

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE APPELLATE PANEL OF THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION

Unpublished Opinion No. 2018–UP–280 (S.C. Ct. App. filed June 27, 2018)

Scott Ledford, Employee, ... Petitioner,

–vs. –

Department of Public Safety, Employer,
and State Accident Fund, Carrier, ... Respondents.

AMENDED APPENDIX – VOLUME I

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S.C. SUPREME COURT

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The South Carolina Court of Appeals

Scott Ledford, Employee, Appellant,

v.

Department of Public Safety, Employer, and State
Accident Fund, Carrier, Respondents.

Appellate Case No. 2016-000601

ORDER

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

Paul G. Short, Jr.

J.

Paul A. Thomas

J.

A. L.

J.

Columbia, South Carolina

cc:

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FILED

August 16, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2016-000601

SCOTT LEDFORD, Employee, ... Appellant,

-vs.-

DEPARTMENT OF PUBLIC SAFETY, Employer,
and STATE ACCIDENT FUND, Carrier, ... Respondents.

PETITION FOR REHEARING

The Appellant moves for a rehearing of the Court's Unpublished Opinion No. 2018-UP-280 filed on June 27, 2018 under Rule 219, S.C.A.C.R., on the following grounds:

- I. The Court should have allowed the Appellant to argue against precedent for an objection recusal standard as requested in the Appellant's motion filed on March 27, 2018.

The Appellant raises this issue for preservation. The arguments in support of rehearing on this ground were set forth in the motion.

- II. The Court misapprehended the prejudice to the Petitioner was not about money.

The Court ruled the Petitioner failed to show prejudice because the single commissioner's award was reversed on review by the Appellate Panel. Furthermore,

"[d]ue to the Appellate Panel's reversal, we find the further discussion of the single commissioner's ruling is not warranted." The Court misapprehended this appeal was about money. It is about a law enforcement officer, who served honorably and with distinction until disabled by two admitted injuries in the line of duty, being called a liar by the single commissioner and threatened with criminal prosecution unless he settled his claim forfeiting his rights. As the Petition for Rehearing before the Appellate Panel explained:

The Claimant/Appellant is sincerely grateful [for] the Appellate Panel's amendments to the Single Commissioner's Decision and Order that has saved him and his family from financial bankruptcy, authorized him to receive ongoing physical therapy and injections recommended by his physicians, and has preserved his right to seek a change of condition within one year from the last payment of compensation under § 42-17-90, S.C. Code Anno., 1976 as amended. The problem is the Appellate Panel, by adopting the majority of the Single Commissioner's findings has left the Claimant/Appellant still accused of being a liar and a cheat whose reputation has been destroyed.

(R. Vol. I, pp. 212 - 213). Judges rule against litigants without threatening them with criminal prosecution unless they settle their cases. The prejudice is about the personal affront to the Petitioner and the anxiety suffered being threatened with criminal prosecution. The Court overlooked any litigant threatened in such a manner would reasonably question the judge's impartiality supporting recusal under Cannon 3(E) of the Code of Judicial Conduct, Rule 501, S.C.A.C.R.

III. The Court overlooked the shockingly inadequate award made by the single commissioner is evidence of partiality.

While it is true the fact a judge rules against a litigant is not proof of partiality, it is also true a judge's impartiality can be questioned when his or her factual findings

are not supported by the record. *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 433 S.E.2d 856 (1993). The hearing commissioner's ignoring the unanimous opinions of the treating physicians and the objective radiographic evidence in concluding the Petitioner suffered a 0% impairment of his spine from his admitted, career ending motorcycle accident was neither fair nor impartial. Her order that the Petitioner repay an \$18,932.80 overpayment was neither fair nor impartial. Although reversed by the Appellate Panel, the court overlooked the single commissioner's award was so shockingly inadequate as to constitute evidence of partiality further supporting recusal.

- IV. The Court overlooked the Hearing Commissioner's dismissal of the allegations of her misconduct as frivolous, her combative and defensive attitude in denying recusal, and her expressing her opinions on the merits of the case prior to her decision constitutes further evidence of partiality.

In *Shaw v. State*, 276 S.C. 190, 277 S.E.2d 140 (1981) the Supreme Court discussed the authority of a judge to resolve a motion for recusal alleging misconduct by him or her. It began by saying, "It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution." It then reviewed the affidavits submitted in support of recusal for legal sufficiency and found the affidavits caused the Court "some concern." Concern because the Court disagreed with the judge's view the allegations against him were "pure trivia." Another concern was the judge's "apparent combative and defensive attitude exhibited during the recusal hearing." And, finally the Court was concerned because the litigant "could reasonably have questioned the judge's

impartiality." Despite these concerns, however, the Supreme Court did not reverse the denial of the motion to recuse because it found "no indication ... the trial judge ever expressed an opinion on the merits of case prior to his decision."

The Court's unpublished decision overlooked the single commissioner dismissed the allegations against her as "frivolous or fanciful." R. Vol. I, pp. 100, 102. It overlooked the single commissioner took a very combative attitude in denying the motion. She accused the Petitioner's CPA of "creative accounting" and the Petitioner's counsel, who she praised for his representation at the hearing, of a making false allegations against her "with the knowledge it is false, or, at best, a reckless disregard for its truth or falsity." R. Vol. I, p. 101. And, the Court overlooked the telephone conference she said was "to notify [the attorneys for the parties] of [her] tentative findings" occurred prior to her decision on the merits. These facts constitute further evidence of partiality in support of recusal.

V. The Court overlooked the Petitioner alleged the findings against him were affected by errors of law.

The Petitioner argued the single commissioner's Order Denying Recusal should be reversed because it was in violation of constitutional and statutory provisions and affected by errors of law. The Order Denying Recusal and the Decision and Order on the merits should be considered separately. The Petitioner requested review of the single commissioner's Order Denying Recusal but his request was dismissed as interlocutory. R. Vol. I, p. 96. The two orders should not now be considered as one for purposes of judicial review. This Court finding the Appellate Panel's finding on credibility in its Decision and Order on the merits is supported by

substantial evidence should not make review of the single commissioner's Order Denying Recusal unwarranted.

The factual basis in support of the Motion to Recuse was set forth in the affidavits and exhibits submitted to support the recusal motion. R. Vol. I, pp. 249 – 259. No contrary evidence was submitted to dispute those allegations.¹ The single commissioner admitted the substance of the allegations in her Order denying recusal. R., Vol. 1, pp. 101 – 102, Findings of Fact 10 – 14. Yet somehow the Appellate Panel's finding with regard to the single commissioner's Order Denying Recusal was, "We find the Hearing Commissioner was not required to recuse herself as there is no evidence her actions were in violation of the Judicial Code of Conduct." The Court misapprehends the substantial evidence standard of judicial review regarding a disputed factual matter has never been intended to preclude review for errors of law on undisputed facts regarding a legal matter.

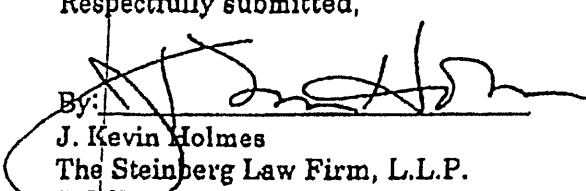
CONCLUSION

The reasons for requesting the right to argue against precedent were set forth in the Petitioner's Motion March 27, 2018. The Court's decision highlights the need for an objective standard. The standard of judicial review applied by this Court is unworkable because it places too high a burden on the litigant. As applied in this case it neither vindicates the Petitioner's right to a fair and impartial hearing nor rectifies the alleged misconduct. Requiring a monetary or tangible prejudice undervalues the affront to the Petitioner's reputation and the stress endured being

¹ The Respondents did not file a response to the recusal motion and the Respondent's attorney has never challenged the accuracy of the factual allegations made in support of the motion.

threatened with criminal prosecution. While the Appellate Panel's Decision and Order may have mitigated the financial prejudice suffered by the Petitioner, it did nothing to restore the Petitioner's reputation or prevent the offending conduct from happening to other litigants. The single commissioner's award was so shocking inadequate, her outright dismissal of unopposed allegations against her as frivolous, her combative attitude in denying the motion, and her threatening the Petitioner with criminal prosecution unless he forfeited his rights before she issued her decision on the merits are all legally sufficient reasons for the Petitioner to have reasonably questioned her impartiality and, that being the case, Cannon 3(E) of the Code of Judicial Conduct, Rule 501, S.C.A.C.R., plainly says, "A judge shall disqualify himself or herself" The purpose of the Rule is to insure judicial proceedings are fair and impartial both in appearance and in fact. It is respectfully submitted it is time for our Appellate Courts to adopt a subjective standard, or at least, clarify what circumstances can or cannot be considered when deciding whether recusal is required when the allegations of misconduct involve the judge's own actions before the issuance of a decision on the merits.

Respectfully submitted,

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10th day of July, 2018.

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

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

Scott Ledford, Employee, Appellant,

v

Department of Public Safety, Employer, and State
Accident Fund, Carrier, Respondents

Appellate Case No. 2016-000601

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-280
Heard May 16, 2018 – Filed June 27, 2018

AFFIRMED

James K. Holmes, of The Steinberg Law Firm, LLP, of
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LLP, of Florence, both for Appellant

Sarah C. Sutusky and John Paul Simkovich, both of
Willson Jones Carter & Baxley, P.A., of Columbia, for
Respondents

PER CURIAM: In this workers' compensation action against the Department of Public Safety (the Department), former highway patrolman Scott Ledford (Claimant) appeals, arguing the Appellate Panel of the Workers' Compensation

Commission (the Appellate Panel) erred in (1) failing to find the single commissioner should have recused herself, (2) failing to find the single commissioner improperly overruled unappealed findings of a prior single commissioner, and (3) adopting factual findings unsupported by substantial evidence. We affirm.

As to the first issue, we find the single commissioner was not required to recuse herself. See *Koon v. Fares*, 379 S.C. 150, 156, 666 S.E.2d 230, 234 (2008) ("A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party"), *Mallett v. Mallett*, 323 S.C. 141, 145, 473 S.E.2d 804, 807 (Ct. App. 1996) ("Such bias must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from his participation in the case"). We further find Claimant has not attributed prejudice to the decision of the Appellate Panel. See *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004) ("The Appellate Panel is the ultimate fact finder in Workers' Compensation cases . . ."). *Mallett*, 323 S.C. at 145-46, 473 S.E.2d at 807 ("It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias or prejudice"). *Id.* at 147, 473 S.E.2d at 808 ("The fact a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his rulings.")

Next, the Appellate Panel reversed the single commissioner regarding the second issue, and we find the Appellate Panel's findings are supported by substantial evidence. See *Bass v. Isochem*, 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005) ("[T]his [c]ourt's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by some error of law"). Due to the Appellate Panel's reversal, we find further discussion of the single commissioner's ruling is not warranted. See *Spivey v. et al. Spivey v. Carolina Crawler*, 367 S.C. 154, 160, 624 S.E.2d 435, 438 (Ct. App. 2005) ("The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation" (quoting *Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003))).

Third, we find substantial evidence supports the Appellate Panel's findings that Claimant was not credible and his landscaping business remained lucrative following the injury. See *Hargrove*, 360 S.C. at 289, 599 S.E.2d at 611 ("The Appellate Panel is the ultimate fact finder in Workers' Compensation cases and is

not bound by the [s]ingle [c]ommissioner's findings of fact."); *id.* ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel.").

AFFIRMED.

SHORT, THOMAS, and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1202545

Scott Ledford, Employee, ... Appellant,

v.

Department of Public Safety, Employer, and
State Accident Fund, Carrier, ... Respondents: .

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- 1 DID THE APPELLATE PANEL COMMIT AN ERROR OF LAW IN FAILING TO RULE THAT THE HEARING COMMISSIONER SHOULD HAVE RECUSED HERSELF?
- 2 DID THE APPELLATE PANEL COMMIT AN ERROR OF LAW IN FAILING TO RULE THE HEARING COMMISSIONER DID NOT HAVE AUTHORITY TO OVERRULE COMMISSIONER ROCHE'S UNAPPEALED FINDINGS OF FACT AND RULINGS OF LAW IN THE CHANGE OF CONDITION CLAIM IN W C C. FILE NO. 1009581?
- 3 WHETHER THE APPELLATE PANEL'S ADOPTED FINDINGS OF FACT INSINUATING THE APPELLANT IS A LIAR WHO SHOULD BE PROSECUTED FOR INSURANCE FRAUD BECAUSE HE OWNS AND OPERATES A LAWN CARE BUSINESS SHOULD BE REVERSED BECAUSE THEY ARE UNSUPPORTED BY SUBSTANTIAL EVIDENCE, AND BASED ON SPECULATION?

STATEMENT OF THE CASE

The Appellant suffered an admitted injury by accident arising out of and in the course of his employment as a South Carolina Highway patrolman on July 15, 2010. (AR, Vol. I, pp. 263 – 271). This claim was settled on a Form 16 for a 25% scheduled loss of the back on September 29, 2011. (AR, Vol. I, p. 263).

The Appellant suffered a second admitted injury by accident arising out of and in the course of his employment as a South Carolina Highway patrolman on March 10, 2012. It was unclear whether the Appellant's neck and back pain following his second admitted accident was the result of his prior accident, his new accident, or a combination of the two. The Appellant filed for a change of condition in W.C.C. File No 1008581 and a new claim for his second accident. (AR, Vol I, pp. 273 – 274). The Appellant filed a motion to consolidate both claims. The motion to consolidate was granted by interim Order filed on October 8, 2012 (AR, Vol. I, p. 108).

The consolidated claims were heard before Commissioner Roche on January 15 2013. Commissioner Roche issued her Order finding the Appellant had not suffered a change of condition injury but was entitled to ongoing medical treatment for his right leg, and for the aggravation of his neck and low conditions that pre-existed his 2010 accident caused by his 2012 accident. (AR Vol I, pp. 109 – 119) No appeal was taken from Commissioner Roche's Order.

The Appellant's claim for his 2012 accident was heard before Commissioner Barden on August 15, 2014. (AR, Vol I, p. 139). A month after the hearing, on September 16 2014, Commission Barden requested a telephone conference with the

attorneys. Based on comments made by Commissioner Barden during the telephone conference, the Appellant filed a motion to recuse Commissioner Barden and reassign the claim to a new commissioner on October 10, 2014. (AR, Vol. I, pp. 232 – 259) Commissioner Barden issued her Order denying recusal on November 3, 2014. (AR, Vol. I, pp. 97 – 107). The Appellant filed a Form 30 seeking review of Commissioner Barden's Order denying recusal on November 14, 2014. (AR, Vol. I, pp. 231) The Respondents elected not to submit a brief in response to the recusal motion. The Commission in conference, Commissioner Barden participating, ruled the Appellant's request for review was interlocutory on December 15, 2014. (AR, Vol. I, p. 96) The Commission in conference, Commissioner Barden participating, dismissed the Appellant's request for review as moot on December 16, 2014. (AR, Vol. I, p. 95).

Commissioner Barden issued her Order on December 17, 2014. (AR, Vol. I, pp. 56 – 94) The Appellant filed a Form 30 seeking Appellate Panel review of Commissioner Barden's Order on December 29, 2014. (AR, Vol. I, pp. 221 – 230)

The request for review was heard by an Appellate Panel of the Commission on March 17, 2015. The Appellate Panel issued its decision affirming in part and reversing in part on January 21, 2016. (AR, Vol. I, pp. 2 – 55) The Appellant filed a Motion for a rehearing on February 1, 2016. (AR, Vol. I, pp. 212 – 220) The Appellate Panel denied the motion for a rehearing on February 22, 2016. (AR, Vol. I, p. 1)

The Appellant filed a Notice of Appeal to this Honorable Court on March 21, 2016 and this appeal follows.

FACTS

The Appellant is forty years old. (AR, Vol. I, p. 157). He is a devoted husband who has been faithfully married for fourteen years and is the proud father of three children. (AR, Vol. I, p. 158). He does not smoke or drink. (AR, Vol. I, p. 162). He attends the First Baptist Church in Myrtle Beach. (AR, Vol. I, p. 158). Growing up all the Appellant ever wanted to be was a law enforcement officer. He studied criminal justice for two years before joining the South Carolina Highway Patrol. (AR, Vol. I, p. 158 – 160, 163). The Appellant proudly served as a patrolman for 17 years. He earned the rank of lance corporal and was selected to be a member of the prestigious ACE team which provides motorcycle escorts for visiting dignitaries. (AR, Vol. I, p. 159). To supplement his law enforcement salary and so his wife could be a stay at home mom, he owned and operated two small businesses, a lawn care company and a fishing and hunting guide service. (AR, Vol. I, p. 164 – 168). Before Commissioner Barden called him a liar who should be prosecuted for insurance fraud, the Appellant's good name and reputation were beyond reproach.

The Appellant suffered two admitted accidents arising out of and in the course of his employment as a highway patrolman. The first admitted accident occurred on July 15, 2010 when he volunteered to be tazed during a training demonstration. The muscle contractions produced by electric shock were so severe he suffered compression fractures of his T6 through T9 vertebra. (AR, Vol. I, p. 169). Following physical therapy and a Functional Capacity Evaluation (FCE) the Appellant was released to return to full duty by the authorized treating physician, Dr. William Mills, on January 27, 2011. (AR, Vol. I, p. 1780). The Appellant saw Dr. Barbara Sarb, a

neurologist, on August 16, 2011 Dr. Sarb also reported the Appellant's neck, back, and radicular symptoms following his 2010 taser injury had resolved but she assigned a 5% permanent impairment because of pre-existing degenerative changes. (AR, Vol. I, p. 51). The parties settled the 2010 taser claim on a Form 16 for a 25% scheduled loss of the spine on September 29, 2011. (AR, Vol I, pp. 145 - 146; 262).

The second admitted accident occurred on March 10, 2012 when the Appellant was involved in a motorcycle accident pursuing a motorist. (AR, Vol. I. pp. 172 - 173). Following the motorcycle accident the Appellant suffered neck and lumbar spine pain and right leg and foot pain. The Appellant was treated by Dr. Mills for his neck and lower back pain and was treated by Dr. Mills' partner, Dr. Ross Taylor, for his right leg injury (AR, Vol I, pp. 307 - 313, 336 - 345). MRI's taken on April 17, 2012 revealed spinal cord stenosis at the C5-C6, C6-C7 levels with impingement of the cervical cord, a posterior disc bulge effacing the cord at T8-T9 and, to a lesser extent, at T9-T10, and a mild to moderate circumferential disc bulge at L4-L5 with mild effacing of the teal sac and mild central spinal cord stenosis (AR, Vol. I. 307 - 308) Dr. Mills, the authorized treating physician for both accidents, testified by deposition on August 23, 2012 that the Appellant's neck and back pain following his motorcycle accident was a change in condition from his prior taser accident contributed to by the motorcycle accident (R Vol II, p 553). Dr Mills again testified by deposition on December 3, 2012 that the motorcycle accident exacerbated his prior taser injury. (R., Vol II, p 606) The Appellant's attorney prudently filed claims for both a change of condition and for a new accident but moved to consolidate the claims to avoid the

possibility of inconsistent rulings. An interim Order granting consolidation was filed on October 8, 2012. (AR, Vol. I, p. 108). The physicians who treated or evaluated the Appellant assigned permanent impairment ratings to his cervical spine of between 13% to 15% and to his lumbar spine of between 5% and 10%, in addition to the impairment rating he had previously received to his thoracic spine following the 2010 taser injury. (AR, Vol. I, pp. 456 – 462, 519 – 524).¹ All of the physicians agreed the Appellant would probably require future cervical and/or lumbar fusion surgery in the future. (AR, Vol. I, pp. 456 – 462, 519 – 524).

Based on the combined effects of the Appellant's two admitted injuries, the State Disability Board determined the Appellant was unable to return to duty as a police officer and granted him disability retirement benefits on July 7, 2012. (R., Vol. II, p. 512).

The consolidated claims were heard before Commissioner Roche on January 15, 2013.² Commissioner Roche issued her Order on May 2, 2013 finding the Appellant's suffered temporary radicular parasthesia symptoms following his 2010 taser accident which had completely resolved. (AR, Vol. I, pp. 115 – 116). Commissioner Roche ruled the Appellant had not suffered a change of condition of

¹ It is important to understand that under the Workers Compensation Act the combined losses from his two admitted injuries his prior award of 25% loss of use of his spine for his thoracic injury together with his 18% to 25% percent medical impairment ratings to his cervical and lumbar spine, put him within percentage points of a statutory presumption of total and permanent disability, without regard to his future earning capacity, under § 42-9-30(21), S.C. Code Anno., as amended.

² One of the reasons Commissioner Barden accuses the Appellant of insurance fraud is because she claims he denied he suffered a cervical spine injury as a result of his 2010 taser. It is noted the Respondents denied the Appellant had sustained injuries to his cervical spine as a result of his 2010 taser accident and, therefore denied there had been a change of condition since the Form 16 was signed. (AR, Vol I p 111)

his 2010 taser accident but was entitled to ongoing medical treatment for his right leg and for the aggravation of his neck and low back pre-existing conditions caused by his 2012 motorcycle accident (AR, Vol. I, pp. 117 – 119). No appeal was taken from Commissioner Roche's Order.

The Appellant's 2012 motorcycle accident permanency claim was heard before Commissioner Barden on August 15, 2014. A month after the hearing, on September 16, 2014, Commissioner Barden requested a telephone conference with the attorneys (AR, Vol. I, p. 248, pp. 245 – 247). During the telephone conference Commissioner Barden indicated she believed the Appellant had lied about not having neck pain following his prior accident and commented, "while he may be a former member of the South Carolina Highway Patrol ACE Team, he was not a member of the 'Truth Team'" (AR, Vol. I, pp. 245 – 247). Commissioner Barden further commented the Appellant's tax returns prepared by his certified public accountant were creative accounting (AR, Vol. I, pp. 245 – 247, pp. 258 – 259). Commissioner Barden stated she did not believe anything the [Appellant] said except his name and age" (AR, Vol. I, pp. 245 – 247). Commissioner Barden said she had an 'obligation' to report the Appellant to the Attorney General for prosecution based on her belief he committed perjury but if the parties were able to settle the claim then she would not have to report him (AR, Vol. I, pp. 245 – 247). Commissioner Barden further said she realized the Respondent would make a 'minimal offer' following the conference call but again stated: if the offer was not accepted she would have a duty to report the Appellant to the Attorney General for prosecution (AR, Vol. I, pp. 245 – 247).

Appellant's counsel was shocked and immediately dictated a memorandum to document what had been said during the telephone conference. (AR, Vol. I, p. 248). He hired Robert Hill, Esquire, at his own expense, to research the law on perjury and judicial ethics. He discussed the matter with his partner, with a criminal defense attorney, and with other attorneys who practice workers' compensation law. And, he ordered a transcript of the hearing held before Commissioner Roche so he could compare the Appellant's testimony given in the two hearings. Appellant's counsel received a draft motion to recuse Commissioner Barden prepared by Mr. Hill on September 30, 2014 and they discussed the need to prepare supporting affidavits, exhibits, and a memorandum to be attached to the motion to recuse if that was the course of action chosen by the Appellant. After discussing the situation with his counsel, the Appellant requested that the motion to recuse be filed. The motion to recuse, supporting documents, and memorandum of law was filed on October 10, 2014. (AR. Vol I. pp. 249 – 253).

Without a hearing, Commissioner Barden issued her Order denying the motion to recuse on November 3, 2014. (AR, Vol I, pp. 97 – 107). In her Order Commissioner Barden suggests she had only reached "tentative findings" and that she merely pointed out that a settlement would make unnecessary the promulgation of a written decision on the merits." (AR. Vol. I, pp. 99 – 99) She states she "assured [Appellant's Counsel] that her findings were in no way a reflection on him or his abilities." (AR, Vol. I, p. 99). In finding of fact 10 of her Order, however, she states, "... the [Appellant] alleges that the undersigned must disqualify herself on the ground that

she 'threaten[ed] criminal proceedings unless the case settles.' This is a false statement of fact and a frivolous allegation. The undersigned made no such proclamation, either expressly or impliedly. Counsel for the [Appellant] has made such statement with the knowledge that it is false, or, at best, a reckless disregard for its truth or falsity. The undersigned will not consider a frivolous and materially false statement as reasonable grounds for disqualification." (AR, Vol. I, p. 101).

Although Commissioner Barden calls the allegation that she improperly threatened to refer the Appellant to the Attorney General's Office to be prosecuted for insurance fraud unless he accepted a settlement false and frivolous, she admits the substance of allegation in her Order (AR, Vol I pp 101 - 102, Findings of Fact 10 - 14). Settling his claim would have required the Appellant to forfeit his right to have his claim determined, not just by Commissioner Barden but by this Appellate Panel and the Appellate Courts in due course. The Attorney General having discretion whether to prosecute is irrelevant, the threat of criminal prosecution can be devastating to a person's reputation and cause severe mental anxiety and stress.

The Appellant urges this Court to use caution accepting the Hearing Commissioner's review of the evidence and findings in her Order filed on December 17, 2014 because they are neither fair nor impartial (AR, Vol I pp 56 - 94). Rather they indicate a bias and prejudice against the Appellant, a career officer with the South Carolina Highway Patrol, who suffered two admitted, career-ending injuries in the line of duty. Commissioner Barden splits hairs over matters of little or no significance in light of the objective radiographic evidence of ruptured discs in the

Appellant's cervical and lumbar spine. She places inordinate weight on such trivial matters as what tense the Appellant spoke in when testifying. For example, she accuses the Appellant is lying about following his doctor's restrictions because he testified in the "present tense," if he exceeds his doctor's restrictions, he suffers increased pain. Apparently, speaking in the present tense somehow not only proved he was lying about following his doctor's restrictions, it proved he continued to perform physical labor in his landscaping business. (AR, Vol. I, p. 85, Finding No. 47). It is not just the Appellant, but his lawyer who is called an unethical liar, his CPA who is called either a liar or incompetent, and his doctors who must all be incompetent because they were all fooled by the Appellant. Until Commissioner Barden called the Appellant a liar who should be prosecuted for insurance fraud, the Appellant's good name, his reputation, and his record with the South Carolina Highway Patrol were unblemished and beyond reproach. After two admitted injuries that ended his law enforcement career, according to Commissioner Barden, he should be referred for criminal prosecution, receive nothing for the MRI demonstrated ruptured discs in his cervical and lumbar spine, and ordered to pay the State \$18,932.80. Commissioner Barden's permanency rating was neither fair nor impartial. It was shocking.

ARGUMENT

1. THE APPELLATE PANEL COMMITTED AN ERROR OF LAW IN FAILING TO RULE COMMISSIONER BARDEN SHOULD HAVE RECUSED HERSELF.

The improper conduct the Appellant alleges required recusal never involved any claim Commissioner Barden or member of her family had any personal prejudice against the Appellant, any relationship with the State Fund, any knowledge of the facts of case, or any financial interest in the outcome of the case. The alleged improper conduct was neither fanciful, conclusory, nor conjectural, it was very specific and supported by the sworn affidavit of the Appellant's attorney, an Officer of the Court

Commissioner Barden is bound by the Code of Judicial Conduct. § 42-3-250, S.C. Code Anno as amended April 15, 2005. Rule 501, SCACR. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2 (A), Rule 501 SCACR. A judge's judicial duties include all the duties of the judge's office prescribed by law. Canon 3(A), Rule 501, SCACR. A Judge shall dispose of all judicial matters promptly, efficiently, and fairly. Canon 3(B)(8) Rule 501. The commentary to the rule states, "A judge should encourage and seek to facilitate settlement but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts" (Emphasis added) Canon 3(B)(8), Rule 501

The Appellant Panel in Appellate Panel Finding of Fact No. 1 found "...there is no evidence to support that the Hearing Commissioner *threatened* criminal proceedings unless the case settled." (AR Vol. I, pp. 30 - 31) It is respectfully submitted the only evidence in the record establishes that is exactly what did happen. Commissioner Barden admits there was a telephone conference after the hearing to

discuss her "tentative findings" and some what she wants to euphemistically call "inconsistencies" in the Appellant's testimony. (AR, Vol. I, p. 98). Commissioner Barden clearly threatened to report the Appellant to the Attorney General's Office for prosecution. (AR, Vol. I, p. 101). If not to threaten prosecution, what reason did Commissioner Barden have for mentioning her statutory duty to report insurance fraud to the Attorney General's Office? Commissioner clearly indicated she would not refer the Appellant for prosecution if he settled his case. (AR, Vol. I, p. 99). If not to say a settlement for a minimal amount would avoid prosecution, why would Commissioner Barden feel it necessary to remind the parties "of their right to enter into a settlement agreement under § 42-9-390, which would make unnecessary the promulgation of a written decision on the merits."

It really does not matter what contrived spin Commissioner Barden tries to put on what was said, what matters is how the Appellant understood what was reported to him she had said. The Appellant understood what she said was a threat to report him to the Attorney General's Office for criminal prosecution unless he settled his case on unfavorable terms

Commissioner Barden had the statutory duty to report suspected false statements or misrepresentations made with the intent of obtaining an undeserved economic benefit in an insurance transaction § 38-55-530(D) and § 42-9-440, S.C. Code Anno , as amended April 15, 2005. Nothing in the statutes, however, gives Commissioner Barden the right to threaten to report the Appellant to the Attorney's General's Office for criminal prosecution unless he settled his claim. Commissioner

1

Barden knows full well settling his claim would cause the Appellant to forfeit his legal right to have his claim fairly and impartially adjudicated not just Commissioner Barden, but by the Appellate Panel and the Appellate Courts in due course if need be. It would cause the Appellant to forfeit his right to come back for a change of condition under § 42-17-90, S.C. Code Anno., as amended July 1, 2007.

Offering not to comply with a statutory duty constitutes a violation of the Code of Judicial Conduct which requires judges to comply with the law and perform the duties prescribed to the judge's office by law. It caused the Appellant, a sixteen year law enforcement officer, to reasonably question Commissioner Barden's integrity, fairness and impartiality. The misuse of her judicial authority in this manner raised reasonable questions about Commissioner Barden's ability to exercise her authority consistent with the statutes she claims to be enforcing, creates an appearance of impropriety and undermined the Appellant's confidence in Commissioner Barden's integrity and impartiality.

The Appellant moved to recuse Commissioner Barden based on specific and verified information provided to him by his attorney, an Officer of the Court. Canon 3(E) of the Code of Judicial Conduct, Rule 501 SCACR, governs disqualification of judges and provides: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." (Emphasis added). The Commentary states: "Under this rule a judge is disqualified whenever the judge's impartiality might reasonably be questioned regardless of whether any of the specific rules in Section 3E(1) apply." Under Canon 3(E)(1)(a), a judge should

disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned. Róche v. Young Bros., Inc., 332 S.C. 75, 504 S.E.2d 311 (1998). The Appellant had reasonable grounds to question Commissioner Barden's impartiality based on the information he was provided.

The Appellant as the party seeking disqualification must show some evidence of impartiality. Mallett v. Mallett, 323 S.C. 141, 473 S.E.2d 804 (Ct App.1996). The only evidence in the record is the Appellant's Motion to Recuse and memorandum of law, the Affidavits of his attorney and certified public accountant, and the memorandum of what was said during the telephone conference. (AR, Vol. I, pp. 249 – 259). Many of Commissioner Barden's findings are also affected by error of law, unsupported by substantial evidence, and based on speculation as set forth below also demonstrating impartiality. Ellis v. Procter & Gamble Dist. Co., 315 S.C. 283, 433 S E 2d 856, 857 (1993).

Commissioner Barden's suggestion the Appellant's attorney falsified the allegation 'for mere tactical advantage' is neither supported by any evidence in the record nor does it make any sense. Why would Appellant's attorney, or any attorney for that matter, make up false allegations of judicial misconduct and subject himself to disciplinary proceedings when there was an obvious a witness. Respondents' counsel, who was a party to the telephone conference in which the improper statements were made? No lawyer in his or her right mind, knowing full well what acrimony will entail, would challenge the impartiality of a judge unless compelled to do so to protect the rights of his or her client. The only "advantage" Appellant's

attorney obtained was the very real expense of having to hire associate appellate counsel and an ethics professor to research perjury and judicial ethics so protect his client's rights.

The Appellant respectfully requests that Commissioner Barden's denial of Appellant's motion for recusal be reversed and his claim remanded to be heard *de novo* before a new hearing Commissioner.

2 THE APPELLATE PANEL COMMITTED AN ERROR OF LAW IN
FAILING TO RULE THE HEARING COMMISSIONER DID NOT
HAVE AUTHORITY TO OVERRULE COMMISSIONER ROCHE'S
UNAPPEALED FINDINGS OF FACT AND RULINGS OF LAW IN
THE CHANGE OF CONDITION CLAIM IN WCC FILE NO
1009581

The Appellant sustained an admitted injury by accident on July 15, 2010 when he volunteered to be tazed during a training demonstration. The parties settled the 2010 taser claim on a Form 16 for a 25% permanent impairment of the spine on September 29, 2011. The Appellant sustained a second admitted injury by accident on March 10, 2012 when he was involved in a motorcycle accident. It was unclear whether the Appellant's neck and back pain following his motorcycle accident was the result of a change of condition from his 2010 taser injury, the 2012 motorcycle accident, or both. The Appellant's attorney prudently filed claims for both a change of condition and for a new accident but moved to consolidate the claims to avoid the possibility of inconsistent rulings. An interim Order granting consolidation was filed on October 8, 2012 (AR, Vol I, p. 108).

On January 15, 2013 the consolidated claims were heard before Commissioner Roche. On May 2, 2013 Commissioner Roche issued her Order ruling that the

Appellant had not suffered a change of condition but was entitled to ongoing medical care and treatment for his right leg and for the aggravation of his pre-existing neck and low back conditions. No appeal was taken from Commissioner Roche's Order.

The failure to appeal findings of fact and rulings of law duly made by a jurisdictional commissioner make those facts and rulings the "law of the case." *See: Brunson v. American Koyo Bearings*, 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2005); *Green v. City of Columbia*, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993) (findings of fact not within the scope of an exception in a prior appeal become the law of the case). The reversal of the findings and rulings of a jurisdictional commissioner is reserved for the Appellate panel under § 42-17-60, S.C. Code Anno., 1976 as amended.

One judge, or commissioner for that matter, does not have the authority to overrule another. *See: Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 340 S.E.2d 546 (1986); *Samonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008). The purpose of this rule is to prevent exactly the kind of injustice inconsistent rulings can have that is manifest in this case.

Although Commissioner Barden professes it was necessary for her "review" Commissioner Roche's Order because of the claim for a credit, what she did was repeatedly misinterpret it and, in fact she reversed it. Commissioner Roche began her Order by noting the Appellant returned to "full-time, full duty" work on January 27, 2011 after his 2010 taser accident. (AR, Vol. I. p. 109). Commissioner Roche specifically noted the Respondents denied the Claimant had suffered injuries to his lumbar spine and cervical spine in his 2010 taser accident. (AR, Vol. I. p. 111). In

reviewing the evidence, Commissioner Roche specifically noted that the report from Dr. Sarb "showed no complaints of radicular symptoms either with the arms or legs " (AR, Vol. I, p. 114). Commissioner Roche did not find the Appellant complained of neck pain to Dr. Sarb. (AR, Vol. I, p. 115). Dr. Sarb's records do not reflect the Appellant complained to her about neck pain. (AR, Vol. I, pp. 321 - 325). Commissioner Roche noted Dr. Sarb's 5% impairment rating was based on cervical degenerative changes "and resolved radicular-parasthesia symptoms " (AR, Vol I, p. 115) Commissioner Roche further noted Dr. Mills, the authorized treating physician testified in his second deposition to a reasonable degree of medical certainty the Appellant's cervical and lumbar problems were aggravated as a result of his motorcycle accident (AR Vol I, p. 116) In finding of fact number 1 Commissioner Roche found [t]he [Appellant] did receive some treatment for his neck and low back as a result of the Taser accident. However, Physical Therapy reports of November 30, 2010 and the Functional Capacity Evaluation of January 25, 2011 show that the problems the [Appellant] suffered with his upper and right lower extremity had resolved. In addition, the [Appellant] returned to Dr. Barbara Sarb on August 16, 2011 and according to her report, the [Appellant] stated he had no additional neck or arm symptoms. Her report further shows that he was not having lower pain or radicular symptoms at that time well. In finding of fact number 3, Commissioner Roche found, [t]he [Appellant], Scott Ledford was an employee of the above named employer prior to March 20, 2012 on which date he did sustain an injury by accident to his right leg which also aggravated his pre-existing neck and back problems. This

finding is based upon the deposition of Dr. William Mills, an authorized treating physician who testified that the motorcycle accident aggravated the [Appellant's] pre-existing neck and back problems and that aggravation has caused the [Appellant] to need surgery." (AR, Vol. I, p. 117). In finding of fact number 6, Commissioner Roche found, "[a]s a result of the [Appellant's] accident of March 10, 2012, the [Appellant] suffered injuries to his right leg and aggravated pre-existing conditions in his neck and back. The Claimant is entitled to causally-related medical care authorized by the Carrier for his admitted injury and aggravation of pre-existing conditions until further order of this Commissioner." (AR, Vol. I, p. 118). In conclusions of law 3, 4, and 5, Commissioner Roche concluded the Appellant suffered an aggravation of his neck and low back for which he was entitled to medical care. (AR, Vol. I, pp. 118 – 119)

Commissioner Barden improperly reversed Commissioner Roche's unappealed findings of fact and rulings of law by attributing all of the Appellant's neck and back problems to his 2010 taser accident and by awarding him a 0% impairment to his neck and back as a result of his 2012 motorcycle accident. The two rulings are inconsistent and manifestly unjust to the Appellant. Commissioner Barden's findings misinterpreting and reversing Commissioner Roche's Order are affected by an error of law and constitute evidence of unfairness and impartiality.

