never physically
21 seen it --

22 A. Yes, ma'am.

23 Q. -- what -- what do you have to do with your body, your
24 back, your legs, your arms, in order to do this work as
25 a lineman?

- 1 A. You have to -- you have to -- you wait on the backer
2 machine. It takes about -- about a hour for the -- the
3 cloth to run through the machine. It's some hot --
4 some hot rollers. So, you sit back there and you wait.
5 Sometimes it'll mess up and the -- the whole cloth will
6 strip and you have to take the cloth and run it, like,
7 rethread it back through, and then you wait at the
8 back. And then after each roll come off, you have to
9 -- you stand behind the -- you stand behind a big table
10 and a machine shoots the roll off onto the table. So,
11 you have to stand behind the table and -- because if --
12 if you don't stand behind the table the roll is going
13 to push the whole table on the -- on the -- on the
14 floor. So, you've got to stand behind there and make
15 sure it don't push it on the floor. And then you --
16 it's a hundred (100) pound rod that's inside the --
17 inside the roll. You have to take it out the roll and
18 you have to walk around back to the front of the
19 machine, and you have to put it on the machine and the
20 thread that's going through the hot rollers, you got to
21 wrap it around the hundred (100) pound roll and press
22 the button and then that's when the next roll start up.
- 23 Q. And -- and this is the question, to sort of understand
24 what you're physically doing with your body. What do
25 you -- what are the lifting requirements of this job?

1 A. A hundred (100) pound roll every -- about every hour.
2 And then you've got to reach over -- we -- we -- we
3 toting it back around to the front of the machine, and
4 then you push the -- you have to push the table about
5 -- about fifty (50) feet to another table. Then you
6 have to --

7 Q. How heavy is that table; do you know?

8 A. -- the table? Probably about two hundred (200) pounds.

9 Q. Okay. How do you push it?

10 A. It's on -- it's on wheels.

11 Q. Okay.

12 A. It's on rollers.

13 Q. All right.

14 A. It's a -- it's a -- like it's a all-metal table.

15 Q. Okay.

16 A. And you have to push it to -- about a hundred (100) --
17 about fifty feet (50') -- it might not be about fifty
18 feet (50'), but you have to push it to another table.
19 You have to get behind the rolls and then push it onto
20 that table. Then that's when -- that's --

21 Q. And what are you pushing it with; are you using --

22 A. -- your --

23 Q. -- your --

24 A. -- your hand, your body --

25 Q. -- okay.

- 1 A. -- your hand.
- 2 Q. All right.
- 3 A. Sometimes you can push and that thing will come back on
- 4 you, it'll roll back and roll back on you that's how
- 5 heavy they be. So, sometimes you have to get two (2)
- 6 people to do it.
- 7 Q. Okay.
- 8 A. And you have to push it onto the table.
- 9 Q. Okay.
- 10 A. And then that's when you get samples off for. You roll
- 11 it all the way down to the end of the table. Then you
- 12 take the -- take it off and -- the -- the end off, and
- 13 it be laying down there, and then you --
- 14 Q. Now, when you take the end off are you -- when you're
- 15 describing all this stuff are you physically doing this
- 16 or --
- 17 A. -- me physically.
- 18 Q. -- is there a machine doing it?
- 19 A. No, it was me physically doing it.
- 20 Q. You were physically doing it?
- 21 A. Yes, ma'am, physically doing it.
- 22 Q. Okay. All right. And from the time you were hired up
- 23 until the time of the accident, is that the type -- is
- 24 that the type of heavy physical manual labor --
- 25 Mr. Huff: I'm going to object.

1 Q. -- that you would do with your arms?

2 Mr. Huff: I'm going to object.

3 Commissioner Wilkerson: Let him describe what
4 kind of -- yes, I understand. Tell me what --
5 tell me what kind of physical labor it is. Is it
6 light, medium, or heavy?

7 A. Oh, it's extra heavy. It ain't -- it ain't -- it's
8 extra heavy.

9 Commissioner Wilkerson: Okay.

10 A. They -- they only -- they ain't -- they don't hire no
11 girls or not no girls hired because it's supposed to be
12 all man work they say, so.

13 Commissioner Wilkerson: Okay.

14 Q. All right. Now, again, we're talking about from the --
15 the time you were hired to the date of the accident.
16 During that period of time did you ever have any
17 problems with your left shoulder?

18 A. No, ma'am. No, ma'am.

19 Q. Okay. Did you ever report any problems with your left
20 shoulder?

21 A. No, ma'am.

22 Q. Did you ever treat with any primary care physician or a
23 specialist for any problems with --

24 A. No, ma'am.

25 Q. -- your left shoulder?

1 A. No, ma'am. No ma'am.

2 Q. Okay. So now, let's move to the date of injury,
3 6/2/09. That's what I want to talk to you about --

4 A. Yes, ma'am. Okay.

5 Q. -- right now. What time did you come into work that
6 day?

7 A. At eight o'clock. Well -- well, it was about 7:00 --
8 7:50, to clock in before eight o'clock.

9 Q. Okay. All right.

10 A. Uh-huh.

11 Q. And what -- when you got there what did your -- who was
12 your supervisor?

13 A. Lowell Simpkins.

14 Q. Lowell --

15 Commissioner Wilkerson: Is that 8:00 A.M. or 8:00
16 P.M.?

17 A. 8:00 P.M., sir.

18 Commissioner Wilkerson: Okay. That's fine. I
19 just wanted to get that for the record.

20 A. Yes, sir.

21 Q. And when you got there, what instructions did you
22 receive from your supervisor?

23 A. Lowell Simpkins said -- he told -- he called us out the
24 -- out the break room. He said we've got -- we've got
25 some B.S. to do. He said first shift ain't really do

1 nothing and we've got to put this machine together and
2 -- at that, the forklift was messed up. That's what he
3 said.

4 Q. Okay. The forklift is messed up?

5 A. Yeah. He said the forklift was messed up. He told us
6 we've got to be careful but we're going to try to do as
7 much as we can -- we going to do much as we can do
8 while the forklift is working because he don't want to
9 hear Charlie's mouth in the morning. So, that's -- and
10 that's what he said.

11 Q. Okay. All right.

12 Ms. Mickle: And, Your Honor, I don't know if I've
13 put this on the record, but I've included my
14 APA's, the records on the forklift.

15 Commissioner Wilkerson: Yes, those were in there
16 --

17 Ms. Mickle: Okay.

18 Commissioner Wilkerson: -- from last time.

19 A. Uh-huh.

20 Q. And -- so, after he told you the forklift was having
21 problems or messed up --

22 A. Uh-huh.

23 Q. -- what was your assignment for that day?

24 A. We was to -- all of us was to use the forklift and put
25 -- go -- it's some -- it's some heavy -- it's about

1 some eight hundred (800) pound rolls -- between five
2 hundred (500) and eight (800) pound rolls, they be
3 spreaded out all over the plant.

4 Q. Okay.

5 A. So, when you -- because they can't have it close to the
6 plant because it -- I mean, close to the machine
7 because the people have got to work on it. So, they
8 take them far away to the -- from the machine as they
9 can. So, he said we going to get the rolls -- you've
10 got to use a forklift -- we going to get all the rolls
11 with the forklift and put them back in the machine and,
12 basically, finish what first shift didn't do.

13 Q. Finish what --

14 A. Yeah.

15 Q. -- and just to set this up, what first shift didn't do,
16 had the machine been broken down over -- did they have
17 to call somebody in --

18 A. They had to call --

19 Q. -- and work with the machine?

20 A. -- yes, ma'am. They had to call somebody in.

21 Q. Okay. And so they had broken down the machine and --

22 Mr. Huff: I'm going to object again. These are
23 leading questions.

24 Commissioner Wilkerson: Yes.

25 Ms. Mickle: -- if I can rephrase my question?

1 Commissioner Wilkerson: Yes, rephrase the
2 question.

3 Q. What -- the last two (2) days prior to this accident,
4 what had happened with the machines?

5 A. You're talking about prior to the -- to the accident?

6 Q. Yes.

7 A. Before -- why -- why they had to fix the machine?

8 Q. Yes.

9 A. I don't know if it was that the machines -- I don't
10 know if the machines messed up.

11 Q. Well, physically describe what you saw.

12 Mr. Huff: Let me object again. He's trying to
13 answer her question --

14 Commissioner Wilkerson: Yes, let him finish
15 answering. And -- and, if we could -- if we could
16 -- it's important to know about the machine but
17 it's more important to know what happened, when it
18 happened, for no better term. So -- so, just tell
19 us what --

20 A. The accident?

21 Commissioner Wilkerson: -- what type machines you
22 worked on on a daily basis.

23 A. Okay, it's a --

24 Ms. Mickle: And part of this is just so you will
25 understand when he does tell you --

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Commissioner Wilkerson: Right. Okay.

Ms. Mickle: -- about the machine. Some of this is important.

Commissioner Wilkerson: But -- but I don't know that the claim is denied for what happened that day. I think it's -- I think it's denied to the extent of the medicals --

Ms. Mickle: He keeps --

Commissioner Wilkerson: -- I believe.

Ms. Mickle: -- he keeps changing; so, I want to cover all my bases.

Commissioner Wilkerson: I understand. Okay. I understand. I understand why you want to cover the bases but I don't think it's a denied -- that whatever happened, happened, okay? We're not getting to that at this minute, something happened that day.

Mr. Huff: We're not denying --

Commissioner Wilkerson: I don't think you all denied something happened.

Mr. Huff: -- we're not denying that he was working that day on the machine.

Commissioner Wilkerson: Okay.

Mr. Huff: The question is, did he have an accident --

1 Commissioner wilkerson: Okay.

2 Mr. Huff: -- and, if he did, how did the accident
3 occur?

4 Commissioner wilkerson: Right. Okay.

5 Ms. Mickle: Okay.

6 Q. The -- the machine that you all -- that you were
7 working on that day, --

8 A.. Uh-huh.

9 Q. -- how big is it? And you can use this room just to
10 kind of give the Commissioner an example.

11 A. It's about -- the machine I was -- the machine we was
12 working on, it's almost -- probably half the size of
13 this room.

14 Mr. Huff: Commissioner, could I put these in?

15 Commissioner wilkerson: Sure.

16 Mr. Huff: I showed these to Ann last time.

17 Commissioner wilkerson: I've got these things
18 right here.

19 Mr. Huff: Yes, that's the photograph of it and if
20 you need them you can have them.

21 A. Yeah, it's probably half the size of this room

22 Q. Okay. All right. And then --

23 A. But it's three (3) of them -- it's three (3) of them,
24 though; there's machine one (1), two (2), and three
25 (3).

- 1 Q. -- okay.
- 2 A. Uh-huh.
- 3 Q. Okay. Machine one (1), two (2), and three (3)?
- 4 A. Yes, and they --
- 5 Q. So, I mean, they -- they go back --
- 6 A. -- yes.
- 7 Q. -- in the room.
- 8 A. It -- it might be about a block. It's about a block
- 9 long. They -- they -- the machine is -- goes over the
- 10 whole plant.
- 11 Q. Okay. All right.
- 12 A. When you walk into the plant you run into -- the
- 13 machine is right in front of you.
- 14 Q. Okay.
- 15 A. Uh-huh.
- 16 Q. And I want you to take me to what you all were doing at
- 17 the time of your injury.
- 18 A. The time of my injury? At the time of the injury we
- 19 was -- we had been lifting about a eight hundred (800)
- 20 -- between a eight hundred (800) and fifteen (15) pound
- 21 -- hundred (100) hood up on -- on the machine.
- 22 Q. All right. Because I have a visual on it. There's a
- 23 machine -- some -- some places in Ros' stuff, I think
- 24 it was referred to as a card machine?
- 25 A. Uh-huh.

1 Q. A card -- this machine?

2 A. Card machine, uh-huh.

3 Q. And there was a hood you were trying to lift up and
4 attach to the machine?

5 A. It's -- it's -- it's a hood. It's like them doors
6 close up there, that's how it --

7 Commissioner wilkerson: Is that it?

8 A. -- that's it. I can't hardly see it from here. Oh,
9 my. That's it. That's it right there.

10 Commissioner wilkerson: Okay. I thought it was.

11 A. Uh-huh. And see how they got it on the --

12 Commissioner wilkerson: Yes.

13 A. -- yeah.

14 Q. Okay.

15 Commissioner wilkerson: That's it; that's the
16 same one I've got.

17 A. Uh-huh.

18 Q. Okay.

19 A. Uh-huh.

20 Q. And I'm going to -- I'm going to leave this in front of
21 you so you can describe for the Commissioner --

22 Ms. Mickle: -- what page is that, Commissioner?

23 Commissioner wilkerson: These are not numbered.
24 I just had put at the top part of Defense exhibits
25 on 8/12/2010. They aren't numbered. It's just --

1 I think what these were submitted last time was
2 the entire machine, how it looked with ladders and
3 --

4 A. Uh-huh.

5 Commissioner Wilkerson: -- dimensions and all
6 that --

7 Ms. Mickle: Is that what you were looking at?

8 Commissioner Wilkerson: -- yes. Yes, ma'am.

9 Ms. Mickle: Okay.

10 Commissioner Wilkerson: And then, I think
11 actually there was some type cloth of some -- I
12 gave back because it was all over the place.

13 Ms. Mickle: Okay.

14 Mr. Huff: If I can approach, too, Commissioner,
15 because there's also --

16 Commissioner Wilkerson: Yes, go ahead.

17 Mr. Huff: -- there's also this one that actually
18 shows the -- there's the hood right there
19 (indicating).

20 Commissioner Wilkerson: That's the roller. Yes,
21 that's the hood with the roller on it. I had
22 already looked at that one, yes.

23 Q. Okay. So, when you're talking --

24 A. Can I see -- can I see that one he just -- he just
25 showed me right there?

1 Ms. Mickle: -- Ros, do you have this one?

2 Mr. Huff: Yes, it's on your's. I'll show you
3 where it is. It's -- it's right there. I think
4 it's behind the one you have right now.

5 Commissioner wilkerson: The one that's got the
6 roller on it right there.

7 Mr. Huff: Yes, it's the one right in front of --

8 A. That's the -- that's the one I need right there.

9 Mr. Huff: -- it's the one in front, Ann.

10 Q. This one right here?

11 A. Uh-huh. Yes, ma'am.

12 Commissioner wilkerson: Yes. It's the one with
13 the roller and the hood. I've got it.

14 A. Yes, this one right here (indicating).

15 Q. Okay. All right. Well, if you would, I'm going to
16 mark -- why don't you to identify this first.

17 A. Okay.

18 Q. What is this?

19 A. That's -- that's the between the five hundred (500) and
20 fifteen thousand (15,000) -- hundred (100) -- hood we
21 was lifting up.

22 Q. Let me see it.

23 A. Uh-huh.

24 Q. Okay. And is this the part that you're referring to as
25 the --

1 A. That's --

2 Q. -- point to it. Where are you referring to the hood?

3 A. -- that's the whole hood right here (indicating).

4 Q. At the very top?

5 A. Yes, ma'am.

6 Q. Okay.

7 A. The whole -- that's the whole -- that's what we was
8 trying to lift up.

9 Q. Okay. So, I'm going to mark with an X on that picture
10 what you're describing as the hood.

11 Ms. Mickle: I'd like to make this Claimant's
12 Exhibit Number One --

13 Commissioner Wilkerson: One. Okay.

14 Ms. Mickle: -- so we'll all be talking about the
15 same thing.

16 Commissioner Wilkerson: Right. So, we've got it.

17 (Claimant's Exhibit Number One was marked for
18 Identification)

19 Court Reporter: Commissioner, I'm going to mark
20 it on the back; it's not showing real well on the
21 front. C-1 for Claimant's One.

22 Ms. Mickle: Thank you.

23 Mr. Huff: Let me see which one that is. All
24 right. And that's C-1?

25 Commissioner Wilkerson: Right.

- 1 Mr. Huff: All right. I've got it, C-1.
- 2 Ms. Mickle: C-1.
- 3 Q. And, if you would, just so we can keep this in context
- 4 --
- 5 A. Uh-huh.
- 6 Q. -- what is -- Mr. Huff has given me another picture --
- 7 a set of pictures -- but what is this picture that the
- 8 Commissioner was referring to a second ago? what is
- 9 it?
- 10 A. It's the same hood.
- 11 Q. Okay.
- 12 A. That's the exact same hood right there (indicating).
- 13 Q. Is it on a chain? what is that?
- 14 A. It's on a -- that's the forklift.
- 15 Q. That's the forklift right there?
- 16 A. That's the forklift behind that, yes, ma'am.
- 17 Q. Okay.
- 18 A. Right -- this long -- this long piece right here?
- 19 Q. Okay.
- 20 A. That's the forklift there.
- 21 Q. Okay. And where is --
- 22 Commissioner Wilkerson: I don't it is but go
- 23 ahead.
- 24 A. Huh? That's -- that's the forklift.
- 25 Q. Right at the top?

- 1 A. See that's -- yeah, that's the top of the --
2 Commissioner Wilkerson: well, I haven't been in
3 that plant but --
4 A. -- that's the top of the building.
5 Commissioner Wilkerson: -- I've been in a bunch
6 in my career but I don't --
7 Q. Yes, that's the top of the building --
8 A. The top of the building.
9 Q. -- but this pulley, is attached --
10 A. It's to -- to the --
11 Q. -- the forklift right there (indicating)?
12 A. -- to the forklift. Yes, ma'am.
13 Q. Okay. All right. And is this -- this piece of
14 equipment right here that is being held up by the
15 chains, is that on this picture right here?
16 A. Yes, ma'am.
17 Q. That's the hood right here?
18 A. It's -- it's held up -- the forklift is holding it up
19 right there (indicating).
20 Q. Right there?
21 A. Yes, ma'am.
22 Q. Same thing?
23 A. Yes, ma'am.
24 Q. I can see that. So, that and that are the same thing?
25 A. Yes, ma'am.

1 Mr. Huff: It's the forklift arm.
2 Commissioner wilkerson: Here it is. It's the arm
3 that's attached to the forklift back here, but
4 it's not the forklift.
5 Ms. Mickle: Right, the arm is attached to the
6 forklift. Okay.
7 Commissioner wilkerson: I'll agree with that.
8 Ms. Mickle: Okay.
9 Commissioner wilkerson: There it is.
10 Mr. Huff: It's the arm.
11 Commissioner wilkerson: I'll agree with that.
12 It's the arm that's attached to the forklift, so.
13 Ms. Mickle: Okay. I want to mark this as
14 Claimant's Exhibit Number Two.
15 (Claimant's Exhibit Number Two was marked for
16 Identification)
17 Mr. Huff: And there's the forklift with the arms
18 (indicating).
19 Commissioner wilkerson: I've got it.
20 Court Reporter: C-2 for Claimant's Two.
21 Ms. Mickle: Thank you.
22 Commissioner wilkerson: Yes, I think we've got to
23 take all this as part of the puzzle, not just --
24 because there's one at the back, too. Ann, if you
25 look all the way toward the back, the last three

1 (3) or four (4) sheets, it shows that arm that's
2 attached to the forklift.

3 Mr. Huff: Yes.

4 Commissioner wilkerson: I don't think there's any
5 dispute of any of this.

6 Mr. Huff: No.

7 Commissioner wilkerson: It's just we need to get
8 in the record correct.

9 Ms. Mickle: No.

10 Mr. Huff: It's that one there (indicating).

11 Commissioner wilkerson: Okay.

12 Q. And if you would identify this as well.

13 Ms. Mickle: Commissioner, were there any other
14 pictures that were --

15 Commissioner wilkerson: No, I just -- I had
16 looked through them before we came in last week.
17 I just knew those were in there. That's why I
18 knew it wasn't the forklift earlier. It was the
19 arm that was attached to the forklift.

20 Mr. Huff: Since we all have them we could just
21 number them, you know, we could number them A to
22 C, if that would help.

23 Ms. Mickle: I'm -- I'm fine.

24 Commissioner wilkerson: Yes, I think that -- this
25 get the -- I don't think anybody's going to

- 1 to do and who was with you --
- 2 A. Yes, ma'am.
- 3 Q. -- at the time of your injury.
- 4 A. Okay. It was -- it was three (3) of us. Lowell
- 5 Simpkins was on the forklift. We brought -- we brought
- 6 the hood to the machine and we was --
- 7 Q. First identify who was there.
- 8 A. Lowell Simpkins, Al Martin, and Tom -- what's Tom's
- 9 last name? Tom -- Tom Harris.
- 10 Mr. Huff: Here is the list.
- 11 Ms. Mickle: Thank you.
- 12 A. Tom -- Tom Harris.
- 13 Commissioner Wilkerson: Tom Harris?
- 14 A. Yes, sir.
- 15 Commissioner Wilkerson: Okay. I'm sorry.
- 16 Q. Okay. Now, where was Lowell?
- 17 A. Lowell was on the -- on the --
- 18 Commissioner Wilkerson: That's Mr. Simpkins,
- 19 okay.
- 20 A. -- yes, sir. He was on the ground on the forklift.
- 21 Commissioner Wilkerson: I've got you.
- 22 Q. Where were the other two (2) people?
- 23 Commissioner Wilkerson: He was on the forklift?
- 24 A. Yes. Yes, sir.
- 25 Commissioner Wilkerson: Was he --

1 Mr. Huff: He was driving.
2 Commissioner Wilkerson: -- he was driving the
3 forklift. Is that --

4 A. He -- he told us he was going to drive it because he
5 didn't want nobody to get hurt because --

6 Commissioner Wilkerson: -- okay, that's fine. He
7 was driving the forklift. Okay.

8 Q. And where are the other two (2) people?

9 A. Tom Harris was right beside me on the left of the
10 machine and -- on the left of the machine, and Al
11 Martin was on the very far end on the right, beside --
12 well, he was above Lowell Simpkins.

13 Q. Okay. All right. Now, --

14 Commissioner Wilkerson: And where were you?

15 A. I was -- I was kind of -- I wasn't in the middle, but I
16 was kind of -- I was to the left side, right before --
17 Tom -- Tom --

18 Commissioner Wilkerson: You were closer to Tom
19 Harris?

20 A. -- yes, sir.

21 Commissioner Wilkerson: Okay.

22 A. Yes, sir. Yes, sir.

23 Q. And what were you all doing?

24 A. We was instructed -- they told Tom to go up there --
25 because the forklift wouldn't -- couldn't lift it up,

- 1 they told Tom to go up there --
- 2 Q. Did you try to lift it up with the forklift initially?
- 3 A. -- and it wouldn't -- it wouldn't -- it wouldn't do
- 4 nothing.
- 5 Q. What would it do when you would try to lift it up with
- 6 the forklift?
- 7 A. It would come straight down.
- 8 Q. The hydraulic system, it would let it down?
- 9 Mr. Huff: I'm going to object.
- 10 A. It -- it would come straight down; it wasn't lifting
- 11 nothing up.
- 12 Q. Okay.
- 13 Commissioner Wilkerson: It just wouldn't lift?
- 14 A. It wouldn't lift. We -- we -- the rolls that was
- 15 spreaded out, we was trying to lift them, it would fall
- 16 right -- it would go all the way to the ground and then
- 17 -- and it would shoot fluid out all over the floor.
- 18 Fluid was out -- they had to get a mop and mop up the
- 19 fluid off -- off the floor because that's how bad it
- 20 was shooting out hydraulic fluid.
- 21 Q. Okay. And so, in response to that, what did you do to
- 22 keep trying to make the -- the -- to get the job done?
- 23 A. Lowell Simpkins instructed us to try -- he -- he
- 24 instructed Tom to get on top of the machine and take
- 25 the straps off, we're going -- and Tom had to put a --

1 a shock or something on it. We were going to try to
2 lift it manually with our hands up in the air while he
3 popped the shock on there. So, basically, we was --
4 there was two (2) people, basically, trying to hold it
5 up. And Tom was on the side trying to hold it up with
6 one (1) hand.

7 Q. So, if this is the hood (indicating) -- I'm just trying
8 to get a visual. If this is the hood (indicating) --

9 A. Yes, ma'am.

10 Q. -- where are you?

11 A. I'm -- I'm right here (indicating).

12 Q. Okay. And where --

13 A. And Tom was right here (indicating). Al Martin is way
14 on this side, and Lowell Simpkins is on floor because
15 we on a platform. Lowell Simpkins is on the floor on
16 the forklift.

17 Q. -- okay. And what's this side (indicating) attached
18 to?

19 A. That's attached to the -- that's -- that's the middle
20 -- it's attached to the middle of the machine.

21 Q. That machine right there (indicating)?

22 A. Yes, ma'am. It's in the middle.

23 Q. Okay. All right.

24 A. See, that's like the two (2), it's in -- it's in the
25 middle.

1 Q. Okay.

2 A. See, this basically -- what we was lifting up was the
3 back of the hood.

4 Q. Okay.

5 A. Uh-huh.

6 Q. All right.

7 A. It's the back of the hood.

8 Q. Okay. And as -- and what happened as you all were
9 doing that?

10 A. I was trying to lift it up with two (2) hands and --
11 and Al was on the other side trying to lift it up and
12 we were supposed to hold it up while he popped the
13 shock on, and then --

14 Q. What's -- I don't know what pop the shock means.

15 A. -- well, he -- he put the -- he put the shock on -- on
16 the machine. He --

17 Q. Okay. So, he's doing something on the machine?

18 A. -- he's got -- we had to try to put the shock on it.

19 Q. Does that mean attach it?

20 A. Yeah, attach the -- attach the shock -- attach the
21 shock on the machine.

22 Q. Okay. All right.

23 A. And all three (3) of us -- when Lowell told us to do
24 that, all three (3) of us looked at each other like we
25 ain't going to be able to pick this -- we ain't going

- 1 to be able to lift this hood up.
- 2 Q. How much do you think that hood weighs?
- 3 A. About fifteen (15) -- two thousand (2,000) pounds.
- 4 Q. Do you really know? Have you ever weighed it?
- 5 A. I never weighed it but I -- it ain't no -- it -- it
- 6 don't -- it don't weigh no less than -- it's a heavy
- 7 hood.
- 8 Q. It's heavy is what you know.
- 9 A. It's a heavy hood. It's a heavy hood.
- 10 Q. Okay. All right. And that's the same hood that you
- 11 were trying to use a forklift to --
- 12 A. Uh-huh.
- 13 Q. -- to raise up; is that right?
- 14 A. Uh-huh. About -- I'd say if you was to stand up on
- 15 that hood about fifteen (15) people could get on top of
- 16 that hood and stand up on it.
- 17 Q. Okay. Then what happened to your body?
- 18 A. And the -- the sharp point of back of the hood, from
- 19 trying to lift up, it came down on my shoulder while we
- 20 was trying to lift it. We kept trying -- like we was
- 21 trying heave it up in the air and hold it up while he
- 22 was doing it, and it kept -- it kept coming back down
- 23 on all of us. And it just -- it caught my shoulder the
- 24 first time, and I was on top of a ladder and it pinned
- 25 me to the ladder, so.