3 THE APPELLATE PANEL'S ADOPTION OF THE HEARING COMMISSIONER'S FINDING OF FACT INSINUATING THE APPELLANT IS A LIAR WHO SHOULD BE PROSECUTED FOR INSURANCE FRAUD BECAUSE HE OWNS AND OPERATES A LAWN CARE BUSINESS ARE UNSUPPORTED BY SUBSTANTIAL EVIDENCE AND BASED ON SPECULATION.

Commissioner Barden repeatedly calls the Appellant a "hustler." The Appellant never said he was a hustler at all. He answered a question posed by his attorney that described the Appellant as a hustler, not in the derogatory sense intended by Commissioner Barden, but in the sense that he worked hard to operate two small businesses to supplement his income as a police officer so he could provide a better life for his wife and three small children. The Appellant is proud he operated two small businesses, a lawn care company and a hunting and fishing guide company for eighteen years. Commissioner Barden findings the Appellant's lawn business has remained successful and lucrative since his two admitted accidents because of the Appellant's labors is not supported by substantial evidence and is based on speculation.

Commissioner Barden does not mention the Appellant was forced to sell his boat and shut down his hunting and fishing guide company since his accidents. Commissioner Barden's reasoning his lawn care businesses remains successful and lucrative is hard to follow. Commissioner Barden apparently concludes the lawn care business must remain successful and lucrative because the Appellant testified it made it possible for him to provide his wife with nicer things. Obviously, he was talking about before his accidents and before the profits plummeted to \$688.00 in 2012 and \$716.00 in 2013. Commissioner Barden simply ignores the Appellant's income tax returns prepared by his CPA and speculates, since the business had gross earnings of \$334,906.00, the net earning must be based on creative accounting. It is noted Commissioner Barden never reviewed the Appellant's tax returns for the years

before his two admitted accidents and never gave the Appellant or his CPA an opportunity to explain basic accounting to her. Commissioner Barden admits she is 'the worst of the bunch' when it comes to understanding accounting which is obvious when she says, "[w]hat deductions the [Appellant] takes on his income tax returns are of no concern" to her. (AR, Vol. I, p. 203, 90, finding of fact 62). Apparently, Commissioner Barden thinks taking deductions for employee salaries of \$74,629.00, subcontractors fees of \$53,844.00, fuel expenses of \$25,793.00, taxes of \$9,982.00, interest of \$6,651.00, insurance of \$8,476.00, legal and accounting expenses of \$3,285.00, supply expense of \$2,444.00, telephone expenses of \$1,913.00, mileage expenses of \$4,438.00, depreciation of \$35,521.00, and utilities of \$8,644.00 according to his tax returns prepared by a CPA in accordance with accepted accounting principles amounts to "creative accounting."

Not only does Commissioner Barden speculate the Appellant's lawn care business is successful and lucrative. she speculates it is successful and lucrative because of the Appellant's physical labor. In finding of fact 65 Commissioner Barden admits, "I have no concrete idea as to whether the [Appellant] is performing most of the work himself (as he 'works a lot' and is 'somewhat of a hustler'), I would assume he is working and don't trust his testimony about having employees who perform the physical labor." (Emphasis added). Apparently, Commissioner Barden does not understand that employee salaries of \$74,629.00 and subcontractors fees of \$53,844.00 would account for the labor performed.

Commissioner Barden finding the Appellant's lawn care business remained successful and lucrative because of the Appellant's labors is not supported by substantial evidence and is based on pure speculation giving further evidence that her decision was neither fair nor impartial.

CONCLUSION

The Appellant requests that the Appellate Panel's finding there was no evidence supporting that Commissioner Barden threatened to report the Appellant to the Attorney General's Office for prosecution unless he settled his claim on unfavorable terms be reversed. This Honorable Court should rule the Appellant had reasonable grounds to question Commissioner Barden's fairness and impartiality based on the detailed and verified information provided to him by an Officer of the Court that Commissioner Barden had threatened to report him to the Attorney General's Office for criminal prosecution unless he accept a grossly unfair settlement. If true, such conduct would clearly violate the very statute Commissioner Barden was charged with enforcing and violate the Code of Judicial Conduct. Whether true or not, once the Appellant was provided with detailed and verified information from an officer of the Court based upon which he questioned her impartiality, the Code of Judicial Conduct required that she disqualified herself to prevent the appearance of impropriety and to protect public confidence in the integrity of the judicial system. Furthermore, the Court should find that Commissioner Barden's permanency Order was affected by an error of law because it overruled the prior decision of Commissioner Roche resulting in two conflicting rulings and her findings concerning

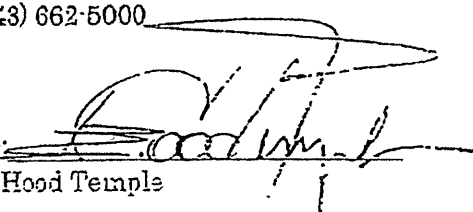
Barden issued her detailed instructions with her Request for Proposed Order on November 3, 2014 or she issued her Order on December 17, 2014. The motion having been supported should have been granted.

CONCLUSION

Appellant's counsel did want the Court left with the impression he waited until Commissioner Barden's findings and ruling were made known before taking action to seek her removal. Action was taken immediately after the offending conduct occurred and long before her "final" findings and ruling were made known. For the reasons set forth in the Appellant's Initial brief and herein, the Appellant prays that the Court reverse the decision of the Appellate Panel and rule the Appellate Panel committed an error of law by failing to rule Commissioner Barden should have recused herself.

Respectfully submitted,

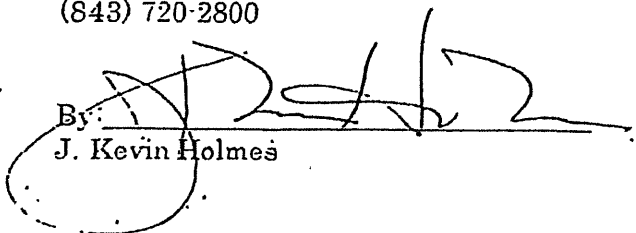
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November 17, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2016-000601

Scott Ledford, Employee..... Appellant,

v

Department of Public Safety, Employer, and
State Accident Fund, Carrier..... Respondents

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Hearing Commissioner was obligated to recuse herself from issuing an Order and Decision pursuant to Judicial Canon 3E, Rule 501, SCACR necessitating a hearing *de novo*
- II. Whether the Hearing Commissioner's Decision and Order filed December 17, 2014 overruled prior Decision and Order filed May 1, 2013
- III. Whether the Commission's findings of fact are supported by substantial evidence

STATEMENT OF THE CASE

Appellant sustained an injury to his right leg, cervical spine, and lumbar spine by an accident arising out of and in the course of his employment with Respondent-Employer on March 10, 2012 (R p. 370). Notably, Appellant sustained a prior injury to his spine while working for Respondent-Employer July 15, 2010. (R. pp 108-119). Respondents and Appellant settled the 2010 claim for 25% to the spine or 75 weeks in permanent partial disability benefits as a result of that accident (R p 262)

Respondents filed a Form 21 Request for Hearing on January 31, 2014 requesting to stop payment of compensation, pay permanency compensation, and credit for overpayment of temporary compensation following Appellant's release at Maximum Medical Improvement (hereinafter "MMI") (R p 274). A Hearing was held on August 15, 2014. (R p 139)

At the Hearing, Respondents argued Appellant reached MMI on October 31, 2013 and any permanent partial disability should be no more than the impairment ratings of the authorized treating physicians, or if there is any partial disability above the impairment ratings, it would be *de minimus* (R p. 144) Respondents also argued for credit of 25% or 75 weeks of compensation paid to the spine as a result of Appellant's prior workers' compensation claim in 2010 with the same Respondents (R p 145) Respondents asserted the back or spine is a single body part as the law does not differentiate between the levels of the spine (R pp 145-46) Therefore, Respondents argued the 25% paid to the back on Appellant's prior claim should be credited against an award, if any, to the back (R pp. 145-46) Respondents further argued that Appellant was not entitled to

future medical treatment for the back as the authorized treating physician opined further treatment was needed only if Appellant's back condition deteriorated. (R. pp 146-47)

Appellant asserted he is permanently and totally disabled as a result of injuries to his right leg and back resulting from the 2012 accident. (R. pp 147-48). Appellant argued that Respondents should get no credit for permanency previously paid to Appellant from his 2010 claim as the 25% paid to the spine was for Appellant's thoracic spine only, an injury not alleged in the 2012 accident (R. p 148)

After the Hearing and after the Hearing Commissioner prepared her findings of fact, Appellant moved to recuse the Hearing Commissioner and have the claim reassigned to a new Commissioner for a new hearing (R. pp 232-41). The Hearing Commissioner denied the Motion on November 3, 2014. (R. pp 97-106)

Pursuant to the Order of December 17, 2014, the Hearing Commissioner determined Appellant reached MMI on October 31, 2013 and that Appellant was not permanently and totally disabled (R. pp 56-94). The Hearing Commissioner awarded Appellant 10% permanent partial disability to the right leg and found there was no additional permanent partial disability beyond the 25% to the spine already paid to Appellant by Respondents (R. p 93). Finally, the Hearing Commissioner found Respondents were entitled to credit of overpayment of temporary benefits paid beyond October 31, 2013 (R. p 94).

Appellant appealed his case to the Workers' Compensation Appellate Panel and requested the Appellate Panel reverse the Order of the Hearing Commissioner and reassign the case to another Commissioner for a hearing *de novo*. (R. pp 221-230). The Appellate Panel heard the appeal on March 17, 2015 and rendered a Decision and Order

filed on January 21, 2016. (R. pp 2-55) The Appellate Panel Affirmed the Hearing Commissioner's Order on Appellant's Motion to Recuse as well as Affirming in Part and Reversing in Part the Hearing Commissioner's Decision and Order on the Form 21 Hearing. (R pp. 54-55). The Appellate Panel reversed the Hearing Commissioner's award of no additional permanent disability to the back beyond the 25% already paid and awarded Appellant 15% additional permanent disability to his back for the 2012 accident. (R. pp. 54-55) Additionally, the Appellate Panel limited the amount of credit of overpayment of temporary total compensation due to Respondents by shifting the date of credit to January 21, 2015 (R p 54). On March 21, 2016, Appellant filed his Notice of Intent to Appeal This appeal follows

STATEMENT OF THE FACTS

Appellant is 39 years of age (R p 157) He graduated high school and attended college for two years where he studied criminal justice. (R pp. 157-58) On the date of the accident in issue, Appellant's position/rank with Respondent-Employer was Lance Corporal and ACE team member with the South Carolina Highway Patrol. (R p 159) Appellant testified he worked for Respondent-Employer until he was placed on medical disability retirement. (R p 158).

Appellant had prior a workers compensation claim in 2010 that "was a t-spine injury only" (R p 204, lines 12-18) Appellant denied that he received an impairment rating to his cervical spine as a result of his 2010 workers' compensation claim (R p 188, lines 24-25) Appellant testified that as a result of his 2010 workers compensation claim he only received treatment to his thoracic spine and that he did not complain of neck pain. (R. p 206, lines 16-20) However, after being confronted by a medical report from his 2010

workers' compensation claim on cross-examination, Appellant acknowledged he received a 5% impairment rating to his cervical spine as a result of his 2010 workers' compensation claim (R p 206, lines 4-7) As a result of his 2010 injury to the spine, Appellant was paid 25% to the spine (R p 262)

As for the 2012 accident, Appellant was injured in a motorcycle accident (R p 172, line 5-p 173, line 11) He sustained compensable injuries to his right leg, neck, and low back (R p 118) Appellant underwent right ankle surgery with Dr Taylor on January 30, 2013 (R pp 430-31) Ultimately, Dr. Taylor released Appellant at MMI on May 23, 2013, assigned a 7% permanent impairment, restricting Appellant from running, cutting and pivoting, and determined no future medical treatment was needed (R p 383)

Appellant initially treated with Dr. Mills at Coastal Orthopaedic Associates for his neck and back pain after the 2012 accident (R p 374) Dr. Mills diagnosed Appellant with C5-6 spondylosis with right cervical radiculopathy and L5-S1 spondylosis (R p 376) Dr. Mills previously treated Appellant for his 2010 injuries (R p 539, lines 7-21) Dr. Mills testified Appellant's thoracic area was the most symptomatic as a result of his 2010 workers' compensation accident, but Appellant also had symptoms in his neck, upper back, and lower back (R p 553, lines 2-11)

Appellant underwent further spine evaluation with Dr. Edwards of Pee Dee Orthopaedic (R p 91) Noting that Appellant was not interested in pursuing aggressive treatment for the cervical spine, Dr. Edwards found Appellant had reached MMI for the spine as of October 31, 2013, and assigned 15% impairment to the back based on cervical disc protrusions (R p 91) Dr. Edwards further opined that it was more likely than not that

the Appellant will require cervical fusion surgery and lumbar disc surgery versus disc replacement surgery *if the Appellant's condition deteriorates in the future* (R. p. 472)

Appellant sought further evaluation from Dr. Poletti at Southeastern Spine Institute. (R. pp 474-75). Dr. Poletti first evaluated Appellant on May 7, 2012 and noted that Appellant had "remained with neck pain" since the 2010 injury. (R. p. 476) Dr. Poletti's later note of March 5, 2014 indicated Appellant did not have neck pain prior to his 2012 motorcycle accident (R. p. 481). Dr. Poletti placed Appellant at MMI on March 5, 2014 and assigned a 23% permanent impairment to the spine based on cervical and lumbar radiculopathy. (R. p 481) As to Appellant's need for surgery, Dr Poletti has at different times indicated that Appellant "potentially" needs surgery, "likely" needs surgery, and "may" require surgery (R pp 477, 479, 481)

Appellant admitted he has neither looked for nor applied for any jobs since getting hurt at work on March 10, 2012. (R p 63, lines 4-5) Appellant further admits he continues to own and operate a landscaping and lawn company called ProCutters (R p 63, lines 6-13) Appellant denied knowing how much income ProCutters makes, but he agreed that his tax returns for the year after his accident indicate gross receipts and sales of \$334,906 (R p 201, line 18-p 202, line 4) In fact, ProCutters' gross receipts increased from \$243,658 in 2012 to \$334,906 in 2013. (R. pp 608, 644).

Appellant testified that he is "somewhat of a hustler" and that he "work[s] a lot," (R p. 163, lines 7-9), but later tried to clarify that he tries "from time to time to get involved" with the landscaping business. (R. p. 184, line 24-p.185, line 2). Appellant testified that he tries to abide by his work restrictions, but his pain intensifies when he does not. (R. p 188, lines 13-15). Appellant also testified that his landscaping business

supplements his income and that he must continue operating the business because he "do[es] not have a choice" (R. p. 168, line 3).

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-380(5)(1976), establishes the "substantial evidence" rule as the standard for judicial review of a decision of the Commission.

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the administrative agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are

- (d) affected by other error of law; [or]
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

An appellate court, in workers' compensation appeals, may overturn a conclusion of the Workers' Compensation Commission if that conclusion is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

The test is whether the decision of the Commission is supported by substantial evidence. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action.

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

Therefore, an appellate court may overturn findings of fact of the Commission if there is no reasonable probability that the facts could be as related by the witnesses upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Further, an award cannot be based on surmise, conjecture, or speculation. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); *see also*, McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947) (holding testimony that is based on surmise, conjecture, and speculation has no probative value). While a finding of fact of the Commission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation. Instead, it must be founded on evidence of sufficient substance to afford a reasonable basis for it. Edwards v. Pettit Constr. Co., 273 S.C. 576, 257 S.E.2d 754 (1979).

ARGUMENT

I. THE APPELLATE PANEL CORRECTLY RULED THAT THE HEARING COMMISSIONER WAS NOT REQUIRED TO RECUSE HERSELF PURSUANT TO JUDICIAL CANON 3E.

The Hearing Commissioner has a duty to hear and decide matters assigned to her except those in which disqualification is required because her impartiality might reasonably be questioned. Canon 3B(1), 3E, Rule 501, SCACR Canon 3(E) provides that recusal may be necessary when (1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding, (2) the judge served as a lawyer in the matter in controversy, (3) the judge or his family member has more than a *de minimis* interest that could be affected by the proceeding or (4) the judge or someone within the third degree in relationship to her is a party to the proceeding or acting as a lawyer in the proceeding Canon 3(E)(1)(a)-(d). Rule 501, SCACR

Appellant readily admits that the recusal never involved any claim Commissioner Barden or member of her family had any personal prejudice against the Appellant, any relationship with the State Fund, any knowledge of the facts of case [sic] or any financial interest in the outcome of the case. However, Appellant never indicates not once in his twenty-one page Appellate Brief the source of the alleged bias. He accuses the Single Commissioner of bias merely because she ruled against him.

It is well established that it is not enough for the party to simply allege bias Mallet v. Mallet, 323 S.C. 141 at 146 - 47, 473 S.E.2d 804 at 807 (S.C. App. 1996). This Court has ruled that the party seeking disqualification must show some evidence of bias or prejudice. Id. Moreover, "[t]he fact a trial judge ultimately rules against a litigant is not

proof of prejudice by the judge, even if it is later held the judge committed error in his rulings.” *Id.* at 147, 473 S.E.2d at 808 (citation omitted) Appellant has not introduced any cogent evidence of bias or prejudice as none exists.

Undeterred by the lack of bias evidence, Appellant’s counsel attempts to draw the Court’s attention to a telephone conference held by the Hearing Commissioner with the parties. The Hearing Commissioner called the parties as an extension of professional courtesy to provide her tentative ruling on the matter (R pp 98-99). Appellant’s counsel alleges that during this phone call, the Hearing Commissioner threatened criminal proceedings against his client to coerce an unfavorable settlement. Appellant fails to identify the source of the Hearing Commissioner’s bias that would motivate her to make such an alleged threat. Appellant repeatedly states in his Appellant Brief that he has supplied the only evidence in the record of what was said on the phone call.¹ Appellant apparently overlooks the Hearing Commissioner’s nine page Order Denying Motion to Recuse setting forth in meticulous detail the reasons she denied his Motion to Recuse, including her staunch denial that she ever made such a threat (R pp 97-106).

Appellant did not allege a bias existed by the Hearing Commissioner until *after* she revealed her ruling would be unfavorable to Appellant. The Hearing Commissioner is the sole judge of credibility and sole decider of weight given to each piece of evidence presented during the hearing. The Hearing Commissioner held no bias or prejudice while listening to Appellant’s testimony, and her actions did not prevent Appellant from fully litigating his claim. The Hearing Commissioner merely judged Appellant’s testimony, determined his credibility, and accordingly weighed it against other evidence. The

¹ It is important to note, the evidence the Appellant refers to is self-serving as it is an affidavit from his attorney, a memorandum written by his attorney, and an affidavit by his certified public accountant.

Hearing Commissioner's Decision and Order contains sixty-seven separate findings of fact, each and every one of which were supported by citations to the record (R pp 56-94) Much to Appellant's disdain, the Hearing Commissioner pointed out the glaring inconsistencies between Appellant's testimony and the other evidence in the record Again, allegations of bias and prejudice only came after the hearing and after the Hearing Commissioner judged the Appellant's testimony

Furthermore, if a party disagrees with a Commissioner's finding, that party's remedy is to appeal to the Full Commission for consideration of the Appellate Panel S C Code Ann § 42-17-50 The Appellate Panel has the power to "reconsider the evidence, receive further evidence, rehear the parties, and amended the award" Id The Appellate Panel may make its own findings of fact and reach its own conclusions of law either consistent or inconsistent with those of the Hearing Commissioner Lowe v. Am-Can Transp. Serv. Inc., 283 S C 534, 324 S.E 2d 87 (Ct App 1984)

The Appellate Panel is not bound by the Hearing Commissioner's findings of fact and could have issued new findings based on their review of the evidence The Appellate Panel did not do so and instead adopted nearly all of the findings of the Hearing Commissioner (R pp 2-55) After reviewing all of the evidence in the record, the Appellate Panel affirmed the Hearing Commissioner's Order on Appellant's Motion to Recuse (R p 53) It also Affirmed in Part and Reversed in Part the Hearing Commissioner's Decision and Order on the Form 21 Hearing (R pp 54-55) In other words, the Appellate Panel found that the Hearing Commissioner's findings were supported by the substantial evidence in the record and simply modified the final award by awarding an additional 15% permanent partial disability to the Appellant's back

Thus, Appellant received a fair review of the evidence and actually succeeded on appeal, yet he is still moving for a new hearing in front of a new single Commissioner.

It is unclear on what grounds Appellant alleges his rights have been affected and how the Hearing Commissioner's alleged bias was also transmuted to the Appellate Panel. This is especially true in light of the fact that the Appellate Panel actually increased Appellant's award. As the Hearing Commissioner astutely opined

[Appellant] made no motion for recusal prior to the hearing, or even after the hearing until he was dissatisfied with [Respondents'] settlement offer, and decided he instead would attempt to obtain a new hearing with a different commissioner (which would have the effect of enabling his client to "qualify" and "explain" his testimony at the hearing before the undersigned). Under the Judicial Canons, the undersigned cannot allow [Appellant] to utilize a recusal mechanism to change the outcome of his case (*i.e.*, to obtain a "second bite at the apple") solely because he is dissatisfied. His remedy is to appeal.

(R. p. 105)

It would be highly prejudicial to Respondents to allow Appellant to have another single Commissioner determine his credibility and permanency. The Hearing Commissioner was duty bound to deny Appellant's Motion to Recuse and the Appellate Panel correctly affirmed her decision. Respondents respectfully request that this Court do the same.

II. THE APPELLATE PANEL CORRECTLY HELD THAT THE HEARING COMMISSIONER DID NOT OVERRULE THE PRIOR DECISION AND ORDER OF MAY 1, 2013.

The Hearing Commissioner determined that Appellant suffered no additional permanent disability over the 25% disability to the spine that Appellant was paid as a result of his 2010 claim. (R. p. 93). Appellant inaccurately argues that the Hearing Commissioner assigned a 0% disability to Appellant's lumbar and cervical spine. The Hearing Commissioner found that "there is no *additional* permanent partial disability

beyond the 25% to the spine already paid to Claimant” (R. p. 33) (emphasis added) Appellant’s characterization that the Hearing Commissioner awarded 0% to the back, thereby overruling a prior Order of the Commission, is erroneous. Regardless, this is a moot argument as the Appellate Panel awarded Appellant 15% to the back. (R pp 54-55)

Dr. Edwards last saw Appellant on October 31, 2013 and released him on that day with a 15% impairment rating to the spine (R p 471) Notably, an MRI taken in 2010 after the first accident showed degenerative disc disease at C5-6 and C6-7 (R p 385) Dr. Edwards noted that the Appellant has only a cervical protrusion without radiculopathy or myelopathy, and opined that Appellant does not need surgery now (R p 471) Dr. Edwards refers to Claimant’s condition as disc degeneration (R p 471)

Appellant treated only conservatively for his lumbar and cervical spine. Despite the fact that Appellant testified his pain is “terrible” and “life changing,” he did not want aggressive treatment and does not take any prescription medication for his pain (R p 183, lines 4-9, p. 193, lines 13-14, p. 199, line 23-p. 200, line 13) Appellant’s most recent medical report indicates he has no neck pain and only “mild” low back pain (R pp 464-65)

The Hearing Commissioner correctly gave no weight to the opinions of Dr. Poletti as she found many inconsistencies in Dr. Poletti’s reports as well as equivocalness regarding future medical treatment for Appellant (R p 89) Dr. Poletti initially noted in 2012 that Appellant had “remained with neck pain” since the 2010 injury. (R. p 476) Dr. Poletti then indicated less than a year later that Appellant suffered neck pain as a result of his motorcycle accident and that he did not have neck symptoms before the motorcycle

accident. (R. pp. 481-82) This is in complete contradiction to his prior medical note. Dr. Poletti also is equivocal as to surgery, stating at different times that Appellant "potentially" needs surgery, "likely" needs surgery, and "may" require surgery in the future. (R. pp. 477, 479, 481) Dr. Poletti is wholly inconsistent, and the Commission correctly determined his opinions were not entitled to any weight

The Commission appropriately gave the greatest weight to the statements and opinion of Dr. Edwards, who examined Appellant much more recently than the other physician. Dr. Edwards further relied on objective findings such as the "absence of focal neurologic deficit" (R. p. 471). In fact, Dr. Edwards specifically notes that Appellant is not interested in aggressive treatment and that Dr. Edwards did not push Appellant in that regard due to the absence of focal neurologic deficit (R. p. 471).

Additionally, Dr. Mills testified he treated Appellant for his 2010 and 2012 accidents. (R. p. 539, lines 7-20). Dr. Mills further testified that Appellant had symptoms in his neck, lower back, and upper back from the 2010 accident. (R. p. 553, lines 2-11). Dr. Mills also testified Dr. Sarb treated the Appellant for neck pain from his 2010 accident (R. pp. 6, line 17-p. 8, line 10)

Therefore, the Commission found that the 25% disability to the back received by Appellant for his 2010 accident included and encompassed the cervical, thoracic, and lumbar spine. Appellant argues an error due to the Commission ruling that he sustained 0% permanent disability, but that is not what the Commission ruled. The Hearing Commissioner found that the Appellant suffered *no additional permanent disability* in the 2012 accident over the 25% disability he received from the 2010 accident. (R. p. 93). As

such, Appellant's argument that the Hearing Commissioner awarded 0% back effectively overruling a prior Order of the Commission that there was a back injury is misplaced

Furthermore, the Appellate Panel amended the Hearing Commission's permanency award and awarded Appellant 15% additional permanent partial disability to his back (R. pp 54-55) The Appellate Panel has left no live dispute for a new Commissioner to address given that the award is now 15% to the back Further, Appellant has not made any allegations of bias in regards to the Appellant Panel's award nor has he questioned the insufficiency of the award He is simply asking this Court to allow him another opportunity to try his case Respondents assert the Commission's rulings are supported by substantial evidence and respectfully request this Court to affirm the same.

III. THE COMMISSION'S FINDINGS OF FACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, AND THEREFORE, ALL FINDINGS MUST BE UPHELD.

The Hearing Commissioner made sixty-seven findings of fact each and everyone one of which contains a citation to evidence in the record Appellant conveniently narrows in on one finding of fact to conclude that the Hearing Commissioner's ruling is based on pure speculation It is clear Appellant is merely grasping at straws to find indices of bias and relies on his misplaced argument that due to the Hearing Commissioner's bias there is not substantial evidence to support the findings and rulings of the Full Commission

Appellant argues that the Appellate Panel's adoption of finding of fact insinuating that Appellant is a liar who should be prosecuted for fraud is unsupported by the substantial evidence However, such argument is improper as there is no such finding of fact The Appellate Panel does find that Appellant was untruthful and evasive when

testifying, a finding supported by the substantial evidence Appellant denied that he had any neck injury or neck pain prior to his 2012 accident. (R. p. 206, lines 22-24). Appellant was specifically asked whether he complained of any neck pain after his 2010 accident, to which he testified "no." (R. p. 206, lines 22-24) Therefore, the findings related to Appellant's lack of credibility and untruthfulness are supported by the substantial evidence in the record.

Despite Appellant's denial of neck injury or pain before his 2012 accident, a prior Order of the Commission proves that not only did Appellant allege an injury to his neck and complaint of neck pain after his 2010 accident, he actually sought a change of condition for the worse based on neck pain (R. p. 108-19) The Commission specifically found as a fact that Appellant received treatment for his neck as result of his 2010 accident (R. p. 117). The Commission's finding in the case at hand that Appellant lacked credibility is supported by the substantial evidence.

The Hearing in this matter was held to determine whether Appellant had reached MMI and whether he was entitled to any permanency benefits. The parties stipulated that Appellant had reached MMI. (R. p. 143, lines 22-24) Appellant sought a finding of permanent and total disability. (R. p. 147, lines 6-7) The Commission properly weighed the evidence in this case and determined Appellant was not permanently and total disabled. (R. p. 49) Such finding is supported by the substantial evidence in the record Appellant has run his own successful business for 18 years and continued to do so after his 2012 work accident. (R. p. 201, lines 6-13). In fact, Appellant's ProCutters income increased after his 2012 accident. (R. pp. 608, 644)

Appellant is well educated as he graduated high school and attended 2 years of college (R. p 157, lines 21-23) A vocational report submitted into evidence identifies multiple jobs Appellant is qualified to perform and that are within his restrictions (R pp 440-49). Appellant admits he has not applied for or looked for any employment. (R. p 201, lines 4-5, p 208, lines 11-14) To support an award of permanent and total disability. Appellant has the burden to prove he has made reasonable efforts to obtain employment and failed to do so due to an injury produced limitation Shealy v Algemon Blair, Inc. 250 S C 106. 113. 156 S E 2d 646. 649 (1967) Appellant fails to meet this burden based on his own testimony that he has neither applied for nor looked for any employment and therefore the Commission correctly determined Appellant was not permanently and total disabled

Appellant accuses the Hearing Commissioner of never giving the Appellant or his CPA an opportunity to explain basic accounting to her. It is the obligation of Appellant to present evidence for the Hearing Commissioner's consideration Appellant could have testified in greater detail regarding his income tax return his CPA could have testified, or he could have refuted the evidence in some other way Appellant had notice that Respondents intended to submit Appellant's tax returns into the record as such documents were properly listed on Respondents' Pre-Hearing Brief (R p 370-71) Appellant neither objected to the submission of his tax returns nor presented any contrary evidence Instead, Appellant argues that the Commission's consideration of such properly submitted evidence indicates bias

Regardless of any explanation, it does not take an accountant to question why a small landscaping business needs a boat, spends over \$6,000.00 for uniforms, over

\$11,000 in utilities, and nearly \$3,000 in telephone expenses. (R. pp. 620, 623). The Hearing Commissioner admitted she did not have the expertise to question the legality of Appellant's deductions and did not make any rulings as to the same. She merely pointed out the excessive deductions on Appellant's tax returns that mask his true income. It is the Commission's duty and obligation to weigh the evidence presented and make rulings. Appellant makes hay of the seemingly innocuous deductions, but fails to mention the more egregious ones listed on his tax returns. The fact that the Hearing Commissioner ruled against Appellant does not make her biased. It simply means Appellant did not meet his burden of proof establishing wage loss or permanent and total disability.

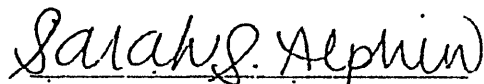
The Commission weighed the evidence presented and properly determined the facts of the claim. The findings of facts are supported by the substantial evidence. Those facts furthermore support the Commission's conclusions and rulings that Appellant neither suffered wage loss nor permanent and total disability. Instead, the Commission awarded Appellant disability compensation under S.C. Code Ann. §42-9-30 for his right leg and back injuries and such findings and rulings are supported by the substantial evidence.

CONCLUSION

The Hearing Commissioner is charged with the task of weighing the evidence and making findings regarding credibility. In doing so, it is inherent that the Hearing Commissioner has the duty to evaluate the evidence and determine the facts of the case and subsequent rulings of law. Appellant's disagreement with the Hearing Commissioner's decision does not constitute a manifestation of bias or prejudice. Pursuant to S.C. Code Ann. §42-17-50, Appellant is afforded the opportunity to appeal

his case to the Full Commission if he disagrees with a ruling of the Hearing Commissioner. He has already exhausted this remedy and is improperly requesting this Court to grant a *de novo* hearing. Appellant should not be granted this relief as his allegations are meritless and a second hearing would be highly prejudicial to Respondents. The substantial evidence in the record supports the findings of fact issued by the Commission. Accordingly, Respondents respectfully request that this Court affirm the Workers' Compensation Commission Full Appellate Panel's January 21, 2016 Decision and Order.

Respectfully submitted



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November 21, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No . 1202545

Scott Ledford, Employee, ... Appellant,

v

Department of Public Safety, Employer, and
State Accident Fund, Carrier, ... Respondents

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

1. THE APPELLATE PANEL COMMITTED AN ERROR OF LAW IN FAILING TO RULE THE HEARING COMMISSIONER SHOULD HAVE RECUSED HERSELF.

The Respondent argues Commissioner Barden is not subject to mandatory disqualification for any of the enumerated reasons set forth in Rule 501. Canon 3E(1)(a) through (d). The Rule provides a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including by not limited to ... the instances enumerated (Emphasis added). The Commentary makes clear a judge shall disqualify himself or herself regardless whether any of the specific rules in Section 3E(1) apply.

Commissioner Barden's impartiality was reasonably questioned by her own conduct. Black's Law Dictionary defines impartial as favoring neither; disinterested; treating all alike; unbiased; equitable; fair; and just. Black's Law Dictionary 5th Ed. West Publishing Co., p 677 (1979). It is neither fair nor just for a judge to threaten criminal prosecution unless a case is settled on grossly unfavorable terms. The Appellant did not have to prove why the Commissioner Barden was willing to shirk her statutory duties or abuse the powers of her office. The Appellant only needed to show she engaged in conduct that caused her impartiality and her integrity to be reasonably questioned by the Appellant.

The Respondent argues the Appellant did not move to have Commissioner Barden recuse herself until after she revealed her ruling would be unfavorable to the Appellant. (Respondent's Initial Brief, p 10). This argument leaves the impression that Commissioner Barden told the parties how she was going to rule

during the telephone conference on September 16, 2014. While Commissioner Barden's comments clearly indicated she was biased against the Appellant, Commissioner Barden never told the parties' attorneys how she was going to rule. If she had simply told the parties what her ruling was, there would have been no motion for recusal and the Appellant's remedy would have been to request review and judicial review. But that is not what happened.

During the telephone conference Commissioner Barden accused the Appellant, a career law enforcement officer, of committing perjury and said "while he may be a former member of the South Carolina Highway Patrol ACE Team, he was not a member of the 'Truth Team.'" (AR, Vol. I, pp. 254 - 256) During the telephone conference she implied he was a tax cheat and called his tax returns "creative accounting." (AR, Vol. I, pp. 254 - 256; 258 - 259) During the telephone conference she went so far as to say she did not believe anything the [Appellant] said except his name and age." (AR, Vol. I, pp. 254 - 256) If all she said was she had concerns about the Appellant's credibility based upon her review of the record and he should consider settlement, there would have been no motion for recusal. But that's not what happened either.

Commissioner Barden threatened to report the Appellant to the Attorney General for criminal prosecution unless he settled his claim for what she understood would be a "minimal amount" offered after her conference call. (AR, Vol. I, pp. 254 - 256) She offered not to perform a statutory duty imposed upon her if the case was settled thereby undermining public confidence in her integrity and impartiality. The

Appellant has not overlooked Commissioner Barden's nine page order in which she found herself impartial and falsely accused Appellant's counsel of lying.¹ A review of her own Order shows she admits committing the improper conduct. (AR, Vol. I, p 101. Findings of Fact 10 - 14). She calls her "findings" at the time of the telephone conference only "tentative" as an excuse for not having to report them. The problem is there was nothing tentative about what she said. Her suggestion her findings did not have to be reported because they were only "tentative" is a subterfuge.

Maybe it is true Respondent's counsel didn't take what Commissioner Barden said as a threat, after all, it wasn't a threat directed at her client. But Respondent's counsel, who was a party to the conference call, has had multiple opportunities to deny what Appellant's counsel says was said during the telephone conference and has not done so. It really does not matter what either lawyer may have thought because, at the end of the day, the question is not how the lawyers perceived the conference call as a threat as described by Appellant's counsel or as a professional courtesy as described by Respondent's counsel. It is how what was said was perceived by the

¹ Just as the Appellant urged the Court to use caution accepting Commissioner Barden's findings in her Order, the Appellant urges the Court to use caution in accepting her findings of fact concerning her own impartiality. It is noted this Court found Commissioner Barden's decision in the case of Burnett v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Cr. App. 2012), a case also dealing with a police officer, disturbing. We find the circuit court erred in affirming findings of fact that were unsupported by substantial evidence in the record. Particularly disturbing is the finding that the 2003 MRI showed only a minimal protrusion with no nerve root displacement or impingement, and comparatively, no greater pathology of any significance (if any) than the MRI of 2004. Because no evidence indicates this opinion originated from a medical provider, yet it appears in the single commissioner's order, we are forced to conclude it is the medical opinion of the single commissioner, adopted by the Commission. *Id.*, 437 S.E.2d at 206.

Appellant, whose case, reputation, liberty, and financial security were threatened and placed in jeopardy that mattered

Appellant's counsel took immediate action to protect the Appellant's rights as soon as the improper conduct occurred. Lawyers are taught it is unethical to threaten criminal prosecution to force the settlement of a civil case. See Rule 407, Rule 4.5. It is no less repugnant that such a threat should be made by a judge. Appellant's counsel was shocked. He immediately dictated a memorandum to document what had been said during the telephone conference. (AR Vol I, p. 257) He hired Robert Hill Esquire, at his own expense, to research the law on perjury and judicial ethics. He discussed the matter with his partner, with a criminal defense attorney, and with other attorneys who practice workers compensation law. And he ordered a transcript of the hearing held before Commissioner Roche so he could compare the Appellant's testimony given in the two hearings. He received a draft motion to recuse Commissioner Bardeen prepared by Mr. Hill on September 30, 2014, and they discussed the need to prepare supporting affidavits, exhibits, and a memorandum to be attached to the motion. And as he was ethically obligated to do, he discussed the ramifications of what had happened with his client, the Appellant. After all, it was the Appellant who had to live with the possibility of long criminal prosecution if the case was not settled. Not surprisingly, the case did not settle. It was the Appellant who decided that the motion to recuse should be filed. The motion to recuse, supporting documents, and memorandum of law were filed as soon as humanly possible on October 10, 2014. (AR Vol I, pp. 249 - 253) This was long before Commissioner

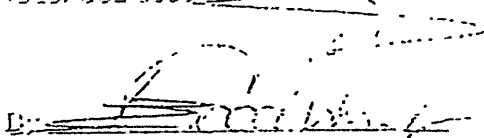
Barden issued her detailed instructions with her Request for Proposed Order on November 3, 2014 or she issued her Order on December 17, 2014. The motion having been supported should have been granted.

CONCLUSION

Appellant's counsel did want the Court left with the impression he waited until Commissioner Barden's findings and ruling were made known before taking action to seek her removal. Action was taken immediately after the offending conduct occurred and long before her final findings and ruling were made known. For the reasons set forth in the Appellant's Initial Brief and herein, the Appellant prays that the Court reverse the decision of the Appellate Panel and rule the Appellate Panel committed an error of law by failing to rule Commissioner Barden should have recused herself.

Respectfully submitted,

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Scott Ledford v Department of Public Safety

SCWCC: 1202545

Commissioners: Taylor, McCaskill, Campbell

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a Motion for Rehearing. 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. _____ Denied. _____ Dismissed _____ Set for Hearing.

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

_____ James

_____ Taylor

_____ Beck

_____ Campbell

_____ Wilkerson

_____ McCaskill

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

_____ Remand to the Hearing Commissioner.

_____ Remand to the Jurisdictional Commissioner.

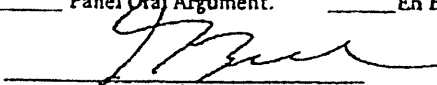
_____ Other: _____

_____ Remand:

_____ Panel Oral Argument.

_____ En Banc Oral Argument

AND IT IS SO ORDERED.


T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

 2/23/2016

CONCURRING:

Commissioner Susan S. Barden

Commissioner Melody James

Commissioner Aisha Taylor

Commissioner Avery Wilkerson

Commissioner Michael Campbell

Commissioner Scott McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

By Kim Falls on February 23, 2016

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Scott Ledford v Department of Public Safety
SCWCC: 1202545
Commissioners: Taylor, McCaskill, Campbell

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a Motion for Rehearing. 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.

☒ Denied.

☐ Dismissed

☐ Set for Hearing.

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

☐ James

☐ Taylor

☐ Beck

☐ Campbell

☐ Wilkerson

☐ McCaskill

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

☐ Remand to the Hearing Commissioner.

☐ Remand to the Jurisdictional Commissioner.

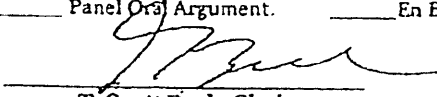
☐ Other: _____

☐ Remand:

☐ Panel Oral Argument.

☐ En Banc Oral Argument

AND IT IS SO ORDERED.


T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

 2/22/2016

CONCURRING:

Commissioner Susan S. Barden

Commissioner Melody James

Commissioner Aisha Taylor

Commissioner Avery Wilkerson

Commissioner Michael Campbell

Commissioner _____

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

By Kim Falls on February 23, 2016

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

WCC FILE NO. 1202545

Scott Ledford,	)
Employee,	)
Claimant,	)
vs	)
Department of Public Safety,	)
Employer,	)
and	)
State Accident Fund,	)
Carrier,	)
Defendants.	)

Appellate Panel Review held in Columbia, South Carolina
on March 17, 2015 per notices timely and properly
served on all parties of interest.

Appellate Panel Decision and Order filed

January 21st 2016

APPEARANCES:

Claimant represented by Kevin Holmes, Esquire of
Goose Creek, South Carolina

Defendants represented by Sarah S. Alphin, Esquire
of Willson Jones Carter & Baxley, P A, Columbia,
South Carolina

I. STATEMENT OF THE CASE

This matter was heard by the Hearing Commissioner on August 15, 2014 in Conway, South Carolina to determine issues set forth on Defendants' Form 21 Request for Hearing. Specifically, Defendants requested termination of temporary total disability benefits, a determination of permanency, if any, and credit for over payment of temporary compensation following the Claimant's release at maximum medical improvement (MMI).

In response, Claimant alleged he was permanently and totally disabled and asserted he sustained injuries to multiple body parts and that his injuries involved significant body parts such as his spine and right leg. Claimant asserted the combination of his two injured body parts, when considered with his vocational report, supported a finding that he was entitled to a permanent and total disability award.

Alternatively, Claimant asserted he was entitled to permanent and total disability benefits under S.C. Code Ann. §42-9-30. Claimant argued the impairment rating alone is single digits away from a greater than 50% loss of use of his spine. Further, Claimant asserted Defendants could not rebut the presumption that he was permanently and totally disabled.

Lastly, Claimant contested Defendants' claim for a credit of 75 weeks of compensation received as a result of Claimant's prior workers' compensation claim. Claimant asserted the impairment rating from his pending claim was unrelated to the impairment rating received as the result his prior claim.

On October 10, 2014, after the hearing on the merits, but before a Decision & Order was filed, Claimant filed a Motion to Recuse the Hearing Commissioner. In that Motion, Claimant alleged the Hearing Commissioner disqualified herself by "threatening criminal proceedings" unless the case settled, going outside the record to make findings from undisclosed materials,

commenting on Claimant's "creative accounting" with regard to his other business, and questioning the Claimant's credibility.

On November 3, 2014, the Hearing Commissioner issued a ruling on the Motion wherein she denied Claimant's Motion and declined to recuse herself on the grounds that Claimant's allegations were not supported by any evidence. Furthermore, the Hearing Commissioner ruled that her post-hearing review of the evidence and her subsequent telephone conference with the attorneys for the parties to discuss the same did not require recusal under the Code of Judicial Conduct. Claimant filed a Form 30 Application for Review of the Order on the Motion on November 14, 2014.

On December 29, 2014, the Hearing Commissioner issued her Decision and Order on the merits of the August 15, 2014 hearing as follows:

FINDINGS OF FACT

1. Claimant injured his right ankle in an admitted accident on March 10, 2012. Claimant's neck and low back injuries were found compensable by Order of Commissioner Roche, dated May 2013.

2. Claimant is 39 years of age (Hearing Transcript, page 19).

3. Claimant is originally from New York, and has 3 school-aged children (Hearing Transcript, pages 20 and 22, Claimant's APA #17, page 123).

4. As of the date of the hearing, Claimant's wife works as a school teacher (Hearing Transcript, page 29, Claimant's APA #17, page 122).

5. Claimant graduated from high school, and attended college for 2 years where he studied criminal justice. Claimant is just 3 courses shy of his Associate's Degree. Claimant also graduated from the S C Criminal Justice Academy. According to his vocational expert, Claimant plans to

pursue higher education at a technical college (Hearing Transcript, pages 19-20 and 59; Defendants' APA #10, page 71; Claimant's APA #17, pages 119-120 and 123).

6. On the date of the accident in issue, Claimant's position/rank with Employer was Lance Corporal and ACE team member with the Highway Patrol. Among other things, this job required Claimant to: (a) review files and criminal records to develop possible leads, (b) investigate causes and results of accidents, (c) complete daily activity reports, and (d) testify in court (Hearing Transcript, page 21; Defendants' APA #10, pages 70 and 79).

7. On the date of the accident in issue, Claimant earned approximately \$40,000 - \$42,000 per year with Employer (Defendants' APA #10, page 79; Claimant's APA #17, page 120).

8. In addition to his job with Employer, Claimant and his wife own (and have owned for 18 years) a mostly commercial landscaping business, the gross receipts for which were \$334,906 in 2013, (the year after the 2012 accident in issue), and \$243,658 in 2012—the year of the accident. I attribute Claimant's lower gross receipts in 2012 to Claimant's accident and recovery therefrom (Claimant's tax returns for 2012 and 2013, as submitted by Defendants; Hearing Transcript, pages 29 and 63-64; Claimant's APA #17, page 120).

9. As to the reason for the dual employment, Claimant testified that (a) it is common and typical for Troopers to have secondary businesses: "you could maybe live off of just being a highway patrolman, but you would – it wouldn't be very good," (b) the purpose of the business was to supplement his income in order to allow his wife to stay home with their three children, so that the children would not be in daycare, and a desire to have "nicer things." Claimant's additional income also enabled him to go on hunting trips to places such as Colorado and Washington State. Medical evidence describes Claimant as a "trooper/business owner" (Hearing Transcript, pages 23-30, 63-65, and 69-71; Claimant's APA #17, page 123; Defendants' APA #5,

page 39; December 2012 Deposition of Dr. Mills, pages 56-57; Claimant's 2012 and 2013 tax returns as submitted by Defendants)

10 As far as his landscaping business is concerned, Claimant initially admitted at the hearing that he is (present tense) "somewhat of a hustler" and "work(s) a lot" (also present tense). I give this testimony far greater weight than I give Claimant's later, inconsistent testimony that he tries "from time to time to get involved." I also give greater weight to the initial "somewhat of a hustler" and "works a lot" admissions than I give to Claimant's statement to his vocational expert that he mostly "calls his employees to check on their progress." Additionally, because Claimant works out at the gym every day, because his weight has not fluctuated upward since the accident, and because of medical providers' description of Claimant as muscular and very physically fit (See finding of fact, *infra*), I believe and find that Claimant is far more active than he lets on (Hearing Transcript, page 25, lines 7-9; Claimant's APA #17, pages 119-120; Claimant's APA #13, page 94).

11. Although Claimant told one vocational expert that he earns no personal income from the landscaping business, he admitted to Defendants' evaluator that he "owns a landscaping business" and works as tolerated, has the business in order "to supplement" his income, is stated to be a shareholder via tax returns, and testified at the hearing that he must continue the landscaping business because he "do[es] not have a choice." I therefore find that Claimant's landscaping business continues to be lucrative for Claimant primarily through deductions taken for his vehicles, a boat, meals and entertainment, phones, utilities, etc., as the business is located at Claimant's residence, according to Claimant's vocational report and tax returns (Hearing Transcript, pages 23, 25, 28-30, and 63, Claimant's APA #17, pages 119-120 and 122, Claimant's 2012 and 2013 tax returns, as submitted by Defendants, Defendants' APA #10, page 70).

12. Claimant is articulate, and expressed himself well at the hearing. Defendants' vocational report shows that Claimant's academic skills of word reading, sentence comprehension, spelling, and math are all above average. Claimant's vocational report states that Claimant's word reading is at a 12.5 grade equivalent, his sentence comprehension a 12.9 grade equivalent, his spelling a 12.7 grade equivalent, and his math computation is a 10th grade equivalent. Notwithstanding Claimant's documented academic achievements and abilities, Claimant has not applied or looked for any other work of any description. I therefore believe and find, based upon this and other evidence, that Claimant has instead chosen to devote his time and efforts to his landscaping business (Hearing Transcript, e.g., pages 63 and 70; testimony of Claimant; observations of the undersigned at the hearing; Defendants' APA #10, page 76; Claimant's APA #17, pages 123-124).

13. Claimant has the appearance of being physically fit. The ankle IME also describes Claimant as "*muscular*," and Dr. Poletti notes just several months prior to the date of the hearing that Claimant is "*very physically fit*." Dr. Mills similarly describes Claimant as "very fit" and "active." In fact, Claimant goes to the gym for an hour each day, and weighs virtually the same—actually slightly less—than he weighed shortly after the date of the accident (Claimant's APA #13, page 94—Claimant weighed 192 in May 2012—2 months after the accident; Claimant's APA #13, page 101—describing Claimant as "very physically fit"; Claimant's APA #17, page 119—Claimant goes to the gym for an hour each day, Defendants' APA #10, page 71—describing Claimant's weight the month prior to the hearing as approximately 186; Defendants' APA #9, page 67—describing Claimant as "muscular;" observations of the undersigned; August and December 2012 Depositions of Dr. Mills).

14. During both the pre-hearing conference and at the hearing, Defendants requested credit for Claimant's prior 2011 settlement for the 2010 spine injury. A copy of the 16A, dated 2011,

was provided by the parties to the undersigned during the pre-hearing conference. Defendants contend that the prior rating was a whole person impairment rating (encompassing the entire spine and not just limited to any particular area of the spine, such as the thoracic spine), and Claimant contends that the rating and settlement were solely attributable to the thoracic spine, as Claimant contends he did not injure his neck or low back in the prior 2010 accident ("*r-spine only*"—Hearing Transcript, page 66). Because of the dispute raised by the parties, adjudication of the issue necessitated my review of Commissioner Roche's 2013 Order, as contained in the Commission's file. In fact, when Defendants impeached Claimant with a prior cervical rating Claimant had solicited on his own behalf, Claimant's counsel specifically stated he had no objection because "I think all of that should be in the file." Additionally, at the hearing before the undersigned, Defendants submitted medical evidence from the prior 2010 case, and Claimant submitted two depositions into evidence (Claimant's APA, Exhibits D and E) in which Claimant's counsel himself refers to Claimant's cervical and low back injuries from the prior (2010) accident (See e.g., various documents as contained in Defendants' APA #1, #2, and #5, Defendants' Exhibit #1, containing the 2011 letter from Dr. Sarb assigning an impairment rating for the neck for the prior claim in response to Claimant's counsel's request for a cervical spine impairment rating). None of these documents was requested by the undersigned. The only document requested of the parties by the undersigned was a post-accident-in-issue deposition indexed in—but inadvertently missing from—Claimant's submissions. No documents (a) outside the Commission's file, as provided to the undersigned by the Judicial Department upon assignment to the undersigned, or (b) other than those provided by the parties were consulted or reviewed in preparation of these findings.

15. For the 2010 claim, Claimant was assigned a 15-18% whole person impairment rating to

the spine (the impairment rating itself does not specify the particular spinal level(s) involved), and settled his claim for in 2011 for 25% to the spine (\$38,151.75).

16. In order to foreclose Defendants' request for credit for the 2011 settlement of the 2010 claim, Claimant testified under oath before the undersigned (a) that he did not injure his neck in the 2010 accident (*"that was a t-spine injury only"*—Hearing Transcript, page 66), and *"everything that was done was done for my thoracic spine from day one"*; (b) that he had "never" complained of neck pain from the 2010 accident; (c) that he did not have an impairment rating to the neck from the 2010 accident, or (later) was unaware he had an impairment rating to the neck from the 2010 accident (Hearing Transcript, page 50, lines 24-25), even though his attorney requested and received a neck impairment rating on his behalf, and even though Claimant's counsel discussed with Dr. Mills in multiple depositions that Claimant injured his neck and low back in the 2010 accident; and (d) that he had no idea why his treating physician would order any cervical testing because of the 2010 accident. When Claimant was confronted on cross examination with the prior cervical rating, he was evasive and continued to maintain it was for his thoracic spine (Hearing Transcript, e.g., pages 50 and 66-69).

17. Notwithstanding Claimant's testimony to the contrary, Claimant underwent a cervical MRI in 2010 for the 2010 injury, the reason for which according to the report's "History" was "neck pain...extending into the right arm with numbness"; (b) Dr. Poletti (in 2012) refers to Claimant's non-operative neck care with Dr. Sarb in 2010, stating that Claimant has, since the 2010 accident, *"remained with neck pain,"* according to Claimant's complaints to Dr. Poletti; without Claimant's own statement to Dr. Poletti, Dr. Poletti would otherwise have no knowledge that Claimant has "remained" with neck pain since the date of the 2010 accident; (c) Commissioner

Roche's 2013 Order refers to the Claimant's 2010 neck treatment, refers to the fact that Claimant's 2010 neck condition deteriorated upon Claimant's return to work after the 2010 accident but before the 2012 accident, and refers to Claimant's contention that Claimant is "now in need of surgery to his cervical spine" as a result of the 2010 accident; (d) Claimant's own vocational expert writes that Claimant's 2010 accident caused cervical spine problems at C4-5 and C5-6, including nerve damage and right arm numbness; (e) Claimant's attorney in 2011 requested a cervical spine impairment rating for the 2010 cervical injury, and in response, received one. Claimant's knowledge of such is imputed through his attorney, however, regardless of whether Claimant knew about the cervical rating (even though his last visit with Dr. Sarb was for that specific purpose), Commissioner Roche's unappealed Order states that Claimant testified at the Roche hearing that he had neck pain/numbness from the 2010 accident, and was in need of surgery because of the 2010 injury; further, 21 pages of records of Dr. Sarb were admitted into evidence at Commissioner Roche's hearing (according to Commissioner Roche's Order); and (f) Claimant's own counsel points out to Dr. Mills (at both Dr. Mills' December 2012 and August 2012 depositions) that Dr. Sarb treated Claimant for his neck/arm complaints in 2010, as Claimant's counsel sought to alternately establish the fact that Claimant's cervical condition worsened after the 2010 accident—Dr. Mills responds to Claimant's counsel that Claimant's neck was in fact injured in the 2010 accident (Claimant's APA #17, page 118; Defendants' APA #2, page 13, containing a cervical MRI dated September 2010—for "neck pain," Hearing Transcript, pages 31-33, 50-51, and 66-69; Claimant's APA #13, page 96—he has "remained with neck pain" since the 2010 accident; Defendants' Exhibit #1—a letter from Dr. Sarb in response to Claimant's counsel's request for a cervical spine impairment rating in 2011; December 2012 Deposition of Dr. Mills, pages 44-50, particularly 48-49; August 2012 Deposition of Dr.

Mills, e.g., pages 11-16, 19, 37-38, and 40-41; Exhibits to Dr. Mills' August 2012 Deposition; unappealed Order of Commissioner Roche, dated May 2013, as contained in the Commission's file, page 4—Claimant is "now in need of surgery to his cervical spine...as a result of that [2010] accident; page 7—"his neck.....began bothering him...but....he did not seek any medical attention until after his motorcycle accident [of 2012]"—pages 8-10).

18. If there is any question as to whether Claimant injured his neck and low back in the prior (2010) accident, one need look no further than Dr. Mills' depositions (particularly the August 2012 deposition), in which Claimant's own counsel describes and discusses in detail Claimant's prior (i.e., 2010 accident) neck and low back problems, and elicits testimony from Dr. Mills that Claimant injured his neck and low back in the prior 2010 accident. These two depositions were provided to the undersigned by Claimant's counsel.

19. I further note that Commissioner Roche's Order is replete with references to Claimant's contention that he injured his neck and low back in the prior accident. In fact, Claimant was granted a postponement prior to a hearing in order that he could "gather additional information regarding an alleged [2010] cervical spine injury." See Order of Commissioner Roche, pages 2, 4, and 7-12.

20. The undersigned is fully cognizant of the fact that at one point Claimant's neck or at least radicular problems from the 2010 accident resolved. However, at Commissioner's Roche's hearing, Claimant testified that his neck problems reappeared prior to the date of the 2012 injury in issue, and that he was in need of surgery to his neck as a result of the original 2010 accident. According to Commissioner Roche's Order, Claimant last saw Dr. Sarb in 2011 (prior to the date of the 2012 injury in issue) for the purpose of obtaining a rating to his cervical spine. Commissioner Roche's Order also cites the fact that Dr. Mills testified that Claimant injured his

neck in the 2010 accident. By contrast, at the hearing before the undersigned, Claimant denied the prior neck injury or pain prior to the date of the injury in issue, and initially outright denied--and then denied knowledge of--the prior cervical rating, even though Claimant went to Dr. Sarb for that specific purpose. Claimant's untruthfulness and evasiveness at the hearing greatly damage his credibility in general at the hearing, and call into question his veracity as a whole. If credibility is not important, and oaths are meaningless, then swearing in a witness is mere "window dressing," and could be dispensed with at hearings. In addition to taking an oath to tell the truth, Claimant also testified that he had "absolutely" answered all of his attorney's questions honestly, and that there was no answer he wanted to change (Order of Commissioner Roche, pages 4 and 7-11; Hearing Transcript, pages 50-51; page 62, lines 14-17).

21. According to Commissioner Roche's Order, Claimant testified that he needed surgery to his cervical and lumbar spines because of the 2010 accident. If Claimant asked Commissioner Roche to find a compensable change of condition regarding his neck injury from the 2010 accident, then by necessity, Claimant knew he had injured his neck in the 2010 accident; a change of condition would be impossible for a body part that was never injured or for a body part that Claimant did not know he had injured. By contrast, Claimant testified at the hearing before the undersigned that he only injured his thoracic spine in the 2010 accident:

Q. You testified that that [2010 accident] was a T-spine injury only, correct?

A. Yeah. (Hearing Transcript, page 66).

22. Based upon the greater weight of the evidence, including but not limited to Commissioner Roche's Order, I find that the \$38,151.75 settlement for the spine for the 2010 accident encompasses all three spinal levels (Claimant's Exhibit)

23. Because of his ankle injury, Claimant underwent surgery in January 2013-- arthroscopic

debridement/resection of osteophyte and "resection of posterior process of talus" (Defendants' APA #7, pages 58-59; Claimant's APA #15, page 111).

24. Claimant was untruthful at the hearing when he testified (twice) that the treating surgeon discovered (during surgery) that Claimant's pathology was "a lot worse" than what the surgeon originally thought or expected; this testimony is not supported by the operative notes or by any treatment record in evidence. In fact, the opposite appears to be true: as one of the purposes of the surgery was "assessment of the cartilage surface" and resultant treatment of any cartilage pathology found during the assessment (Defendants' APA #1, page 9), the surgeon specifically notes in operative notes that the lateral gutter was noted to be free of any loose bodies, the lateral shoulder of the talus was noted to be free of any cartilage lesions as was the distal fibula; the talar dome was void of any cartilage defects; the tibial articular surface was noted to be similarly absent of any articular cartilage lesions, and a tibial osteophyte had no corresponding cartilage lesion. Claimant's exaggerated testimony in this regard is self-serving hearsay that further damages his credibility as medical evidence does not support—and actually refutes—his statement in this regard (Defendants' APA #7, pages 58-59; Defendants' APA #1, page 9; Hearing Transcript, pages 38 and 40).

25. As to Claimant's outcome from the ankle surgery, Claimant's testimony is not believable or credible: Claimant initially testified at the hearing that with post-surgical physical therapy, he "progressively got better and better" (Hearing Transcript, pages 38-39), and then practically in the next breath, Claimant visibly "shifted gears," and inconsistently testified that surgery was "absolutely not" successful, that he was better prior to the surgery than he is now, and that he is "absolutely" worse. Claimant's demeanor and delivery were not believable or persuasive; nor is this testimony—that Claimant was better prior to the surgery--supported by the treatment records.

I also note that after Claimant's recovery from the surgery, his landscaping business gross receipts rose from \$243,000 (the year of the accident) to \$334,906--the year after the accident (Hearing Transcript, pages 39-40, 43, and 52, Claimant's tax returns as submitted by Defendants).

26. Although the undersigned recognizes that it is entirely possible for a claimant to be initially better after surgery, but then subsequently become worse, a sequential review of the medical evidence after the surgery up through the date of maximum medical improvement does not show this to be applicable in this case:

- (a) 1½ months after the date of the surgery, Claimant's treating physician was "pleased with [Claimant's] progress;" Claimant's *only complaint to his physical therapist was "ankle stiffness when he initially stands up."* Claimant told the treating physician's practice that he was having "no difficulty;" Claimant's gait was only "slightly antalgic" (Defendants' APA #7, pages 61-63; Claimant's APA #15, page 113);
- (b) 2½ months after the surgery, Claimant's subjective complaint was "mild stiffness and discomfort;" Claimant had "*complete stability* " Claimant was returned to use of a regular shoe (Claimant's APA #15, page 114);
- (c) 4 months after the surgery Dr. Taylor found "*complete stability* of the bilateral hind foot, mid foot, and forefoot joints;" Claimant's complaints were his inability to run, cut, or pivot. Claimant's pain was described as "intermittent", and his gait "is non-antalgic" [emphasis added] (Defendants' APA #1, page 12);
- (d) Claimant's post-surgical restrictions for his leg are cutting, running, pivoting, and unpredictable surfaces. However, prior to the surgery (which Claimant contends made him "worse"): (a) he was on crutches and then had to use a walking boot; (b)

he had an "antalgic gait," and (c) a "persistently painful" ankle. After the surgery and reaching MMI, Claimant had a "nonantalgic" gait and an "intermittent" dull ache. Even Claimant's vocational expert notes that Claimant "ambulated [at the evaluation] with no observed problems." The most recent medical record in evidence—an ER visit—also documents Claimant's "normal" gait. Claimant's surgical outcome is clearly better than he is willing to admit to the Commission for purposes of permanency (e.g., Defendants' APA #1, pages 8-9 and 12; Defendants' APA #3, page 25; Defendants' APA #4, page 31—"ambulates with crutches;" Claimant's APA #15, pages 108-109 and 113-114; Hearing Transcript, pages 39-40 and 43).

27. As to Claimant's surgical outcome and recovery (ankle), I also note that Claimant (a) hikes in Gatlinburg, TN; (b) is able to ride his Harley; (c) hunts; (d) throws baseballs; and (e) goes to the gym and works out. The fact that Claimant no longer coaches his son's baseball team, that he may no longer be able to hike "Clingmans [phonetic] Dome," that he may no longer be able to run, and that he no longer goes to Colorado to hunt is not persuasive evidence toward a finding that Claimant is unable to work (Hearing Transcript, pages 40, 45-48 and 69-70; Claimant's APA #17, page 123).

28. Both prior to and after the ankle surgery, treatment records state that Claimant had and has "complete stability of the left ankle, hindfoot, bilateral midfoot and forefoot joints" (medical evidence in its entirety including but not limited to Defendants' APA #1, pages 7, 9, and 12; Claimant's APA #15, pages 108-109 and 114; Defendants' APA #6 in its entirety—documenting no complaint of "giving out" or "giving way;" Claimant's APA #14, page 103—pre-surgical record containing documentation of an ankle exam with no complaint of giving out).

are based upon Claimant's subjective statements and complaints which are in no way consistent with the treatment records. The IME (in an orthopedics practice) did not order a post-surgical x-ray prior to issuing an 18% impairment rating (Defendants' APA #1, page 12; Defendants' APA #9, pages 66-67)

37. As the authorized treating physician (Dr. Taylor) did not recommend any future medicals for the ankle, none are ordered herein (Defendants' APA #1, page 12).

38. PPD to right leg pursuant to Section 42-9-30(16): 10%. I find that a person who can hike and engage in all the other activities (including but not limited to landscaping work) in which Claimant engages has not sustained more than 10% loss of use to his leg.

39. Claimant was treated conservatively for his back and neck (medical evidence in its entirety).

40. In spite of his significant spinal pain complaints ("terrible" and "life changing," per Hearing Transcript, page 55), Claimant takes no prescription medication for either his neck or back (Hearing Transcript, pages 44-45 and 61-62; Defendants' APA #10, page 70; Claimant's APA #17, page 119; Claimant's APA #11, page 84—documenting "none" as far as medications are concerned; Defendants' APA #9, page 66).

41. As to the neck and low back, Dr. Mills states that Claimant has cervical and lumbar spondylosis, or disc degeneration/arthritis which became symptomatic (based upon pain complaints) from the accident (December 2012 Deposition of Dr. Mills, e.g., pages 12-14, 17, 19, 28-29, and 38)

42. Because of Claimant's significant spinal pain complaints, Dr. Mills, in both written records (date of last visit: June 2012) and at Dr. Mills' August 2012 and December 2012 depositions, recommended surgery for both the cervical and lumbar spine based on complaints of significant

29. Claimant's testimony at the hearing—that his ankle "gives out" on him—is not supported by even a single pre- or post-surgical treatment record in evidence; if anything, Claimant's testimony is refuted by the medical evidence as referenced in the preceding finding of fact. I find that Claimant complaints in this regard—made only to his vocational expert and to the ankle IME physician (however, the IME also interestingly found "no instability" of the ankle joints, and saw no apparent need to take x-rays or other diagnostic films)—are for purposes of litigation and maximization of his claim. In addition to Dr. Taylor's treatment notes (in which there is no complaint of instability), Doctors Care records also state that there is "0 ligamentous laxity." PT records are similarly silent as to any complaint of instability or giving way. I find the treatment records (a) inconsistent with Claimant's self-serving testimony and (b) consistent with Claimant's initial hearing testimony that he works "a lot" in his landscaping business, that he is able to hike, and that he is able to hunt (medical evidence in its entirety; Claimant's APA #17, page 119; Hearing Transcript, e.g., pages 25, 40, and 45, Defendants' APA #9, pages 66-67; Defendants' APA #4, pages 32-33)

30. For a person whose leg allegedly gives way or gives out without warning, Claimant inconsistently does not use any assistive device (e.g., Claimant's APA #17, page 118; Hearing Transcript, e.g., page 45).

31. To Defendants' vocational expert, Claimant reported that his ankle problems are (a) pain, (b) swelling, and (c) limited mobility. There is no complaint or mention of instability or giving out of the ankle (Defendants' APA #10 in its entirety, including but not limited to page 69).

32. Even Claimant's own vocational expert states that Claimant ambulates with no observed problems and with no assistive devices (Claimant's APA #17, page 118)

33. For the 2012 leg injury in issue, the authorized treating physician assigned a 7%

impairment rating, and recommends no future medicals. I considered the IME rating, but it is not without salient issues: (a) although the IME physician works in an orthopedic practice, the IME admits that he neither ordered nor reviewed any post-surgical films prior to rendering an opinion/assigning an 18% impairment rating; the IME rating is largely based upon Claimant's subjective complaints of instability, etc. The IME physician states that "due to lack of new x-rays, I am unable to evaluate for any post-traumatic ankle arthritis," but gives no reason why he (in an orthopedics practice) did not have Claimant's leg at least x-rayed, particularly given Claimant's significant complaints to the IME; (b) the IME physician admits that Claimant's chronic pain complaints are "not well characterized;" (c) even though Claimant told the IME that Claimant's ankle "gives out on him frequently," the IME by contrast documented no instability; (d) the IME states that Claimant's "hypersensitivity" complaint is not borne out by any diagnostic test; and (e) although Claimant admits that he continues to hike, the IME by contrast states that Claimant "cannot walk on uneven ground" and that Claimant is limited in his ability to walk on an incline; the IME must be unaware of Claimant's ongoing hiking and hunting activities (Defendants' APA #9, pages 66-67; Defendants' APA #1, page 12; Hearing Transcript, page 48).

34. If Claimant can hike, hunt, and throw baseballs, I believe that, notwithstanding any self-serving testimony to the contrary, Claimant is in fact performing physical labor for his landscaping business, and that he (according to his initial testimony) is in fact working "a lot."

35. Claimant takes no prescription medication for his ankle (evidence in its entirety, including but not limited to Claimant's APA #17, page 119; Hearing Transcript, page 44).

36. I give greater weight to the authorized treating physician's restrictions of no running, cutting, pivoting, or unpredictable surfaces, as these restrictions are based upon treatment records. I do not give much weight to the restrictions (light) suggested by the IME, as the IME's restrictions

pain that has allegedly persisted over a long period of time. However, Claimant has not seen Dr. Mills in more than 2 years as of the date of the hearing, and Dr. Mills' last deposition occurred almost 2 years prior to the date of hearing. During Dr. Mills' treatment period throughout 2012, Claimant repeatedly declined surgery. Further, Claimant told Defendants' vocational evaluator that "no further treatment has been recommended." This statement is not surprising given the fact that the most recent medical evidence (the ER visit) states that Claimant had no neck pain and only "mild" low back pain; by contrast, Claimant's pain complaints to Dr. Poletti led Dr. Poletti to recommend a rhizotomy and possible surgery (Claimant's APA #14; Defendants' APA #1, pages 3-8; December 2012 Deposition of Dr. Mills, e.g., pages 29-31, 38-39, and 42-43; August 2012 Deposition of Dr. Mills, e.g., pages 17, 20, and 22; Defendants' APA #10, page 72).

43. More recently (October 2013—more than one year after Claimant last saw Dr. Mills), Dr. Edwards views Claimant's cervical MRI as showing no significant compressive pathology; Claimant told Dr. Edwards that he is "not interested" in surgery (Claimant's APA #12, page 91).

44. As to the neck, I give the greatest weight to the findings of Dr. Edwards, who refers to Claimant's condition as a cervical protrusion without radiculopathy or myelopathy; he states that there is an "absence of focal neurologic deficit." Claimant told Dr. Edwards that Claimant "believes conservative efforts will be appropriate" (medical evidence in its entirety, including but not limited to Claimant's APA #12, page 91).

45. As to the lumbar spine, Dr. Edwards refers to Claimant's condition as disc degeneration (Claimant's APA #12, page 91).

46. Claimant reached maximum medical improvement on October 31, 2013. I do not agree that Claimant was still contemplating surgery after this date, as he has declined surgery from the

outset, and told Dr. Edwards he is "not interested" in any aggressive treatment, but rather only conservative treatment (Claimant's APA #12, page 91)

47. By his own testimony, Claimant apparently does not abide by his restrictions, as I find instructive the specific question asked by his counsel on the issue: Claimant was asked not whether he abides by his restrictions, but whether he is "trying to" abide, and if he does not abide, "what happens?" Claimant responded that if he does not abide by the restrictions, "I hurt [present tense] worse" (Claimant did not use words to the effect "if I did not abide, I would hurt worse" or "if I did not abide, I might injure myself." This leads the undersigned to conclude that Claimant continues to perform physical labor in his landscaping business; in addition to his job with Employer as a Trooper, Claimant worked 40-50 hours a week in his landscaping business prior to the date of the injury. The year after the date of the 2012 injury, Claimant's sales exceeded \$300,000 (e.g., Hearing Transcript, page 50; Claimant's APA #17, page 120).

48. I considered both vocational reports, but give greater weight to Defendants' vocational report as far as ultimate conclusions are concerned: although Claimant attended 2 years of college, scored well on tests, is articulate, and runs his own very successful business, Claimant's vocational evaluator identifies only 3 potential jobs (lot attendant, gate guard, and security guard). Claimant's vocational report appears outcome-determinative rather than a credible analysis of Claimant's transferable skills. The conclusions of Defendants' report are well-reasoned and supported by other evidence as well (Defendants' APA #10 in its entirety, including but not limited to pages 70 and 75, Cf. Claimant's APA #17, page 127)

49. In this case, Claimant has not met his burden of proof of establishing wage loss:

- Claimant attended two years of college,
- Claimant has run his own successful business (including regular contract sales) for

18 years, including doing so while injured in 2012 and afterwards (even more profitably) in 2013 (Hearing Transcript, page 63);

- Claimant's job with Employer paid \$40,000-\$42,000; Defendants' vocational evaluator has identified jobs which pay up to \$41,600, all of which are within Claimant's restrictions (Defendants' APA #10);

- Claimant admits that he has not applied or even looked for any other jobs (Hearing Transcript, pages 63 and 70);

- Claimant was informed of vocational rehab services (as stated three times in Defendants' vocational report), but Claimant provided no proof to the Commission that he has pursued such services (Defendants' APA #10, pages 72 and 76-77);

- Claimant has transferable skills, but would not admit at the hearing to having the aptitude/ability to perform jobs which have been vocationally identified for him; the undersigned believes that Claimant is currently concentrating on his landscaping business for the reason that he is a self-described "somewhat of a hustler" who "works a lot" (Defendants' APA #10, page 72; Hearing Transcript, page 25).