1 Q. Okay. when you --

2 Mr. Huff: Ann, can I speak to you for a second?

3 Ms. Mickle: -- all right. I'm with you.

4 Mr. Huff: Yes. Okay. Just make it --

5 Ms. Mickle: Can --

6 Commissioner Wilkerson: Yes.

7 Mr. Huff: Can we take a break for minute?

8 Commissioner Wilkerson: Oh, yes. Okay.

9 Q. We're going to take a short break.

10 A. Okay.

11 Ms. Mickle: Is that okay, Commissioner?

12 Commissioner Wilkerson: Yes. Do I need to be out
13 there or no?

14 Ms. Mickle: Well, he --

15 Commissioner Wilkerson: Oh, he needs a break.

16 Oh, I'm sorry.

17 Ms. Mickle: -- yes, he wants a break.

18 Commissioner Wilkerson: I'm sorry. I thought you
19 all were wanted it. I'm going to check to see who
20 is out there.

21 Court Reporter: And I'm going off the record.

22 (Off The Record)

23 Commissioner Wilkerson: Ann, I was telling Ros, I
24 told the other two (2) Attorneys that we had them
25 scheduled for about 10:00 or 10:30. This -- they

1 could probably leave and come back about 11:30.
2 So, I was just telling them that would probably be
3 better for them to do that instead of sitting
4 around.

5 Ms. Mickle: Thank you, Commissioner.

6 Commissioner Wilkerson: Sure.

7 Q. Okay. Mr. Lee, you were describing where everybody was

8 --

9 A. Yes, ma'am.

10 Q. -- and then you left off by saying you were on a
11 ladder?

12 A. Yes, ma'am.

13 Q. Now, where was the ladder?

14 A. The ladder was just like they got it right here
15 (indicating).

16 Q. Hold on for a second. You're looking at Claimant's
17 Exhibit Number One?

18 A. Uh-huh. It was like that right there (indicating).

19 Q. Like the guy that's on that ladder --

20 A. Yes.

21 Q. -- on this picture?

22 A. Uh-huh. See, Tom was on the ladder, too. And,
23 basically, we had -- we have to -- we have to kind of
24 stand on anything we can. So, it's like the ladder --
25 and they've got a little short ladder that be right

1 there (indicating).

2 Q. Okay.

3 A. And we have to stand on the ladder.

4 Q. Okay. So, Claimant's Exhibit One shows a ladder. You
5 were on the ladder and Tom was on the ladder?

6 A. Uh-huh.

7 Q. Okay. And then what happened?

8 A. And they wanted -- they wanted -- Lowell Simpkins
9 wanted us to, basically, to hold the hood up while Tom
10 did something on -- put -- tried to put a shock on the
11 machine. They wanted us to hold it up in the air.
12 That's why when -- when Mr. Ros said -- he said he was
13 pushing and stuff, we was trying to push the -- the
14 hood in the air and hold it up in the air. And we was
15 looking at each other like we can't -- ain't no way we
16 can hold this hood up in the air.

17 Q. Okay.

18 A. And that's when the hood just came down and it came on
19 my shoulder.

20 Q. Okay.

21 A. They wanted us to hold the hood --

22 Commissioner Wilkerson: What shoulder?

23 A. -- on my left shoulder.

24 Commissioner Wilkerson: Okay.

25 A. And it's a --

1 Commissioner Wilkerson: I knew that but just go
2 ahead.

3 Ms. Mickle: Okay.

4 A. -- it's a sharp edge on the -- that's on the hood that
5 hangs off.

6 Q. Okay.

7 A. And that's what landed -- that's what I think hurt me
8 because it landed -- that's what landed on my shoulder,
9 the sharp edge.

10 Q. Okay. Then after the hood landed on your shoulder --

11 A. Uh-huh.

12 Q. -- did it come all the way down to the ground or what
13 happened to the hood?

14 A. No, it didn't -- it -- it just stayed on my shoulder.
15 It stayed on my shoulder and it was -- it's like --

16 Q. Are you still on the ladder at that point?

17 A. -- still on the ladder.

18 Q. And is Tom still on the ladder?

19 A. Tom is still on the ladder too. Uh-huh.

20 Q. Okay. And then what do you all do to finish up the
21 job; what happens after that?

22 A. We didn't get to finish it. I had -- I had to pick the
23 hood up off me, myself.

24 Q. Okay.

25 A. I picked the hood off of me, myself and then I went

1 down -- that's when I went down, and they had --
2 they've got some yellow rails and I went on the rails
3 and I put my head down. And I said --

4 Q. Can you see the rail from this picture, any of the
5 pictures?

6 A. -- no, ma'am, you can't see the rails.

7 Q. Okay.

8 Commissioner Wilkerson: Let me ask you a
9 question. If this hood weighs fifteen hundred
10 (1,500) -- two thousand (2,000) pounds and you're
11 on a ladder, how did you pick that hood off by
12 yourself?

13 A. Off of me?

14 Commissioner Wilkerson: Yes.

15 A. I -- I -- I picked it up enough to ease out from up
16 under it.

17 Commissioner Wilkerson: All right. Did you use
18 both hands, one hand or --

19 A. Huh-huh. I used one (1) hand.

20 Commissioner Wilkerson: -- you used your right
21 hand?

22 A. Uh-huh. And I just picked it up off me enough to get
23 it off my shoulder. Uh-huh.

24 Q. All right. Do you really know how much that hood
25 weighs; you just know it's heavy?

- 1 A. Yeah, I just know it's heavy.
- 2 Q. Okay.
- 3 A. I don't really know how much it -- how much it weighs
4 but I just know it's heavy.
- 5 Q. Okay. All right. Now, what happened next? what did
6 you feel?
- 7 A. I told -- I told Lowell, I said, Lowell, I said my
8 shoulder don't feel right. I said -- I said, it's a --
9 I told him it just don't feel right; that's what I told
10 him.
- 11 Q. Okay.
- 12 A. And I said -- I said it's a different kind of pain
13 that's in my shoulder.
- 14 Q. Okay.
- 15 A. And Lowell looked at me and Lowell said -- okay, he
16 said, well, Lee, you -- he said, Lee, I don't know if
17 you want to go to the hospital or not because they
18 going to give you a piss test; that's what he told me.
- 19 Q. Okay.
- 20 A. So, anyway, --
- 21 Q. And then --
- 22 A. -- I kept on trying to work.
- 23 Q. -- okay.
- 24 A. I kept on trying to work. And I -- but I knew I hadn't
25 smoked nothing or none of that --

- 1 Q. Okay.
- 2 A. -- I wasn't drunk or nothing.
- 3 Q. All right.
- 4 A. I know I hadn't did none of that.
- 5 Q. All right.
- 6 A. So, the pain started shooting --
- 7 Q. I want you to be completely honest.
- 8 A. -- the pain just start shooting down my back and stuff.
- 9 Q. Okay.
- 10 A. And I went to Lowell -- I went to Lowell Simpkins --
- 11 no, Al Martin brought me some -- some Biofreeze and
- 12 some Goody Powder.
- 13 Q. Okay.
- 14 A. He brought me some Biofreeze and some Goody Powder.
- 15 Q. Okay.
- 16 A. And I used that and I took the Goody Powder and I tried
- 17 to work some more. And the pain just start shooting
- 18 down my back, shooting down my back. And then, all
- 19 them was asking me, they was talking about -- they was
- 20 like, what's wrong with you? And I said, man, it's
- 21 hurting. Because I usually -- I usually can work
- 22 through pain and I ain't no weak person; I'm usually a
- 23 strong person and I -- I don't like hospitals. So, I
- 24 kept on trying to work. And the pain got so bad, I
- 25 told Lowell -- I said, Lowell, we've got to go in the

- 1 office; I said, I've got to go to the hospital. Lowell
2 told me -- he told me to follow him in the office and
3 he -- he did the report, asked me who the witness was.
4 I told him Tom was there beside it and I explained to
5 him what happened, and he sent me to the hospital.
- 6 Q. Okay. Hold on for a second.
- 7 A. Uh-huh.
- 8 Q. You said you did a report. I'm looking at Claimant's
9 Exhibit Number One --
- 10 A. Uh-huh.
- 11 Q. -- dated 6/2/09.
- 12 A. Yes, ma'am.
- 13 Q. Is that the report that was done? Under treatment it
14 says, "Took Goody Powder and rubbed with Biofreeze".
15 Is that when you were talking about, Biofreeze?
- 16 A. Yes. Yes, ma'am, that's it.
- 17 Q. And then, "Sent to University Hospital ER at 1:45 OM"
18 is -- is what the report says?
- 19 A. Yes, ma'am.
- 20 Q. Okay. And then it has the supervisor's signature. Did
21 you, in fact, go to the hospital that night?
- 22 A. I went to try to go to the hospital but I was in so
23 much pain I couldn't make it; so, I went home and got
24 my daddy to drive me to the hospital.
- 25 Q. Okay. So, your dad then drove you to the hospital?

- 1 A. My dad, I woke him up and he drove me to the hospital.
- 2 Q. Okay. Then I have your records next in our APA's from
- 3 University Hospital, and they start at page 2, giving a
- 4 history patient states, "The hood from a machine fell
- 5 and hit his left shoulder".
- 6 A. Uh-huh.
- 7 Q. Did you tell the people at the hospital what happened?
- 8 A. Yes, ma'am.
- 9 Q. And that's page 2 of our APA?
- 10 A. Yes. Yes, ma'am.
- 11 Q. And that was in the emergency department?
- 12 A. Uh-huh.
- 13 Q. And then, did you ask for treatment at work and was
- 14 treatment provided?
- 15 A. well, I --
- 16 Q. How did you get to Dr. Broder?
- 17 A. -- I went back to work. I went back to work. I was in
- 18 pain and I went back to work, and Nancy -- Nancy Bowers
- 19 told me you can't return to work until you -- they want
- 20 you to see the -- they -- the company doctor. And so,
- 21 they sent me to the company doctor.
- 22 Q. okay.
- 23 A. I came back to work with a arm brace on and they --
- 24 they sent me home.
- 25 Q. And the arm brace, did you get that in the emergency

1 room?

2 A. Yes, ma'am.

3 Q. Okay. And they sent you to the company doctor, Dr.
4 Broder.

5 A. Yes, ma'am.

6 Q. And did you tell Dr. Broder that you were hurt at work?

7 A. Yes, ma'am.

8 Ms. Mickle: And, Your Honor, I'm pointing to page
9 8 of our APA's, the first line.

10 Q. And then did Dr. Broder, the company doctor, provide
11 treatment for you?

12 A. Yes, ma'am.

13 Q. Okay. And what did he do for you essentially; did he
14 give you medications?

15 A. He gave me Naprosyn and then he gave me Skelaxin, I
16 think.

17 Q. Okay. All right. And did you come back and did they
18 give you some restrictions in terms of work as well?

19 A. Yes, ma'am.

20 Ms. Mickle: And I'm looking at page 10 of our
21 APA's.

22 Q. "No right handed work, no left handed work".

23 A. Uh-huh.

24 Q. Did they give you some restrictions?

25 A. Yes, ma'am.

- 1 Q. Okay.
- 2 A. And he put me up for physical therapy.
- 3 Q. And some for physical therapy?
- 4 A. Yes, ma'am.
- 5 Q. And who is Nancy -- it says, "Verified by Nancy
- 6 Bowers". Who is Nancy Bowers?
- 7 A. That's the Human Resource woman at Bondex.
- 8 Q. Okay.
- 9 A. Uh-huh.
- 10 Q. And Bondex -- okay, so they authorized that. Did you
- 11 -- in looking at the records, it looks like you
- 12 continued to go back to the doctor; is that correct?
- 13 A. Yes, ma'am.
- 14 Q. And what were you feeling; what were your symptoms at
- 15 that time?
- 16 A. I had back pain, I had neck pain and I had real bad
- 17 shoulder pain.
- 18 Q. And which shoulder were you talking about at the time?
- 19 A. My left shoulder.
- 20 Q. Okay. All right. And I see that you returned to the
- 21 doctor multiple times --
- 22 A. Yes, ma'am.
- 23 Q. -- and they provided restrictions.
- 24 A. Yes, ma'am.
- 25 Q. Now, it looks like Dr. -- Dr. Broder --

- 1 Ms. Mickle: -- page 15 of our APA's --
- 2 Q. -- ordered an MRI --
- 3 A. Uh-huh.
- 4 Q. -- and says it was okayed by Bowers, is what it says on
- 5 page 15, faxing letter. Did you do everything that the
- 6 doctor ordered you to do?
- 7 A. Every -- everything the doctor ordered for me to do, I
- 8 did it.
- 9 Q. And it looks like you -- you were given an open MRI.
- 10 A. Yes, ma'am.
- 11 Q. The record won't reflect this, which is why I have to
- 12 say it now. About how tall are you?
- 13 A. About six foot (6').
- 14 Q. And about how much do you weigh?
- 15 A. About one ninety-five (195).
- 16 Q. Okay. All right. Do you know why an open MRI was
- 17 ordered?
- 18 A. No, I don't know.
- 19 Q. Not -- it wasn't ordered, do you know what you were
- 20 given it?
- 21 A. Why -- why I was given it?
- 22 Q. Yes.
- 23 A. Because of my pain in my shoulder.
- 24 Commissioner Wilkerson: Do you know what an open
- 25 MRI is?