50. I considered all the various impairment ratings assigned for the spine, but impairment ratings are not dispositive, and are in part based upon subjective complaints. I also fully considered Claimant's testimony that his low back "hurt so bad" ("to the point where I didn't care what happened to me") that he went to an emergency room—the month prior to the date of the hearing. The clinic exam findings of ER personnel are instructive, and refute Claimant's testimony and his self-serving statements/complaints to workers' compensation providers: ER providers (a) examined Claimant's neck; Claimant's neck was negative for neck pain or other neck complaint.

(b) found Claimant's lumbar spine range of motion to be normal; (c) found Claimant's back pain to be "very mild;" and (d) found Claimant's gait "normal." These records are inconsistent with Claimant's testimony at the hearing and with his subjective complaints documented in treatment records. Contrary to this ER report, Claimant testified at the hearing that he is never without neck pain. Of all the medical evidence relating to the spine, I give the clinical examination findings of ER personnel the greatest weight (Claimant's APA #11, including but not limited to pages 84-85; Hearing Transcript, pages 55-59)

51. Defendants may stop payment of temporary benefits.

52. For a spinal condition treated conservatively, where Claimant takes no medication for allegedly "life changing" and "terrible" pain, where Claimant has declined surgery in spite of this allegedly severe and constant pain, where Claimant tells a non-workers' compensation provider that he has no neck pain and only "mild" low back pain, and where Claimant's gross receipts for his landscaping business were more than \$300,000 for the year after his 2012 injury, I cannot and do not rely on Claimant's subjective statements or testimony regarding his residual condition. Swearing an oath to tell the truth at the hearing meant nothing to Claimant, for after requesting benefits from Commissioner Roche in 2013 for his neck condition from the 2010 accident (including but not limited to surgery), Claimant would not admit--at the 2014 hearing before the undersigned--to injuring his neck or experiencing neck pain from the 2010 accident. If that is not enough, Claimant brought or sent his 2010 cervical MRI to Dr. Poletti for their discussion, and obtained a prior cervical impairment rating from Dr. Sarb (Order of Commissioner Roche in its entirety; Hearing Transcript, e.g., pages 66 and 68; Claimant's APA #13, pages 95-96).

53 Claimant is not permanently and totally disabled. Although Claimant did in fact qualify for state disability retirement (the standard for such being whether Claimant can return to his particular

state job), workers' compensation utilizes a different standard. However, I do note that Claimant's approval for state disability was contingent upon a reevaluation in 2015 (Hearing Transcript, page 20; Claimant's APA, Exhibit B).

54. Considering Claimant told the last provider (at the Emergency Room) that he had "no" neck pain (and this is significant since Claimant takes no pain medication, and Claimant inconsistently testified that he is never without neck pain) and only "mild" lumbar pain, I find that there is no additional permanent partial disability beyond the 25% to the spine already paid to Claimant. Awards cannot be based upon speculation or surmise, and I decline to speculate. Impairment ratings are not dispositive in any case, and I find other evidence more persuasive. 0% additional permanent partial disability to the spine, based upon the recent ER findings of no neck pain and "mild" lumbar pain, such that there is no additional disability beyond the previous 25% settlement for the spine (\$38,151.75).

55. Defendants to receive credit for overpayment of temporary benefits paid beyond October 31, 2013.

56. As to future medicals for the spine, I give the greatest weight to the statements/opinions of Dr. Edwards, who examined Claimant much more recently than did Dr. Mills: (a) in fact, as of the date of the hearing, Claimant had not seen Dr. Mills in more than 2 years; (b) Claimant told Dr. Edwards in 2013 that "he is not interested in considering any aggressive treatment" for the neck; Dr. Edwards did not push surgery, because there is an "absence of focal neurologic deficit," evidence to which I accord great weight; (c) there is no objective evidence that Claimant has any lower extremity radiculopathy (his straight leg raise is negative) other than his subjective complaints, (d) Claimant told Defendants' vocational expert (the month prior to the date of the hearing) that no further treatment has been recommended; and (e) Dr. Poletti is wholly inconsistent

to the point that I cannot and do not give his opinions any weight. For example, Claimant told Dr. Poletti in 2012 (prior to the Roche hearing) that Claimant has "remained with neck pain" since the 2010 injury—subjective information that Dr. Poletti could have only obtained from Claimant, however, in a 180-degree turn in 2014 (after the Roche Order—denying Claimant's change of condition—was served), Dr. Poletti inconsistently in 2014 "parrots" Claimant's statement to him that Claimant "did not have these neck symptoms and low back symptoms prior to the [accident in issue]." This discrepancy calls into question any conclusion of Dr. Poletti. Second, Dr. Poletti is equivocal as to future surgery—he states in 2012 Claimant could "potentially" (repeatedly the word used) be a surgical candidate. In 2014, when Dr. Poletti makes the point of stating that none of Claimant's cervical or lumbar problems existed prior to the accident in issue, Dr. Poletti states that Claimant "most likely" will require cervical fusion surgery and low back disc surgery which could "potentially" lessen Claimant's disability. Dr. Poletti then inconsistently states that Claimant "may" require surgeries in the future [emphasis added]. The "may" is consistent with Dr. Edwards' pronouncement on the issue (Claimant's APA #13 in its entirety; Defendants' APA #10, page 72; Claimant's APA #12, page 91; Defendants' APA #9, page 67, Claimant's APA #11, page 84, Defendants' APA #1, pages 3 and 5-6; December 2012 Deposition of Dr. Mills, pages 29-31 and 37-39, August 2012 Deposition of Dr. Mills, pages 17, 20, and 22).

57. I considered the recommendation of Dr. Mills (who recommended fusion surgeries based upon Claimant's subjective pain complaints), but Claimant has not seen Dr. Mills in 2 years. Dr. Poletti is inconsistent and equivocal, and Dr. Edwards' conclusions are consistent and sound particularly given Claimant's most recent clinical exam at the ER.

58. I give the greatest weight to the opinion of Dr. Edwards. Dr. Edwards does not recommend

surgery, but recommends treatment *if* Claimant's condition *deteriorates in the future*. Dr. Edwards states that Claimant's condition should be observed "over the course of a couple of years." I therefore find that Claimant would be entitled to surgery for his neck and/or low back based upon a change of condition for the worse, as Dr. Edwards does not state Claimant needs surgery now, that Claimant probably needs it now, or that Claimant even probably needs it in the future (Claimant's APA #12).

59. Dr. Mills ties the need for surgery to "symptoms enough" to warrant surgery. Given the "mild" lumbar spine complaints and nonexistent neck complaints at the last medical visit in evidence (particularly when considering the fact that Claimant takes no pain medication), I find Dr. Edwards' opinion to be the most cogent (Claimant's APA #12; 2012 Deposition of Dr. Mills, e.g., page 22).

60. Dr. Poletti recommended/suggested a rhizotomy, but Claimant never followed up for this procedure either. This, in addition to the fact that Claimant takes no pain medication, is further evidence that Claimant's condition is most accurately as he described it to providers at the ER the month prior to the date of the hearing (Claimant's APA #1; Claimant's APA #13).

61. Claimant is entitled to receive recommended physical therapy and injections (Claimant's APA #12, pages 91-92).

62. What deductions Claimant takes on his income tax returns are of no concern to the undersigned. I fully considered the fact that Claimant's tax return shows that Claimant had business income of \$688 in 2013 (gross receipts: \$334,906), and \$716 in 2012 (gross receipts: \$243,658). However, \$700 in income would not allow Claimant (as he testified) "nicer things," would not have allowed Claimant's wife to stay home, (even Claimant admitted in testimony that he is "not really" living off of \$688), and would not explain

Claimant's testimony that he has "no choice" but to continue a business at which he only "realizes" in income \$600-\$700/year. Regardless of accounting methodology, the point is that Claimant's business continues to be lucrative—particularly the year after the year of his accident in issue. It also shows that Claimant has abilities of which he is hesitant to admit. However, Claimant's tax returns and deductions are of no import otherwise (Hearing Transcript, e.g., pages 23-24, 26, and 29-30).

63. Because Claimant's wife works full time as a school teacher (except for summers) and has 3 children, I do not believe Claimant's later testimony/statements to providers that she does most of the work, and that he only helps out "from time to time" in the landscaping business. Claimant's wife did not testify at the hearing, so Claimant's testimony in this regard is strictly self-serving (Hearing Transcript; Claimant's APA #17, pages 119-120).

64. The March 11, 2012 record from the Emergency Room visit on the date of the accident (stating that Claimant has undergone prior back surgery—Defendants' APA #3, pages 17, 22-23, and 29) is an error, according to Claimant's counsel, which statement I accept from an officer of the court. Claimant's counsel also advised the undersigned that the reference to prior back surgery in Claimant's APA #11, page 84, is an error as well.

65 I do not find credible or even plausible Claimant's stated "reason" at the hearing for not claiming his landscaping income as dual employment to boost his compensation rate. It seemed "canned" and strained when Claimant was asked why he felt so "passionately" about not "burdening" the Highway Patrol with this income to increase his comp rate. I found this colloquy quite puzzling (initially), considering Claimant's claimed net business income for his landscaping business was just \$688-\$716 per year for 2012 and 2013. However, after reviewing the tax returns (which Defendants subpoenaed, including the gross receipts and deductions), I can understand why

Claimant would rather have avoided calling attention to a successful business if he had plans to claim that he is permanently and totally disabled. Alternatively, Claimant may have chosen to keep private (from Employer and/or co-workers) his lucrative business enterprise. Regardless of the reason, Claimant's business success shows Claimant's marked capabilities (both mental and physical), and shows an increase in gross receipts of almost \$100,000 the year after the date of the injury. I have no concrete idea as to whether Claimant is performing most of the work himself (as he "works a lot" and is "somewhat of a hustler," I would assume he is working) or whether in fact he has employees, but I cannot trust his testimony. I do note that in 2013, the business paid \$1,195 for "outside services and subcontractors" (Hearing Transcript, page 25, lines 10-11; Tax returns).

66. The undersigned did not request, seek, or obtain the prior workers' compensation file relating to the 2010 claim. However, when Defendants sought to introduce the prior (2010) cervical rating at the hearing before the undersigned, Claimant's counsel replied, "...I don't object to that. Yeah, it can come in, because I think all of that should be in the file" (Hearing Transcript, page 67).

67. Claimant's average weekly wage is \$709.95, yielding a compensation rate of \$473.32 (established by previous Order of the Commission—Order of Commissioner Roche, dated May 2013).

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant sustained an injury to his right lower extremity, lumbar

spine, and cervical spine by accident arising out of and in the course and scope of his employment on March 10, 2012.

3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from March 12, 2012 until October 31, 2013, the date on which Claimant reached maximum medical improvement:

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until October 31, 2013, the date on which Claimant reached maximum medical improvement.

5. Under § 42-15-60, Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574 (Ct. App. 1999), and other applicable law, Claimant is entitled to receive causally-related physical therapy and injections for the cervical spine described in APA # 12 pages 91-92.

6. Under § 42-9-30(16), Claimant has sustained 10% permanent partial disability to the right lower extremity. Under § 42-9-30(21), Claimant has sustained 0% additional permanent partial disability to his back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since October 31, 2013 to be taken from the permanency awarded herein.

7. Defendants may stop payment of temporary benefits under S.C. Reg. 67-506(B) and other applicable law.

8. Claimant is not permanently and totally disabled under §42-9-10 or §42-9-30(21).

9. Under §42-9-20 and other applicable law, Claimant has not met his burden of proof of establishing wage loss.

ORDER/AWARD

IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of

temporary total compensation is hereby granted, effective October 31, 2013, the date on which Claimant reached maximum medical improvement.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on March 10, 2012, he has sustained 10% permanent partial disability to the right lower extremity, for which he is entitled to 19 weeks of compensation, at the compensation rate of \$473.32 per week. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation paid after October 31, 2013. Claimant is entitled to 0% permanent impairment to his spine for the 2012 accident in issue.

IT IS FURTHER ORDERED Claimant reached maximum medical improvement on October 31, 2013, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, save the medical treatment aforementioned in paragraph 61 of the Finding of Fact and paragraph 5 of the Conclusions of Law.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

Within the statutory period, Claimant filed a Form 30 Application for Review of the merits hearing setting forth the basis for his appeal, copies of which were provided to all parties pursuant to the Act. Oral Arguments for Claimant's Form 30 Application for Review on the Claimant's Motion (filed November 14, 2014) and Form 30 Application for Review on the Form 21 Hearing (filed December 29, 2014) were combined for purposes of judicial economy.

In his appeal of the November 3, 2014 Order on the Motion, Claimant alleges statements contained the Order confirm that the Hearing Commissioner's impartiality might reasonable be

questioned and requests the Appellate Panel to reverse the Order and reassign the case to another commissioner for a hearing de novo. In his appeal of the December 29, 2014 Decision and Order on the merits of Defendants' Form 21, Claimant reiterates his request for a reversal of the Order denying recusal and alleges the Hearing Commissioner's award on the merits of the claim is neither fair nor impartial, specifically as it relates to the gross income of Claimant's lawn care business and the award of 0% to the back for Claimant's admitted motorcycle accident. Oral arguments on both Form 30 Applications for Review were held on March 17, 2015 before the Appellate Panel and have since been under study and consideration.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann §42-17-50 (1985), review the award, weight the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, the Appellate Panel hereby (1) AFFIRMS the Hearing Commissioner's Order on Claimant's Motion to Recuse; (2) AFFIRMS IN PART and REVERSES IN PART the Hearing Commissioner's Decision and Order on the Form 21 Hearing; and (3) enters the following Findings of Fact, Conclusions of Law and Order as its own.

APPELLATE PANEL FINDINGS OF FACT

I We find the Hearing Commissioner was not required to recuse herself as there is no evidence her actions were in violation of the Judicial Code of Conduct. Specifically, we find all of the evidence reviewed and considered by the Hearing Commissioner were either submitted into evidence in the APA Submissions for the hearing or were already a part of the Commissions' file as the result of prior submissions for prior hearings. As such, we find the Hearing Commissioner

held no personal bias or prejudice towards the Claimant or his counsel and did not have personal knowledge of evidentiary facts in dispute in the proceeding. See Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014), Canon 3(E)(1), Rule 501, SCACR. Lastly, we find there is no evidence to support Claimant's assertion that the Hearing Commissioner "*threatened criminal proceedings*" unless the case settled.

2. Claimant injured his right ankle in an admitted accident on March 10, 2012. Claimant's neck and low back injuries were found compensable by Order of Commissioner Roche, dated May 2013.

3. Claimant is 39 years of age (Hearing Transcript, page 19).

4. Claimant is originally from New York and has 3 school-aged children (Hearing Transcript, pages 20 and 22; Claimant's APA #17, page 123).

5. As of the date of the hearing, Claimant's wife worked as a school teacher (Hearing Transcript, page 29; Claimant's APA #17, page 122).

6. Claimant graduated from high school and attended college for 2 years where he studied criminal justice; Claimant is just 3 courses shy of his Associate's Degree. Claimant also graduated from the S.C. Criminal Justice Academy. According to his vocational expert, Claimant plans to pursue higher education at a technical college (Hearing Transcript, pages 19-20 and 59; Defendants' APA #10, page 71; Claimant's APA #17, pages 119-120 and 123).

7. On the date of the accident in issue, Claimant's position/rank with Employer was Lance Corporal and ACE team member with the Highway Patrol. Among other things, this job required Claimant to: (a) review files and criminal records to develop possible leads, (b) investigate causes and results of accidents, (d) complete daily activity reports, and (d) testify in court (Hearing Transcript, page 21; Defendants' APA #10, pages 70 and 79)

8 On the date of the accident in issue, Claimant earned approximately \$40,000 – \$42,000 per year with Employer (Defendants' APA #10, page 79; Claimant's APA #17, page 120).

9 In addition to his job with Employer, Claimant and his wife own (and have owned for 18 years) a mostly commercial landscaping business, the gross receipts for which were \$334,906 in 2013, (the year after the 2012 accident in issue), and \$243,658 in 2012—the year of the accident. We attribute Claimant's lower gross receipts in 2012 to Claimant's accident and recovery therefrom (Claimant's tax returns for 2012 and 2013, as submitted by Defendants; Hearing Transcript, pages 29 and 63-64, Claimant's APA #17, page 120).

10 As to the reason for the dual employment, Claimant testified that (a) it is common and typical for Troopers to have secondary businesses: "you could maybe live off of just being a highway patrolman, but you would – it wouldn't be very good," (b) the purpose of the business was to supplement his income in order to allow his wife to stay home with their three children, so that the children would not be in daycare, and a desire to have "nicer things." Claimant's additional income also enabled him to go on hunting trips to places such as Colorado and Washington State. Medical evidence describes Claimant as a "trooper/business owner" (Hearing Transcript, pages 23-30, 63-65, and 69-71; Claimant's APA #17, page 123; Defendants' APA #5, page 39; December 2012 Deposition of Dr. Mills, pages 56-57; Claimant's 2012 and 2013 tax returns as submitted by Defendants)

11 As far as his landscaping business is concerned, Claimant initially admitted at the hearing that he is (present tense) "somewhat of a hustler" and "work[s] a lot" (also present tense) We give this testimony far greater weight than we give Claimant's later, inconsistent testimony that he times "from time to time to get involved." We also give greater weight to the initial "somewhat of a hustler" and "works a lot" admissions than we give to Claimant's statement to his vocational

expert that he mostly "calls his employees to check on their progress." Additionally, because Claimant works out at the gym every day, because his weight has not fluctuated upward since the accident, and because of medical providers' description of Claimant as muscular and very physically fit (See finding of fact, *infra*), we believe and find that Claimant is far more active than he lets on (Hearing Transcript, page 25, lines 7-9; Claimant's APA #17, pages 119-120; Claimant's APA #13, page 94).

12 Although Claimant told one vocational expert that he earns no personal income from the landscaping business, he admitted to Defendants' evaluator that he "owns a landscaping business" and works as tolerated. We find Claimant has the business in order "to supplement" his income, is stated to be a shareholder via tax returns, and testified at the hearing that he must continue the landscaping business because he "do[es] not have a choice." We therefore find that Claimant's landscaping business continues to be lucrative for Claimant primarily through deductions taken for his vehicles, a boat, "meals and entertainment," phones, utilities, etc., as the business is located at Claimant's residence. This finding is based on Claimant's testimony, vocational report and tax returns (Hearing Transcript, pages 23, 25, 28-30, and 63; Claimant's APA #17, pages 119-120 and 122; Claimant's 2012 and 2013 tax returns, as submitted by Defendants; Defendants' APA #10, page 70).

13 Claimant is articulate, and expressed himself well at the hearing. Defendants' vocational report shows that Claimant's academic skills of word reading, sentence comprehension, spelling, and math are all above average. Claimant's vocational report states that Claimant's word reading is at a 12.5 grade equivalent, his sentence comprehension a 12.9 grade equivalent, his spelling a 12.7 grade equivalent, and his math computation is a 10th grade equivalent. Notwithstanding Claimant's documented academic achievements and abilities, Claimant has not applied or

looked for any other work of any description. We therefore believe and find, based upon this and other evidence, that Claimant has instead chosen to devote his time and efforts to his landscaping business (Hearing Transcript, e.g., pages 63 and 70, testimony of Claimant; observations of the Hearing Commissioner at the hearing, Defendants' APA #10, page 76; Claimant's APA #17, pages 123-124)

14. Claimant has the appearance of being physically fit. The ankle IME also describes Claimant as "muscular," and Dr. Poletti notes just several months prior to the date of the hearing that Claimant is "very physically fit." Dr. Mills similarly describes Claimant as "very fit" and "active." In fact, Claimant goes to the gym for an hour each day, and weighs virtually the same--actually slightly less--than he weighed shortly after the date of the accident (Claimant's APA #13, page 94--Claimant weighed 192 in May 2012--2 months after the accident; Claimant's APA #13, page 101--describing Claimant as "very physically fit"; Claimant's APA #17, page 119--Claimant goes to the gym for an hour each day; Defendants' APA #10, page 71--describing Claimant's weight the month prior to the hearing as approximately 186; Defendants' APA #9, page 67--describing Claimant as "muscular," observations of the undersigned; August and December 2012 Depositions of Dr. Mills)

15. During both the pre-hearing conference and at the hearing, Defendants requested credit for Claimant's prior 2011 settlement for the 2010 spine injury. A copy of the 16A, dated 2011, was provided by the parties to the undersigned during the pre-hearing conference. Defendants contend that the prior rating was a whole person impairment rating (encompassing the entire spine and not just limited to any particular area of the spine, such as the thoracic spine), and Claimant contends that the rating and settlement were solely attributable to the thoracic spine, as Claimant contends he did not injure his neck or low back in the prior 2010 accident ("1-spine only"--

Hearing Transcript, page 66). Because of the dispute raised by the parties, adjudication of the issue necessitated the Hearing Commissioner's review of Commissioner Roche's 2013 Order, as contained in the Commission's file. In fact, when Defendants impeached Claimant with a prior cervical rating Claimant had solicited on his own behalf, Claimant's counsel specifically stated he had no objection because "I think all of that should be in the file." Additionally, at the hearing before the Hearing Commissioner, Defendants submitted medical evidence from the prior 2010 case, and Claimant submitted two depositions into evidence (Claimant's APA, Exhibits D and E) in which Claimant's counsel himself refers to Claimant's cervical and low back injuries from the prior (2010) accident (See e.g., various documents as contained in Defendants' APA #1, #2, and #5; Defendants' Exhibit #1, containing the 2011 letter from Dr. Sarb assigning an impairment rating for the neck for the prior claim in response to Claimant's counsel's request for a cervical spine impairment rating) None of these documents was requested by the Hearing Commissioner. The only document requested of the parties by the Hearing Commissioner was a post-accident-in-issue deposition indexed in—but inadvertently missing from—Claimant's submissions. No documents (a) outside the Commission's file, as provided to the Hearing Commissioner by the Judicial Department upon assignment to the Hearing Commissioner, or (b) other than those provided by the parties were consulted or reviewed in preparation of these findings.

16. For the 2010 claim, Claimant was assigned a 15-18% whole person impairment rating to the spine (the impairment rating itself does not specify the particular spinal level(s) involved), and settled his claim for in 2011 for 25% to the spine (\$38,151.75).

17. In order to foreclose Defendants' request for credit for the 2011 settlement of the 2010 claim, Claimant testified under oath before the Hearing Commissioner (a) that he did not injure his neck in the 2010 accident (*"that was a t-spine injury only"*—Hearing Transcript, page

66), and "everything that was done was done for my thoracic spine from day one"; (b) that he had "never" complained of neck pain from the 2010 accident; (c) that he did not have an impairment rating to the neck from the 2010 accident, or (later) was unaware he had an impairment rating to the neck from the 2010 accident (Hearing Transcript, page 50, lines 24-25), even though his attorney requested and received a neck impairment rating on his behalf, and even though Claimant's counsel discussed with Dr. Mills in multiple depositions that Claimant injured his neck and low back in the 2010 accident; and (d) that he had no idea why his treating physician would order any cervical testing because of the 2010 accident. When Claimant was confronted on cross examination with the prior cervical rating, he was evasive and continued to maintain it was for his thoracic spine (Hearing Transcript, e.g., pages 50 and 66-69).

18 Notwithstanding Claimant's testimony to the contrary, Claimant underwent a cervical MRI in 2010 for the 2010 injury, the reason for which according to the report's "History" was "neck pain...extending into the right arm with numbness"; (b) Dr. Poletti (in 2012) refers to Claimant's non-operative neck care with Dr. Sarb in 2010, stating that Claimant has, since the 2010 accident, "remained with neck pain," according to Claimant's complaints to Dr. Poletti; without Claimant's own statement to Dr. Poletti, Dr. Poletti would otherwise have no knowledge that Claimant has "remained" with neck pain since the date of the 2010 accident; (c) Commissioner Roche's 2013 Order refers to the Claimant's 2010 neck treatment, refers to the fact that Claimant's 2010 neck condition deteriorated upon Claimant's return to work after the 2010 accident but before the 2012 accident, and refers to Claimant's contention that Claimant is "now in need of surgery to his cervical spine" as a result of the 2010 accident, (d) Claimant's own vocational expert writes that Claimant's 2010 accident caused cervical spine problems at C4-5 and C5-6,

including nerve damage and right arm numbness; (e) Claimant's attorney in 2011 requested a cervical spine impairment rating for the 2010 cervical injury, and in response, received one. Claimant's knowledge of such is imputed through his attorney; however, regardless of whether Claimant knew about the cervical rating (even though his last visit with 'Dr. Sarb was for that specific purpose), Commissioner Roche's unappealed Order states that Claimant testified at the Roche hearing that he had neck pain/numbness from the 2010 accident, and was in need of surgery because of the 2010 injury; further, 21 pages of records of Dr. Sarb were admitted into evidence at Commissioner Roche's hearing (according to Commissioner Roche's Order); and (f) Claimant's own counsel points out to Dr. Mills (at both Dr. Mills' December 2012 and August 2012 depositions) that Dr. Sarb treated Claimant for his neck/arm complaints in 2010, as Claimant's counsel sought to alternately establish the fact that Claimant's cervical condition worsened after the 2010 accident—Dr. Mills responds to Claimant's counsel that Claimant's neck was in fact injured in the 2010 accident (Claimant's APA #17, page 118; Defendants' APA #2, page 13, containing a cervical MRI dated September 2010—for "neck pain;" Hearing Transcript, pages 31-33, 50-51, and 66-69; Claimant's APA #13, page 96—he has "remained with neck pain" since the 2010 accident; Defendants' Exhibit #1—a letter from Dr. Sarb in response to Claimant's counsel's request for a cervical spine impairment rating in 2011; December 2012 Deposition of Dr. Mills, pages 44-50, particularly 48-49; August 2012 Deposition of Dr. Mills, e.g., pages 11-16, 19, 37-38, and 40-41; Exhibits to Dr. Mills' August 2012 Deposition; unappealed Order of Commissioner Roche, dated May 2013, as contained in the Commission's file, page 4—Claimant is "now in need of surgery to his cervical spine...as a result of that [2010] accident; page 7—"his neck...began bothering him...but....he did not seek any medical attention until after his motorcycle accident [of 2012]"--pages 8-10).

19. If there is any question as to whether Claimant injured his neck and low back in the prior (2010) accident, one need look no further than Dr. Mills' depositions (particularly the August 2012 deposition), in which Claimant's own counsel describes and discusses in detail Claimant's prior (i.e., 2010 accident) neck and low back problems, and elicits testimony from Dr. Mills that Claimant injured his neck and low back in the prior 2010 accident. These two depositions were provided to the Hearing Commissioner by Claimant's counsel.

20 We further note that Commissioner Roche's Order is replete with references to Claimant's contention that he injured his neck and low back in the prior accident. In fact, Claimant was granted a postponement prior to a hearing in order that he could "gather additional information regarding an alleged [2010] cervical spine injury." See Order of Commissioner Roche, pages 2, 4, and 7-12.

21. We are fully cognizant of the fact that at one point Claimant's neck or at least radicular problems from the 2010 accident resolved. However, at Commissioner's Roche's hearing, Claimant testified that his neck problems reappeared prior to the date of the 2012 injury in issue, and that he was in need of surgery to his neck as a result of the original 2010 accident. According to Commissioner Roche's Order, Claimant last saw Dr. Sarb in 2011 (prior to the date of the 2012 injury in issue) for the purpose of obtaining a rating to his cervical spine. Commissioner Roche's Order also cites the fact that Dr. Mills testified that Claimant injured his neck in the 2010 accident. By contrast, at the hearing before the Hearing Commissioner, Claimant denied the prior neck injury or pain prior to the date of the injury in issue, and initially outright denied--and then denied knowledge of--the prior cervical rating, even though Claimant went to Dr. Sarb for that specific purpose. Claimant's untruthfulness and evasiveness at the hearing greatly damage his credibility in general at the hearing, and call into question his veracity as a whole. If

credibility is not important, and oaths are meaningless, then swearing in a witness is mere "window dressing," and could be dispensed with at hearings. In addition to taking an oath to tell the truth, Claimant also testified that he had "absolutely" answered all of his attorney's questions honestly, and that there was no answer he wanted to change (Order of Commissioner Roche, pages 4 and 7-11; Hearing Transcript, pages 50-51; page 62, lines 14-17).

22. According to Commissioner Roche's Order, Claimant testified that he needed surgery to his cervical and lumbar spines because of the 2010 accident. If Claimant asked Commissioner Roche to find a compensable change of condition regarding his neck injury from the 2010 accident, then by necessity, Claimant knew he had injured his neck in the 2010 accident; a change of condition would be impossible for a body part that was never injured or for a body part that Claimant did not know he had injured. By contrast, Claimant testified at the hearing before the Hearing Commissioner that he only injured his thoracic spine in the 2010 accident:

Q: You testified that that [2010 accident] was a T-spine injury only, correct?

A: Yeah. (Hearing Transcript, page 66).

23. Based upon the greater weight of the evidence, including but not limited to Commissioner Roche's Order, we find that the \$38,151.75 settlement for the spine for the 2010 accident encompasses all three spinal levels.

24. Because of his ankle injury, Claimant underwent surgery in January 2013—arthroscopic debridement/resection of osteophyte and "resection of posterior process of talus" (Defendants' APA #7, pages 58-59; Claimant's APA #15, page 111).

25. Claimant was untruthful at the hearing when he testified (twice) that the treating surgeon discovered (during surgery) that Claimant's pathology was "a lot worse" than what the surgeon originally thought or expected; this testimony is not supported by the operative notes or by any

treatment record in evidence. In fact, the opposite appears to be true: as one of the purposes of the surgery was "assessment of the cartilage surface" and resultant treatment of any cartilage pathology found during the assessment (Defendants' APA #1, page 9), the surgeon specifically notes in operative notes that *the lateral gutter was noted to be free of any loose bodies; the lateral shoulder of the talus was noted to be free of any cartilage lesions as was the distal fibula; the talar dome was void of any cartilage defects; the tibial articular surface was noted to be similarly absent of any articular cartilage lesions, and a tibial osteophyte had no corresponding cartilage lesion*. Claimant's exaggerated testimony in this regard is self-serving hearsay that further damages his credibility as medical evidence does not support—and actually refutes—his statement in this regard (Defendants' APA #7, pages 58-59, Defendants' APA #1, page 9; Hearing Transcript, pages 38 and 40).

26. As to Claimant's outcome from the ankle surgery, Claimant's testimony is not believable or credible: Claimant initially testified at the hearing that with post-surgical physical therapy, he "progressively got better and better" (Hearing Transcript, pages 38-39), and then practically in the next breath, Claimant visibly "shifted gears," and inconsistently testified that surgery was "absolutely not" successful, that he was better prior to the surgery than he is now, and that he is "absolutely" worse. Claimant's demeanor and delivery were not believable or persuasive; nor is this testimony—that Claimant was better prior to the surgery--supported by the treatment records. We also note that after Claimant's recovery from the surgery, his landscaping business gross receipts rose from \$243,000 (the year of the accident) to \$334,906—the year after the accident (Hearing Transcript, pages 39-40, 43, and 52, Claimant's tax returns as submitted by Defendants).

27. Although we recognize that it is entirely possible for a claimant to be initially better after surgery, but then subsequently become worse, a sequential review of the medical

evidence after the surgery up through the date of maximum medical improvement does not show this to be applicable in this case:

- (e) 1½ months after the date of the surgery, Claimant's treating physician was "pleased with [Claimant's] progress;" Claimant's *only complaint to his physical therapist was "ankle stiffness when he initially stands up;"* Claimant told the treating physician's practice that he was having "no difficulty;" Claimant's gait was only "slightly antalgic" (Defendants' APA #7, pages 61-63; Claimant's APA #15, page 113);
- (f) 2½ months after the surgery, Claimant's subjective complaint was "*mild stiffness and discomfort;*" Claimant had "*complete stability.*" Claimant was returned to use of a regular shoe (Claimant's APA #15, page 114);
- (g) 4 months after the surgery Dr. Taylor found "*complete stability* of the bilateral hind foot, mid foot, and forefoot joints;" Claimant's complaints were his inability to run, cut, or pivot. Claimant's pain was described as "*intermittent*," and his gait "*is non-antalgic*" [emphasis added] (Defendants' APA #1, page 12);
- (h) Claimant's post-surgical restrictions for his leg are limited to cutting, running, pivoting, and unpredictable surfaces. However, prior to the surgery (which Claimant contends made him "worse"): (a) he was on crutches and then had to use a walking boot; (b) he had an "*antalgic gait,*" and (c) a "*persistently painful*" ankle. After the surgery and reaching MMI, Claimant had a "*nonantalgic*" gait and an "*intermittent*" dull ache. Even Claimant's vocational expert notes that Claimant "*ambulated [at the evaluation] with no observed problems.*" The most recent medical record in evidence—an ER visit—also documents Claimant's

"normal" gait. Claimant's surgical outcome is clearly better than he is willing to admit to the Commission for purposes of permanency (e.g., Defendants' APA #1, pages 8-9 and 12; Defendants' APA #3, page 25; Defendants' APA #4, page 31-- "ambulates with crutches;" Claimant's APA #15, pages 108-109 and 113-114; Hearing Transcript, pages 39-40 and 43).

28 As to Claimant's surgical outcome and recovery (ankle), we also note that Claimant (a) hikes in Gatlinburg, TN; (b) is able to ride his Harley; (c) hunts; (d) throws baseballs; and (e) goes to the gym and works out. The fact that Claimant no longer coaches his son's baseball team, that he may no longer be able to hike "Clingmans [phonetic] Dome," that he may no longer be able to run, and that he no longer goes to Colorado to hunt is not persuasive evidence toward a finding that Claimant is unable to work (Hearing Transcript, pages 40, 45-48 and 69-70; Claimant's APA #17, page 123).

29 Both prior to and after the ankle surgery, treatment records state that Claimant had and has "complete stability of the left ankle, hindfoot, bilateral midfoot and forefoot joints" (medical evidence in its entirety including but not limited to Defendants' APA #1, pages 7, 9, and 12; Claimant's APA #15, pages 108-109 and 114, Defendants' APA #6 in its entirety--documenting no complaint of "giving out" or "giving way;" Claimant's APA #14, page 103--pre-surgical record containing documentation of an ankle exam with no complaint of giving out).

30 Claimant's testimony at the hearing--that his ankle "gives out" on him--is not supported by even a single pre- or post-surgical treatment record in evidence; if anything, Claimant's testimony is refuted by the medical evidence as referenced in the preceding finding of fact. We find that Claimant's complaints in this regard--made only to his vocational expert and to the ankle IME physician (however, the IME also interestingly found "no instability" of the ankle joints, and saw

no apparent need to take x-rays or other diagnostic films)—are for purposes of litigation and maximization of his claim. In addition to Dr. Taylor's treatment notes (in which there is no complaint of instability), Doctors Care records also state that there is "0 ligamentous laxity." PT records are similarly silent as to any complaint of instability or giving way. We find the treatment records (a) inconsistent with Claimant's self-serving testimony and (b) consistent with Claimant's initial hearing testimony that he works "a lot" in his landscaping business, that he is able to hike, and that he is able to hunt (medical evidence in its entirety, Claimant's APA #17, page 119; Hearing Transcript, e.g., pages 25, 40, and 45; Defendants' APA #9, pages 66-67; Defendants' APA #4, pages 32-33).

31. For a person whose leg allegedly gives way or gives out without warning, Claimant inconsistently does not use any assistive device (e.g., Claimant's APA #17, page 118; Hearing Transcript, e.g., page 45).

32. To Defendants' vocational expert, Claimant reported that his ankle problems are (a) pain, (b) swelling, and (c) limited mobility. There is no complaint or mention of instability or giving out of the ankle (Defendants' APA #10 in its entirety, including but not limited to page 69).

33. Even Claimant's own vocational expert states that Claimant ambulates with no observed problems and with no assistive devices (Claimant's APA #17, page 118).

34. For the 2012 leg injury in issue, the authorized treating physician assigned a 7% impairment rating, and recommends no future medicals. We considered the IME rating, but it is not without salient issues: (a) although the IME physician works in an orthopedic practice, the IME admits that he neither ordered nor reviewed any post-surgical films prior to rendering an opinion/assigning an 18% impairment rating; the IME rating is largely based upon Claimant's subjective complaints of instability, etc. The IME physician states that "due to lack of new x-rays,

I am unable to evaluate for any post-traumatic ankle arthritis," but gives no reason why he (in an orthopedics practice) did not have Claimant's leg at least x-rayed, particularly given Claimant's significant complaints to the IME; (b) the IME physician admits that Claimant's chronic pain complaints are "not well characterized," (c) even though Claimant told the IME that Claimant's ankle "gives out on him frequently," the IME by contrast documented no instability; (d) the IME states that Claimant's "hypersensitivity" complaint is not borne out by any diagnostic test; and (e) although Claimant admits that he continues to hike, the IME by contrast states that Claimant "cannot walk on uneven ground" and that Claimant is limited in his ability to walk on an incline, the IME physician must be unaware of Claimant's ongoing hiking and hunting activities (Defendants' APA #9, pages 66-67, Defendants' APA #1, page 12; Hearing Transcript, page 48).

35 If Claimant can hike, hunt, and throw baseballs, we believe that, notwithstanding any self-serving testimony to the contrary, Claimant is in fact performing physical labor for his landscaping business, and that he (according to his initial testimony) is in fact working "a lot."

36. Claimant takes no prescription medication for his ankle (evidence in its entirety, including but not limited to Claimant's APA #17, page 119; Hearing Transcript, page 44).

37 We give greater weight to the authorized treating physician's restrictions of no running, cutting, pivoting, or unpredictable surfaces, as these restrictions are based upon treatment records. We do not give much weight to the restrictions (light) suggested by the IME, as the IME's restrictions are based upon Claimant's subjective statements and complaints which are in no way consistent with the treatment records. The IME (in an orthopedics practice) did not order a post-surgical x-ray prior to issuing an 18% impairment rating (Defendants' APA #1, page 12, Defendants' APA #9, pages 66-67)

38. As the authorized treating physician, Dr. Taylor did not recommend any future medicals

for the ankle. Thus, none are ordered herein (Defendants' APA #1, page 12).

39. Claimant has sustained 10% permanent partial disability to his right leg pursuant to Section 42-9-30(16). We find that a person who can hike and engage in all the other activities (including but not limited to landscaping work) in which Claimant engages has not sustained more than 10% loss of use to his leg.

40. Claimant was treated conservatively for his back and neck (medical evidence in its entirety).

41. In spite of his significant spinal pain complaints ("terrible" and "life changing," per Hearing Transcript, page 55), Claimant takes no prescription medication for either his neck or back (Hearing Transcript, pages 44-45 and 61-62; Defendants' APA #10, page 70; Claimant's APA #17, page 119; Claimant's APA #11, page 84—documenting "none" as far as medications are concerned; Defendants' APA #9, page 66).

42. As to the neck and low back, Dr. Mills states that Claimant has cervical and lumbar spondylosis, or disc degeneration/arthritis which became symptomatic (based upon pain complaints) from the accident (December 2012 Deposition of Dr. Mills, e.g., pages 12-14, 17, 19, 28-29, and 38).

43. Because of Claimant's significant spinal pain complaints, Dr. Mills, in both written records (date of last visit: June 2012) and at Dr. Mills' August 2012 and December 2012 depositions, recommended surgery for both the cervical and lumbar spine based on complaints of significant pain that has allegedly persisted over a long period of time. However, Claimant has not seen Dr. Mills in more than 2 years as of the date of the hearing, and Dr. Mills' last deposition occurred almost 2 years prior to the date of hearing. During Dr. Mills' treatment period throughout 2012, Claimant repeatedly declined surgery. Further, Claimant told Defendants'

vocational evaluator that "no further treatment has been recommended". This statement is not surprising given the fact that the most recent medical evidence (the ER visit) states that Claimant had no neck pain and only "mild" low back pain; by contrast, Claimant's pain complaints to Dr. Poletti led Dr. Poletti to recommend a rhizotomy and possible surgery (Claimant's APA #14, Defendants' APA #1, pages 3-8; December 2012 Deposition of Dr. Mills, e.g., pages 29-31, 38-39, and 42-43; August 2012 Deposition of Dr. Mills, e.g., pages 17, 20, and 22, Defendants' APA #10, page 72).

44 More recently (October 2013—more than one year after Claimant last saw Dr. Mills), Dr. Edwards views Claimant's cervical MRI as showing no significant compressive pathology; Claimant told Dr. Edwards that he is "not interested" in surgery (Claimant's APA #12, page 91).

45 As to the neck, we give the greatest weight to the findings of Dr. Edwards, who refers to Claimant's condition as a cervical protrusion without radiculopathy or myelopathy; he states that there is an "absence of focal neurologic deficit." Claimant told Dr. Edwards that Claimant "believes conservative efforts will be appropriate" (medical evidence in its entirety, including but not limited to Claimant's APA #12, page 91).

46 As to the lumbar spine, Dr. Edwards refers to Claimant's condition as disc degeneration (Claimant's APA #12, page 91).

47 Claimant reached maximum medical improvement on October 31, 2013. We do not agree that Claimant was still contemplating surgery after this date, as he has declined surgery from the outset, and told Dr. Edwards he is "not interested" in any aggressive treatment, but rather only conservative treatment (Claimant's APA #12, page 91).

48 We considered both vocational reports, but give greater weight to Defendants' vocational report as far as ultimate conclusions are concerned, although Claimant attended 2 years of college.

scored well on tests, is articulate, and runs his own very successful business, Claimant's vocational evaluator identifies only 3 potential jobs (lot attendant, gate guard, and security guard). Claimant's vocational report appears outcome-determinative rather than a credible analysis of Claimant's transferable skills. The conclusions of Defendants' report are well-reasoned and supported by other evidence as well (Defendants' APA #10 in its entirety, including but not limited to pages 70 and 75; Cf. Claimant's APA #17, page 127).

49. In this case, Claimant has not met his burden of proof of establishing wage loss:

- Claimant attended two years of college;
- Claimant has run his own successful business (including regular contract sales) for 18 years, including doing so while injured in 2012 and afterwards (even more profitably) in 2013 (Hearing Transcript, page 63);
- Claimant's job with Employer paid \$40,000-\$42,000; Defendants' vocational evaluator has identified jobs which pay up to \$41,600, all of which are within Claimant's restrictions (Defendants' APA #10);
- Claimant admits that he has not applied or even looked for any other jobs (Hearing Transcript, pages 63 and 70);
- Claimant was informed of vocational rehab services (as stated three times in Defendants' vocational report), but Claimant provided no proof to the Commission that he has pursued such services (Defendants' APA #10, pages 72 and 76-77);
- Claimant has transferable skills, but would not admit at the hearing to having the aptitude/ability to perform jobs which have been vocationally identified for him; we believe that Claimant is currently concentrating on his landscaping business for the

reason that he is a self-described "somewhat of a hustler" who "works a lot" (Defendants' APA #10, page 72; Hearing Transcript, page 25).

50. We considered all the various impairment ratings assigned for the spine, but impairment ratings are not dispositive, and are in part based upon subjective complaints. We also fully considered Claimant's testimony that his low back "hurt so bad" ("to the point where I didn't care what happened to me") that he went to an emergency room— the month prior to the date of the hearing. The clinic exam findings of ER personnel are instructive, and refute Claimant's testimony and his self-serving statements/complaints to workers' compensation providers: ER providers (a) examined Claimant's neck; Claimant's neck was negative for neck pain or other neck complaint; (b) found Claimant's lumbar spine range of motion to be normal; (c) found Claimant's back pain to be "very mild;" and (d) found Claimant's gait "normal." These records are inconsistent with Claimant's testimony at the hearing and with his subjective complaints documented in treatment records. Contrary to this ER report, Claimant testified at the hearing that he is never without neck pain. Of all the medical evidence relating to the spine, we give the clinical examination findings of ER personnel the greatest weight (Claimant's APA #11, including but not limited to pages 84-85; Hearing Transcript, pages 55-59).

51. Defendants may stop payment of temporary benefits.

52. For a spinal condition treated conservatively, where Claimant takes no medication for allegedly "life changing" and "terrible" pain, where Claimant has declined surgery in spite of this allegedly severe and constant pain, where Claimant tells a non-workers' compensation provider that he has no neck pain and only "mild" low back pain, and where Claimant's gross receipts for his landscaping business were more than \$300,000 for the year after his 2012 injury, we cannot and do not rely on Claimant's subjective statements or testimony regarding his residual condition.

Swearing an oath to tell the truth at the hearing meant nothing to Claimant, for after requesting benefits from Commissioner Roche in 2013 for his neck condition from the 2010 accident (including but not limited to surgery), Claimant would not admit--at the 2014 hearing before the Hearing Commissioner--to injuring his neck or experiencing neck pain from the 2010 accident. If that is not enough, Claimant brought or sent his 2010 cervical MRI to Dr. Poletti for their discussion, and obtained a prior cervical impairment rating from Dr. Sarb (Order of Commissioner Roche in its entirety; Hearing Transcript, e.g., pages 66 and 68; Claimant's APA #13, pages 95-96).

53. Claimant is not permanently and totally disabled. Although Claimant did in fact qualify for state disability retirement (the standard for such being whether Claimant can return to his particular state job), workers' compensation utilizes a different standard. However, we do note that Claimant's approval for state disability was contingent upon a reevaluation in 2015 (Hearing Transcript, page 20; Claimant's APA, Exhibit B).

54. Considering Claimant told the last provider (at the Emergency Room) that he had "no" neck pain (and this is significant since Claimant takes no pain medication, and Claimant inconsistently testified that he is never without neck pain) and only "mild" lumbar pain, we find Claimant has sustained only 15% additional permanent partial disability to his back beyond the previous 25% to the spine already paid to Claimant. This finding is based on the medical evidence only including the regional impairment ratings issued by Dr. Edwards as well as the deposition testimony of Dr. Mills as it relates to a worsening of Claimant's condition after his previous injury.

55. Defendants are entitled to receive credit for overpayment of temporary benefits paid beyond January 21, 2014, the date Defendants filed their Form 21 Request for Hearing. We decline to award credit back to the date of maximum medical improvement (October 31, 2013) as

evidence that Claimant's condition is most accurately as he described it to providers at the ER the month prior to the date of the hearing (Claimant's APA #1; Claimant's APA #13).

61. Claimant is entitled to receive recommended physical therapy and injections (Claimant's APA #12, pages 91-92)

62. Because Claimant's wife works full time as a school teacher (except for summers) and has 3 children, we do not believe Claimant's later testimony/statements to providers that she does most of the work, and that he only helps out "from time to time" in the landscaping business. Claimant's wife did not testify at the hearing, so Claimant's testimony in this regard is strictly self-serving (Hearing Transcript; Claimant's APA #17, pages 119-120).

63. The March 11, 2012 record from the Emergency Room visit on the date of the accident (stating that Claimant has undergone prior back surgery—Defendants' APA #3, pages 17, 22-23, and 29) is an error, according to Claimant's counsel, whose statement we accept from an officer of the court. Claimant's counsel also advised the Hearing Commissioner that the reference to prior back surgery in Claimant's APA #11, page 84, is an error as well.

64. We do not find credible or even plausible Claimant's stated "reason" at the hearing for not claiming his landscaping income as dual employment to boost his compensation rate. It seemed "canned" and strained when Claimant was asked why he felt so "passionately" about not "burdening" the Highway Patrol with this income to increase his comp rate. The Hearing Commissioner found this colloquy quite puzzling (initially), considering Claimant's claimed net business income for his landscaping business was just \$688-\$716 per year for 2012 and 2013. However, after reviewing the tax returns (which Defendants subpoenaed, including the gross receipts and deductions), we can understand why Claimant would rather have avoided calling attention to a successful business if he had plans to claim that he is permanently and totally

disabled

65. The Hearing Commissioner did not request, seek, or obtain the prior workers' compensation file relating to the 2010 claim. However, when Defendants sought to introduce the prior (2010) cervical rating at the hearing before the undersigned, Claimant's counsel replied, "...I don't object to that. Yeah, it can come in, because I think all of that should be in the file" (Hearing Transcript, page 67).

66. Claimant's average weekly wage is \$709.95, yielding a compensation rate of \$473.32 (established by previous Order of the Commission—Order of Commissioner Roche, dated May 2013).

APPELLATE PANEL CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under Rule 501 of the South Carolina Code of Judicial Conduct, the Hearing Commissioner was not required to recuse herself from the proceeding below.
2. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
3. Under § 42-1-160, Claimant sustained an injury to his right lower extremity, lumbar spine, and cervical spine by accident arising out of and in the course and scope of his employment on March 10, 2012.
4. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from March 12, 2012 until October 31, 2013, the date on which Claimant reached maximum medical improvement.
5. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other

authorized treatment until October 31, 2013, the date on which Claimant reached maximum medical improvement.

6. Under § 42-15-60, Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574 (Cl. App. 199), and other applicable law, Claimant is entitled to receive causally-related physical therapy and injections for the cervical spine described in APA # 12 pages 91-92.

7. Under § 42-9-30(16), Claimant has sustained 10% permanent partial disability to the right lower extremity. Under § 42-9-30(21), Claimant has sustained 15% additional permanent partial disability to his back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since January 21, 2015, the date Defendants filed their Form 21 Request for Hearing, to be taken from the permanency awarded herein.

8. Defendants may stop payment of temporary benefits under S.C. Reg. 67-506(B) and other applicable law.

9. Claimant is not permanently and totally disabled under §42-9-10 or §42-9-30(21).

10. Under §42-9-20 and other applicable law, Claimant has not met his burden of proof of establishing wage loss.

APPELLATE PANEL ORDER & AWARD

IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective January 21, 2014, the date on which Defendants filed their Form 21 Request for Hearing.

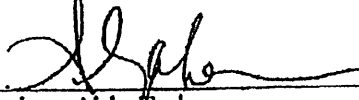
IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on March 10, 2012, he has sustained 10% permanent partial disability to his right leg, for which he is entitled to 19 weeks of compensation, at the compensation rate of \$473.32 per week. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total

compensation paid after January 21, 2014. Claimant is entitled to 15% permanent partial disability to his back for the 2012 accident in issue and for which he is entitled to 45 weeks of compensation, at the compensation rate of \$473.32 per week.

IT IS FURTHER ORDERED Claimant reached maximum medical improvement on October 31, 2013, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, with the exception of the physical therapy and injections aforementioned in paragraph 61 of the Appellate Panel Findings of Fact and paragraph 6 of the Appellate Panel Conclusions of Law.

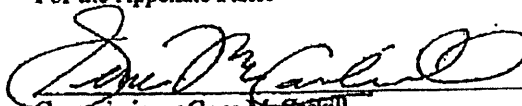
IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION

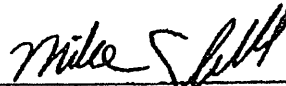


Commissioner Aisha Taylor
For the Appellate Panel

WE CONCUR:



Commissioner Gene McCaskill



Commissioner R. Michael Campbell, II

CERTIFICATE OF SERVICE

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

By Kim Falls on January 21, 2016

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO 1202545

Scott Ledford,
Employee,
Claimant,

vs

Department of Public Safety,

and Employer,

State Accident Fund,

Carrier,
Defendants

HEARING:

Held in Conway, South Carolina on August 15,
2014

APPEARANCES:

Claimant represented by E. Hood Temple, Esquire of
Florence, South Carolina.

Defendants represented by Sarah S Alphin, Esquire
of Willson Jones Carter & Baxley, P.A., Columbia,
South Carolina

PURPOSE OF HEARING:

To determine the issues as set forth on the Form 21

DECISION AND ORDER:

By Susan Barden, Commissioner

FILED:

December 17, 2014

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing

- APA #1 Records of Coastal Orthopaedic Associates, William L. Mills, M.D., dated 7/28/2010 – 5/23/2013, consisting of pages 1-12
- APA #2. Records of InMed, dated 09/09/2010, consisting of page 13
- APA #3: Records of Conway Medical Center, dated 3/23/2012 – 03/28/2012, consisting of pages 14-30
- APA #4: Records of Doctor's Care, dated 03/13/2012 – 04/06/2012, consisting of pages 31 – 34
- APA #5: Reports of Long Bay Diagnostic Imaging, dated 04/17/2012 – 04/18/2012, consisting of pages 35-40
- APA #6. Records of Atlantic Physical Therapy & Rehabilitation, dated 10/18/2012 – 11/14/2012, consisting of pages 41-57.
- APA #7: Records of Carolina Bone and Joint Surgery Center, dated 1/30/2012 – 03/18/2013, consisting of pages 58-63
- APA #8: Records of Community Rehab and Physical Therapy, dated 3/30/2013, consisting of pages 64-65.
- APA #9. Records of Pee Dee Orthopaedic Associates, P.A., dated 8/15/2013, consisting of pages 66-67
- APA #10: Records of Initial Vocational Evaluation with Labor Market Survey, dated 7/17/2014 – 7/21/2014, consisting of pages 68-83
- APA #11 Records of Conway Medical Center, dated 07/13/14, consisting of pages 84-90
- APA #12 Records of Dr. W.S. Edwards, Jr. of Pee Dee Orthopaedic Assoc, dated 10/31/13 – 03/27/14, consisting of pages 91-93.
- APA #13: Records of Dr. Steven Poletti of Southeastern Spine Institute, dated 05/07/12 – 03/05/14, consisting of pages 94-102.
- APA #14. Records of Dr. William Mills of Coastal Orthopaedic Assoc, dated 04/02/12 – 04/27/12, consisting of pages 103-107

- APA #15. Records of Dr. Ross Taylor of Coastal Orthopaedic Assoc., dated 08/09/12 - 04/11/13, consisting of pages 108-114
- APA #16. Records of Philip Lowe, P.T. of Lowe's Therapy, dated 02/28/14, consisting of pages 115-117
- APA #17. Records of Glen K. Adams of Adams & Wilkinson, dated 05/20/14, consisting of pages 118-129
- APA #18. Records of Horry County Fire Rescue, dated 03/10/12, consisting of pages 130-131
- Defendants' Exhibit One. Medical statement of Dr. Sarb from 2011.
- Defendants' Exhibit A. Form 19 for WCC# 1009581
- Defendants' Exhibit B. Form 16A for WCC# 1009581
- Defendants' Exhibit C. Tax returns for ProCutters year 2012 and 2013
- Claimant's Exhibit A. Preliminary Disability Cost Projection of Karen Shelton of Project Works, dated 04/09/14, consisting of page 132
- Claimant's Exhibit B. Letter of SC Retirement System approving claim for disability retirement, dated 07/09/12, consisting of page 133
- Claimant's Exhibit C. Claimant's PowerPoint Presentation consisting of pages 134-155
- Claimant's Exhibit D. Deposition transcript of Dr. William Mills dated 12/03/12
- Claimant's Exhibit E. Deposition transcript of Dr. Williams Mills dated 08/23/12
- Claimant's Exhibit F. Claimant's prior workers' compensation file bearing WCC #1009581 incorporated by reference
- Claimant's Exhibit G. Unappealed Decision and Order of the SC Workers' Compensation Commission dated 5/1/14

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues

1. The purpose of the hearing is to determine the issues as set forth in the Form 21 and any other issues which may timely come before the Commission,
2. That the Claimant's accident occurred on March 10, 2012,

3. The Claimant's average weekly wage was \$709.95 with a corresponding compensation rate of \$473.32;
4. Notices were timely and properly served upon all parties of interest;
5. Venue, set in Horry, is proper as agreed by all parties;
6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;
7. The issues for determination are whether the Defendants are entitled to stop payment of temporary total compensation and the Claimant's entitlement to temporary total disability compensation, permanent partial disability compensation, total disability compensation, medical benefits and/or disfigurement, if any, and any other issues which may timely come before the Commission

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports. The Commission's file includes (but is not limited to) the Order of Commissioner Roche, dated May 2013

III. STATEMENT OF THE CASE

This case was heard by the undersigned Commissioner in Conway, South Carolina, on August 15, 2014. Defendants filed a Form 21 (received by the Commission on February 3, 2014), requesting to stop payment of compensation, a determination of permanency, if any, and credit for over payment of temporary compensation following the Claimant's release at maximum medical improvement (MMI).

It is Claimant's position that he is permanently and totally disabled. Claimant asserts that he has sustained injuries to multiple body parts, that he has significant problems with regard to each of those body parts, and that his injuries involve significant body parts such as his spine and right leg. Claimant asserts that the combination of his two injured body parts when considered with his vocational report support a finding that he is entitled to a permanent and total disability award.

Alternatively, Claimant asserts that he is entitled to permanent and total disability under S.C. Code Ann. §42-9-30. Claimant believes the impairment rating alone is single digits away from a greater than 50% loss of use of his spine. Further, Claimant believes that Defendants cannot rebut the presumption that he is permanently and totally disabled. Therefore, Claimant asserts that he is permanently and totally disabled under either theory. Additionally, Claimant believes that Defendants are not entitled to receive credit for 75 weeks of compensation that he received as a result of his prior workers' compensation claim because the impairment rating from his pending claim is unrelated to the impairment rating received as the result of his prior claim.

Claimant seeks the award that is most advantageous to him, whether it is under S.C. Code Ann. §42-9-20 or §42-9-30. Claimant believes the undersigned should consider that he has been removed from his pre-accident job, has not been offered another job, and that he has qualified for disability under the state retirement system for retirement disability. Claimant contends that he has significant permanent partial disability with regard to his injured body parts, which included his right ankle, neck, and spine. Claimant believes that impairment ratings are nothing more than a mere starting point in determining disability. Claimant acknowledges that the authorized treating physicians' impairment ratings are usually given greater deference, but Claimant requests the undersigned to consider his contention that the authorized treating physician's rating is flawed because he only rated his right ankle and not his leg. As such, Claimant believes that the undersigned should give greater deference to the impairment rating by the physician he sought after disapproving of the authorized treating physician's rating. Claimant further asserts that the impairment rating to his cervical and lumbar spine is a new impairment rating according to Dr. Edwards. However, Claimant believes that Dr. Poletti's (Claimant's expert) impairment rating should be given greater deference for reasons set forth in Dr. Poletti's evaluation and narrative.

Regarding credit, Claimant contends that any credit owed to Defendants should begin on March 5, 2014, because he was still treating and considering surgery until the aforementioned date. Alternatively, Claimant contends that any credit owed to Defendants should start from the date Defendants filed the Form 21, received by the Commission on February 3, 2014.

Regarding future medical treatment, Claimant takes the position that he is entitled to future medical treatment in the form of a fusion surgery as recommended by Dr. Poletti and another unauthorized physician as reflected in Claimant's APA submissions. Claimant contends that the physicians have counseled him to defer surgery as long as possible. Claimant believes that he should not be punished for not undergoing surgery after he has been advised to defer the surgery as long as possible. In addition to the fusion surgery, Claimant also wants the undersigned to consider that Dr. Poletti opined that Claimant would need physical therapy and injections as well.

It is Defendants' position in this matter that Claimant reached MMI on October 31, 2013. In addition to stop payment and credit for over payment of temporary compensation, Defendants seek a determination of permanency with regard to Claimant's right ankle, neck, and low back. Defendants believe that the award should be made pursuant to S.C. Code Ann. § 42-9-30(21) for the spine and item (16) for the leg. Defendants believe that Claimant did not sustain permanent partial disability beyond the impairment ratings of the authorized treating physician, and if there is any partial disability, it would be strictly *de minimis*. Defendants strongly oppose Claimant's position that he is permanently and totally disabled due to the fact that he owns and operates a landscaping company. Defendants acknowledge that Claimant may not be able to perform some of the physical labor that he performed prior to his work-related accident, however, Defendants assert that Claimant still runs the company, the company remains profitable, and Claimant is capable of performing some of the tasks necessary to run the company. Defendants assert that based on the

findings of their vocational report and the fact that Claimant continues to run a landscaping company, Claimant is not permanently and totally disabled.

Defendants believe that Claimant's entitlement to a permanency award would be limited to S.C. Code Ann. § 42-9-30. Defendants contend Claimant has not sustained 50% or greater loss of use to his spine, thus his permanency award at most would be based upon a maximum of 300 weeks. Regarding credit for over payment of temporary compensation, Defendants take the position that they are entitled to receive credit for the temporary compensation paid after October 31, 2014, as well as credit for 75 weeks of compensation paid as a result of Claimant's prior workers' compensation claim for the spine. Defendants assert that the Form 16A, which Claimant signed in 2011, includes an impairment rating to the whole spine and not a specific region of Claimant's back. As such, Defendants believe they are entitled to 75 weeks credit to any permanency award for Claimant's back based on Claimant's prior workers' compensation claim with same Employer and Carrier with date of accident July 15, 2010, WCC # 1009581.

Regarding future medical treatment, Defendants concur Dr. Poletti's recommendation of a fusion if Claimant's condition deteriorates as an issue to be addressed as a change of condition for the worse and should not be considered future medical treatment. Therefore, Defendants take the position that Claimant is not entitled to future medical treatment because the authorized treating physician has not recommended future medical treatment and none should be awarded.

Claimant testified at the hearing in this matter, and his testimony allowed the Commissioner to observe the Claimant, to ask questions to the Claimant, and to judge his credibility as a witness.

IV. EVIDENCE OF THE CASE

Testimony of the Claimant, Scott Ledford:

Direct Examination of Claimant:

Claimant testified that he is 39 years of age (Hearing Tr pg 19). Claimant is originally from New York and has three school-aged children (Id. at pgs. 20 and 22). Claimant's wife works as a school teacher (Id. at pg 29). Claimant graduated from high school and attended college for two years where he studied criminal justice (Id. at pg 19-20). On the date of the accident in issue, Claimant's position/rank with Defendant Employer was Lance Corporal and ACE team member with the South Carolina Highway Patrol (Id. at pg 21). Claimant testified he worked for Defendant-Employer until he was placed on medical disability retirement (Id. at pg 20).

Claimant testified he and his wife own a landscaping business with gross receipts of \$334,906 in 2013 and \$243,658 in 2012 (Id. at pgs. 29; 63-64). Claimant testified that it is common and typical for Troopers to have secondary businesses, and the purpose of the landscaping business was to supplement his income in order to allow his wife to stay home with their three children, and his desire to have "nicer things" (Hearing Tr. pgs. 23-30; 63-65). Claimant's additional income also enabled him to go on hunting trips to places such as Colorado and Washington State (Id. at pgs 69-71). Claimant initially testified that he is "somewhat of a hustler" and that he "work[s] a lot," but later testified that he tries "from time to time to get involved" with the landscaping business (Id. at pg. 25). Claimant testified that he tries to abide by his work restrictions, but when he does not abide by the work restrictions, his pain intensifies (Id. at pg 50). Claimant also testified that his landscaping business supplements his income and that he must continue operating the business because he "do[es] not have a choice" (Id. at pgs 28-30).

Claimant testified he had a workers' compensation claim in 2010 that "was a t-spine injury only," and that he did not receive an impairment rating to his cervical spine as a result of his 2010 workers' compensation claim (Id. at pgs 50, 66). Claimant's testimony regarding the treatment he

received as a result of his 2010 workers' compensation claim was that he only received treatment to his thoracic spine and that he did not complain of neck pain (Id. at pg 68). However, after being confronted by a medical report from his 2010 workers' compensation claim on cross-examination as to the prior 5% impairment rating, Claimant first responded "if you say, I don't know" (Id. at pg 67), when shown the document, Claimant acknowledged its contents, but went on to say that he only saw Dr Sarb once, that it was for his thoracic spine, and "whether she did something—she only did a nerve study." Claimant denied ever having complained of neck pain (Id. at pg. 68).

Claimant testified that the surgeon who performed his ankle surgery told him that he realized during the surgery that his ankle injury was much worse than he had thought (Id. at pg 38). However, Claimant testified that after the surgery, physical therapy progressively improved his condition (Id. at pg 39). Claimant later testified that he feels as if he was in a better condition before the surgery than after the surgery (Id. at pg. 40). Despite feelings that his ankle is worse now than before the surgery, Claimant testified that he hikes in Gatlinburg, TN, rides a motorcycle, hunts, throws a baseball with his son, and regularly goes to the gym (Id. at pgs 45-48, 69-70). Even though Claimant testified that he never knows when his ankle will give out, he inconsistently does not use any assistive device to keep him from falling (Hearing Tr pg 45). Claimant testified that he always has pain and swelling in his ankle, but he does not take prescription pain medicine because he does not like the way it makes him feel (Id. pgs 44-45). Claimant testified that his spinal pain is "terrible" and "life changing," but he uses no prescription medication (Id. at pgs 55, 61-62). Claimant testified that he always has pain in his neck (Id. at pg 57). Claimant testified that he has pain in his lower back, but it is not as bad as the pain in his neck (Id.). Then, Claimant testified that "a couple of weeks ago I hurt so bad in my lower back I went to the Conway E R" (Id. at pg 58).

Cross Examination of Claimant:

Claimant admitted he has neither looked for nor applied for any jobs since getting injured at work on March 10, 2012 (Id. at pg. 63). Claimant does own and operate a landscaping and lawn company called Pro-Cutters (Id.) Claimant testified he does not know how much income he makes, but he agreed that his tax returns for 2013—the year after the date of the 2012 accident in issue—indicate gross receipts and sales of \$334,906 (Id. at 63-64).

Claimant reiterated that his 2010 work accident was for his t-spine only (Id. at 66). Claimant admitted to treating with Dr. Sarb for his 2010 accident, but when asked if Dr. Sarb treated Claimant's neck and radicular symptoms in the arm, he replied she did a nerve study (Id. at 66-67). Claimant denied being aware of Dr. Sarb's assignment of 5% impairment to Claimant's cervical spine (Id. at 67-68). Defendants submitted, without objection of Claimant's attorney, the report of Dr. Sarb assigning 5% impairment to the cervical spine, and Claimant still maintained that all Dr. Sarb did was a nerve study (Defendants' Exhibit I; Hearing Tr. pg. 67-78).

Claimant then denied he complained of neck pain to Dr. Sarb and testified it complained of numbness and tingling and burning in his thoracic area (Hearing Tr. pg. 68-69). He then admitted to having the numbness and tingling down his arm prior to this current workers' compensation claim (Id. at 69).

Medical Evidence:

On March 10, 2012, Claimant presented to Conway Medical Center with complaints of right ankle pain as the result of a motorcycle accident (APA #3 pg. 17). On March 13, 2012, Claimant presented to Doctors Care with complaints of right ankle pain and was diagnosed with a right ankle sprain (APA #5, pg. 31). On April 6, 2012, Doctors Care referred Claimant to Dr. Mills for further treatment and evaluation (Id. at pg. 34). On April 20, 2012, Claimant presented to Dr.

Mills with continued complaints of thoracic pain, lower back pain, and right ankle pain (APA #1, pg 3) Dr Mills diagnosed Claimant with myofascial pain in the thoracic area, a right ankle contusion, and L5-S1 spondylosis (Id.) Dr Mills wrote Claimant out of work on April 20, 2012 (Id. at pg 4)

On May 7, 2012, Claimant presented to Dr Poletti of Southeastern Spine Institute with complaints of pain to his back, his leg, his neck, and his right arm (APA #13, pg 94) Dr Poletti noted in his report that Claimant told him that he is a very active outdoorsman and that he is very aggravated that his pain is not improving (Id.) Dr Poletti diagnosed Claimant with cervical cord compression, status post compression fracture at T6 and T9 with kyphotic deficit, and disc disruption at L5-S1 (Id. at pg 96)

On June 4, 2012, Claimant went back to Dr Mills with complaints of right hand numbness, right arm pain, neck pain, low back pain, and right ankle pain (APA #1, pg 5). Dr. Mills diagnosed Claimant with C5-6 spondylosis with right cervical radiculopathy, L5-S1 spondylosis, and right ankle contusion with continued pain (Id.). On June 19, 2012, Claimant presented to Dr. Taylor with complaints of right ankle pain (Id. at pg 7) Dr Taylor diagnosed Claimant with a right ankle sprain and superficial peroneal neuritis (Id. at pg 8). On November 15, 2012, Claimant presented to Dr Taylor with continued complaints of right ankle pain after 12 visits of physical therapy with modest to no relief (Id. at pg 9) Dr Taylor diagnosed Claimant with probable impingement lesion, a possible osteochondral lesion, and posterior syndrome to his right ankle, and recommended surgery (Id.) On January 30, 2013, Dr Taylor performed an anterior arthroscopy with debridement of impinging synovium as well as resection of anterior distal tibial osteophyte and an open resection of posterior process of talus (APA # 7, pg 58) Claimant attended rehabilitation and physical therapy sessions after his right ankle surgery from March 4 - March 26,

2013 (APA # 8, pg 64-65) On May 23, 2013, Dr Taylor opined that Claimant's right ankle had reached maximum medical improvement, issued him a 7% impairment rating to his right ankle, restricted Claimant from running, cutting, pivoting, and unpredictable surfaces, and determined that Claimant did not need future medical treatment (APA #1, pg. 12).

On August 15, 2013, Claimant received an independent medical evaluation on his right ankle from Dr. Edwards of Pee Dee Orthopaedic Associates (APA #9, pg 66) Dr. Edwards opined that Claimant had suffered from a right ankle sprain with chronic pain status post previous surgery (Id. at pg 67) Dr Edwards also opined that Claimant had an 18% impairment to his right lower extremity as a result of the motorcycle accident, ankle surgery, and his complaints of chronic pain (Id.). On October 31, 2013, Dr Edwards of Pee Dee Orthopaedics opined that Claimant's spine had reached maximum medical improvement (APA #12, pg 91) Dr. Edwards determined that Claimant had 15% impairment to his spine based on cervical disc protrusion at C5-6 and C6-7 and additional 10% impairment of his spine based on compression fractures of T6 and T9 (Id.) Dr. Edwards noted that Claimant was not interested in pursuing any aggressive treatment as it related to his cervical spine (Id.).

On March 5, 2014, Dr Poletti opined that Claimant was at maximum medical improvement and issued him a 23% impairment rating to his spine based on his cervical and lumbar radiculopathy (APA #13, pg 101). Dr Poletti further opined that it was more likely than not that Claimant will require cervical fusion surgery and lumbar disc surgery versus disc replacement surgery *if Claimant's condition deteriorates in the future* (Id.; emphasis added) On March 27, 2014, Dr Edwards wrote a letter to Claimant's attorney stating that based on his October 31, 2013, maximum medical improvement note, he believes that it is more likely than not that Claimant will need future medical treatment in the form of physical therapy and therapeutic

injections (Id. at pg 92)

On July 13, 2014, Claimant presented to Conway Medical Center with complaints of low back pain that did not radiate and had no known mechanism of injury (APA #11, pg 84). Claimant was discharged from Conway Medical Center in stable condition with a diagnosis of back pain and prescriptions from Naprosyn and Flexeril (Id. at pg 87).

August 23, 2012 Deposition of Dr. Williams Mills—submitted by Claimant

Dr. Mills testified that he treated Claimant for injuries arising out of Claimant's July 15, 2010 and March 10, 2012 workers' compensation accidents (Dr. Mills Dep. 57-20, August 23, 2012). Dr. Mills testified that Dr. Sarb opined in an August 27, 2010 note that Claimant had complaints in the cervical spine and disc pathology that Dr. Sarb wanted to evaluate (Id. at 151-1620). Dr. Mills also testified that Dr. Sarb opined in an August 26, 2011 note that Claimant sustained a 5% impairment rating to his whole person due to cervical degenerative changes and radicular paresthesia symptoms (Id.). Dr. Mills testified to a reasonable degree of medical certainty that Claimant's thoracic area was the most symptomatic as a result of his first workers' compensation accident, but that he also had symptoms in his neck, upper back, and lower back (Id. at 192-11) [emphasis added]. Dr. Mills testified to a reasonable degree of medical certainty that Claimant's second workers' compensation accident exacerbated the symptoms in his neck and lower back to the point that he recommended that Claimant have fusion surgery on his neck and his lower back (Id. at 201-11).

December 3, 2012 Deposition of Dr. William Mills

Dr. Mills testified that he recommended Claimant undergo cervical spine surgery at C5/6 and lumbar spine surgery at L5/S1, but as of the date of his deposition, he had not performed the recommended surgeries (Dr. Mills Dep. 292-3123, December 3, 2012). Dr. Mills testified that he

believes Claimant is a good candidate for surgery because he does not smoke, does not have diabetes, is not obese, and *seems very active* (*Id.* at 37:9-24) [emphasis added]. Dr. Mills testified that all the usual conservative measures have failed to provide Claimant with relief, which is why he recommended that Claimant have surgery (*Id.* at 38:18-39:5). Dr. Mills testified that he indicated in his July 28, 2010 note that Claimant had complaints of neck and low back pain as indicated by his diagnosis of lower extremity pain and bilateral upper extremity paresthesia (*Id.* at 45:9-20) [emphasis added]. Dr. Mills testified that Dr. Sarb treated Claimant for neck and low back pain in August of 2010 as a result of Claimant's 2010 workers' compensation accident (*Id.* at 48-50) [emphasis added]. Dr. Mills testified that for Claimant's 2010 workers' compensation accident, he released Claimant back to work as a state trooper without work restriction, and did not see him again until 15 months later (*Id.* at 56-57).