1 A. Yes, sir.

2 Commissioner Wilkerson: Okay. Tell me what it
3 is.

4 A. It's when you -- it's a -- it's when you get in the
5 machine and they do a -- well, I don't know what -- I
6 just know it by the name. You get in the machine and
7 it's --

8 Commissioner Wilkerson: So, you wouldn't know
9 what an open MRI was to a MRI with contrast,
10 right?

11 A. -- oh, no, sir.

12 Commissioner Wilkerson: Okay.

13 A. Not -- no, sir. I -- I didn't -- I thought it was -- I
14 didn't -- I didn't even -- I ain't never heard of a
15 closed --

16 Commissioner Wilkerson: Okay. I didn't think so.

17 Q. Okay. You just got in the machine and that's what
18 you're talking about when you say an MRI?

19 A. -- yes. Yes, ma'am.

20 Q. Okay. All right. And then from there, it looks like
21 all of the appointments were authorized. And the last
22 authorized appointment seems to be July 1st, 2009, page
23 18 of our APA's. At that point, you were then referred
24 to an Orthopedist; is that correct?

25 A. Yes, ma'am.

- 1 Q. And you were sent to -- and you had been taking
2 physical therapy; the company had been sending you to
3 Sports Plus for physical therapy?
- 4 A. Yes. Yes, ma'am.
- 5 Q. Okay.
- 6 A. Uh-huh.
- 7 Q. And then you were sent to a Dr. James Bethea; is that
8 correct?
- 9 A. Yes, it is.
- 10 Q. And did you make every appointment that the company
11 provided for you?
- 12 A. Yes, ma'am.
- 13 Q. Okay. And --
- 14 A. I was going to work and going to physical therapy.
- 15 Q. -- so, you were doing them both?
- 16 A. I was doing them both, yes, ma'am.
- 17 Q. Okay. All right. How were you able to go to therapy?
18 After work?
- 19 A. Oh, before work.
- 20 Q. You'd go before work?
- 21 A. Before, because I work the night shift.
- 22 Q. Okay.
- 23 A. Yes, ma'am.
- 24 Q. All right. And it looks like on 7/16/09, the company
25 authorized you to see Dr. Bethea, page 31 of our APA's;

1 what did he do for you?

2 A. Dr. Bethea?

3 Q. Did he give you medications?

4 A. He -- I think he gave me a cortisone shot.

5 Q. Yes. Okay.

6 A. And he gave me some more -- some more Naproxen.

7 Q. Okay. All right. And he made an appointment for you
8 to return to him --

9 A. Yes, ma'am.

10 Q. -- in about two (2) weeks.

11 A. Yes, ma'am.

12 Q. Did you ever get to return to that appointment?

13 A. That's when they -- they cut -- they stopped me from
14 doing physical therapy and everything.

15 Q. At that point?

16 A. Uh-huh.

17 Q. Okay. So, now we're in the latter part of July of
18 2009?

19 A. Yes, ma'am.

20 Q. Okay. All right. So, once they stopped, were you
21 still working?

22 A. I was still working, yes, ma'am.

23 Q. And what type of work were you doing?

24 A. I was doing -- there's some -- the hoppers, that's
25 where you have to load the fibers up on the table.

1 And, at the time, -- at the time, everybody told me to
2 look out because they said the people at the job --

3 Mr. Huff: I'm going to object to hearsay.

4 Commissioner Wilkerson: Yes. You can't tell what
5 they told you.

6 Q. Just tell me what kind of work you were doing, focus on
7 the work. Don't tell me what anybody said at this
8 point, unless it's a supervisor.

9 A. -- that's -- that's who it was, a supervisor.

10 Q. Oh, so the -- what -- okay, what type of work did the
11 supervisor have you doing?

12 A. He had loading -- loading some fiber on the table. But
13 see the -- okay, the -- the fiber we -- the fiber that
14 they had me loading on the table is kind of -- you have
15 to wet it down. So, you're having to tote -- it's some
16 big -- it's some big canisters that you have to fill up
17 with water and you have to tote them to the table. So,
18 you have to spray all the fiber down, and then you have
19 to load it -- load it up onto -- onto the table.

20 Q. And how heavy is that?

21 A. It's -- it's just -- it's back and forth but it ain't
22 -- it ain't too heavy.

23 Q. Okay.

24 A. It's just the canisters, at that time, I was carrying
25 was heavy.

- 1 Q. okay. what are the canisters --
- 2 A. They're probably about -- probably about fifteen (15),
- 3 twenty-five (25) pounds --
- 4 Q. -- okay.
- 5 A. -- something like that.
- 6 Q. Is something in the canisters or --
- 7 A. well, it's full of water.
- 8 Q. -- okay.
- 9 A. Full of water and some kind of other mixture, you know,
- 10 a mixture of stuff --
- 11 Q. okay.
- 12 A. -- that they had.
- 13 Q. All right. And is that the kind of work that you were
- 14 doing at the time?
- 15 A. Uh-huh. And -- and I was trying like -- okay, every --
- 16 like two (2) -- out of about two (2) times a week you
- 17 have to clean the machines. So, I was trying to go
- 18 clean the machines with one (1) arm and stuff like
- 19 that.
- 20 Q. okay. All right.
- 21 A. uh-huh.
- 22 Q. And so, from the date of the accident to now we're
- 23 seeing Dr. Bethea, had you missed any time from work or
- 24 had you tried to work every day?
- 25 A. I worked every day.

- 1 Q. Okay. All right.
- 2 A. Uh-huh. Every day.
- 3 Q. Okay.
- 4 A. Lowell Simpkins told me, you know, the work I was
5 doing, Lowell Simpkins told me, he said, Lee, I don't
6 know how you're doing this work because it's hard for
7 two (2) -- a person with two (2) hands -- two (2) --
8 two (2) people to do it.
- 9 Q. And he's your supervisor?
- 10 A. And that's my supervisor, he came back there and he
11 talked -- he talked to me and he said, off the record.
12 He said, I don't know how you're doing it. I used to
13 go to Janice every morning and show her --
- 14 Q. Now, who is Janice?
- 15 Ms. Napier: Napier.
- 16 Ms. Mickle: Oh, okay. Thank you.
- 17 A. -- and she seen it. My whole arm used to be swollen up
18 every morning, so.
- 19 Q. Okay.
- 20 A. And I was in pain and I -- and I told her -- I went to
21 her about -- like twice, didn't I?
- 22 Q. No, you can't ask her.
- 23 A. Like two (2) -- two (2) or three (3) times I went to
24 her --
- 25 Q. Okay.

1 A. -- and -- but I still came back to work and I still was
2 trying to do it, though.

3 Q. Okay. All right. Got it. Now, did you then, when --
4 when the Carrier denied treatment and wouldn't give you
5 any further treatment --

6 A. Uh-huh.

7 Q. -- did you then go get treatment on your own?

8 A. I went and got treatment on my own, yes, ma'am.

9 Q. Is there a Community Health Center, Margaret J. Weston,
10 or something to that effect?

11 A. Yes, ma'am.

12 Q. Okay.

13 A. Uh-huh.

14 Q. And so, you did go get treatment?

15 A. Yes, ma'am.

16 Q. And what were you seen for?

17 A. I was seen for my back, my neck, and my shoulder.

18 Q. And when you talk about your shoulder, at that point,
19 you're talking about your left shoulder?

20 A. Yes, ma'am. Uh-huh.

21 Q. Okay. All right. And did -- you were getting
22 treatment. Did you continue to try to work?

23 A. She -- she took me out of work. She -- she told me --
24 it was August the 3rd, she told -- she -- because I had
25 to see Dr. Shannon on August the 18th. So, she took me

1 out of work.

2 Q. Okay. So, you were seen in the Community Health
3 Center?

4 A. Yes, ma'am.

5 Q. Then they recommended that you see an Ortho, and is
6 that how you got to Dr. Shannon --

7 A. That's right.

8 Q. -- and Dr. Carter?

9 A. Uh-huh.

10 Q. Okay.

11 A. I went there to Dr. Shannon first.

12 Q. All right. Dr. Shannon first, then Dr. Carter --

13 A. Uh-huh.

14 Q. -- Ty Carter?

15 A. Uh-huh.

16 Q. Okay. And did they change your work status; did your
17 work status change? Did they --

18 A. That's when Dr. Shannon told me -- he gave me a -- the
19 work restrictions --

20 Mr. Huff: And I object to what Dr. Shannon said

21 --

22 Q. Okay. Don't tell --

23 Commissioner Wilkerson: You can't tell me what
24 the doctor said.

25 Q. -- don't tell me --

- 1 Mr. Huff: -- the records speak for themselves.
- 2 Q. -- what he said; just tell me about what was your --
- 3 your -- your work status when you saw Dr. Shannon.
- 4 A. It was no -- no climbing ladders, no climbing stairs.
- 5 I think I couldn't lift over ten (10) pounds with my
- 6 left hand. No overhead work --
- 7 Q. Okay.
- 8 A. -- no overhead work and I think it was no pushing or
- 9 pulling, and no being -- being around hazardous
- 10 equipment.
- 11 Q. Okay. And did they give you the work slip that we've
- 12 got in our APA's --
- 13 A. Yes.
- 14 Q. -- page 68?
- 15 A. Yes.
- 16 Q. This is -- now, we're up to around August 17th or 18th.
- 17 A. Yes, ma'am. That's it right there (indicating).
- 18 Q. And is that from Dr. Shannon?
- 19 A. Yes, ma'am.
- 20 Q. which includes no operating hazardous equipment?
- 21 A. Yes, ma'am.
- 22 Q. Okay. When he gave you that work slip, what did you do
- 23 with it?
- 24 A. when he -- when they -- he -- he gave me that work
- 25 slip, I was going to -- I was just going to return to

1 work.

2 Q. Okay.

3 A. I thought I -- I was getting ready to go to work. I
4 took it to Janice --

5 Q. Ms. Napier, right?

6 A. -- Ms. Napier.

7 Q. Okay.

8 A. Sorry about that, Janice. I took it to Ms. Napier -- I
9 took it to Ms. Napier and she looked at it and she told
10 me -- she was like -- she looked at it for a second and
11 she told me, she said -- she's going -- she's going to
12 talk to Jay because it said no -- no being around
13 hazardous equipment. So, she said -- she said not for
14 me -- she said she's going to talk to Jay. Jay -- Jay
15 Mickleson before I can return to work.

16 Q. Who is -- and just for the record, who is Jay
17 Mickleson?

18 A. Jay is the Vice President at Bondex.

19 Q. Okay. All right.

20 A. Uh-huh.

21 Q. And then what happened?

22 A. I went home. She told me to wait on her to call; she
23 was going to call me.

24 Q. All right.

25 A. So, I think it was around six o'clock, 6:30 had come

1 around, she called -- I said -- I said -- well, I said,
2 they must want me -- I said, they want me to go to work
3 because Janice ain't called me yet because I know she
4 gets off about 5:00. So, I said she ain't called me;
5 then I must got to go to work. So, she called me on
6 her cell phone and told me, she said, I talked to Jay
7 on the phone and Jay said if you can't be around no
8 hazardous material don't return to work. So, she told
9 me -- she said, you've got my cell phone number and if
10 you got any more problems give me a call on my cell
11 phone.

12 Q. Okay.

13 A. Uh-huh.

14 Q. And has anybody from the company since that
15 conversation called you to return to work?

16 A. No, ma'am.

17 Q. Okay.

18 A. No, ma'am.

19 Q. Now, you referred to her as Janice a couple times but
20 Ms. Napier?

21 A. Uh-huh.

22 Q. How do you know Ms. Napier?

23 A. I grew up and went to school with her daughter.

24 Q. So, you went to school with her daughter --

25 A. Yes, ma'am.

- 1 Q. -- so, you know her pretty well; is that correct?
- 2 A. Yes, ma'am. She's a -- she's a aerobics instructor at
- 3 -- in the gym. I know her real good.
- 4 Q. I know you do --
- 5 A. Uh-huh.
- 6 Q. -- but the Commissioner doesn't know you do, okay? And
- 7 so, that was the last conversation with -- with Ms.
- 8 Napier.
- 9 A. Oh, that wasn't the last conversation.
- 10 Q. About work.
- 11 A. Yes, ma'am.
- 12 Q. Okay. Now, did you continue to see Ms. Napier; did --
- 13 would you see her for various things?
- 14 A. I -- I would talk to her.
- 15 Q. Okay.
- 16 A. I would talk to her. And this is what -- this is what
- 17 -- Ms. Napier said -- she said -- told me that she
- 18 don't know why they stopped me from going because she
- 19 said she seen me and how my arm was and stuff, and she
- 20 told me she don't know why they stopped my workman's
- 21 Comp.
- 22 Q. Okay.
- 23 A. She said she was going to do anything she could to help
- 24 me.
- 25 Q. Okay.