A record such as was necessary for a decision was made of the proceeding, and after careful consideration and study of all the evidence, the following findings of fact are accordingly made

V. FINDINGS OF FACT

IT IS FOUND AS A FACT.

- 1 Claimant injured his right ankle in an admitted accident on March 10, 2012. Claimant's neck and low back injuries were found compensable by Order of Commissioner Roche, dated May 2013.
- 2 Claimant is 39 years of age (*Hearing Transcript*, page 19).
- 3 Claimant is originally from New York, and has 3 school-aged children (*Hearing Transcript*, pages 20 and 22, Claimant's APA #17, page 123)
- 4 As of the date of the hearing, Claimant's wife works as a school teacher (*Hearing*

Transcript, page 29, Claimant's APA #17, page 122).

5 Claimant graduated from high school, and attended college for 2 years where he studied criminal justice, Claimant is just 3 courses shy of his Associate's Degree. Claimant also graduated from the S.C. Criminal Justice Academy. According to his vocational expert, Claimant plans to pursue higher education at a technical college (Hearing Transcript, pages 19-20 and 59, Defendants' APA #10, page 71, Claimant's APA #17, pages 119-120 and 123).

6 On the date of the accident in issue, Claimant's position/rank with Employer was Lance Corporal and ACE team member with the Highway Patrol. Among other things, this job required Claimant to (a) review files and criminal records to develop possible leads, (b) investigate causes and results of accidents, (c) complete daily activity reports, and (d) testify in court (Hearing Transcript, page 21, Defendants' APA #10, pages 70 and 79).

7 On the date of the accident in issue, Claimant earned approximately \$40,000 - \$42,000 per year with Employer (Defendants' APA #10, page 79, Claimant's APA #17, page 120).

8 In addition to his job with Employer, Claimant and his wife own (and have owned for 18 years) a mostly commercial landscaping business, the gross receipts for which were \$334,906 in 2013, (the year after the 2012 accident in issue), and \$243,658 in 2012—the year of the accident. I attribute Claimant's lower gross receipts in 2012 to Claimant's accident and recovery therefrom (Claimant's tax returns for 2012 and 2013, as submitted by Defendants, Hearing Transcript, pages 29 and 63-64, Claimant's APA #17, page 120).

9 As to the reason for the dual employment, Claimant testified that (a) it is common and typical for Troopers to have secondary businesses "you could maybe live off of just being a highway patrolman, but you would – it wouldn't be very good," (b) the purpose of the business was to supplement his income in order to allow his wife to stay home with their three children, so

that the children would not be in daycare, and a desire to have "nicer things" Claimant's additional income also enabled him to go on hunting trips to places such as Colorado and Washington State. Medical evidence describes Claimant as a "trooper/business owner" (Hearing Transcript, pages 23-30, 63-65, and 69-71; Claimant's APA #17, page 123; Defendants' APA #5, page 39, December 2012 Deposition of Dr. Mills, pages 56-57, Claimant's 2012 and 2013 tax returns as submitted by Defendants)

10 As far as his landscaping business is concerned, Claimant initially admitted at the hearing that he is (present tense) "somewhat of a hustler" and "work[s] a lot" (also present tense). I give this testimony far greater weight than I give Claimant's later, inconsistent testimony that he tries "from time to time to get involved." I also give greater weight to the initial "somewhat of a hustler" and "works a lot" admissions than I give to Claimant's statement to his vocational expert that he mostly "calls his employees to check on their progress." Additionally, because Claimant works out at the gym every day, because his weight has not fluctuated upward since the accident, and because of medical providers' description of Claimant as muscular and very physically fit (See finding of fact, *infra*), I believe and find that Claimant is far more active than he lets on (Hearing Transcript, page 25, lines 7-9; Claimant's APA #17, pages 119-120, Claimant's APA #13, page 94).

11 Although Claimant told one vocational expert that he earns no personal income from the landscaping business, he admitted to Defendants' evaluator that he "owns a landscaping business" and works as tolerated, has the business in order "to supplement" his income, is stated to be a shareholder via tax returns, and testified at the hearing that he must continue the landscaping business because he "do[es] not have a choice." I therefore find that Claimant's landscaping business continues to be lucrative for Claimant primarily through deductions taken for his vehicles,

a boat, "meals and entertainment," phones, utilities, etc., as the business is located at Claimant's residence, according to Claimant's vocational report and tax returns (Hearing Transcript, pages 23, 25, 28-30, and 63, Claimant's APA #17, pages 119-120 and 122, Claimant's 2012 and 2013 tax returns, as submitted by Defendants, Defendants' APA #10, page 70)

12 Claimant is articulate, and expressed himself well at the hearing. Defendants' vocational report shows that Claimant's academic skills of word reading, sentence comprehension, spelling, and math are all above average. Claimant's vocational report states that Claimant's word reading is at a 12.5 grade equivalent, his sentence comprehension a 12.9 grade equivalent, his spelling a 12.7 grade equivalent, and his math computation is a 10th grade equivalent. Notwithstanding Claimant's documented academic achievements and abilities, Claimant has not applied or looked for any other work of any description. I therefore believe and find, based upon this and other evidence, that Claimant has instead chosen to devote his time and efforts to his landscaping business (Hearing Transcript, e.g., pages 63 and 70; testimony of Claimant; observations of the undersigned at the hearing, Defendants' APA #10, page 76, Claimant's APA #17, pages 123-124)

13 Claimant has the appearance of being physically fit. The ankle IME also describes Claimant as "muscular," and Dr. Poletti notes just several months prior to the date of the hearing that Claimant is "very physically fit." Dr. Mills similarly describes Claimant as "very fit" and "active." In fact, Claimant goes to the gym for an hour each day, and weighs virtually the same—actually slightly less—than he weighed shortly after the date of the accident (Claimant's APA #13, page 94—Claimant weighed 192 in May 2012—2 months after the accident, Claimant's APA #13, page 101—describing Claimant as "very physically fit," Claimant's APA #17, page 119—Claimant goes to the gym for an hour each day, Defendants' APA #10, page 71—describing Claimant's weight the month prior to the hearing as approximately 186, Defendants' APA #9, page

67—describing Claimant as “muscular,” observations of the undersigned; August and December 2012 Depositions of Dr. Mills)

14 During both the pre-hearing conference and at the hearing, Defendants requested credit for Claimant's prior 2011 settlement for the 2010 spine injury. A copy of the 16A, dated 2011, was provided by the parties to the undersigned during the pre-hearing conference. Defendants contend that the prior rating was a whole person impairment rating (encompassing the entire spine and not just limited to any particular area of the spine, such as the thoracic spine), and Claimant contends that the rating and settlement were solely attributable to the thoracic spine, as Claimant contends he did not injure his neck or low back in the prior 2010 accident (“*t-spine only*”—Hearing Transcript, page 66). Because of the dispute raised by the parties, adjudication of the issue necessitated my review of Commissioner Roche's 2013 Order, as contained in the Commission's file. In fact, when Defendants impeached Claimant with a prior cervical rating Claimant had solicited on his own behalf, Claimant's counsel specifically stated he had no objection because “I think all of that should be in the file.” Additionally, at the hearing before the undersigned, Defendants submitted medical evidence from the prior 2010 case, and Claimant submitted two depositions into evidence (Claimant's APA Exhibits D and E) in which Claimant's counsel himself refers to Claimant's cervical and low back injuries from the prior (2010) accident (See e.g., various documents as contained in Defendants' APA #1; #2, and #5; Defendants' Exhibit #1, containing the 2011 letter from Dr. Sarb assigning an impairment rating for the neck for the prior claim in response to Claimant's counsel's request for a cervical spine impairment rating) None of these documents was requested by the undersigned. The only document requested of the parties by the undersigned was a post-accident-in-issue deposition indexed in—but inadvertently missing from—Claimant's submissions. No documents (a) outside the Commission's file, as

provided to the undersigned by the Judicial Department upon assignment to the undersigned, or (b) other than those provided by the parties were consulted or reviewed in preparation of these findings.

15 For the 2010 claim, Claimant was assigned a 15-18% whole person impairment rating to the spine (the impairment rating itself does not specify the particular spinal level(s) involved), and settled his claim for in 2011 for 25% to the spine (\$38,151.75)

16 In order to foreclose Defendants' request for credit for the 2011 settlement of the 2010 claim, Claimant testified under oath before the undersigned (a) that he did not injure his neck in the 2010 accident ("that was a t-spine injury only"—*Hearing Transcript*, page 66), and "everything that was done was done for my thoracic spine from day one"; (b) that he had "never" complained of neck pain from the 2010 accident; (c) that he did not have an impairment rating to the neck from the 2010 accident, or (later) was unaware he had an impairment rating to the neck from the 2010 accident (*Hearing Transcript*, page 50, lines 24-25), even though his attorney requested and received a neck impairment rating on his behalf, and even though Claimant's counsel discussed with Dr. Mills in multiple depositions that Claimant injured his neck and low back in the 2010 accident; and (d) that he had no idea why his treating physician would order any cervical testing because of the 2010 accident. When Claimant was confronted on cross examination with the prior cervical rating, he was evasive and continued to maintain it was for his thoracic spine (*Hearing Transcript*, e.g., pages 50 and 66-69).

17 Notwithstanding Claimant's testimony to the contrary, Claimant underwent a cervical MRI in 2010 for the 2010 injury, the reason for which according to the report's "History" was "neck pain...extending into the right arm with numbness". (b) Dr. Poletti (in 2012) refers to

Claimant's non-operative neck care with Dr. Sarb in 2010, stating that Claimant has, since the 2010 accident, "remained with neck pain," according to Claimant's complaints to Dr. Poletti, without Claimant's own statement to Dr. Poletti, Dr. Poletti would otherwise have no knowledge that Claimant has "remained" with neck pain since the date of the 2010 accident; (c) Commissioner Roche's 2013 Order refers to the Claimant's 2010 neck treatment, refers to the fact that Claimant's 2010 neck condition deteriorated upon Claimant's return to work after the 2010 accident but before the 2012 accident, and refers to Claimant's contention that Claimant is "now in need of surgery to his cervical spine" as a result of the 2010 accident, (d) Claimant's own vocational expert writes that Claimant's 2010 accident caused cervical spine problems at C4-5 and C5-6, including nerve damage and right arm numbness, (e) Claimant's attorney in 2011 requested a cervical spine impairment rating for the 2010 cervical injury, and in response, received one Claimant's knowledge of such is imputed through his attorney; however, regardless of whether Claimant knew about the cervical rating (even though his last visit with Dr. Sarb was for that specific purpose), Commissioner Roche's unappealed Order states that Claimant testified at the Roche hearing that he had neck pain/numbness from the 2010 accident, and was in need of surgery because of the 2010 injury; further, 21 pages of records of Dr. Sarb were admitted into evidence at Commissioner Roche's hearing (according to Commissioner Roche's Order); and (f) Claimant's own counsel points out to Dr. Mills (at both Dr. Mills' December 2012 and August 2012 depositions) that Dr. Sarb treated Claimant for his neck/arm complaints in 2010, as Claimant's counsel sought to alternately establish the fact that Claimant's cervical condition worsened after the 2010 accident—Dr. Mills responds to Claimant's counsel that Claimant's neck was in fact injured in the 2010 accident (Claimant's APA #17, page 118, Defendants' APA #2, page 13, containing a cervical MRI dated September 2010—for "neck pain," Hearing

Transcript, pages 31-33, 50-51, and 66-69, Claimant's APA #13, page 96—he has "remained with neck pain" since the 2010 accident, Defendants' Exhibit #1—a letter from Dr. Sarb in response to Claimant's counsel's request for a cervical spine impairment rating in 2011, December 2012 Deposition of Dr. Mills, pages 44-50, particularly 48-49, August 2012 Deposition of Dr. Mills, e.g., pages 11-16, 19, 37-38, and 40-41, Exhibits to Dr. Mills' August 2012 Deposition, unappealed Order of Commissioner Roche, dated May 2013, as contained in the Commission's file, page 4—Claimant is "now in need of surgery to his cervical spine as a result of that [2010] accident, page 7—"his neck began bothering him but he did not seek any medical attention until after his motorcycle accident [of 2012]"--pages 8-10)

18 If there is any question as to whether Claimant injured his neck and low back in the prior (2010) accident, one need look no further than Dr. Mills' depositions (particularly the August 2012 deposition), in which Claimant's own counsel describes and discusses in detail Claimant's prior (i.e., 2010 accident) neck and low back problems, and elicits testimony from Dr. Mills that Claimant injured his neck and low back in the prior 2010 accident. These two depositions were provided to the undersigned by Claimant's counsel

19 I further note that Commissioner Roche's Order is replete with references to Claimant's contention that he injured his neck and low back in the prior accident. In fact, Claimant was granted a postponement prior to a hearing in order that he could "gather additional information regarding an alleged [2010] cervical spine injury." See Order of Commissioner Roche, pages 2, 4, and 7-12

20 The undersigned is fully cognizant of the fact that at one point Claimant's neck or at least radicular problems from the 2010 accident resolved. However, at Commissioner's Roche's hearing, Claimant testified that his neck problems reappeared prior to the date of the 2012 injury

in issue, and that he was in need of surgery to his neck as a result of the original 2010 accident. According to Commissioner Roche's Order, Claimant last saw Dr. Sarb in 2011 (prior to the date of the 2012 injury in issue) for the purpose of obtaining a rating to his cervical spine. Commissioner Roche's Order also cites the fact that Dr. Mills testified that Claimant injured his neck in the 2010 accident. By contrast, at the hearing before the undersigned, Claimant denied the prior neck injury or pain prior to the date of the injury in issue, and initially outright denied, and then denied knowledge of—the prior cervical rating, even though Claimant went to Dr. Sarb for that specific purpose. Claimant's untruthfulness and evasiveness at the hearing greatly damage his credibility in general at the hearing, and call into question his veracity as a whole. If credibility is not important, and oaths are meaningless, then swearing in a witness is mere "window dressing," and could be dispensed with at hearings. In addition to taking an oath to tell the truth, Claimant also testified that he had "absolutely" answered all of his attorney's questions honestly, and that there was no answer he wanted to change (Order of Commissioner Roche, pages 4 and 7-11); Hearing Transcript, pages 50-51; page 62, lines 14-17).

21. According to Commissioner Roche's Order, Claimant testified that he needed surgery to his cervical and lumbar spines because of the 2010 accident. If Claimant asked Commissioner Roche to find a compensable change of condition regarding his neck injury from the 2010 accident, then by necessity, Claimant knew he had injured his neck in the 2010 accident; a change of condition would be impossible for a body part that was never injured or for a body part that Claimant did not know he had injured. By contrast, Claimant testified at the hearing before the undersigned that he only injured his thoracic spine in the 2010 accident.

Q: You testified that that [2010 accident] was a T-spine injury only, correct?

A: Yeah. (Hearing Transcript, page 66)

22 Based upon the greater weight of the evidence, including but not limited to Commissioner Roche's Order, I find that the \$38,151.75 settlement for the spine for the 2010 accident encompasses all three spinal levels (Claimant's Exhibit)

23 Because of his ankle injury, Claimant underwent surgery in January 2013—arthroscopic debridement/resection of osteophyte and “resection of posterior process of talus” (Defendants' APA #7, pages 58-59, Claimant's APA #15, page 111)

24 Claimant was untruthful at the hearing when he testified (twice) that the treating surgeon discovered (during surgery) that Claimant's pathology was “a lot worse” than what the surgeon originally thought or expected, this testimony is not supported by the operative notes or by any treatment record in evidence. In fact, the opposite appears to be true: as one of the purposes of the surgery was “assessment of the cartilage surface” and resultant treatment of any cartilage pathology found during the assessment (Defendants' APA #1, page 9), the surgeon specifically notes in operative notes that *the lateral gutter was noted to be free of any loose bodies; the lateral shoulder of the talus was noted to be free of any cartilage lesions as was the distal fibula, the talar dome was void of any cartilage defects; the tibial articular surface was noted to be similarly absent of any articular cartilage lesions, and a tibial osteophyte had no corresponding cartilage lesion*. Claimant's exaggerated testimony in this regard is self-serving hearsay that further damages his credibility as medical evidence does not support—and actually refutes—his statement in this regard (Defendants' APA #7, pages 58-59, Defendants' APA #1, page 9, Hearing Transcript, pages 38 and 40)

25 As to Claimant's outcome from the ankle surgery, Claimant's testimony is not believable or credible. Claimant initially testified at the hearing that with post-surgical physical therapy, he “progressively got better and better” (Hearing Transcript, pages 38-39), and then practically in the

next breath, Claimant visibly "shifted gears," and inconsistently testified that surgery was "absolutely not" successful, that he was better prior to the surgery than he is now, and that he is "absolutely" worse. Claimant's demeanor and delivery were not believable or persuasive, nor is this testimony—that Claimant was better prior to the surgery--supported by the treatment records. I also note that after Claimant's recovery from the surgery, his landscaping business gross receipts rose from \$243,000 (the year of the accident) to \$334,906--the year after the accident (Hearing Transcript, pages 39-40, 43, and 52; Claimant's tax returns as submitted by Defendants)

26. Although the undersigned recognizes that it is entirely possible for a claimant to be initially better after surgery, but then subsequently become worse, a sequential review of the medical evidence after the surgery up through the date of maximum medical improvement does not show this to be applicable in this case:

- (a) 1½ months after the date of the surgery, Claimant's treating physician was "pleased with [Claimant's] progress;" Claimant's *only complaint to his physical therapist* was "*ankle stiffness when he initially stands up*;" Claimant told the treating physician's practice that he was having "no difficulty," Claimant's gait was only "slightly antalgic" (Defendants' APA #7, pages 61-63; Claimant's APA #15, page 113),
- (b) 2½ months after the surgery, Claimant's subjective complaint was "*mild stiffness and discomfort*;" Claimant had "*complete stability*." Claimant was returned to use of a regular shoe (Claimant's APA #15, page 114);
- (c) 4 months after the surgery Dr Taylor found "*complete stability* of the bilateral hind foot, mid foot, and forefoot joints;" Claimant's complaints were his inability to run, cut, or pivot. Claimant's pain was described as "intermittent", and his gait "is non-

analgesic" [emphasis added] (Defendants' APA #1, page 12),

- (d) Claimant's post-surgical restrictions for his leg are cutting, running, pivoting, and unpredictable surfaces. However, prior to the surgery (which Claimant contends made him "worse") (a) he was on crutches and then had to use a walking boot, (b) he had an *"analgesic gait,"* and (c) a *"persistently painful" ankle*. After the surgery and reaching MMI, Claimant had a *"nonanalgesic" gait and an "intermittent" dull ache*. Even Claimant's vocational expert notes that Claimant "ambulated [at the evaluation] with no observed problems." The most recent medical record in evidence—an ER visit—also documents Claimant's "normal" gait. Claimant's surgical outcome is clearly better than he is willing to admit to the Commission for purposes of permanency (*e.g.*, Defendants' APA #1, pages 8-9 and 12, Defendants' APA #3, page 25, Defendants' APA #4, page 31—"ambulates with crutches," Claimant's APA #15, pages 108-109 and 113-114, Hearing Transcript, pages 39-40 and 43)

27 As to Claimant's surgical outcome and recovery (ankle), I also note that Claimant (a) hikes in Gatlinburg, TN, (b) is able to ride his Harley, (c) hunts, (d) throws baseballs; and (e) goes to the gym and works out. The fact that Claimant no longer coaches his son's baseball team, that he may no longer be able to hike "Clingmans [phonetic] Dome," that he may no longer be able to run, and that he no longer goes to Colorado to hunt is not persuasive evidence toward a finding that Claimant is unable to work (Hearing Transcript, pages 40, 45-48 and 69-70, Claimant's APA #17, page 123)

28 Both prior to and after the ankle surgery, treatment records state that Claimant had and has *"complete stability of the left ankle, hindfoot, bilateral midfoot and forefoot joints"* (medical

evidence in its entirety including but not limited to Defendants' APA #1, pages 7, 9, and 12, Claimant's APA #15, pages 108-109 and 114, Defendants' APA #6 in its entirety—documenting no complaint of "giving out" or "giving way." Claimant's APA #14, page 103—pre-surgical record containing documentation of an ankle exam with no complaint of giving out)

29. Claimant's testimony at the hearing—that his ankle "gives out" on him—is not supported by even a single pre- or post-surgical treatment record in evidence, if anything. Claimant's testimony is refuted by the medical evidence as referenced in the preceding finding of fact. I find that Claimant complaints in this regard—made only to his vocational expert and to the ankle IME physician (however, the IME also interestingly found "no instability" of the ankle joints, and saw no apparent need to take x-rays or other diagnostic films)—are for purposes of litigation and maximization of his claim. In addition to Dr. Taylor's treatment notes (in which there is no complaint of instability), Doctors Care records also state that there is "0 ligamentous laxity." PT records are similarly silent as to any complaint of instability or giving way. I find the treatment records (a) inconsistent with Claimant's self-serving testimony and (b) consistent with Claimant's initial hearing testimony that he works "a lot" in his landscaping business, that he is able to hike, and that he is able to hunt (medical evidence in its entirety; Claimant's APA #17, page 119, Hearing Transcript, e.g., pages 25, 40, and 45; Defendants' APA #9, pages 66-67, Defendants' APA #4, pages 32-33)

30 For a person whose leg allegedly gives way or gives out without warning, Claimant inconsistently does not use any assistive device (e.g., Claimant's APA #17, page 118, Hearing Transcript, e.g., page 45)

31 To Defendants' vocational expert, Claimant reported that his ankle problems are (a) pain, (b) swelling, and (c) limited mobility. There is no complaint or mention of instability or giving

out of the ankle (Defendants' APA #10 in its entirety, including but not limited to page 69)

32. Even Claimant's own vocational expert states that Claimant ambulates with no observed problems and with no assistive devices (Claimant's APA #17, page 118)

33. For the 2012 leg injury in issue, the authorized treating physician assigned a 7% impairment rating, and recommends no future medicals. I considered the IME rating, but it is not without salient issues. (a) although the IME physician works in an orthopedic practice, the IME admits that he neither ordered nor reviewed any post-surgical films prior to rendering an opinion/assigning an 18% impairment rating; the IME rating is largely based upon Claimant's subjective complaints of instability, etc. The IME physician states that "due to lack of new x-rays, I am unable to evaluate for any post-traumatic ankle arthritis," but gives no reason why he (in an orthopedics practice) did not have Claimant's leg at least x-rayed, particularly given Claimant's significant complaints to the IME, (b) the IME physician *admits that Claimant's chronic pain complaints are "not well characterized;"* (c) even though Claimant told the IME that Claimant's ankle "gives out on him frequently," the IME by contrast documented *no instability;* (d) the IME states that Claimant's "hypersensitivity" complaint is not borne out by any diagnostic test, and (e) although Claimant admits that he continues to hike, the IME by contrast states that Claimant "cannot walk on uneven ground" and that Claimant is limited in his ability to walk on an incline, the IME must be unaware of Claimant's ongoing hiking and hunting activities (Defendants' APA #9, pages 66-67, Defendants' APA #1, page 12, Hearing Transcript, page 48)

34. If Claimant can hike, hunt, and throw baseballs, I believe that, notwithstanding any self-serving testimony to the contrary, Claimant is in fact performing physical labor for his landscaping business, and that he (according to his initial testimony) is in fact working "a lot."

35. Claimant takes no prescription medication for his ankle (evidence in its entirety, including

but not limited to Claimant's APA #17, page 119, Hearing Transcript, page 44)

36 I give greater weight to the authorized treating physician's restrictions of no running, cutting, pivoting, or unpredictable surfaces, as these restrictions are based upon treatment records. I do not give much weight to the restrictions (light) suggested by the IME, as the IME's restrictions are based upon Claimant's subjective statements and complaints which are in no way consistent with the treatment records. The IME (in an orthopedics practice) did not order a post-surgical x-ray prior to issuing an 18% impairment rating (Defendants' APA #1, page 12, Defendants' APA #9, pages 66-67)

37. As the authorized treating physician (Dr. Taylor) did not recommend any future medicals for the ankle, none are ordered herein (Defendants' APA #1, page 12)

38. PPD to right leg pursuant to Section 42-9-30(16) 10%. I find that a person who can hike and engage in all the other activities (including but not limited to landscaping work) in which Claimant engages has not sustained more than 10% loss of use to his leg.

39 Claimant was treated conservatively for his back and neck (medical evidence in its entirety).

40. In spite of his significant spinal pain complaints ("terrible" and "life changing," per Hearing Transcript, page 55), Claimant takes no prescription medication for either his neck or back (Hearing Transcript, pages 44-45 and 61-62, Defendants' APA #10, page 70, Claimant's APA #17, page 119; Claimant's APA #11, page 84—documenting "none" as far as medications are concerned, Defendants' APA #9, page 66)

41 As to the neck and low back, Dr. Mills states that Claimant has cervical and lumbar spondylosis, or disc degeneration/arthritis which became symptomatic (based upon pain complaints) from the accident (December 2012 Deposition of Dr. Mills, e.g., pages 12-14, 17, 19,

28-29, and 38)

42 Because of Claimant's significant spinal pain complaints, Dr. Mills, in both written records (date of last visit June 2012) and at Dr. Mills' August 2012 and December 2012 depositions, recommended surgery for both the cervical and lumbar spine based on complaints of significant pain that has allegedly persisted over a long period of time. However, Claimant has not seen Dr. Mills in more than 2 years as of the date of the hearing, and Dr. Mills' last deposition occurred almost 2 years prior to the date of hearing. During Dr. Mills' treatment period throughout 2012, Claimant repeatedly declined surgery. Further, Claimant told Defendants' vocational evaluator that "no further treatment has been recommended." This statement is not surprising given the fact that the most recent medical evidence (the ER visit) states that Claimant had no neck pain and only "mild" low back pain, by contrast, Claimant's pain complaints to Dr. Poletti led Dr. Poletti to recommend a rhizotomy and possible surgery (Claimant's APA #14, Defendants' APA #1, pages 3-8, December 2012 Deposition of Dr. Mills, e.g., pages 29-31, 38-39, and 42-43, August 2012 Deposition of Dr. Mills, e.g., pages 17, 20, and 22, Defendants' APA #10, page 72)

43 More recently (October 2013—more than one year after Claimant last saw Dr. Mills), Dr. Edwards views Claimant's cervical MRI as showing no significant compressive pathology. Claimant told Dr. Edwards that he is "not interested" in surgery (Claimant's APA #12, page 91)

44 As to the neck, I give the greatest weight to the findings of Dr. Edwards, who refers to Claimant's condition as a cervical protrusion without radiculopathy or myelopathy. he states that there is an "absence of focal neurologic deficit." Claimant told Dr. Edwards that Claimant "believes conservative efforts will be appropriate" (medical evidence in its entirety, including but not limited to Claimant's APA #12, page 91)

45 As to the lumbar spine, Dr. Edwards refers to Claimant's condition as disc degeneration (Claimant's APA #12, page 91)

46 Claimant reached maximum medical improvement on October 31, 2013. I do not agree that Claimant was still contemplating surgery after this date, as he has declined surgery from the outset, and told Dr. Edwards he is "not interested" in any aggressive treatment, but rather only conservative treatment (Claimant's APA #12, page 91)

47. By his own testimony, Claimant apparently does not abide by his restrictions, as I find instructive the specific question asked by his counsel on the issue: Claimant was asked whether he abides by his restrictions, but whether he is "trying to" abide, and if he does not abide, "what happens?" Claimant responded that if he does not abide by the restrictions, "I hurt [present tense] worse" (Claimant did not use words to the effect "if I did not abide, I would hurt worse" or "if I did not abide, I might injure myself." This leads the undersigned to conclude that Claimant continues to perform physical labor in his landscaping business, in addition to his job with Employer as a Trooper, Claimant worked 40-50 hours a week in his landscaping business prior to the date of the injury. The year after the date of the 2012 injury, Claimant's sales exceeded \$300,000 (e.g., Hearing Transcript, page 50, Claimant's APA #17, page 120).

48 I considered both vocational reports, but give greater weight to Defendants' vocational report as far as ultimate conclusions are concerned although Claimant attended 2 years of college, scored well on tests, is articulate, and runs his own very successful business, Claimant's vocational evaluator identifies only 3 potential jobs (lot attendant, gate guard, and security guard). Claimant's vocational report appears outcome-determinative rather than a credible analysis of Claimant's transferable skills. The conclusions of Defendants' report are well-reasoned and supported by other evidence as well (Defendants' APA #10 in its entirety, including but not limited to pages 70

and 75, Cf Claimant's APA #17, page 127)

49 In this case, Claimant has not met his burden of proof of establishing wage loss

- (a) Claimant attended two years of college,
- (b) Claimant has run his own successful business (including regular contract sales) for 18 years, including doing so while injured in 2012 and afterwards (even more profitably) in 2013 (Hearing Transcript, page 63),
- (c) Claimant's job with Employer paid \$40,000-\$42,000; Defendants' vocational evaluator has identified jobs which pay up to \$41,600, all of which are within Claimant's restrictions (Defendants' APA #10),
- (d) Claimant admits that he has not applied or even looked for any other jobs (Hearing Transcript, pages 63 and 70),
- (e) Claimant was informed of vocational rehab services (as stated three times in Defendants' vocational report), but Claimant provided no proof to the Commission that he has pursued such services (Defendants' APA #10, pages 72 and 76-77);
- (f) Claimant has transferable skills, but would not admit at the hearing to having the aptitude/ability to perform jobs which have been vocationally identified for him, the undersigned believes that Claimant is currently concentrating on his landscaping business for the reason that he is a self-described "somewhat of a hustler" who "works a lot" (Defendants' APA #10, page 72, Hearing Transcript, page 25)

50 I considered all the various impairment ratings assigned for the spine, but impairment ratings are not dispositive, and are in part based upon subjective complaints. I also fully considered Claimant's testimony that his low back "hurt so bad" ("to the point where I didn't care what

happened to me") that he went to an emergency room— the month prior to the date of the hearing. The clinic exam findings of ER personnel are instructive, and refute Claimant's testimony and his self-serving statements/complaints to workers' compensation providers. ER providers (a) examined Claimant's neck; Claimant's neck was negative for neck pain or other neck complaint; (b) found Claimant's lumbar spine range of motion to be normal; (c) found Claimant's back pain to be "very mild;" and (d) found Claimant's gait "normal." These records are inconsistent with Claimant's testimony at the hearing and with his subjective complaints documented in treatment records. Contrary to this ER report, Claimant testified at the hearing that he is never without neck pain. Of all the medical evidence relating to the spine, I give the clinical examination findings of ER personnel the greatest weight (Claimant's APA #11, including but not limited to pages 84-85, Hearing Transcript, pages 55-59).

51. Defendants may stop payment of temporary benefits

52. For a spinal condition treated conservatively, where Claimant takes no medication for allegedly "life changing" and "terrible" pain, where Claimant has declined surgery in spite of this allegedly severe and constant pain, where Claimant tells a non-workers' compensation provider that he has no neck pain and only "mild" low back pain, and where Claimant's gross receipts for his landscaping business were more than \$300,000 for the year after his 2012 injury, I cannot and do not rely on Claimant's subjective statements or testimony regarding his residual condition. Swearing an oath to tell the truth at the hearing meant nothing to Claimant, for after requesting benefits from Commissioner Roche in 2013 for his neck condition from the 2010 accident (including but not limited to surgery), Claimant would not admit--at the 2014 hearing before the undersigned--to injuring his neck or experiencing neck pain from the 2010 accident. If that is not enough, Claimant brought or sent his 2010 cervical MRI to Dr. Poletti for their discussion, and

obtained a prior cervical impairment rating from Dr. Sarb (Order of Commissioner Roche in its entirety, Hearing Transcript, e.g., pages 66 and 68, Claimant's APA #13, pages 95-96)

53 Claimant is not permanently and totally disabled. Although Claimant did in fact qualify for state disability retirement (the standard for such being whether Claimant can return to his particular state job), workers' compensation utilizes a different standard. However, I do note that Claimant's approval for state disability was contingent upon a reevaluation in 2015 (Hearing Transcript, page 20, Claimant's APA, Exhibit B).

54 Considering Claimant told the last provider (at the Emergency Room) that he had "no" neck pain (and this is significant since Claimant takes no pain medication, and Claimant inconsistently testified that he is never without neck pain) and only "mild" lumbar pain, I find that there is no additional permanent partial disability beyond the 25% to the spine already paid to Claimant. Awards cannot be based upon speculation or surmise, and I decline to speculate. Impairment ratings are not dispositive in any case, and I find other evidence more persuasive. 0% additional permanent partial disability to the spine, based upon the recent ER findings of no neck pain and "mild" lumbar pain, such that there is no additional disability beyond the previous 25% settlement for the spine (\$38,151.75).

55 Defendants to receive credit for overpayment of temporary benefits paid beyond October 31, 2013.

56. As to future medicals for the spine, I give the greatest weight to the statements/opinions of Dr. Edwards, who examined Claimant much more recently than did Dr. Mills. (a) in fact, as of the date of the hearing, Claimant had not seen Dr. Mills in more than 2 years, (b) Claimant told Dr. Edwards in 2013 that "he is not interested in considering any aggressive treatment" for the neck, Dr. Edwards did not push surgery, because there is an "absence of focal neurologic deficit."

evidence to which I accord great weight; (c) there is no objective evidence that Claimant has any lower extremity radiculopathy (his straight leg raise is negative) other than his subjective complaints, (d) Claimant told Defendants' vocational expert (the month prior to the date of the hearing) that no further treatment has been recommended, and (e) Dr. Poletti is wholly inconsistent to the point that I cannot and do not give his opinions any weight. For example, Claimant told Dr. Poletti in 2012 (prior to the Roche hearing) that Claimant has "remained with neck pain" since the 2010 injury—subjective information that Dr. Poletti could have only obtained from Claimant; however, in a 180-degree turn in 2014 (after the Roche Order—denying Claimant's change of condition—was served), Dr. Poletti inconsistently in 2014 "parrots" Claimant's statement to him that Claimant "did not have these neck symptoms and low back symptoms prior to the [accident in issue]." This discrepancy calls into question any conclusion of Dr. Poletti. Second, Dr. Poletti is equivocal as to future surgery. He states in 2012 Claimant could "potentially" (repeatedly the word used) be a surgical candidate. In 2014, when Dr. Poletti makes the point of stating that none of Claimant's cervical or lumbar problems existed prior to the accident in issue, Dr. Poletti states that Claimant "most likely" will require cervical fusion surgery and low back disc surgery which could "potentially" lessen Claimant's disability. Dr. Poletti then inconsistently states that Claimant "may" require surgeries in the future [emphasis added]. The "may" is consistent with Dr. Edwards' pronouncement on the issue (Claimant's APA #13 in its entirety, Defendants' APA #10, page 72; Claimant's APA #12, page 91, Defendants' APA #9, page 67, Claimant's APA #11, page 84; Defendants' APA #1, pages 3 and 5-6; December 2012 Deposition of Dr. Mills, pages 29-31 and 37-39, August 2012 Deposition of Dr. Mills, pages 17, 20, and 22).

57. I considered the recommendation of Dr. Mills (who recommended fusion surgeries based

upon Claimant's subjective pain complaints), but Claimant has not seen Dr. Mills in 2 years. Dr. Poletti is inconsistent and equivocal, and Dr. Edwards' conclusions are consistent and sound, particularly given Claimant's most recent clinical exam at the ER.

58 I give the greatest weight to the opinion of Dr. Edwards. Dr. Edwards does not recommend surgery, but recommends treatment if Claimant's condition *deteriorates in the future*. Dr. Edwards states that Claimant's condition should be observed "over the course of a couple of years." I therefore find that Claimant would be entitled to surgery for his neck and/or low back based upon a change of condition for the worse, as Dr. Edwards does not state Claimant needs surgery now, that Claimant probably needs it now, or that Claimant even probably needs it in the future (Claimant's APA #12).

59 Dr. Mills ties the need for surgery to "symptoms enough" to warrant surgery. Given the "mild" lumbar spine complaints and nonexistent neck complaints at the last medical visit in evidence (particularly when considering the fact that Claimant takes no pain medication), I find Dr. Edwards' opinion to be the most cogent (Claimant's APA #12; 2012 Deposition of Dr. Mills, e.g., page 22).

60 Dr. Poletti recommended/suggested a rhizotomy, but Claimant never followed up for this procedure either. This, in addition to the fact that Claimant takes no pain medication, is further evidence that Claimant's condition is most accurately as he described it to providers at the ER the month prior to the date of the hearing (Claimant's APA #1, Claimant's APA #13).