- 1 A. So, she -- I didn't ask her to do -- give me no
2 short-term disability because I don't even know about
3 it. She said -- I told her I'm having problems with
4 child support and stuff, and I told her, yeah, that I'm
5 having problems with child support --
- 6 Q. Okay.
- 7 A. -- and she said she's going to get me short term
8 disability. And she told me let me make some calls and
9 she's going to see what she can do and she called me
10 that same day.
- 11 Q. Okay.
- 12 A. Uh-huh.
- 13 Q. And it's at that point that you started getting some
14 short-term disability?
- 15 A. Yes, ma'am. Yes, ma'am.
- 16 Q. Okay. And I believe your child support was coming out
17 of your check at Bondex; is that right?
- 18 A. Oh, it -- it wasn't coming out of my checks. I had
19 just got on child support.
- 20 Q. Right.
- 21 A. Uh-huh.
- 22 Q. Right.
- 23 A. Just -- I had just started --
- 24 Q. Right.
- 25 A. -- just got on child support.

- 1 Q. Okay.
- 2 A. It hadn't started coming out of my check yet.
- 3 Q. Okay. And then did Ms. Napier take -- help you with
4 that or take -- address that for you as well?
- 5 A. Yes. Yes, ma'am.
- 6 Q. She wrote a letter?
- 7 A. Your talking to the child support people?
- 8 Q. Yes.
- 9 A. Yeah, because they told me to bring a letter up there
10 saying when I got on workman's Comp. She brought --
11 she -- I went -- I went to her, I called her on the
12 phone, she said the letter is going to be ready.
- 13 Q. Okay. All right.
- 14 A. So, I went down there and the secretary gave me the
15 letter and it said he's been on workman's Comp since, I
16 think, July 28th, or something like that.
- 17 Q. And about how long did you get short-term disability,
18 if you remember? And we've --
- 19 A. I don't remember.
- 20 Q. -- got Ms. Napier; we'll ask her.
- 21 A. I don't remember the time frame but I think it was six
22 (6) weeks though, like about -- about two (2) months.
- 23 Q. Okay. All right. And then it stopped after that?
- 24 A. Yes, ma'am.
- 25 Q. Okay. Are you still getting some of the health

1 insurance benefits? Do you still have your health
2 insurance in place?

3 A. No. No, ma'am.

4 Q. Did you have it for a little while, though?

5 A. I had it for -- she helped me out with that, too.

6 Q. Okay. How did she help you with that?

7 A. The last time we came to court, she -- she talked to me
8 outside when we -- after court was over with she called
9 me outside. She said, I'm going to have -- I'm going
10 to need you -- I need you to call me because I got to
11 talk to you about your health -- your health -- yeah,
12 your health insurance -- it was like your insurance.
13 So, I called her on the phone and she said you've got
14 -- she said I been trying to keep your insurance --
15 because, like, see she was trying to figure out why
16 they stopped -- why they stopped me from --

17 Mr. Huff: I'm going to object to what she was
18 trying to figure out.

19 Ms. Mickle: Okay. I understand.

20 Q. But do you have health insurance now?

21 A. -- I don't have it now.

22 Q. Oh, all right. But after your -- but you can --

23 A. But she -- she told me I can pay it though.

24 Q. -- okay. All right. But there was a period of time
25 that you did have it, correct?

- 1 A. Yeah, I did.
- 2 Q. Okay. And then when you didn't have it, you'd go to
3 the health center and then you had to pay on a sliding
4 scale on your own; is that what happened?
- 5 A. I had to pay on my own, yes.
- 6 Q. Okay. All right then. And then, after that -- and the
7 Commissioner has these records -- you've seen various
8 doctors that the Workers' Comp people have sent you to;
9 we call them independent medical evaluations.
- 10 A. Yes, ma'am.
- 11 Q. But when they had set these up with Dr. Bethea or Dr.
12 Westerkam or there was another IME back in 2009 --
- 13 A. Uh-huh.
- 14 Q. -- did you go to Dr. Charles Thomas? Did you go to
15 every IME they set up?
- 16 A. Yes, ma'am.
- 17 Q. Okay.
- 18 A. I went to every one.
- 19 Q. All right. And then, when did the problems with your
20 right arm start to develop?
- 21 A. When I -- when I was -- when I set -- when I was
22 putting the fiber on the machine, I had to use one (1)
23 -- one (1) arm to do it. And that's -- that was twelve
24 (12) hours of putting one (1) arm on -- putting fiber
25 on the machine for twelve (12) hours, standing up for

1 twelve (12) hours, then I had to try to wet it down.
2 And, you know, that fiber, when you wet it down, it's
3 -- it's real -- it's real, real heavy. It's real
4 heavy. So, that's when -- that's when my -- my whole
5 -- I was hurting everywhere then.

6 Q. Okay.

7 A. And my whole arm -- that's when I said I was going -- I
8 was going to Janice every morning because my whole
9 right arm would be swollen up.

10 Q. Okay.

11 A. And she -- and --

12 Q. Okay.

13 Commissioner Wilkerson: That's got nothing to do
14 with this accident.

15 Ms. Mickle: No. It's in the -- it's in the
16 medical; that's why I'm pointing it out. And --

17 Commissioner Wilkerson: How are you going to tie
18 in repetitive trauma to an accident that took
19 place on 6/2 of '09?

20 Ms. Mickle: -- what I'm doing is saying the
21 accident of 6/2/09 caused the problem with his
22 left shoulder, neck, and back for which he was
23 treated.

24 Commissioner Wilkerson: Okay.

25 Ms. Mickle: And then Dr. Carter, when he started

1 having these problems with his right arm because
2 he was overusing it --

3 Commissioner Wilkerson: Right.

4 Ms. Mickle: -- treated him for that as well and
5 gave a causation statement on that as well.

6 Commissioner Wilkerson: But it wasn't -- but it
7 wasn't because of the 6/2/09 accident.

8 Ms. Mickle: It was because of the -- because of
9 the 6/2/09 accident, he had limited use of the
10 left arm, so --

11 Commissioner Wilkerson: I -- I would agree with
12 that.

13 Ms. Mickle: -- he started -- started to use the
14 right arm, and then started to develop problems
15 with that. So, that's what makes it all relate
16 back to the original accident. All the -- all
17 injuries proximately caused by the original
18 accident, proximately caused from the 6/2/09.

19 Commissioner Wilkerson: Well, I just don't think
20 that proximately caused it. I think that's going
21 to be repetitive trauma and that's going to be a
22 2010 claim, but go ahead.

23 Ms. Mickle: Okay. But --

24 Commissioner Wilkerson: I'm telling you.

25 Ms. Mickle: -- just to answer your question and

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Commissioner Wilkerson: Yes. No, I understand.
Yes.

Ms. Mickle: -- and to push forward.

Commissioner Wilkerson: Yes.

Q. And so, since that time you have continued to get
medical treatment?

Ms. Mickle: Now, Commissioner, do you want me to
go through the medical treatment since this is --
you're going to read that?

Commissioner Wilkerson: Yes. I've already read a
lot of it.

Ms. Mickle: Okay.

Commissioner Wilkerson: I hadn't read --
actually, I read your part. I hadn't read Ros'
part because some of it was overlapping with the
doctors, but I read the Claimant's side before I
came in last week.

Ms. Mickle: Okay.

Q. And so, because the Commissioner is going to -- to read
the medical part --

A. Uh-huh.

Q. -- and it's my understanding that what's really
contested, and correct me if I'm wrong, is the accident
itself.

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Commissioner wilkerson: Right. How --

Ms. Mickle: Is that correct?

Commissioner wilkerson: -- right. The -- that's my understanding from the Defense that was there an accident arising out --

Ms. Mickle: Was there an accident.

Commissioner wilkerson: -- was there an accident --

Ms. Mickle: That's it. Okay.

Commissioner wilkerson: -- which we've actually got to tie back into the law, but was there an accident.

Ms. Mickle: Okay. All right.

Commissioner wilkerson: That's -- that's the whole issue today, was there an accident, period.

Ms. Mickle: Okay. And that's what I understand.

Q. Since that's the whole issue for today, the Commissioner has the medical records --

A. Yes, ma'am.

Q. -- so, I'm really not going to go through the medical with you other than you were treated for all the body parts that you -- you've complained of today?

A. Yes, ma'am.

Q. Is that correct?

A. Uh-huh.

1 Q. Okay. And just the latest treatment is a diagnostic
2 MRI with contrast that you did last Thursday; is that
3 correct?

4 A. Uh-huh. Yes, ma'am.

5 Q. Okay. And then we got that MRI back and that has been
6 provided to the Commissioner today, which shows a -- a
7 labral tear.

8 A. Yes, ma'am.

9 Q. Okay. Now, while you were able to work, and while you
10 were given restrictions, and while the employer allowed
11 you to work, did you work?

12 A. Yes, ma'am.

13 Q. Okay.

14 A. Yes, ma'am.

15 Q. And the last day you worked would have been on or
16 around the date of this statement, 8/18, and this
17 conversation that you would have had --

18 Mr. Huff: I'm going to have to object again; this
19 is leading. She can ask if he --

20 Commissioner Wilkerson: Yes.

21 Mr. Huff: -- when is the last day you worked?

22 Commissioner Wilkerson: Yes.

23 Q. -- is that correct?

24 A. Yes, ma'am.

25 Q. Okay. Just so the record is clear on the dates. Okay.

1 And so, are you asking for treatment for that left arm
2 and for the body parts that are related to this
3 accident that the Commissioner finds?

4 A. I need treatment because I be in so much pain. Yes,
5 ma'am, I'm asking for treatment.

6 Q. Okay.

7 A. I ain't had no -- I -- I wasn't -- I wasn't hurt before
8 June the 2nd and it's kind of -- that's kind of done
9 messed my whole life up, basically.

10 Ms. Mickle: Okay. With the stipulations that
11 you've mentioned, Your Honor, those are the
12 questions that I have at this point.

13 Commissioner Wilkerson: Okay. Mr. Huff?

14 Mr. Huff: Thank you. If you don't mind,
15 Commissioner, I'm going to come around here. I
16 bet you can't hear me there, can you?

17 Court Reporter: Not real well.

18 Commissioner Wilkerson: No.

19 Mr. Huff: Well, let's don't do that; I'll do it
20 right over here. I'll just stand back and --

21 Court Reporter: I just want you to have a clean
22 record.

23 Mr. Huff: -- I can stand back at my desk and do
24 it; that's no problem.

25

CROSS-EXAMINATION

1 By Mr. Huff:

2 Q. Your testimony earlier today --

3 A. Uh-huh.

4 Q. -- you said that this hood, in your opinion, weighed
5 somewhere between fifteen hundred (1,500) to two
6 thousand (2,000) pounds, correct?

7 A. Yes, sir.

8 Q. And then it's your testimony today that this fifteen
9 hundred (1,500) pound to two thousand (2,000) pound,
10 which is a ton, while standing on a ladder, you took
11 your right arm only and lifted it off your body; is
12 that what you said?

13 A. Yes, sir.

14 Q. Okay.

15 A. Off my shoulder.

16 Q. Off your shoulder?

17 A. Uh-huh.

18 Q. And they had you doing some light duty, did they not,
19 with fiber?

20 A. Yes, sir.

21 Q. You would stand at the end of a conveyor belt --

22 A. Yes, sir.

23 Q. -- and there's a big box -- a huge box, full of fiber,
24 correct?

25 A. No, sir.

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Q. Pardon?

A. No, sir.

Q. Tell me about the fiber.

A. It's -- it's in a big two thousand (2,000) pound barrel, which you have to lift up with a forklift, too, and put it to the end of hopper. And you've got to take two (2) -- you have to take some big snip pliers --

Q. Listen to my question. Where is the fiber --

Ms. Mickle: Let him finish the question.

Commissioner Wilkerson: Let him -- let him finish the question.

Mr. Huff: No, he's not -- I'm -- I'm -- let me object.

Commissioner Wilkerson: Whoa, whoa, whoa. Well, you can object to his answer but --

Mr. Huff: He's not answering my question, though. My question was is it in a box. Now he's describing how you open it. My question is it in a box; that's a yes, no answer.

Commissioner Wilkerson: And he said no.

Mr. Huff: No. It's -- I mean, it's a question.

Ms. Mickle: And he's --

Commissioner Wilkerson: Wait, no, no, no, wait a minute.

1 Mr. Huff: Okay. Go ahead.

2 Commissioner Wilkerson: Once he answers that --

3 Mr. Huff: All right.

4 Commissioner Wilkerson: -- he can give his
5 explanation of what he believes was taking place.
6 So, he's answered the question yes or no, and he
7 said no.

8 Mr. Huff: Yes.

9 A. Uh-huh.

10 Commissioner Wilkerson: Now -- now, go ahead and
11 finish --

12 Mr. Huff: Sure.

13 Commissioner Wilkerson: -- and then you can --

14 Mr. Huff: All right.

15 Commissioner Wilkerson: -- I'll get you to -- go
16 ahead.

17 A. It's -- it's in like a two thousand (2,000), three
18 thousand (3,000) pound bale with straps around it, like
19 five (5) or six (6) straps around it.

20 Q. All right. So, it's in --

21 Commissioner Wilkerson: And that -- go ahead.

22 Now you can ask him.

23 Q. -- it's in a bale?

24 A. Yes. Yes, sir.

25 Q. And it's wrapped with straps?

- 1 A. Yes, sir.
- 2 Q. And the straps have to be cut?
- 3 A. Yes, sir.
- 4 Q. And then when you cut the straps, what happens to the
5 -- to the fiber?
- 6 A. Well, you have to put a shield on your face and gloves
7 on before you can cut the straps off. And then, when
8 the straps come off, the fiber -- the whole fiber go up
9 in the air and you have to take the fiber off the bale
10 and put it onto the hoppers, the table, the conveyor
11 belt.
- 12 Q. So, who brings that big bale of fiber over to your work
13 area?
- 14 A. Lowell Simpkins was doing it.
- 15 Q. And so, when you have to bring it with a fork lift,
16 that you told the Commissioner, you're not the one
17 using the forklift?
- 18 A. No, sir.
- 19 Q. When the bale is sitting there and it's wrapped up, who
20 -- who uses the snips to un-bale it; is it Mr. Simpson
21 -- Simpkins?
- 22 A. I'm trying to think that I -- I might have did it a
23 couple times. He -- he might have did it a couple
24 times and I might have tried to do it the best way I
25 can. I like tried to put the snaps up on my -- on my

- 1 waist and try to snap it off a couple times.
- 2 Q. You were required to un-bale it, they brought it to you
- 3 -- basically, they brought it to you most times?
- 4 A. They just -- they didn't want me on the forklift when
- 5 they brought it to me.
- 6 Q. They brought it to you?
- 7 A. Uh-huh.
- 8 Q. That's the answer. Okay.
- 9 A. Uh-huh.
- 10 Q. And then, after the bale was un-snapped with the wire --
- 11 A. Uh-huh.
- 12 Q. -- you said that the fiber is then put on a table?
- 13 A. Yes, sir.
- 14 Q. Who puts it on the table, you or some other employee?
- 15 A. I puts it on the table.
- 16 Q. You put it on the table.
- 17 A. Yes, sir.
- 18 Q. Okay. And this is the material?
- 19 A. Yes, sir.
- 20 Q. Right there (indicating).
- 21 A. Uh-huh.
- 22 Q. Okay. And that's what -- that's what they had you
- 23 lifting up with one (1) arm and you're saying you had
- 24 to wet this with water?
- 25 A. Well, not that -- not that fiber, no.

1 Q. Not that fiber?

2 A. No, sir.

3 Q. But that's -- that's the light duty -- that's some of
4 the light duty they had you do, right?

5 A. Yes, sir. But --

6 Q. All right.

7 A. -- one (1) other thing. Just -- you know how the fiber
8 is so compact. That's what makes it -- that's where
9 the heaviness come in. It's compressed -- it's
10 compressed -- it's so pressed together that you have to
11 sit there and pull it off.

12 Q. Sir, I want you to know I've been out to the plant and
13 I've seen the fiber and I've seen the bales and I've
14 seen it all.

15 Ms. Mickle: Objection, Your Honor. He can't
16 testify.

17 Commissioner Wilkerson: You can't --

18 Mr. Huff: No, I'm going to ask him a question.
19 He said I don't know and I said I've been out
20 there and I've seen it --

21 Commissioner Wilkerson: -- he's just saying he's
22 been out there --

23 Mr. Huff: -- and I'm going to ask him a question.

24 Commissioner Wilkerson: -- and now you can ask
25 him a question.

1 Q. Your employer would have that fiber put on a table for
2 you so you could put it -- and use one (1) arm, if you
3 wanted to, into the -- onto the conveyor belt, correct?

4 A. No, sir. He didn't have -- he didn't have to put on
5 the table for me; I put it on the table myself.

6 Mr. Huff: Could I have this marked as Defendant's
7 Exhibit on the bag, please?

8 (Defendant's Exhibit Number One was marked for
9 Identification)

10 Q. What other duties -- did they have you cleaning out the
11 bathrooms?

12 A. They -- they didn't say nothing about no sweeping no
13 floors, no cleaning no bathroom. I didn't -- they
14 didn't -- that wasn't part of no light duty. I ain't
15 -- there wasn't nothing, no sweeping no floor, no
16 cleaning out no bathrooms or nothing.

17 Q. You didn't clean out any bathrooms?

18 A. That's what you have to do every day; every day we have
19 to do that.

20 Q. When you went to work, though, some of the job duties
21 you were doing after this accident, after you had this
22 light-duty restriction, sometimes you cleaned out the
23 bathrooms when you weren't doing the -- the fiber?

24 A. No, sir.

25 Q. Sometimes you did some sweeping?

- 1 A. No, sir.
- 2 Q. what other duties did they have you do, then, other
3 than the fiber?
- 4 A. They had me to -- to clean out the -- clean out the
5 machines but you have to reach over your head or -- and
6 stand on ladders and try -- and I had try to reach over
7 my head and try to balance myself up.
- 8 Q. what else?
- 9 A. And -- I think that's -- that's about it. Uh-huh.
- 10 Q. The Commissioner has mentioned to you, on page 68, was
11 the light-duty restrictions given by Dr. Shannon, at
12 page 68; that's for the date of August 18th, 2009. I'd
13 also bring to your attention, it was the same group as
14 Dr. Ty Carter, he did one on January 25th, 2010, which
15 is some five (5) months later and the restrictions had
16 changed; I just wanted to bring it to your attention
17 the restrictions that were placed. How did you wet
18 that fiber; did you have a spray bottle or a bucket
19 that you poured on it or how did you wet it?
- 20 A. It was like a five (5) gallon -- a five (5) gallon
21 cannister that they had and you had to spray it out.
- 22 Q. You spray it?
- 23 A. Yes, sir.
- 24 Q. Okay. And how -- what amount of fiber would you spray
25 with that sprayer before you would start loading again?

1 A. What amount of fiber?

2 Q. Yes.

3 A. The whole conveyor belt be filled up. The conveyor
4 belt, it's -- the conveyor belt is the -- it's as long
5 as this -- almost long as this whole room and you have
6 to fill that whole conveyor belt up with fiber or else
7 you going to fall behind.

8 Q. Then you'd spray it down?

9 A. Then you spray it -- you -- you have to get the water,
10 get -- put it in the cannister, tote it over there,
11 then you spray it down.

12 Q. So, let me see if I've got this right. When you're
13 putting the fiber on the conveyor belt, the fiber is
14 dry?

15 A. It's dry.

16 Q. It's dry. But you testified earlier -- and I'm going
17 to turn to what your testimony was -- you indicated, "I
18 was putting the fiber on the machines for twelve (12)
19 hours, standing there wetting down and it was real
20 heavy", which insinuated -- if I'm wrong tell me --

21 A. Uh-huh.

22 Q. -- that the fiber was real heavy because you wet it
23 down. But your testimony now is that the fiber is
24 already on the conveyor belt and then you wet it down;
25 is that correct?

1 A. You mixed me up then.

2 Q. No, I didn't. That's your words. Is that what you're
3 saying? You said you put dry fiber on the conveyor
4 belt --

5 A. Uh-huh.

6 Q. -- and then you wet it down. Isn't that what you just
7 testified to?

8 A. And then I -- yeah, when it was on --

9 Q. Yes.

10 A. -- the conveyor belt.

11 Q. But earlier you said that you --

12 Ms. Mickle: Your Honor, he won't let him answer
13 the question.

14 Commissioner Wilkerson: Let him finish his
15 answer.

16 Mr. Huff: -- he said yes.

17 A. But sometimes -- sometimes the -- you have to -- like
18 that fiber that I put on there, the only fiber that you
19 have to wet down, they had big bags where it would be
20 already wet inside the bags from the moisture and from
21 it previous being wet and when you don't use it you
22 have to put it back into the bags. So, I had -- I had
23 to load that on the table, too, and it's wet.

24 Q. You didn't testify -- your first testimony, when your
25 Attorney asked you the question, you said you wet it

1 down, not somebody else wet it down?

2 A. I did wet it down.

3 Q. All right. Now, your -- your new testimony -- your
4 testimony now is someone else wet down some other
5 stuff?

6 Commissioner wilkerson: He's talking about --
7 he's talking about a different fiber, right?

8 A. It's a different fiber.

9 Commissioner wilkerson: This is -- he's not
10 talking about this fiber.

11 A. No, not that fiber there.

12 Q. what fiber are you talking about?

13 Commissioner wilkerson: He's talking about a
14 different fiber.

15 A. It's a totally different -- oh, yeah, it's a totally
16 different fiber.

17 Commissioner wilkerson: Yes, that's what I
18 understood.

19 Q. what fiber are you talking about?

20 A. It's --

21 Commissioner wilkerson: Initially he said fiber,
22 I'll agree, but --

23 A. Yeah.

24 Commissioner wilkerson: -- but you asked him
25 about this and he's not talking about this fiber.

1 Q. What fiber?

2 A. See, okay, at the time of my accident that fiber there,
3 it ain't too hard to deal with. But see, the fiber
4 that you've got to wet that's when you've got to work.
5 It ain't no --

6 Q. Describe that -- describe that fiber for me, please.

7 A. -- it's some -- it's all gold fiber that you have to --
8 it won't hardly even run through the machine because it
9 will tear up the machines. So, they wet it and let it
10 run through the machines, but you have to -- you have
11 to -- when you -- when you load it on the table you
12 have to put a whole bunch in there and then you have to
13 -- and worse, on the other end of the machines, it runs
14 slow but the end where I'm at, the hoppers, it runs
15 real fast. So, you have to load a bunch of it up on
16 the hopper because if you don't load it up -- that's
17 why, if you load it up, you got to wet it, too. So, if
18 you don't load enough of it up, and then you have to
19 wet it, you going to fall behind. So, that's why
20 Lowell told me that I don't see how you doing that;
21 it's a two (2) man job.

22 Commissioner Wilkerson: That's golden fiber?

23 A. Yes, sir. It's golden fiber.

24 Q. The -- the color is not white, it's gold?

25 A. No, sir, it's all gold.

1 Q. All gold. Good, we'll ask Lowell about it.

2 A. And see, it's three (3) hoppers. It's three (3) fibers
3 you have to put in there and wet down.

4 Ms. Mickle: I don't see any gold.

5 A. It's a -- it's gold -- it's gold, yellow, and then it's
6 another fiber. And you have to go through all three
7 (3) -- you have to fill all three (3) tables of it and
8 you have to wet all three (3) tables down.

9 Commissioner Wilkerson: Okay.

10 A. It ain't just one (1) hopper, it's three (3) -- there's
11 three (3) hoppers long as this room. No, I wasn't
12 doing that white fiber at the time.

13 Q. Okay. It's your testimony today that when this hood
14 fell on your left shoulder and pinned you, that you all
15 were moving the hood manually and had not used the
16 forklift?

17 A. We did -- we had used the forklift but we couldn't --
18 after the forklift messed up we couldn't use it no
19 more.

20 Q. When did the forklift mess up?

21 A. On first shift.

22 Q. And you worked when?

23 A. Second shift.

24 Q. So, by the time you came in the forklift was already
25 broken?

- 1 A. It was already broken. They didn't want to use it but
2 the supervisor -- they said don't want to hear his
3 mouth in the morning; so, they going -- we're going to
4 try to work with what we got.
- 5 Q. Well, I've got -- they use -- so, you did -- when you
6 were on the second shift putting this hood back on the
7 machine, at some point in time when you all were doing
8 that, were you all or were you all not using the
9 forklift?
- 10 A. We was using the forklift the whole time; you can't do
11 it without a forklift. Everything in that plant
12 revolves around the forklift.
- 13 Q. So, the forklift was used to lift the hood up and
14 suspend it above the machine?
- 15 A. Yes, sir.
- 16 Q. And then the -- and at that time when the forklift was
17 lifting this hood, you weren't lifting the hood, were
18 you?
- 19 A. No, sir.
- 20 Q. All right.
- 21 A. No, sir.
- 22 Q. And then the forklift brought the hood over and it came
23 down to the machine, and there's a lip for it to sit
24 on, correct?
- 25 A. Yes, sir.

1 Q. And then after the lips -- after it sits on the
2 machine, you have to put these bolts through some holes
3 to fasten it down, right?

4 A. Yes, sir.

5 Ms. Mickle: Your Honor, I didn't ask that the
6 witness be sequestered but the Adjuster went
7 outside with the witnesses and I really do not
8 want him to -- it defeats the purpose.

9 Mr. Huff: I'll -- I'll make sure he doesn't talk
10 to anybody.

11 Commissioner wilkerson: Yes, let's do that.

12 Mr. Huff: I'll be more than happy to.

13 Commissioner wilkerson: Because we're fixing to
14 send you all out in the hallway and let you come
15 back this afternoon, the way we're going. I'm
16 going to get the other one in here next and let
17 you all wait.

18 Court Reporter: May I go off the record?

19 Commissioner wilkerson: Yes.

20 Court Reporter: Thank you.

21 (Off The Record)

22 Mr. Huff: He went to the bathroom, it appears. I
23 gave instructions for him not to talk to anybody
24 -- to the witnesses out there.

25 Commissioner wilkerson: Okay.

- 1 Q. Let's see if I've got this right. The hood comes down
2 on the machine, and there's holes on the hood, and
3 there's a hole on the machine, and I'll use something
4 like this, and a bolt has to go through to fasten down
5 the hood, correct?
- 6 A. Yes, sir.
- 7 Q. All right.
- 8 A. It's -- It's a good -- it's a lot of bolts.
- 9 Q. Yes, it's a lot of bolts.
- 10 Commissioner Wilkerson: That's what he was
11 talking about earlier.
- 12 A. Uh-huh.
- 13 Commissioner Wilkerson: Just above the notch,
14 yes.
- 15 Q. And, when that hood comes down sometimes the holes are
16 not perfectly lined up and the -- and the bolt can't go
17 in, correct?
- 18 A. Yes, sir.
- 19 Q. And what you all were doing at the time was shimming,
20 or pushing, or moving the hood to get the holes lined
21 up so you could put the bolt in, correct?
- 22 A. No, sir. We was lifting it in the air so we could get
23 a shock on it; it's a -- a shock.
- 24 Q. A shock?
- 25 A. Yes, sir. It's --

1 Q. what's a shock?

2 A. -- it's two (2) shocks on the side, like the shocks on
3 a car; it would be on the machine, too, and they on the
4 side, they blue.