61 Claimant is entitled to receive recommended physical therapy and injections (Claimant's APA #12, pages 91-92).

62 What deductions Claimant takes on his income tax returns are of no concern to the undersigned. I fully considered the fact that Claimant's tax return shows that Claimant had

business income of \$688 in 2013 (gross receipts \$334,906), and \$716 in 2012 (gross receipts \$243,658). However, \$700 in income would not allow Claimant (as he testified) "nicer things," would not have allowed Claimant's wife to stay home, (even Claimant admitted in testimony that he is "not really" living off of \$688), and would not explain Claimant's testimony that he has "no choice" but to continue a business at which he only "realizes" in income \$600-\$700/year. Regardless of accounting methodology, the point is that Claimant's business continues to be lucrative—particularly the year after the year of his accident in issue. It also shows that Claimant has abilities of which he is hesitant to admit. However, Claimant's tax returns and deductions are of no import otherwise (Hearing Transcript, e.g., pages 23-24, 26, and 29-30).

63. Because Claimant's wife works full time as a school teacher (except for summers) and has 3 children, I do not believe Claimant's later testimony/statements to providers that she does most of the work, and that he only helps out "from time to time" in the landscaping business. Claimant's wife did not testify at the hearing, so Claimant's testimony in this regard is strictly self-serving (Hearing Transcript; Claimant's APA #17, pages 119-120).

64. The March 11, 2012 record from the Emergency Room visit on the date of the accident, (stating that Claimant has undergone prior back surgery—Defendants' APA #3, pages 17, 22-23, and 29) is an error, according to Claimant's counsel, which statement I accept from an officer of the court. Claimant's counsel also advised the undersigned that the reference to prior back surgery in Claimant's APA #11, page 84, is an error as well.

65 I do not find credible or even plausible Claimant's stated "reason" at the hearing for not claiming his landscaping income as dual employment to boost his compensation rate. It seemed "canned" and strained when Claimant was asked why he felt so "passionately" about not

"burdening" the Highway Patrol with this income to increase his comp rate. I found this colloquy quite puzzling (initially), considering Claimant's claimed net business income for his landscaping business was just \$688-\$716 per year for 2012 and 2013. However, after reviewing the tax returns (which Defendants subpoenaed, including the gross receipts and deductions), I can understand why Claimant would rather have avoided calling attention to a successful business if he had plans to claim that he is permanently and totally disabled. Alternatively, Claimant may have chosen to keep private (from Employer and/or co-workers) his lucrative business enterprise. Regardless of the reason, Claimant's business success shows Claimant's marked capabilities (both mental and physical), and shows an increase in gross receipts of almost \$100,000 the year after the date of the injury. I have no concrete idea as to whether Claimant is performing most of the work himself (as he "works a lot" and is "somewhat of a hustler," I would assume he is working) or whether in fact he has employees, but I cannot trust his testimony. I do note that in 2013, the business paid \$1,195 for "outside services and subcontractors" (Hearing Transcript, page 25, lines 10-11; Tax returns).

66 The undersigned did not request, seek, or obtain the prior workers' compensation file relating to the 2010 claim. However, when Defendants sought to introduce the prior (2010) cervical rating at the hearing before the undersigned, Claimant's counsel replied, ". I don't object to that. Yeah, it can come in, because I think all of that should be in the file" (Hearing Transcript, page 67).

67 Claimant's average weekly wage is \$709.95, yielding a compensation rate of \$473.32 (established by previous Order of the Commission—Order of Commissioner Roche, dated May 2013).

VI CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann (1976), as amended, it is the

determination of this Commission that

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act
2. Under § 42-1-160, Claimant sustained an injury to his right lower extremity, lumbar spine, and cervical spine by accident arising out of and in the course and scope of his employment on March 10, 2012
3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from March 12, 2012 until October 31, 2013, the date on which Claimant reached maximum medical improvement.
4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until October 31, 2013, the date on which Claimant reached maximum medical improvement.
5. Under § 42-15-60, Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574 (Ct App 1999), and other applicable law, Claimant is entitled to receive causally-related physical therapy and injections for the cervical spine described in APA # 12 pages 91-92
6. Under § 42-9-30(16), Claimant has sustained 10% permanent partial disability to the right lower extremity. Under § 42-9-30(21), Claimant has sustained 0% additional permanent partial disability to his back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since October 31, 2013 to be taken from the permanency awarded herein.
7. Defendants may stop payment of temporary benefits under S C Reg 67-506(B) and other applicable law
8. Claimant is not permanently and totally disabled under §42-9-10 or §42-9-30(21)

9 Under §42-9-20 and other applicable law, Claimant has not met his burden of proof of establishing wage loss

VII. ORDER/AWARD

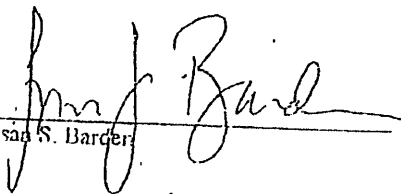
IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective October 31, 2013, the date on which Claimant reached maximum medical improvement

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on March 10, 2012, he has sustained 10% permanent partial disability to the right lower extremity, for which he is entitled to 19 weeks of compensation, at the compensation rate of \$473.32 per week. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation paid after October 31, 2013. Claimant is entitled to 0% permanent impairment to his spine for the 2012 accident in issue.

IT IS FURTHER ORDERED Claimant reached maximum medical improvement on October 31, 2013, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, save the medical treatment aforementioned in paragraph 61 of the Finding of Fact and paragraph 5 of the Conclusions of Law.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.


Susan S. Barden

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Scott Ledford v Department of Public Safety
SCWCC: 1202545
Commissioner: Barden

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on the Motion to Stay Decision and Order. 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 _____ Denied. _____ Dismissed _____ Set for Hearing

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

_____ Beck

_____ James

_____ Campbell

_____ McCaskill

_____ Taylor

_____ Wilkerson

_____ 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.

Columbia, South Carolina

12/16 2014

T. Scott Beck, Chair

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Alsha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

By Kim Falls on December 16, 2014

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Scott Ledford v Department of Public Safety.

SCWCC: 1202545

Commissioner: Barden

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. ☐ Denied. ☐ Dismissed ☐ Set for Hearing.

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

☐ James

☐ Taylor

☐ Beck

☐ Campbell

☐ Wilkerson

☐ McCaskill

☐ Remand for Order consistent with the Order of the Court

☐ Remand to the Hearing Commissioner.

☐ Remand to the Jurisdictional Commissioner.

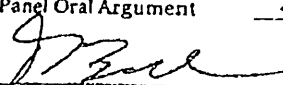
☐ Other: _____

☐ Remand.

☐ Panel Oral Argument

☐ En Banc Oral Argument

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

12/15 2014

CONCURRING:

Commissioner Susan S. Barden

Commissioner Melody James

Commissioner Aisha Taylor

Commissioner Avery Wilkerson

Commissioner Michael Campbell

Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

By Kim Falls on December 16, 2014

ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
THE HONORABLE SUSAN S BARDEN, COMMISSIONER

SCWCC FILE NO 1202545

SCOTT LEDFORD,

Claimant,

v

SC DEPARTMENT OF PUBLIC SAFETY,

Employer, and

SC STATE ACCIDENT FUND,

Carrier

On Motion of the Claimant

Susan S Barden, Commissioner

Filed. November 3, 2014

STATEMENT OF THE CASE

This matter comes before the undersigned pursuant to Claimant's "Motion to Rescuse (sic) Commissioner Barden and to Reassign Case to Another Commissioner" filed on October 10th, 2014.¹ The undersigned previously conducted a Hearing on the merits of the issues raised by the parties on Forms 50/51 on August 15th, 2014, relating to Claimant's 2012 claim assigned to the undersigned as jurisdictional commissioner. Following the Hearing, the undersigned reviewed the records in the 2012 claim file as well as records and other evidence submitted by the parties during the pre-hearing conference. One of these documents was the unappealed Decision and Order of Commissioner Andrea C. Roche, dated May 1st, 2013. Another document provided to the undersigned at the hearing was a Form 16A, documenting Claimant's 2011 settlement of his prior 2010 accident. As Defendants requested credit for the prior (2011) settlement amount/impairment rating, the credit issue was squarely before the undersigned, and by necessity required adjudication.

Based upon my post-hearing review of the evidence, the undersigned conducted a telephone conference with the parties' attorneys to notify them of my tentative findings and to discuss some of the inconsistencies in Claimant's testimony. During that

¹ On October 10th, 2014, Claimant submitted a first version of the Motion. Following receipt of the Motion by the Commission's Judicial Department and prior to referral to the undersigned's office for consideration, Counsel for Defendants objected to the Motion on the grounds that it improperly referenced amounts discussed during settlement negotiations. Following a telephone conference between the attorneys for Claimant and Defendant, the Commission's Judicial Director, and the Commission's General Counsel, Claimant agreed to submit an amended version of the Motion with the objectionable material removed. Shortly thereafter, Claimant resubmitted an amended version of the Motion. However, the Commission's General Counsel reviewed the amended Motion and discovered it still contained information that might be improper for the Commissioner to consider. Specifically the Motion on page 2 and its attachment on page 3 at # 9 stated the exact dollar amount which Claimant believed his claim to be worth. After discussing the potential issue with the undersigned, but without disclosing to the undersigned the dollar amount, General Counsel redacted the dollar amounts and instructed the Judicial Department to forward the redacted copy of the Motion to the undersigned for processing. The undersigned has not reviewed the original version of the Motion or the unredacted second version of the Motion, and neither will be included in the Commission's file or considered in this matter. Only the redacted copy of the second version of the Motion will be reviewed by the Commission and preserved as part of the Commission's records.

telephone conference, the undersigned reminded the parties of their right to enter into a settlement agreement under § 42-9-390, which would make unnecessary the promulgation of a written decision on the merits. During the telephone conversation, the undersigned complimented Claimant's counsel on his representation of his client at the hearing, and assured Claimant's counsel that the undersigned's findings were in no way a reflection upon him or his abilities. Claimant's counsel thanked the undersigned for the compliment and for the opportunity to attempt settlement prior to the issuance of the findings as discussed during the conference.

Claimant asserts that during the telephone conference, the undersigned (a) "threatened" Claimant with criminal charges unless he settled his case, (b) went outside the record to make findings from "undisclosed materials," (c) assigned weight to the evidence submitted from Claimant's accountant without hearing the accountant's testimony, and (d) concluded that Claimant lied during his testimony. For these reasons, Claimant moves the undersigned to disqualify herself from considering the matter on its merits, and to reassign the case to another Commissioner for a Hearing *de novo*.

FINDINGS OF FACT AND RULINGS OF LAW

1. Commissioners are bound by the Code of Judicial Conduct, Rule 501 SCACR S C Code Ann § 42-3-250 (1976, as amended).
2. "[T]he purpose of the Code [of Judicial Conduct] would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding." Preamble, CJC, Rule 501 SCACR.
3. The Code of Judicial Conduct requires that a Commissioner "shall disqualify himself or herself in a proceeding in which the [Commissioner's] impartiality might *reasonably* be questioned." Canon 3(E) CJC, Rule 501 SCACR. (Emphasis added)
4. The Code of Judicial Conduct also requires that a Commissioner "shall hear and decide matters assigned to the [Commissioner] except those in which disqualification is required" *Id* at Canon 3(B)(1)

- 5 "In applying Canon 3.(F)(1), the South Carolina Supreme Court has stated that the movant or petitioner must show some evidence of the bias or prejudice of the judge" *Lyvers v Lyvers*, 280 S C 361, 367, 312 S E 2d 590, 594 (Ct App 1984)
- 6 "Allegations of facts that are merely frivolous or fanciful will not support a motion to disqualify on the ground of prejudice, nor will conclusory statements, conjecture, or innuendo be sufficient to support a motion for disqualification" 46 Am Jur 2d *Judges* § 208 (1994)
- 7 "When disqualification is not required, the South Carolina Code of Judicial Conduct holds, "A judge *shall* hear and decide matters assigned to the judge " Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR (emphasis added)" *Simpson v Simpson*, 377 S C 519, 660 S E 2d 274 (Ct App. 2008) See *Adair v State*, 474 Mich 1027, 709 NW 2d 567, 579 (2006) ("[W]here the standards governing disqualification have not been met, disqualification is not optional, rather, it is prohibited, *Millen v Eighth Judicial Dist. ex rel. County of Clark*, 148 P 3d 694, 700 (Nev 2006) ("Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification"), *Tennant v Marion Health Care Found., Inc*, 194 W Va 97, 459 S E 2d 374, 385 (1995) ("Also important, however, is the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal ")
- 8 It is not proper for the undersigned to grant Claimant's motion and disqualify herself in this case. In order for the undersigned to disqualify herself, Claimant's allegations must be supported by evidence of an actual improper prejudice or bias. Otherwise, the undersigned has a duty to issue her decision on the merits. As to bias or prejudice, prior to the date of the hearing, the undersigned commissioner had never met or even heard of Claimant, the undersigned is also unacquainted with Claimant's family or with any business interest(s) he may hold. The undersigned has no interest of any description in the value of any settlement offered to this or any other claimant.
- 9 Claimant alleges four grounds, which he asserts that any one alone would be sufficient to show an improper prejudice or bias on behalf of the undersigned and therefore require disqualification. Each allegation is addressed in turn.

- 10 First, Claimant alleges that the undersigned must disqualify herself on the ground that she "threaten[ed] criminal proceedings unless the case settles." This is a false statement of fact and a frivolous allegation. The undersigned made no such proclamation, either expressly or impliedly. Counsel for Claimant has made such statement with the knowledge that it is false, or, at best, a reckless disregard for its truth or falsity. The undersigned will not consider a frivolous and materially false statement as reasonable grounds for disqualification.
11. Commissioners have a statutorily-imposed duty to report "suspected" false statements or misrepresentations by a Claimant to the Office of the Attorney General. "The commission shall report all cases of suspected false statement or misrepresentation . . . to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution." S.C. Code Ann. § 42-9-440.
- 12 "'False statement or misrepresentation' means a statement or representation made by a person that is false, material, made with the person's knowledge of the falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic benefit." S.C. Code Ann. § 38-55-530(D).
- 13 Section 42-9-440 strictly requires the Commission to report "suspicions" of false statements and misrepresentations to the Office of the Attorney General. It is the duty of the Office of the Attorney General--not the Commission--to investigate the allegations. It is the duty of the Office of the Attorney General--not the Commission--to decide what action should be taken, if any, following the investigation. Claimant's allegation--that the undersigned's reciting a duty under (and interpretation of) this statutory provision of the Workers' Compensation Act equates to the undersigned's having "threatened criminal proceedings"--is fanciful and frivolous.
14. Use of the word "shall" in § 42-9-440 indicates that the duty is not discretionary, if a commissioner suspects false statements or misrepresentation by a Claimant, she must report the matter to the Office of the Attorney General. The undersigned did not manifest bias or prejudice against Claimant, but simply informed the parties of the inconsistencies in Claimant's testimony *vis a vis* other evidence and

of duties the law required of her for pending claims, regarding the findings she had reached after consideration of the evidence. These are not proper grounds for disqualification.

- 15 Second, Claimant asserts the undersigned should disqualify herself for "going outside the record to make findings from undisclosed materials."
- 16 "In contested cases, notice may be taken of judicially cognizable facts." S.C. Code Ann. § 1-23-330(4) (1976, as amended). "Parties shall be notified either before or during the hearing or otherwise of the material noticed, and they shall be afforded an opportunity to contest the material so noticed." *Id.*
- 17 "Notice may be taken of judicially cognizable facts in administrative cases." *Wise v. Wise*, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011). "A court can take judicial notice of its own records, files, and proceedings for all proper purposes including facts established in its records." *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984).
- 18 The undersigned reviewed and took judicial notice of the prior Decision and Order of Commissioner Roche issued in the same (2012) workers' compensation claim brought by the same claimant against the same employer; this decision was either provided to the undersigned by one of the parties during the pre-hearing conference or was contained in the 2012 file when it was assigned to the undersigned prior to the hearing. My review of the prior Order was not only permissible under the precedents set by *Wise* and *Freeman*, and § 1-23-330(4), but also required because of the contested credit issue. Furthermore, the undersigned arranged and conducted a conference call with counsel to discuss the contents of Commissioner Roche's Order *vis a vis* Claimant's testimony at the hearing before the undersigned. At the hearing—and even prior to the hearing—both parties had a copy of the Roche Order.
- 19 At the Hearing on the merits, Defendants requested credit for the prior settlement. Therefore, it was necessary for the undersigned to consult and consider both the prior Decision and Order of Commissioner Roche and the Commission's file in order to address this issue. Although the undersigned could have obtained the file pertaining to the 2010 injury (in order to adjudicate the credit issue), I never requested nor received nor consulted the 2010 file (as can be verified by the

Commission's tracking system), Commissioner Roche's Order made review of the 2010 file unnecessary. No other evidence (except as described herein, i.e., that which was provided to the undersigned by the parties at the hearing) outside the Commission's 2012 file was reviewed or considered by the undersigned. Claimant has presented no evidence that the undersigned conducted her own "investigation." Any allegations that the undersigned conducted some sort of "investigation" are frivolous and false. If reviewing the evidence submitted to me at a hearing qualifies as an investigation, I am unfamiliar with such a meaning or interpretation. Claimant's allegation is unfounded and false.

20 Since the undersigned considered (a) only the 2012 file assigned to me as prepared by the Judicial Department, and (b) the evidence supplied to me by the parties at the hearing, the undersigned has not engaged in any wrongdoing or inappropriate "investigation" of "undisclosed materials." Therefore, there are not reasonable grounds for disqualification or recusal.

21. Third, Claimant asserts that the undersigned should disqualify herself on the grounds that she "derid[ed] 'creative accounting' without hearing from an accountant."

22. At the Hearing on the merits, Defendants submitted Claimant's tax returns prepared by Claimant's accountant. Claimant did not offer the accountant's testimony when Defendants questioned Claimant about deductions, etc. During the telephone conference, the undersigned emphasized that she was unconcerned with any (alleged) "creative accounting" or accounting methodology, as Claimant's tax returns have nothing to do with the credit issue. The tax returns are relevant to other issues as set forth in the Order adjudicating the merits of the claim.

23 "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission" *Muir v. C.R. Baird, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999). It is wholly within the purview of the single Commissioner to make findings regarding the weight to be assigned to a particular piece of evidence, and to draw conclusions based on such evidence. If a party disagrees with a conclusion the single Commissioner draws from a particular piece of evidence, the law provides that party a remedy pursuant to §

42-17-50 Disagreement with the single Commissioner regarding the conclusion she draws from the evidence does not constitute a manifestation of unreasonable bias or prejudice on the part of the Commissioner and are not grounds for disqualification

24 Furthermore, in addition to being hearsay, the affidavit of Robert Jayroe offered as an attachment to Claimant's motion was not properly submitted in accordance with R 67-707

25 Finally, Claimant asserts that the undersigned must disqualify herself because she 'jump[ed] to conclude that Lortford lied by offering testimony that is fully consistent with the medical records "

26 As the quote from *Muir, supra*, demonstrates, it is the duty of the hearing Commissioner to weigh the evidence and make findings regarding credibility. If a party disagrees with a conclusion of the single Commissioner regarding credibility of a witness or other findings of fact, the law provides that party a remedy pursuant to § 42-17-50. Disagreements with the single Commissioner regarding findings of fact do not constitute a manifestation of unreasonable bias or prejudice of the Commissioner and are not grounds for disqualification.

27 During the conference call on September 16th, 2014, the undersigned verbally informed the parties of her decision on the merits in anticipation of finalizing her written decision. Claimant did not make his allegations against the undersigned and request disqualification until October 10th, 2014, a full twenty-four days after the conference call during which the alleged judicial misconduct occurred and the parties were informed of how the undersigned had ruled on certain issues such as credibility. A party may not use a request for disqualification under the Code of Judicial conduct to obtain a *de novo* hearing before a new Commissioner after the Commissioner has already reached her decision, but before the written Decision and Order has been perfected. See Preamble, CJC, Rule 501 SCACR (" [T]he purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding"), *Mallett v Mallett*, 323 S C 141, 146, 473 S E 2d 804, 808 (Cl App 1996) ("A motion to recuse may not be predicated on the judge's ruling in the case before him"), *Payne v Holiday Towers, Inc.*, 283 S C 210, 321 S E 2d 179 (Cl App 1984) ("When no evidence is presented

other than claimed "adverse" rulings by the judge, the judge is not required to recuse himself"), *Butler v. Sea Pines Plantation Company*, 282 S.C. 113, 317 S.E.2d 464 (Ct App 1984) ("Adverse rulings, even if erroneous, are insufficient to establish a trial judge's bias or prejudice.").

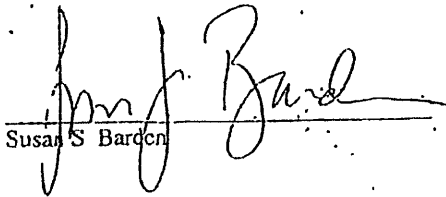
28. As to Claimant's contention or suggestion that the undersigned has, for reasons not expressed in the motion, an interest in State Accident Fund settlements, the undersigned would point out that neither she nor any family member has ever been employed by the Fund. Nor does the undersigned have any personal relationship with any employee of the Fund. Claimant's suggestion, like his other "grounds," is baseless.

29. Claimant made no motion for recusal prior to the hearing, or even after the hearing, until he was dissatisfied with Defendants' settlement offer, and decided he instead would attempt to obtain a new hearing with a different commissioner, (which would have the effect of enabling his client to "qualify" and "explain" his testimony at the hearing before the undersigned). Under the Judicial Canons, the undersigned cannot allow Claimant to utilize a recusal mechanism to change the outcome of his case (*i.e.*, to obtain a "second bite at the apple") solely because he is dissatisfied. His remedy is to appeal.

ORDER

IT IS, THEREFORE, ORDERED that Claimant's Motion is DENIED and DISMISSED WITH PREJUDICE. A written Decision and Order on the issues raised at the Hearing on August 15th, 2014 shall be forthcoming from the undersigned. Neither the contents of Claimant's Motion, nor the undersigned's consideration of the issues raised in Claimant's Motion, shall play any role in the undersigned's decision on the merits of this claim.

IT IS SO ORDERED.


Susan S. Barden

CERTIFICATE OF SERVICE

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

November 3, 2014

By: Krish Love, Administrative Assistant to
Commissioner Barden

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. H009581/1202545

Scott Ledford,

Claimant,
vs.

Dept. of Public Safety,

Employer,

State Accident Fund,

Carrier,
Defendants

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 mail addressed to any unrepresented party

By Elaine Boyd on October 8, 2012

A Motion regarding the following issue(s) has been received.

- ☒ Motion to Consolidate
- ☐ Appointment of guardian Ad Litem
- ☐ Attorney's appearance before the Commission
- ☐ Withdrawal of Representation
- ☐ Attorney's Fee
- ☐ Claim Pending Commission Review
- ☐ Postpone
- ☐ Adjourned the Scheduled Hearing
- ☐ Self Insurance Privileges
- ☐ Penalties and Interest
- ☐ Third Party Practice
- ☐ Other:

The following disposition has been made: ☒ Granted ☐ Denied

☐ Set for Hearing

☐ Have Attorneys brief the Issue

Reasons: The Motion to Consolidate is granted. The cases are to be heard back to back before a single Commissioner. WCC 1009581/1202545 to be returned to the Industrial Department to await the Form 51.

Commissioner

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NOS. 1009581 & 1202545

Scott Ledford,
Employee,
Claimant,
vs.
South Carolina Department of Public
Safety
Employer,
and
State Accident Fund Carrier,
Defendants.

DECISION AND ORDER

HEARING

Held in Myrtle Beach, South Carolina on January 15, 2013

APPEARANCES

Claimant represented by E. Hood Temple, Esquire, of Florence,
South Carolina;

Employer/Carrier, represented by Samuel T. Brunson, Esquire, of
Florence, South Carolina on 2010 Claim;

Employer/Carrier, represented by Sarah S. Alphin, Esquire, of
Columbia, South Carolina on 2012 Claim.

PURPOSE OF THE HEARING. To determine the issues set forth on Forms 50 and 51

DECISION AND ORDER

By Andrea C. Roche, Commissioner

FILED

May 1, 2013 (Re served)
(Parties did not receive Order served on April 3, 2013)

STATEMENT OF THE CASE

This case was heard by the undersigned Commissioner on January 15, 2013, in Myrtle Beach, South Carolina. Notices were timely and properly served upon all parties of interest at which time the parties and/or their representative appeared in evidence on the Claims were submitted. Without objection, the Workers' Compensation Commission files were made part of the record.

This matter arises out of two admitted accidents involving the Claimant Scott Ledford, a Highway Patrolman employed with the South Carolina Department of Public Safety. The first accident occurred on July 15, 2010 in Florence County, South Carolina. At that time the Claimant was going through Taser training. As part of that training, he was tased causing his back to spasm resulting in compression fractures in his thoracic spine. The Defendants admitted that the Claimant had suffered a compensable injury by accident and provided medical care and temporary total benefits. The Claimant was out of work from July 26, 2010 through January 27, 2011. At that time, he returned to work full-time, full duty.

The matter was scheduled to be heard by Commissioner Derrick L. Williams on July 11, 2011 to determine the Claimant's extent of permanent partial disability. The matter was postponed at that time in order to allow the Claimant to gather additional information regarding an alleged cervical spine injury. The case was reset before Commissioner Williams for August 29, 2011 but prior to the matter going forward, the case was settled on a Form 16-A. According to that Form which was approved by Commissioner Bryan Lyndon on September 29, 2011, the parties agreed that the Claimant had suffered a twenty-five (25%) percent loss of use to his spine and compensation for that loss was paid shortly thereafter.

The Claimants' second injury occurred on March 10, 2012. On that date the Claimant, while riding a Highway Patrol motorcycle, attempted to turn around to pursue a vehicle when he lost control of his motorcycle and suffered admitted injuries to his right leg. On April 10, 2012, the Claimant filed a Form 50 in relation to his 2012 accident alleging injuries to his right leg and low back. The Defendants' responded with a Form 51 shortly thereafter admitting that the Claimant had suffered an injury to his right leg but denying other injuries. The matter was set for a hearing in July 2012, but was eventually postponed with the consent of the parties.

On June 8, 2012 the Claimant filed a form 50 in relation to his 2010 claim. In that Form 50, the Claimant alleged injuries to his spine and his right leg. The Claimant further alleged that he has suffered a change of condition for the worse since settling his case on a Form 16. The Defendants' filed a Form 51 in response denying that the Claimant had suffered a change of conditions for the worse related to his original 2010 injury.

A hearing in the 2010 Change of Condition claim was set for August 29, 2012 before Commissioner Avery Wilkerson. The matter was postponed at that time due to a court conflict with the Claimant's Attorney. The case was reset for September 12, 2012. On September 5, 2012, the Claimant, by and through his Attorney, filed a motion to consolidate the above Claims. Because that motion was filed, the September 12, 2012 hearing was postponed. A motion hearing was held before Commissioner Wilkerson on October 3, 2012 in Florence. Following that hearing, Commissioner Wilkerson issued a Form Order consolidating the two Claims and requesting that they be reset before the next Jurisdictional Commissioner.

As stated above, this matter arises out of two admitted Workers' Compensation Claims. The first occurred on July 10, 2012 when the Claimant was involved in the Taser accident. The

Claimant alleges that he has suffered a change of conditions for the worse as a result of that accident and now is in need of surgery to his cervical spine and lumbar spine as a result of that original accident. The Defendants' deny that Claimant suffered injuries to his lumbar spine and cervical spine in his 2010 accident and deny that he has suffered a change of condition for the worse since the Form 16-A was approved.

The Claimants second and most recent accident occurred on March 10, 2012 when the Claimant was involved in a motorcycle accident. In his Form 50, the Claimant alleged injuries to his right leg and lower back. At the call of the case, a Motion was made by the Claimant to amend his Form 50 to include the Claimants cervical spine as well. That amendment is granted. The parties to this matter have been dealing with these Claims for a number of months and the Claimant's alleged injuries to his cervical spine have been part of this Claim throughout. The Defendants, in regards to the Claimants second Claim admit that the Claimant only suffered an injury to his right leg.

II. APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the parties offered into evidence the following documents:

- APA #1: Medical reports of Dr. Steven Poletti dated 5/7/12-7/18/12, numbered pages 1-7;
- APA #2: Medical reports of Dr. William Mills dated 7/27/2010-6/4/2012, numbered pages 8-29;
- APA #3: Medical reports of Dr. Barbara Sarb dated 7/28/2010-8/26/2011 numbered pages 30-51;
- APA #4: Medical reports of Dr. Ross Taylor dated 6/16/2012-11/15/2012 numbered pages 52-61;

APA #5. Reports of Doctor's care dated 3/16/2012-4/6/2012 numbered pages 62-69;

APA #6 Medical reports from Conway Hospital dated 3/10/2012 numbered pages 70-80,

APA #7 Report from Horry County Fire Rescue dated 3/10/2012 numbered pages 81-82;

APA #8 Report of Dr. Richard Holgate dated 5/16/2012 numbered page 83.

APA #9 Functional Capacity Act of Therapy dated 1/25/2011 numbered pages 84-95,

APA #10 Cervical MRI of Inmed Diagnostics Services dated 9/9/2010 numbered page 96,

APA #11 Report of select physical therapy dated 11/30/2010 numbered pages 97-102;

APA #12 Medical report of Dr. William Mills dated 1/27/2011 numbered page 103.

III. EVIDENCE OF THE CASE

The Claimant, Scott Ledford, was the only witness to testify at the hearing. Mr. Ledford at the time of the hearing was thirty-seven (37) years of age. He testified that he is a High School Graduate. The Claimant has three children and is married to Kerry Ledford. The two have been married for fourteen years.

The Claimant testified that he has been in Law Enforcement for Seventeen years. He began employment with the South Carolina Highway Patrol in July of 2005. The Claimant medically retired from the Highway Patrol in September of 2012. At that time, he had been unable to work for One Hundred Eighty (180) days due to his ankle injury and rather than he terminated, he chose medical retirement. At the time of the hearing the Claimant had not been released to return to work as a result of his admitted ankle injury. Surgery was scheduled for January 30, 2013.

Mr. Ledford testified that he was involved in three accidents while working with the South Carolina Highway Patrol. One occurred in May of 2011 and no claim has been filed for that accident.

Mr. Ledford testified that his first filed accident occurred on January 15, 2010. At that time, he was undergoing Taser training in Florence. He had come back from his vacation to attend that training.

Mr. Ledford testified that his second accident occurred on March 10, 2010. He was involved in a motorcycle accident at that time. His right leg was pinned under his motorcycle. Mr. Ledford testified that he was going between 25 and 50 miles per hour when the accident occurred. Damage was caused to the motorcycle. He attempted to stand up following the accident and realized his ankle had been injured. He was taken from the accident scene by ambulance to Conway Hospital. He stated he complained of problems with his knee, ankle and back at that time.

Mr. Ledford testified he was treated by Doctors' Care following his motorcycle accident but was eventually returned to Coastal Orthopedics where he has treated with Dr. Ross Taylor for his ankle injury and Dr. William Mills for his back and neck problems. Surgery has been recommended by Dr. Mills and Dr. Taylor and he is willing to undergo that surgery. He complains of pain in his right ankle and pain in his neck which radiates into arms and low back pain which radiates into his right thigh and leg.

In response to questioning from Attorney Brunson, Mr. Ledford testified that he was released from Dr. Mills' care following his 2010 accident on January 27, 2011 and returned to

work full time, full duty at that time. He further stated he did not return to Dr. Mills during the next 15 months. The only doctor he saw during that time was Dr. Sarb who he only saw on one occasion. Mr. Ledford confirmed that his neck problems had resolved at that time and that her report showed no complaints of radicular symptoms either with the arms or legs. Mr. Ledford stated that his neck and back began bothering him shortly thereafter but admitted that he did not seek any medical attention until after his motorcycle accident and continued to work full time.

In addition, Mr. Ledford testified that he has two businesses. One is known as Pro-Cutters, LLC which does landscape work and the other is Ledford Outdoors, LLC which provides hunting guide services. Mr. Ledford testified he has continued to run those businesses since being released by Dr. Mills in early 2011.

In response to questions from Attorney Alphin, Mr. Ledford testified regarding the circumstances regarding his motorcycle accident. He stated that he was taken by ambulance from the scene to Conway Hospital. Mr. Ledford testified that he complained of back and neck problems at that time while in the hospital. Mr. Ledford further stated that he was sent by the insurance carrier to Doctor's Care. He was seen there on several occasions before his care was transferred to Coastal Orthopedics and Associates. He testified that he made complaints of back and neck pain to the physicians at Doctor's Care as well. Mr. Ledford testified that he sought a second opinion on his own with Dr. Poletti down in Charleston. He was unsure why Dr. Poletti prepared two reports for his first visits. He testified that he informed Dr. Poletti of his motorcycle accident as well.

Medical reports introduced into evidence show that the claimant was primarily treated for his 2010 accident by Dr. William Mills. Dr. Mills reports show a diagnosis of a compression fracture in his thoracic spine. The reports also show that Dr. Mills refer the Claimant to Dr. Barbara Sarb, a neurologist for problems he complained of in his upper extremities and right leg. Dr. Mills treated the claim conservatively with bracing, medications, and physical therapy. Dr. Mills released the Claimant following his first accident on January 27, 2011 to return to work full duty.

Before being released by Dr. Mills in January of 2011, the Claimant received physical therapy and also was given a Functional Capacity Evaluation. That therapy and evaluation were completed by Select Physical Therapy. Reports from Select Physical Therapy show that the Claimant's parenthesis in his upper extremities and numbness in his right lower extremity had resolved. The primary focus of the physical therapy and the functional capacity evaluation was the Claimant's thoracic spine. The Functional Capacity Evaluation, dated January 25, 2011 released the Claimant to return to heavy work, full time. Between January 27, 2011 and the Claimant's second accident of March 10, 2012, the Claimant was only seen by one physician. It seems the Claimant returned to Dr. Barbara Sarb on August 16, 2011. According to Dr. Sarb's report at that time, the Claimant's neck and arm symptoms had resolved. Furthermore, the Claimant was not complaining of any lower extremity pain or radicular symptoms. His chief complaints were persistent discomfort in his thoracic spine. Dr. Sarb did not offer any treatment at that time and rated the Claimant as suffering a Five (5%) percent whole person impairment for cervical degenerative changes and resolved radicular-parasthesia symptoms. It

appears that the Claimant returned to Dr. Sarb to get an additional rating shortly before his scheduled hearing

After seeing Dr. Sarb in August of 2011, the Claimant did not seek any medical treatment until his accident of March 10, 2012. Since that time, he has been under the care of Dr. Ross Taylor for his ankle problems and Dr. William Mills for his back and neck problems. He also has been to Dr. Steven Poletti for a second opinion regarding his neck and back problems.

The Deposition of Dr. William Mills was taken on Three (3) occasions. All of those depositions were introduced into evidence. Dr. Mills' Deposition was first taken on April 27, 2011. It appears that the purpose of that Deposition was for clarification of the Claimant's impairment rating to his thoracic spine. In that Deposition, Dr. Mills raised his rating from ten (10%) percent up to fifteen (15%) to eighteen (18%) percent of the spine. In that Deposition, Dr. Mills admitted that the Claimant had returned to work full time, full duty. Furthermore, Dr. Mills did not anticipate the Claimant would need any additional medical care for his injuries other than prescription strength Motrin for flare ups.

The second Deposition of Dr. Mills was taken on August 23, 2012 following the Claimant's second accident. In that Deposition, Dr. Mills testified that the Claimant had suffered injuries to his lower back and neck as a result of his first accident. His opinions were based upon medical reports of other Doctors. In that Deposition, Dr. Mills admitted that he had not seen the Claimant between January 27, 2011 when he released the Claimant to return to work and early April of 2012, when the Claimant returned following the motorcycle accident.

Although the Claimant testified that his low back and neck condition deteriorated following his returning to work, the medical records show that he was doing pretty well until his motorcycle accident. No medical records show any physical change of condition. The only evidence of a change of condition is the Claimant's testimony. He testified that his pain escalated following his August, 2011 visit with Dr. Sarb but there is no medical evidence to corroborate his complaints. He did not return to any doctor and continued to work full-time, full duty until his motorcycle accident. Thus, I find that the Claimant failed to carry his burden of proving a change of condition for the worse from the Taser accident.

3) The Claimant, Scott Ledford, was an employee of the above named employer prior to March 10, 2012 on which date he did sustain an injury by accident to his right leg which also aggravated his pre-existing neck and back problems. This finding is based upon the deposition of Dr. William Mills, an authorized treating physician who testified that the motorcycle accident aggravated the Claimants pre-existing neck and back problems and that aggravation has caused the Claimant to need surgery.