5 Q. okay.

6 A. And we weren't shimmy -- we weren't moving it or
7 nothing; we was trying to push it -- hold it in the
8 air; that's what we was trying to do.

9 Q. So, you had three (3) men up there?

10 A. Yes, sir. And one (1) on the -- one (1) on the ground
11 on the forklift.

12 Q. The forklift?

13 A. Uh-huh.

14 Q. was the hood still attached to the forklift?

15 A. No, sir.

16 Q. So, the forklift, at that point in time, stops holding
17 any weight of the hood, correct?

18 A. Yes, sir.

19 Q. And, if this piece of paper is the hood --

20 A. Uh-huh.

21 Q. -- what side were you standing on?

22 A. That's the hood right there (indicating) and I was -- I
23 was --

24 Q. No, this is the hood right here (indicating).

25 A. -- oh, right here (indicating).

- 1 Q. You're standing on the left side --
- 2 A. That's about right.
- 3 Q. -- of the hood.
- 4 A. Uh-huh.
- 5 Q. Where was Tom standing?
- 6 A. Tom was on the outside, right -- about right -- right
- 7 here (indicating).
- 8 Q. All right. So, he's on the -- the left side?
- 9 A. Uh-huh.
- 10 Q. You're on the left bottom side, I call it, on this
- 11 piece of paper facing you?
- 12 A. Uh-huh.
- 13 Q. And where was Al?
- 14 A. Way on the other side of the machine.
- 15 Q. All right. All right. So, nobody was on this two (2)
- 16 corners away from you guys?
- 17 A. No, sir. No, sir.
- 18 Q. And where are the shocks located?
- 19 A. The shocks are located way, way up under here
- 20 (indicating).
- 21 Q. They're up under there (indicating)?
- 22 A. Yes, sir.
- 23 Q. All right. And what play were the shocks having when
- 24 you all were moving this; since you're not near the
- 25 shocks, Tom is not near the shocks, and neither is Al

1 near the shocks?

2 A. Tom was near the shocks. Tom was the one trying to
3 work with the shocks.

4 Q. So, Tom was --

5 A. Tom is, like, the weakest one out of all of us; so, we
6 had him kind of work with the shocks.

7 Q. -- so, was he lifting at all or was it just you and Al
8 lifting?

9 A. Tom was trying to lift but he couldn't -- he couldn't.
10 He was trying to lift with one (1) arm and trying to
11 help us out as much as he can but he couldn't really do
12 no lifting and try to put the shock on at the same
13 time. So, it was me and Al mostly.

14 Q. So, the two (2) of you all were lifting --

15 A. Uh-huh.

16 Q. -- a fifteen hundred (1,500) to two thousand (2,000)
17 pound hood?

18 A. Well, I don't know the -- I think that's the weight of
19 it. I don't know the accurate weight. And while Al
20 was trying to lift it, he was talking to Lowell on the
21 forklift and they'd be laughing and hee-heeing and
22 hee-heeing.

23 Commissioner Wilkerson: At the time the thing is
24 still attached to the forklift, right?

25 Mr. Huff: But he's saying that the forklift is

1 not holding any weight at all; it's no longer
2 being suspended by the forklift. It's just the
3 two (2) men lifting that's there.

4 Commissioner wilkerson: That can't happen but go
5 ahead. If it's still attached to the forklift --

6 Mr. Huff: Well, the -- the slack has been let
7 off.

8 Commissioner wilkerson: -- I understand. It's
9 like a tractor, once you put it --

10 A. Uh-huh.

11 Commissioner wilkerson: -- once the hydraulics
12 are gone. But, I think we'll all agree, or maybe
13 we won't, that if it weighs fifteen hundred
14 (1,500) to two thousand (2,000) pounds, if it's
15 still attached to the forklift, that is not the
16 entire weight that is suspended. Is that fair,
17 from either side or no?

18 Ms. Mickle: That's fair.

19 Mr. Huff: His own testimony says it's --

20 Commissioner wilkerson: That -- that isn't what I
21 asked.

22 Mr. Huff: -- yes, you -- you decide.

23 Commissioner wilkerson: Yes. I mean, I -- yes.

24 Mr. Huff: Credibility of the witness.

25 Commissioner wilkerson: Yes, credibility and I

1 agree --

2 Mr. Huff: Yes, sir.

3 Commissioner Wilkerson: -- because I haven't
4 heard from the other witnesses but --

5 Mr. Huff: Yes, sir. Yes, sir.

6 Commissioner Wilkerson: -- but having worked
7 enough with farm equipment and forklifts, it can't
8 happen that way. It's got -- if it's still
9 attached, the majority of the weight is still
10 being held by the forklift. What that is, I'm not
11 an expert, I can't testify. That would be the
12 engineer to tell me that and I'm not qualified.

13 Q. You went to the emergency room on June 3rd, the next
14 day, correct? You were at work at night on the 2nd --
15 and went to the emergency room the next morning or the
16 next after -- day after you got home?

17 A. Huh-huh. I went -- I went straight from work. When I
18 got hurt I went straight to the -- well, I went home
19 and got my daddy to drive me to work -- I mean, drive
20 me to the emergency room because I couldn't drive.

21 Commissioner Wilkerson: It may have a date after
22 the accident because I think the accident happened
23 after midnight and then he went -- or by the time
24 he got to the hospital, I think he testified
25 earlier, it was 6/3 when his dad came and got him

1 because he couldn't drive.

2 Q. What time -- about what time of day did you go to the
3 hospital?

4 A. It might have been around 10:00.

5 Q. 10:00 A.M.?

6 A. Huh-huh. 10:00 -- 10:00 at night, 10:00 P.M.

7 Q. 10:00 P.M.?

8 A. Uh-huh.

9 Q. On the 3rd?

10 A. Well, it had to be the 2nd.

11 Q. What time did you get off on the 2nd?

12 A. Around 9:00, 9:30. I went straight home and -- and got
13 my daddy, I think; so it had to be around 9:30.

14 Commissioner Wilkerson: So, if the accident, or
15 your description of the accident, or the incident,
16 took place shortly after you'd gone to work that
17 night?

18 A. Yes, sir. Yeah, shortly after I came into work.

19 Uh-huh.

20 Commissioner Wilkerson: Okay. So, you went to
21 work that night at 8:00 and it happened sometime,
22 and then you went home --

23 A. Around ten o'clock.

24 Commissioner Wilkerson: -- around ten o'clock
25 that night, which would have been the 2nd. Okay.

1 A. Yes, sir.

2 Q. Was your father at your house?

3 A. He was asleep. Yes, sir.

4 Q. Do you live with your father?

5 A. Yes, sir.

6 Q. And you asked him to drive you to the hospital?

7 A. Yes, sir.

8 Q. How long of a trip is it from your house to the
9 hospital?

10 A. About forty-five (45) minutes.

11 Q. Forty-five (45) minutes?

12 A. Yes, sir. He stayed and went to sleep in the truck
13 while I was in the hospital.

14 Commissioner Wilkerson: How long were you at the
15 hospital?

16 A. To about -- probably about 2:00 or -- two o'clock --
17 2:00 or three o'clock.

18 Commissioner Wilkerson: Okay.

19 Q. I'm showing that you arrived --

20 Mr. Huff: -- pn page 2 of the APA --

21 Q. -- that you arrived at the hospital at 3:00 A.M. in the
22 morning.

23 A. At 3:00 A.M.?

24 Q. That's five (5) hours after you got off work.

25 A. At 3:00 A.M.?

- 1 Q. That's what it says. Page 2, it says, "Time arrived,
2 zero three point zero four (03.04), 3:00 A.M. is what
3 it says.
- 4 A. Well -- well, it must have been around 3:00 A.M, around
5 3:00 then.
- 6 Q. Okay.
- 7 Ms. Mickle: Does that say arrived or when he was
8 seen?
- 9 Mr. Huff: Arrival date and it has the time next
10 to it.
- 11 Q. And it's your testimony --
- 12 A. It could have -- it could have -- like I said, I stayed
13 at work; I tried to work. So, it could have been later
14 than that. I tried -- I stayed at work, so.
- 15 Q. -- it's your testimony today that you were lifting this
16 hood when you hurt yourself?
- 17 A. Uh-huh.
- 18 Q. And the Exhibit on the statement that was done on 6/2,
19 it says, this was written by Lowell Simpkins, "Lifting
20 it with his hands and shoulder, he said he guessed he
21 was pushing too hard". Okay?
- 22 A. Uh-huh.
- 23 Q. When you go to the emergency room that day, you say --
24 or it says on here -- it says nothing about you pushing
25 -- pushing, pulling, lifting, shoving. Here it says

1 that this fifteen hundred (1,500) to two thousand
2 (2,000) pound hood fell on you

3 A. Uh-huh.

4 Q. -- and pinned you.

5 A. Uh-huh.

6 Q. All right. So, the act that basically caused the
7 injury was the two thousand (2,000) pound hood falling
8 on you and you not lifting it. Is that what the --
9 isn't that what you told them at the hospital?

10 A. No, sir. We was lifting that.

11 Q. I'm going to give it to you. Tell me where it says you
12 were lifting.

13 Ms. Mickle: You didn't ask him to tell you what
14 the report says --

15 Commissioner Wilkerson: Report said --

16 Ms. Mickle: -- You asked him what happened.

17 Commissioner Wilkerson: -- what happened.

18 Ms. Mickle: Those are two (2) different things --

19 Q. All right. I'll ask you then.

20 Ms. Mickle: -- Your Honor, I object.

21 Commissioner Wilkerson: I agree.

22 Q. What does the report say?

23 Ms. Mickle: He is very misleading.

24 Q. What does the report say how it happened?

25 A. "Patient states that a hood from a machine fell and hit

1 his left shoulder".

2 Q. Hood fell on you. Let me ask you a question.

3 A. Uh-huh.

4 Commissioner wilkerson: But doesn't it also say
5 under triage where it says patient was struck by a
6 hood?

7 Mr. Huff: Was struck by a hood, yes, when it
8 fell.

9 A. Yes, sir.

10 Mr. Huff: It says falling; It says nothing about
11 lifting. But we'll go to another medical report
12 and let's look at it.

13 Ms. Mickle: Your Honor, I want to strike the last
14 statement of Mr. Huff's.

15 Commissioner wilkerson: I'm sorry?

16 Ms. Mickle: I want to --

17 Commissioner wilkerson: Go ahead. I apologize.

18 Ms. Mickle: -- I want to strike the last
19 statement of Mr. Huff's.

20 Commissioner wilkerson: Okay.

21 Ms. Mickle: It was a statement and not question.

22 Commissioner wilkerson: I understand. I
23 understand.

24 Q. On that day that this accident happened and you went to
25 the emergency room did you take a look at your shoulder

1 to see how it looked?

2 A. Yes, sir.

3 Q. Did you see any abrasions or cuts on your shoulder?

4 A. No, it was swollen.

5 Q. Question: Any abrasions or cuts, was my question.

6 A. No there was no -- I don't -- I don't think so.

7 Ms. Mickle: And, Your Honor, objection. He
8 answered. He said no, it was swollen.

9 Commissioner Wilkerson: Swollen. Okay.

10 Q. Okay. How was your neck doing that night?

11 A. Well, that's why I went to the -- that's -- that's why
12 really -- because I wasn't -- I wasn't going to try to
13 go to the emergency room but after the pain shot all
14 through my neck to my back, that's when I -- that's
15 when I told them I needed to go.

16 Q. Were you having any pain or -- well, let me -- were you
17 having any spasms in your neck that night?

18 A. You mean -- what you mean pain? Just sharp -- I just
19 had sharp --

20 Q. I said spasms, you know, like muscle spasms in your
21 neck?

22 A. -- no, it was just sharp pain running from my neck to
23 my back.

24 Mr. Huff: Excuse me, Commissioner.

25 Commissioner Wilkerson: No, that's fine.

(Off The Record)

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Q. I'm looking at page 20 of the medical records, when you went to Sports Plus.

A. Uh-huh.

Q. On that day, did you give them a history that a seven hundred (700) pound hood that goes on a machine fell between your neck and the left shoulder?

A. At Bondex.

Q. All right. But you didn't tell them -- and if I'm wrong please tell me; I'm going to let you look at it. Did you tell them anything about lifting or pulling or pushing, or did you just say something had fell on you?

A. No, sir. Because I didn't tell them because that ain't when I got hurt. When I was pushing and it came back down on me; that's when I -- that's when I told them that.

Commissioner Wilkerson: So, your testimony is, when you got injured or hurt or the accident took place, is when the hood --

A. Came down --

Commissioner Wilkerson: -- came back down on you?

A. -- yes, sir.

Commissioner Wilkerson: Is that right or --

A. Yes, sir.

Commissioner Wilkerson: -- okay.

1 A. Yes, sir. It came -- it came back down on me.

2 Q. Let me show you your Form 50; this is what was filed by
3 your Attorney seeking benefits in this claim. I'm
4 looking at 1(b). "Briefly describe how the accident
5 occurred". And it says, "Instructed to lift four
6 hundred (400) pound piece of equipment".

7 A. Uh-huh.

8 Q. Did you make any statement that you got hurt when it
9 fell on you or was lifting? It's 1(b).

10 A. Say what now?

11 Q. 1(b), where does it -- how does it say the accident
12 occurred on 1(b)? Does it say something fell on you or
13 you were instructed to lift something?

14 Ms. Mickle: Your Honor, that's not a complete
15 statement of how the accident happened. We're not
16 required to give you all the details of the
17 accident. He can't be tried based on --

18 Mr. Huff: You can object -- that's not an
19 objection. That's a statement and I move to
20 strike it.

21 Commissioner Wilkerson: Yes. Okay.

22 Mr. Huff: If she's got an objection to the form
23 of the question, then make it.

24 A. Uh-huh. I agree.

25 Commissioner Wilkerson: Is there an objection to

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the form of the question?

Ms. Mickle: -- this is improper --

Commissioner Wilkerson: Hold on.

Ms. Mickle: -- this improper, evidentiary reference.

Mr. Huff: There's no such objection.

A. Yeah, it says, instructed to lift a--

Commissioner Wilkerson: I mean, I'll let him say what it says.

Ms. Mickle: Right.

A. -- four hundred (400) piece of --

Commissioner Wilkerson: It's in the file; it's part of the file.

A. -- four hundred (400) pound piece of equipment.

Commissioner Wilkerson: Because we all know that no matter what's put on the 50's, what's put on the 51's, what's put on the 21's, what's put on anything; it all changes because you've got a snapshot of what took place that day. It all comes down to the testimony of all witnesses and the greater weight of evidence.

Q. Well, I'm going to look at page 71, this is from your Attorney; she put it into evidence. Her letter to Dr. Shannon. "He and two other co-workers were lifting a machine hood and the hood fell onto his left side".

1 So, you're saying a hood fell on you?

2 A. That's what happened.

3 Q. Okay.

4 A. Uh-huh.

5 Q. Have you drawn any unemployment?

6 A. No, sir. I can't draw unemployment because they still
7 got me as an employer -- employee.

8 Q. Can you describe for me -- when you had your first MRI
9 done, can you describe that machine for me; what did it
10 look like?

11 A. It looked like -- it was like a bed up under it and
12 there was a big circle over my head.

13 Q. You weren't like in a tube?

14 A. No, sir.

15 Q. Describe it again then.

16 A. Like a oval -- a oval circle over my head. It wasn't
17 no tube. I can see out the sides of it. I just can't
18 see the ceiling.

19 Q. All right. Thank you. After you left Bondex, have you
20 applied for work anywhere else?

21 A. No, sir. But I had jobs calling me, though.
22 Bridgestone and a old job I had called me; BAE called
23 me back.

24 Q. Have you worked anywhere since you left Bondex?

25 A. I'm -- I'm still working at Bondex; they got me still

1 there. I can't leave there; they still got me on the

2 --

3 Q. Have you picked up any side jobs since you left Bondex?

4 A. -- no, sir.

5 Q. Have you worked at any car washes?

6 A. No, sir.

7 Q. Do you have a current driver's license so you could
8 drive to work?

9 A. No, sir.

10 Q. You don't have a current driver's license?

11 A. No, sir.

12 Q. Is your license suspended?

13 A. Yes, sir.

14 Q. For what reason?

15 A. For a DUI.

16 Q. How many DUI's have you had?

17 A. Two (2).

18 Q. Have you ever had any driving under the suspension?

19 A. I have. I got --

20 Ms. Mickle: Objection, Your Honor.

21 Commissioner Wilkerson: Why is that relevant? If
22 a man admits he's had two (2) DUI's, it doesn't
23 have a --

24 Mr. Huff: All right. I'll move on.

25 Q. Have you got a criminal record?

1 A. I've got a criminal record but it's no -- no felonies
2 or nothing.

3 Q. What was the -- why didn't you give me those?

4 Ms. Mickle: Objection, Your Honor, ten (10)
5 years.

6 Commissioner Wilkerson: Ten (10) years.

7 Q. When did -- when were -- when were you arrested?

8 Ms. Mickle: It is not arrested, it's convicted,
9 Your Honor.

10 Q. Were you convicted of what you were arrested for?

11 A. For a DUI.

12 Q. Is that it?

13 A. Uh-huh. Yeah, just a DUI. And I got a disorderly
14 conduct back in 2000, 2002.

15 Q. You were convicted of a disorderly conduct?

16 A. Uh-huh.

17 Ms. Mickle: Again, relevance, Your Honor.
18 Objection.

19 Mr. Huff: I'm going to credibility.

20 Commissioner Wilkerson: Yes.

21 Q. All right. Were you ever arrested for the possession
22 of an unlawful weapon?

23 Ms. Mickle: Same objection, just a running
24 objection.

25 Commissioner Wilkerson: Yes, I understand.

1 A. I went to --

2 Ms. Mickle: what does that have to do with the
3 compensability of this case and what -- whether he
4 was lifting --

5 Commissioner Wilkerson: I don't think it does, I
6 mean.

7 Mr. Huff: Not as to the accident, I'm just going
8 -- I'm just putting credibility stuff on the
9 record.

10 A. -- uh-huh.

11 Ms. Mickle: And, again, what does that have --
12 what -- how does that relate to the credibility of
13 him when he was lifting on the job? There is no
14 relationship.

15 Commissioner Wilkerson: I'll let it in. It does
16 not, I agree with you. It's his life pattern, for
17 no better term, and I'm fine with that. If it
18 happened yesterday or two (2) weeks ago I'm a lot
19 more concerned than with what happened in 2001,
20 2002 -- because in 2001, 2002, he would have been
21 in his early twenties (20's). Men do a lot of
22 stupid things from fifteen (15) to twenty-five
23 (25) and some do it from twenty-five (25) to
24 thirty-five (35), so.

25 Mr. Huff: well, I'll put it on the record, I

1 didn't do stupid things. My father had the fear
2 of God in me.

3 Commissioner Wilkerson: well, you didn't do it or
4 you weren't caught? I always ask my two (2).

5 Ms. Mickle: He didn't get caught.

6 Commissioner Wilkerson: I've got one that doesn't
7 get caught and one that got caught, so.

8 Mr. Huff: Okay. Thank you. Thank you,
9 Commissioner. I may be finished, let me look at
10 one (1) --

11 Commissioner Wilkerson: Men and boys, including
12 myself, weren't always the brightest from fifteen
13 (15) to twenty-five (25).

14 Mr. Huff: -- I have nothing further. Thank you.

15 Commissioner Wilkerson: Any follow ups?

16 REDIRECT EXAMINATION

17 By Ms. Mickle:

18 Q. Mr. Lee, why were you unable to take the two (2) jobs
19 that you were offered?

20 A. Because of this injury.

21 Q. And what about -- the two (2) jobs were at Bridgestone
22 and where else?

23 A. And BAE.

24 Q. And what -- what pay were they offering?

25 Mr. Huff: I object to hearsay.

1 Q. Fifteen (15) --

2 Commissioner Wilkerson: Well, he -- no -- he can
3 testify to --

4 Ms. Mickle: He can testify to all of that.

5 Mr. Huff: He's going to testify to what somebody
6 -- what somebody told him. If he can -- quotes
7 any dollar amount, somebody had to tell him that
8 dollar amount, and that's hearsay.

9 Ms. Mickle: Well, the Form 20 is hearsay if
10 that's the case.

11 Commissioner Wilkerson: -- well, he can tell us
12 what they offered him a position and what they
13 were going to pay him; they ought -- he has
14 knowledge of that.

15 Mr. Huff: What if he's lying; how can I
16 cross-examine that? And I'm just saying what if
17 he -- I'm not saying he is but how do I
18 cross-examine him?

19 Commissioner Wilkerson: You can cross-examine.
20 The question is I don't know what it's got to do
21 with his case, whether he was offered a job or
22 not, because I think he's still employed, is what
23 he testified to. I don't know what it's --

24 A. Yeah.

25 Commissioner Wilkerson: -- got to do with the

1 case; I really don't. I understand why he is
2 going to testify to why he can't take that job.
3 whether they're paying him fifteen dollars
4 (\$15.00) an hour or fifty dollars (\$50.00) an hour
5 does not matter. We're here on an accident; we're
6 not on a lost wage. I mean, and I don't want any
7 of that stuff. I've got to determine if an
8 accident took place. I mean -- yes, I don't -- I
9 don't --

10 Ms. Mickle: I'd like to go back and clarify some
11 things on the record, if I can follow up.

12 Commissioner Wilkerson: -- yes.

13 Q. You were offered two (2) jobs?

14 Commissioner Wilkerson: well, he -- he --

15 A. Yes.

16 Q. Bridgestone, and where's the other one?

17 A. At BAE. I can say something. When the -- the day
18 before I was supposed to go to court the last time she
19 called and left a message on my answering machine about
20 me going to an interview and I got it saved on my phone
21 now.

22 Q. Okay.

23 Commissioner Wilkerson: -- no, that's okay. I'm
24 not -- I'm not concerned about that.

25 A. Okay.

1 Q. But were they good jobs?

2 A. Oh, yes. Yes. Yes, ma'am.

3 Q. Would you have taken them if you could have taken those
4 jobs?

5 A. I would have taken them.

6 Mr. Huff: I'm going to object to hearsay, just
7 running.

8 Commissioner Wilkerson: I understand.

9 Q. No, would you have taken the job --

10 Commissioner Wilkerson: He can testify to whether
11 he would have taken them.

12 Q. -- if you were physically able to take the job?

13 A. If I could take the jobs?

14 Q. If -- if you could have?

15 A. Yes. Yes, ma'am.

16 Q. Okay.

17 A. Yes, ma'am.

18 Q. And then to clarify the record so that --

19 Ms. Mickle: -- where is that bag of --

20 Commissioner Wilkerson: I think I've got it.

21 Ms. Mickle: -- it's marked as Claimant's -- it's
22 marked as Defense Exhibit --

23 Mr. Huff: Defense Exhibit One.

24 Commissioner Wilkerson: Some of it got out, I
25 think. That's why --

1 Ms. Mickle: Okay.

2 Commissioner Wilkerson: -- when I got it out here
3 for a little bit awhile ago trying to get a hold
4 of it.

5 Q. This is marked as Defendant's Exhibit Number One. Is
6 this the material that you were work -- just to clarify
7 -- is this the material that you were working with at
8 the time that they said you were on light duty or was
9 it another material?

10 A. It was another material.

11 Q. Okay. So, it's not what they've put in evidence?

12 A. Not -- not that right there (indicating).

13 Q. Okay. All right. Being perfectly clear on some
14 things.

15 A. Can I say one (1) more thing, Ms. Mickle?

16 Q. No.

17 Commissioner Wilkerson: No. Watch out for the
18 lady's microphones.

19 Court Reporter: I can't reach him.

20 Commissioner Wilkerson: That's all right. I
21 don't --

22 Court Reporter: I'll give it to him.

23 Commissioner Wilkerson: -- I've got to -- I've
24 got to figure out how that -- how we're going to
25 scan that in.

1 Court Reporter: Yes, really.

2 Commissioner Wilkerson: Since everything has got
3 to be scanned in by law, I've got to figure out
4 how we're going to scan this in, but I'll let you
5 all tell me how I'm going to do that.

6 Mr. Huff: Take a photograph.

7 Q. And a couple other clarifications.

8 A. Uh-huh.

9 Q. On the hood, do you really know how much -- and we
10 covered this on direct examination --

11 A. Uh-huh.

12 Q. -- but do you really know how much that hood weighs?

13 A. No, ma'am.

14 Q. Okay.

15 A. No ma'am, not at all.

16 Q. All right. So, you've been guessing; is that -- is
17 that fair?

18 A. Yes, ma'am.

19 Q. Okay.

20 Commissioner Wilkerson: Pictures are worth a
21 thousand (1,000) words.

22 Q. Okay. And then --

23 Commissioner Wilkerson: We've seen it.

24 Q. -- then Mr. Huff mentioned light -- that you were on --
25 that Dr. Shannon didn't have you on any restrictions.

1 Let me point you to a couple things. Page -- hold on.
2 Page, I believe it is 79 of our APA's. It looks like
3 when you last saw Dr. Shannon, as of May 25th, 2010,
4 your restrictions were no lifting, no use of the left
5 arm and no overhead work; is that right?

6 A. Yes, ma'am.

7 Q. And it also looks like when they sent you to their
8 doctor a couple months ago on June 10th -- June 10th,
9 2010, he indicates he should not lift anything greater
10 than ten (10) pounds with his left upper extremity and
11 that's Dr. Westerkam?

12 A. Yes, ma'am.

13 Q. So, those are some of the restrictions that some of the
14 doctors have you on right now; is that correct?

15 A. Yes, ma'am. But when I seen Dr. Carter, Dr. Carter
16 said -- he told me that he --

17 Mr. Huff: I'm going to object.

18 Q. No, you can't say what Dr. Carter said.

19 Commissioner Wilkerson: You can't tell what Dr.
20 Carter said. It's in the records.

21 A. -- uh-huh.

22 Commissioner Wilkerson: I've got -- I've got the
23 doctor's records.

24 A. Okay.

25 Q. And were you having any problems with that left arm in