The Claimant has also been seen by Dr. Steven Poletti. There appeared to be two records from Dr. Poletti dated May 7, 2012. This Commissioner does not have any idea as to why there are two records but must say that it is certainly unusual. Nevertheless, the Claimant did mention the motorcycle accident to Dr. Poletti on his first visit in the second record.

4) The Claimants average weekly wage is Seven Hundred Nine Ninety-Five dollars 95/100 (\$709.95) per week thus making the compensation rate of Four Hundred Seventy Three Dollars 32/100 (\$473.32) per week. This finding is based upon the Form 20 properly filed by the Defendants. The Claimant failed to prove any good reason to deviate from the Form 20.

5) As a result of the Claimants accident of March 10, 2012, he was drawing temporary total benefits as a result of admitted injuries. The stoppage of temporary total benefits was not an issue in this hearing.

6) As a result of the Claimants accident of March 10, 2012, the Claimant suffered injuries to his right leg and aggravated pre-existing conditions in his neck and low back. The Claimant is entitled to causally-related medical care authorized by the Carrier for his admitted injury and aggravations of pre-existing conditions until further order of this Commission

V. CONCLUSIONS OF LAW

Accordingly, as provided by the Code of Laws (1976 as amended) Section 42-17-40, is the determination of this Commissioner:

1) That under Section 42-1-130, the Claimant was a covered employee at the time in question, that under Section 42-1-140, the employer, South Carolina of Public Safety, was a covered employer under the South Carolina Workers' Compensation Act

2) That under Section 42-1-160, the Claimant did sustain an injury by accident arising out of and in the course of his employment on July 15, 2010

3) That under Section 42-17-90, the Claimant did not suffer a change of conditions for the worse as a result of his accident of July 15, 2010.

4) That under Section 42-1-160, the Claimant did sustain an injury by accident arising out of and in the course of his employment on March 10, 2012. That as a result of that accident, the claimant suffered injuries to his right leg and aggravated conditions in his low back and neck

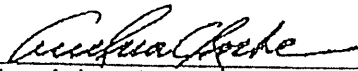
5) That under Section 42-9-60, the Claimant is entitled to medical care for his injuries and aggravations of pre-existing conditions.

VI. ORDER

IT IS THEREFORE ORDERED, that the claim of the Claimant for a change of condition for the worse, pursuant to Section 42-17-90, under WCC claim no 1009581, be and hereby is, denied and dismissed.

IT IS FURTHER ORDERED, under WCC claim no. 1202545, that the Defendants provide Medical Care, Evaluation, and Treatment for Injuries to his right leg and Medical Care, Evaluation and Treatment for aggravation of pre-existing conditions to the Claimant's Neck and Low Back.

AND IT IS SO ORDERED.


Commissioner Andica 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 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.
May 1, 2013

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Roche

IN THE STATE BOARD OF WORKERS' COMPENSATION
STATE OF SOUTH CAROLINA

SCOTT LEDFORD,

Claimant,

-VS-

DEPARTMENT OF PUBLIC SAFETY,

Defendant,

and

STATE ACCIDENT FUND,

Carrier

WCC FILE NO
1202545

APPELLATE HEARING

Before the Honorable Aisha Taylor,
Michael Campbell, and Avery Wilkerson, Jr., Chair

Commencing on March 17, 2015 at 10:26 a.m.
Columbia, South Carolina

APPEARANCES BY COUNSEL:

FOR THE CLAIMANT:

J. Kevin Holmes, Esq.
The Steinberg Law Firm, LLP
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Charleston, SC 29402

FOR THE DEFENDANTS
AND CARRIER:

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LEGEND OF THE TRANSCRIPT

dashes [--]	intentional or purposeful interruption
[ph]	denotes phonetically written
(sic)	written as said

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P R O C E E D I N G S

1 THE COURT REPORTER: Today is March 17, 2015. This
2 is South Carolina Workers' Compensation Case Number
3 1202545. This is the case of Scott Ledford, Claimant,
4 versus Department of Public Safety, Employer, and State
5 Accident Fund, Carrier.
6

7 The Appellant is the Claimant, represented today by
8 Kevin Holmes. The Respondent is represented today by
9 Sarah Alphin.

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

14 COMMISSIONER WILKERSON: It's my understanding
15 Mr. Holmes is going to do the presentation here this
16 morning.

17 MR. HOLMES: That is correct.

18 COMMISSIONER WILKERSON: Mr. Holmes, please. Thank
19 you.

20 A P P E L L A N T A R G U M E N T

21 MR. HOLMES: Good morning. I wish each of you a
22 Happy St. Patrick's Day. It's always the beginning of
23 Spring for me. But I say that knowing that none of us are
24 particularly happy about being here to hear this case this
25 morning. None are less happy than Scott Ledford, his

1 wife, and his attorney Scott -- Hood Temple.

2 In his 27 years of practice before this Commission
3 Mr. Temple has never before filed a motion to recuse a
4 Commissioner. He did so in this case only because he felt
5 compelled to do so to protect his client's rights and at
6 his client's direction. The suggestion he filed this
7 motion to gain some imaginary collateral advantage could
8 not be further from the truth.

9 What has Mr. Hood gained? Well, he's gained the very
10 substantial out of pocket cost to hire associate counsel
11 to help him with the legal issues, to hire associate
12 appellate counsel, to hire a law school ethics professor
13 to counsel all of us.

14 This hearing isn't about the lawyers. This hearing
15 is about Scott Ledford, a good, decent, hard working
16 citizen, a devoted husband and father, who, yes, he worked
17 hard to provide a better life for his wife and three
18 children. A seventeen year veteran of law enforcement. A
19 distinguished highway patrolman who reached the rank of
20 Lance Corporal, was accepted on the ACE team in motorcycle
21 to do escorts for visiting dignitaries. A man whose
22 record was unblemished. A law enforcement officer that
23 suffered not one, but two admitted accidents.

24 The first, in 2010 when he volunteered to be the
25 tester, you know, in experiment showing the other law

1 officers about lasers [sic]. And when they tasered him
2 the muscle spasms were so severe from the 50,000 volts of
3 electricity he got he broke two vertebra in his mid back.

4 The second occurred after his back had healed, after
5 he'd been back to work for almost a year full duty without
6 restrictions when he was involved in a motorcycle
7 accident. The motorcycle accident pursuing a motorist. A
8 motorcycle accident that, according to the authorized
9 treating physician, according to the objective MRI scans,
10 resulted in a blown cervical disc, an impingement of the
11 spinal cord at C5/C6 and C6/7, a blown lumbar disc that
12 was in facing the nerve roots and impinging on the spinal
13 cord at L4/5. Injuries which the physicians -- the
14 treating and the consulting physicians rated at between
15 thirteen and fifteen percent impairment for the cervical
16 spine and between five and ten percent impairment to the
17 lumbar spine, in addition to the impairment he already had
18 for the two ruptured vertebra in his back. Injuries that
19 the physicians all agree will most probably require future
20 surgery.

21 An admitted career ending accidents that the State of
22 South Carolina has granted him disability retirement for,
23 because they recognize he's unable to return to his job as
24 a law enforcement officer.

25 And what is the fair and impartial award that Office

1 Ledford has received for his career ending injuries? A
2 zero percent impairment to his neck and low back.

3 Putting aside whether Officer Ledford can work or at
4 what capacity he can work at you have to understand that
5 he is at least entitled to a scheduled award for his
6 cervical and lumbar spine injury that he did not receive,
7 regardless of his earning capacity and to the year to
8 petition if those conditions worsen and he needs that
9 surgery his doctors most probably say he will need.

10 Not only is he denied an award, Mr. and Ms. Ledford
11 are ordered to pay this State Fund \$19,000 of money they
12 do not have to spare. By any measure, this award is not
13 fair and impartial. It's shocking. It undermines
14 confidence in the Commission.

15 And it's not enough that Officer Ledford should be
16 denied an award, this man with an exemplary record in law
17 enforcement and an unblemished record is called a liar who
18 should be referred for criminal prosecution. And now it's
19 not just Officer Ledford, it's his lawyer is called a liar
20 and unethical, too. His Certified Public Accountant is
21 called either incompetent or a tax crook. All of the
22 doctors that treated Officer Ledford, well, they must be
23 incompetent, because none of them thought that Scott
24 Ledford was trying to gain the system. And while your at
25 it, go ahead and add Commissioner Andrea Roche to the

1 list.

2 You may not even have to weigh it in to the ethical
3 dispute over whether or not Commissioner Barden should
4 have recused herself when there was sworn affidavit saying
5 that Scott Ledford felt that he had been threatened and
6 coerced into settlement, because there's an even more
7 fundamental error of law that occurred. After the initial
8 injury -- the taser injury -- Scott Ledford had some
9 radicular problems in his arms and he had a radicular
10 problem in his leg, but he was treated and all of that
11 resolved. When he had the motorcycle accident it wasn't
12 clear whether his -- now his neck and back were a
13 worsening of his taser accident or a result of the
14 motorcycle accident. So Mr. Hood prudently filled for
15 both. And the change of condition came to be heard before
16 Commissioner Roche.

17 She made very specific findings. She said that, No,
18 the back and neck pain that he had following the accident,
19 all of that resolved. All of the medical records agree it
20 resolved. That he does not have a worsening of his
21 condition. The problem he is having now with his neck and
22 back are the result of the motorcycle accident. Those
23 were her finding. Her finding were never appealed. But
24 Commissioner Barden took it upon herself to -- she says,
25 Well, I have to review her decision. She didn't review

1 Commissioner Roche's decision, she reversed it, and said
2 that, No, Scott Ledford's neck and back problems, they're
3 the result of the taser accident. That has resulted in
4 two entirely inconsistent awards. And that, I submit, is
5 manifestly unfair to Scott Ledford.

6 I submit that Commissioner Barden's order can and
7 should be reversed on this ground alone, without you
8 having to get embroiled in the ethical armageddon that's
9 looming.

10 If, for some reason, you decide you have to get
11 involved in that dispute then I would remiss if I didn't
12 clarify exactly what it is that Mr. Ledford and Mr. Temple
13 said that Commissioner Barden did. They've never claimed
14 that she had a personal interest in the outcome of the
15 case, they never claimed that she had any personal
16 prejudice against Scott Ledford. They said that she
17 threatened to report him to the attorney general unless he
18 settled his workers' comp case, and settled it on terms
19 which, she admitted, would obviously be very unfavorable
20 in view of her comments in the telephone conversation
21 after the hearing.

22 Scott Ledford has a right to have his claim decided
23 not just by Commissioner Barden, but by an appellate panel
24 like you, by the court of appeals, and by the supreme
25 court, if need be in due course.

1 You can not threaten to do something that you're
2 actually required by law to do. Actually, threaten, I
3 will not report you if you settle your case, if you give
4 up your rights. The Code of Judicial Conduct admonishes
5 that while judges should encourage settlements, the
6 parties should not feel coerced into surrendering the
7 right to have their case resolved by the courts.

8 So I ask you, did she say that she'd make the threat?
9 Well, what lawyer in his right mind would accuse a
10 Commissioner of saying something she didn't say when
11 opposing counsel's on the telephone and could refute it?
12 Mr. Temple didn't file the motion to recuse before
13 the hearing because she hadn't made the statement yet.

14 If Scott Ledford said in a sworn affidavit that he
15 even felt threatened and coerced then Commissioner Barden
16 should have recused herself to avoid the appearance of
17 impropriety. Her grossly inadequate order should be
18 reversed to preserve public confidence in the fairness and
19 impartiality of the Commission. In this case it is fair
20 to remand the case to a new hearing before a fair and
21 impartial Commissioner to issue an order consistent with
22 the prior order of Commissioner Roche. That's all that
23 Mr. Ledford has asked for, that's what he's entitled to
24 Thank you.

25 COMMISSIONER WILKERSON: Any questions?

Ms. Alphin, on behalf of your client.

MS. ALPHIN: Thank you, Commissioner.

RESPONDENT ARGUMENT

MS. ALPHIN: The Defendants today here argue that the evidence supports a full affirmation of Commissioner Barden's hearing order and that there were not errors in the law.

The hearing Commissioner heard the evidence in the case that was presented, none of which was ever objected to, and she decided the case and made findings of fact and rulings of law, which is exactly what she is charged to do as a hearing Commissioner.

Claimant argues that the outcome is shocking and should be overturned for that reason among others. However, I think that that argument is -- misconstrues some of the evidence. And what I mean by that is the hearing Commissioner did not reverse any prior order of Commissioner Roche. Commissioner Roche heard a claim and decided that the Claimant's neck and back complaints were an aggravation of a preexisting condition and were a part of this claim that we're here about today. That was accepted, no one appealed that, treatment was provided. And what she ruled at the hearing was -- she didn't rule that the neck and the back are no longer related, she ruled that Claimant did not prove disability above what

1 was already paid to him.

2 The taser accident that was in 2010, not this
3 accident we're here about, he was paid 25 percent to his
4 back already. And the back is the whole spine, we don't
5 break it up in cervical, thoracic, and lumbar. And that
6 was our argument at the hearing, is he's already been paid
7 25 percent to the back and any disability to the back
8 would have to be proven above 25 percent, as we're
9 entitled to a credit for that amount. And what the
10 hearing Commissioner found is that she agreed we would be
11 entitled to a credit for that, and she found no disability
12 greater than the 25 percent that he had already been
13 found. And when you read the order instructions I think
14 that's very clear, she does not say, I find no disability,
15 but she finds no disability greater than the 25 percent
16 already paid as part of the prior claim.

17 I also take exception with the statement that all of
18 the physicians have recommended surgery. Dr. Mills was
19 the original authorized physician. He did discuss surgery
20 and recommended it. The Claimant did not want to proceed
21 that way and all the parties agreed to have a new
22 authorized treating physicians declared. And that was
23 with the consent of the parties that no was sent to
24 Dr. Edwards at that time. And you will see in every
25 medical record that raises surgery that the Claimant did

1 not want to undergo surgery. And, in fact, Dr. Edwards,
2 as the most recent authorized treating physician, said
3 that surgery may be warranted if his condition
4 deteriorates in the future. And because of that language
5 I think that the hearing Commissioner's award is
6 supported. And she even mentions in the order that if he
7 had a change of condition he could pursue that surgery,
8 but the way the Commissioner -- I'm sorry -- the way the
9 doctor phrased that, that he was not entitled to any
10 surgery at that time.

11 And it would be the Defendant's position that the
12 hearing Commissioner correctly found the date of MMI to be
13 October 31, 2013 and awarded the appropriate credit for
14 overpayment of TTD benefits. She correctly awarded credit
15 to the Defendants and found that there was no disability
16 greater than the 25 percent previously paid to the
17 Claimant for his back.

18 The Commissioner found credibility issues with this
19 Claimant. The hearing that was in front of Commissioner
20 Roche actually had a -- it was the 2010 and this 2012
21 claim were heard together to determine whether he had a
22 change of condition for the worse on the 2010 claim or a
23 new accident or aggravation under this 2012 claim. At
24 that hearing in front of Commissioner Roche the Claimant
25 argued that his neck, and his lumbar spine, and his

1 thoracic spine were all injured in the taser accident and
2 that they also were injured in this new accident. Yet, at
3 the hearing that was held -- the hearing we're here about
4 today, the Claimant did not admit to having any of those
5 prior issues and was impeached with a medical record of
6 Dr. Sarb in which he was actually given a rating for his
7 cervical spine from the taser accident. And that goes to
8 show that the Commissioner -- the hearing Commissioner had
9 good grounds for the decisions that she made, it was
10 supported by the evidence.

11 She also relied heavily -- or it seems that she
12 relied on tax returns that were submitted. Those were
13 submitted as evidence in the case and they were not
14 objected to. And they showed the Claimant's lawn care
15 landscaping business. And he, the year after his
16 accident, had over \$300,000 in profit -- gross profits
17 coming into that business.

18 And we would assert that the evidence in the case
19 supports the hearing Commissioner's decision and would ask
20 for a full affirmance of the matter. Thank you.

21 COMMISSIONER WILKERSON: Questions? Thank you.

22 Mr. Holmes.

23 MR. HOLMES: Thank you.

24 COMMISSIONER WILKERSON: Three minutes in reply.

25 COMMISSIONER TAYLOR: Mr. Holmes, before you go on to

1 reply. I wrote down a few questions. I didn't want to
2 take your time on the initial argument.

3 MR. HOLMES: Please.

4 COMMISSIONER TAYLOR: Part of the argument on the
5 ethical issue, I think the way it's phrased is that
6 Commissioner Barden, essentially, said that unless the
7 claim was resolved via settlement she would report. And I
8 think the word I kind of focused on when I was reading the
9 documents was the word unless. And I just want to make
10 sure that was the exact word that was used or if that was
11 just your -- the argument that was phrased.

12 MR. HOLMES: Immediately after the conversation Hood
13 Temple made a contemporaneous note of what was said, and
14 that was what he wrote in his note, was, I have a duty to
15 report this, but if you settle the case I won't report it,
16 is the just of it. And our position is is that when you
17 have a mandatory duty to report you can not say, I won't
18 report it if you give up your legal rights

19 COMMISSIONER TAYLOR: Well, and I think to follow up
20 on that exact statement as you phrase it, is that not
21 true, though, because -- and I think if you tie it into
22 what we do during a pre-hearing conference So let's say
23 this conversation took place before any evidence was even
24 submitted -- and often times we'll have the lawyers come
25 in and kind of informally go over the positions, and a

1 Commissioner might say, Well, you know, I don't know if I
2 believe what's going on here, you know if I find that it's
3 not true I'll have an obligation to report it so you may
4 want to discuss that with your claimant. And sometimes
5 the attorneys go out and talk about it and settle it. So
6 how is this, even though it was post-hearing, unlike that
7 scenario?

8 MR. HOLMES: It's exactly, it's post-hearing. And
9 Commissioner Barden said, I have a duty to investigate,
10 and I've been investigating, and I have found that this is
11 what -- that I find that I don't believe anything you've
12 said other than your name and address, and then, unless
13 you settle this case I will report you.

14 So I think it is a little bit different than saying,
15 If I find that one of you is lying, either side, I have a
16 duty to report you. That is correct. You have an
17 absolute -- it's a statutory, mandatory duty..

18 But -- and I practice law in the criminal law and
19 very often before the trial you meet with the judge, he
20 said, Well, your client's facing 35 years in prison, you
21 know, and that's true. But he can't say, If you go
22 forward with this trial I'm going to, you know, do this,
23 this, and this, and max you out on everything. That's not
24 permitted. You have a right to a trial by jury, may be
25 foolish to exercise it, but if you want it you can not be

1 punished for asking for your right to a trial.

2 COMMISSIONER WILKERSON: So issue is post, not pre.

3 MR. HOLMES: It's post.

4 And, you know --

5 COMMISSIONER TAYLOR. That answered my question, you
6 can go on.

7 APPELLANT REPLY

8 MR. HOLMES: Credibility. Credibility doesn't trump
9 everything. It doesn't trump objective medical evidence,
10 doesn't trump the opinions of the medical doctors And a
11 Commissioner demeans and abuses their authority when they
12 a stoop to base credibility finding on what tense the
13 client is speaking in at the hearing. And it's in the
14 order that he was asked, What happens if you don't follow
15 the doctor's restrictions. And he said, Well, it hurts.
16 And for some reason she thought, well, he spoke in the
17 present tense so that must mean that he's doing more than
18 he says he's doing and I don't know.

19 I don't know how you can look at tax returns two
20 years after -- and somebody has suffered these kind of
21 injuries -- and make any conclusions about what that
22 business must have been beforehand.

23 She makes a -- you know, she sort of uses circuitous
24 reasoning that, Well, he operated this small business for
25 seventeen years to provide a better life for his wife, but

1 now he's got tax returns that show that in the two years
2 after his injury he may have had gross income of \$300,000,
3 but his net income was almost zero, \$700 one year and \$900
4 the next. And she comes to the conclusion that the
5 business must be much more profitable, he must be using
6 creative accounting to hide income. You know, that just
7 comes out of nowhere.

8 She ignores the very same records that say the
9 business paid \$75,000 in salaries to its workers and
10 \$54,000 to subcontractors. Well, gee, what do you think,
11 maybe they might have been the ones doing the physical
12 labor?

13 You know the bottom line in this case is, if a 17
14 year old law enforcement officer with a spotless record
15 can't measure up, then nobody can. He can't just turn --
16 he can't say, I'm going to ignore the MRI that says he's
17 got a ruptured disc in his neck and a ruptured disc in his
18 spine and just say, Well, credibility, I don't believe
19 anything he said so I'm going to give him zero.

20 And we can say, you know, it's not in addition to the
21 25 percent that was already approved and agreed to. But
22 if you add the 25 percent that was already approved and
23 agreed to to the 23 to 25 percent he was awarded in this
24 case then he's within percentage points of where a person
25 is entitled, at least, to the rebuttable presumption that

1 he's totally disabled under the statute.

2 So I stand by my position. The award is just -- it's
3 not fair to Scott Ledford, to Hood Temple. I ask you to
4 reverse it. This happens all the time. I'm sure you get
5 cases where you look at it and you say, This award, it
6 just doesn't look right. Let's send it back, do it again,
7 let the chips fall where they may.

8 COMMISSIONER WILKERSON: Any questions?

9 This concludes the hearing.

10 *
11 (Whereupon, the hearing was concluded at 10:49 a.m.)

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1202545

 COPY

EMPLOYEE/CLAIMANT: SCOTT LEDFORD

EMPLOYER: DEPARTMENT OF PUBLIC SAFETY

CARRIER: STATE ACCIDENT FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 15TH DAY
OF AUGUST, 2014, COMMENCING AT THE HOUR OF 11:59 A.M.,
IN CONWAY, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN
S. BARDEN, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

SCANNED

APPEARANCES

E. HOOD TEMPLE, ESQUIRE, OF THE FIRM
HATFIELD TEMPLE
POST OFFICE BOX 1770
FLORENCE, SOUTH CAROLINA 29503

ATTORNEY FOR THE CLAIMANT,

SARAH S. ALPHIN, ESQUIRE, OF THE FIRM
WILLSON, JONES, CARTER & BAXLEY, P.A..
4500 FORT JACKSON BOULEVARD
COLUMBIA, SOUTH CAROLINA 29209

ATTORNEY FOR THE EMPLOYER/CARRIER.

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

* * * * *

5. BY COMMISSIONER BARDEN:

6. TODAY'S DATE IS AUGUST 15TH, 2014. THIS IS
7. SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
8. NUMBER 1202545. THIS IS THE CASE OF THE CLAIMANT,
9. MR. SCOTT LEDFORD, WHO IS PRESENT TODAY AND
10. REPRESENTED BY ATTORNEY HOOD TEMPLE, VERSUS THE
11. EMPLOYER, THE SOUTH CAROLINA DEPARTMENT OF PUBLIC
12. SAFETY, AND ITS CARRIER, THE STATE ACCIDENT FUND,
13. BOTH OF WHICH ARE REPRESENTED BY ATTORNEY SARAH
14. ALPHIN. THE PURPOSE OF TODAY'S HEARING IS TO
15. DETERMINE ISSUES RAISED IN DEFENDANTS' FORM 21,
16. REQUEST TO STOP PAYMENT OF TEMPORARY BENEFITS. THE
17. PARTIES AGREE AND STIPULATE THAT MR. LEDFORD'S
18. AVERAGE WEEKLY WAGE IS \$709.95, YIELDING A
19. COMPENSATION RATE OF \$473.52. THE DATE OF THIS
20. ADMITTED ACCIDENT WAS MARCH 10TH, 2012. ARE THERE
21. ANY OBJECTIONS TO APAS, JURISDICTION, VENUE, OR ANY
22. OTHER ITEMS?

23. BY MS. ALPHIN:

24. I'M SORRY, COMMISSIONER. I BELIEVE THE
25.

1 COMPENSATION RATE IS 473.32.

2 BY THE COMMISSIONER:

3 THIRTY-TWO?

4 BY MS. ALPHIN:

5 YES, MA'AM.

6 BY THE COMMISSIONER:

7 THAT'S A THREE THERE. I CANNOT READ MY OWN
8 WRITING. THANK YOU SO MUCH, MS. ALPHIN, FOR THAT
9 CORRECTION. THANK YOU. ANY OBJECTIONS TO APAs?
10 AGAIN, THANK YOU FOR THAT CLARIFICATION. ANY
11 OBJECTIONS EITHER OF YOU MAY HAVE?

12 BY MR. TEMPLE:

13 NONE FROM THE CLAIMANT, YOUR HONOR.

14 BY MS. ALPHIN:

15 NO, COMMISSIONER.

16 BY THE COMMISSIONER:

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

21 PRIOR TO GOING ON THE RECORD, WE HELD A
22 PREHEARING CONFERENCE. IT IS THE POSITION OF BOTH
23 PARTIES THAT THE CLAIMANT HAS REACHED MAXIMUM
24 MEDICAL IMPROVEMENT. HOWEVER, IT IS THE CLAIMANT'S
25 POSITION THAT HE REACHED MAXIMUM MEDICAL IMPROVEMENT

1 ON MARCH 5TH, 2014, AND I WILL ELABORATE FURTHER AS
2 TO WHY HE BELIEVES IT IS THAT DATE. THE DEFENDANTS
3 BELIEVE THAT THE CLAIMANT REACHED MAXIMUM MEDICAL
4 IMPROVEMENT AS OF OCTOBER 31ST, 2013.

5 THE DEFENDANTS, AS THE MOVING PARTY, BELIEVE
6 THAT, AGAIN, THE CLAIMANT REACHED MAXIMUM MEDICAL
7 IMPROVEMENT AS OF OCTOBER 31ST, 2013. THEY REQUEST
8 AN ORDER TO ALLOW THEM TO STOP PAYMENT OF TEMPORARY
9 BENEFITS. THEY SEEK A DETERMINATION OF PERMANENCY
10 WITH REGARD TO THE RIGHT ANKLE, THE NECK, AND THE
11 LOW BACK. THE DEFENDANTS BELIEVE THAT THE AWARD
12 SHOULD BE MADE PURSUANT TO SECTION 42-9-30, WHATEVER
13 THE APPROPRIATE ITEM, FOR THE SPINE, ITEM 21; FOR
14 THE LEG, ITEM 16. BOTH PARTIES AGREE THAT THERE WAS
15 A RIGHT KNEE INJURY, A CONTUSION WHICH RESOLVED.
16 THE DEFENDANTS BELIEVE THAT THERE IS NO PERMANENT
17 PARTIAL DISABILITY BEYOND THE IMPAIRMENT RATINGS OF
18 THE AUTHORIZED PHYSICIAN, AND IF THERE IS ANY
19 PERMANENT PARTIAL DISABILITY, IT WOULD BE STRICTLY
20 DE MINIMIS. THE DEFENDANTS STRONGLY ARGUE THAT THE
21 CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED.
22 THEY WOULD POINT TO MY ATTENTION THE FACT THAT HE
23 RUNS A LANDSCAPING COMPANY, AND WHILE HE MAY NOT BE
24 ABLE TO CURRENTLY PERFORM SOME OF THE PHYSICAL LABOR
25 WHICH HE PREVIOUSLY PERFORMED PRIOR TO THE DATE OF

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THE ACCIDENT, HE STILL RUNS THE COMPANY; HE IS STILL
ABLE TO DERIVE INCOME FROM THE COMPANY; HE IS
CAPABLE OF RUNNING THE COMPANY, AND HE IS CAPABLE OF
PERFORMING SOME DUTIES. SUCH IN ADDITION TO THE
FINDINGS OF THE VOCATIONAL REPORT OF THE DEFENDANTS,
BECAUSE OF THAT FACTOR AND BECAUSE OF THE FACT THAT
THE CLAIMANT CONTINUES TO RUN A LANDSCAPE COMPANY,
THE DEFENDANTS BELIEVE THAT THE CLAIMANT CANNOT BE
FOUND TO BE PERMANENTLY AND TOTALLY DISABLED.
AGAIN, THEY BELIEVE THAT WHILE THE CLAIMANT IS
ENTITLED TO SOME PERMANENCY AWARD, IT WOULD STRICTLY
BE PURSUANT TO SECTION 42-9-30. AS FAR AS THE SPINE
IS CONCERNED, THE DEFENDANTS BELIEVE THAT THE
CLAIMANT CLEARLY HAS NOT SUSTAINED A 50 PERCENT OR
GREATER LOSS OF USE OF THE SPINE, AND, THEREFORE,
HIS AWARD WOULD BE BASED UPON 300 WEEKS ONLY.

AS FAR AS CREDIT IS CONCERNED, THE DEFENDANTS
DO SEEK A CREDIT FOR TEMPORARY BENEFITS PAID BEYOND
THE DATE OF MAXIMUM MEDICAL IMPROVEMENT. THEY ALSO
SEEK A CREDIT FOR 75 WEEKS FOR BENEFITS PAID FOR THE
THORACIC SPINE IN 2010. THE DEFENDANTS BELIEVE THAT
THE 16-A STATES THAT -- IN WHICH THE CLAIMANT
ENTERED INTO, I BELIEVE, IN 2011, THAT THE INJURY --
THE 16-A STATES THAT THE INJURY IS TO THE SPINE,
THAT THE IMPAIRMENT RATING WAS MADE TO THE WHOLE

1 PERSON, AND REGARDLESS OF WHETHER IT IS TO THE T-
2 SPINE, AS SPECIFIED IN THE DEPOSITION OF THE
3 AUTHORIZED TREATING PHYSICIAN IN THAT CASE -- AGAIN,
4 MS. ALPHIN DID NOT REPRESENT THE EMPLOYER IN THAT
5 CASE, BUT SHE ARGUES THAT THE CLAIMANT WOULD BE
6 ENTITLED TO RECEIVE -- EXCUSE ME; THE DEFENDANTS,
7 RATHER, WOULD BE ENTITLED TO RECEIVE CREDIT FOR THE
8 75 WEEKS PAID PURSUANT TO THE 16-A BECAUSE THE SPINE
9 IS THE SPINE AND THAT THE CLAIMANT CANNOT TAKE
10 ADVANTAGE OF THE FACT THAT IT'S A DIFFERENT AREA OF
11 THE SPINE.

12 AS FAR AS FUTURE MEDICALS IS CONCERNED -- AND
13 I'M GOING TO GO OFF THE RECORD ONE MINUTE.

14 (OFF THE RECORD)

15 BY THE COMMISSIONER:

16 WE ARE BACK ON THE RECORD. IT IS THE
17 DEFENDANTS' POSITION THAT NO FUTURE MEDICALS HAVE
18 BEEN ORDERED BY OR RECOMMENDED BY AN AUTHORIZED
19 TREATING PHYSICIAN, AND, THEREFORE, NONE SHOULD BE
20 ORDERED BY THE COMMISSION. AS FAR AS THE FUSION IS
21 CONCERNED THAT IS RECOMMENDED, I KNOW SPECIFICALLY
22 BY DR. POLETTI, THE DEFENDANTS BELIEVE THAT AN
23 AUTHORIZED PHYSICIAN HAS NOT RECOMMENDED THAT EXCEPT
24 UNLESS -- EXCEPT AND UNLESS THE CLAIMANT'S CONDITION
25 DETERIORATES. SO, THEREFORE, IF THE CLAIMANT IS

1 EVER ENTITLED TO RECEIVE FUSION SURGERY, THE
2 DEFENDANTS BELIEVE IT WOULD BE UNDER A CHANGE OF
3 CONDITION FOR THE WORSE BUT NOT AS A FUTURE MEDICAL
4 TO WHICH THE CLAIMANT WOULD BE ENTITLED AND FOR
5 WHICH AN ORDER SHOULD BE MADE.

6 CONVERSELY, IT IS THE POSITION OF THE CLAIMANT
7 THAT HE IS PERMANENTLY AND TOTALLY DISABLED. HE
8 WOULD POINT TO MY ATTENTION THE FACT THAT HE HAS
9 SUSTAINED INJURIES TO MULTIPLE BODY PARTS, THAT HE
10 HAS SIGNIFICANT PROBLEMS WITH REGARD TO EACH OF
11 THOSE BODY PARTS, AND THAT THEY INVOLVE SIGNIFICANT
12 BODY PARTS, SUCH AS HIS SPINE AND HIS RIGHT LEG, AND
13 TWO LEVELS OF HIS SPINE, THAT BEING HIS CERVICAL
14 SPINE AND HIS LUMBAR SPINE. THAT BECAUSE OF THE
15 COMBINATION OF THE BODY PARTS AND OTHER FACTORS,
16 WHICH WILL BE EXPLORED THROUGH THE TESTIMONY AS WELL
17 AS IN HIS VOCATIONAL REPORT, THAT THE CLAIMANT WOULD
18 CLEARLY BE ENTITLED TO A FINDING OF PERMANENT AND
19 TOTAL DISABILITY. ALTERNATIVELY, HE WOULD BE
20 ENTITLED TO A FINDING OF PERMANENT AND TOTAL
21 DISABILITY UNDER 42-9-30. BECAUSE OF THE IMPAIRMENT
22 RATINGS ALONE, THE CLAIMANT BELIEVES THAT HE IS JUST
23 SINGLE DIGITS AWAY FROM A GREATER THAN 50 PERCENT
24 LOSS OF USE OF HIS SPINE. AND, THEREFORE -- AND
25 THAT THE CLAIMANT CAN'T -- EXCUSE ME; THE DEFENDANTS

1 CANNOT REBUT THE PRESUMPTION THAT HE IS PERMANENTLY
2 AND TOTALLY DISABLED. AND, THEREFORE, HE IS
3 PERMANENTLY AND TOTALLY DISABLED UNDER EITHER
4 THEORY. BUT IF I FIND THAT HE IS NOT PERMANENTLY
5 AND TOTALLY DISABLED, BECAUSE HIS IMPAIRMENT
6 RATINGS, THE CLAIMANT BELIEVES, ARE HIGH AND THAT
7 THERE SHOULD BE NO CREDIT, THAT THIS IS ADDITIONAL
8 IMPAIRMENT UNRELATED TO THE T-SPINE INJURY OF 2010,
9 THAT, IN ANY EVENT, THE CLAIMANT WOULD BE ENTITLED
10 TO HAVE HIS SPINAL AWARD TO BE BASED UPON A 500-WEEK
11 ANALYSIS. BUT HE BELIEVES HE'S PERMANENTLY AND
12 TOTALLY DISABLED, AND THE EVIDENCE CERTAINLY
13 SUPPORTS HIS CONTENTION.

14 IF I FIND THAT HE IS NOT PERMANENTLY AND
15 TOTALLY DISABLED, HE OBVIOUSLY SEEKS THE AWARD THAT
16 WOULD BE MOST ADVANTAGEOUS TO HIM, WHETHER THAT'S
17 UNDER 30 OR WAGE LOSS UNDER SECTION 20. AGAIN, I
18 HAVE NOT READ THE VOCATIONAL REPORT BECAUSE IT'S
19 JUST BEEN HANDED TO ME. BUT HE WOULD LIKE THERE TO
20 BE AN ANALYSIS UNDER 20 AS WELL BECAUSE HE HAS BEEN
21 REMOVED FROM HIS PREACCIDENT JOB WITH THE
22 DEPARTMENT. NO JOB HAS BEEN OFFERED TO HIM, EVEN A
23 DISPATCHER JOB. HE IS UNABLE TO DO THAT; AND,
24 THEREFORE, HE HAS QUALIFIED FOR DISABILITY UNDER THE
25 STATE RETIREMENT SYSTEM FOR RETIREMENT DISABILITY.

1 AND ALTHOUGH PERHAPS THAT MAY NOT BE CONCLUSIVE OR
2 DISPOSITIVE WITH REGARD TO A FINDING IN WORKERS'
3 COMPENSATION, IT'S CERTAINLY SOMETHING THAT SHOULD
4 BE AFFORDED GREAT WEIGHT; AND HE WOULD LIKE,
5 OBVIOUSLY, AS HE BELIEVES HE IS ENTITLED UNDER THE
6 ACT, TO RECEIVE AN AWARD THAT IS MOST ADVANTAGEOUS
7 TO HIM, WHATEVER WITH REGARD TO THE STATUTORY
8 ANALYSIS THAT MIGHT BE. IN A MINIMUM HE WOULD
9 CONTEND THAT HE HAS SIGNIFICANT PERMANENT PARTIAL
10 DISABILITY WITH REGARD TO HIS INJURED BODY PARTS,
11 THAT BEING THE RIGHT ANKLE, THE NECK, AND THE SPINE.
12 HE BELIEVES THAT IMPAIRMENT RATINGS ARE NOTHING MORE
13 THAN MERE STARTING POINTS IN DETERMINING DISABILITY.
14 AND WHILE THE AUTHORIZED TREATING PHYSICIAN MIGHT IN
15 SOME CASES BE GIVEN GREATER DEFERENCE AS FAR AS
16 IMPAIRMENT RATINGS ARE CONCERNED, THE CLAIMANT WOULD
17 CONTEND THAT DR. TAYLOR'S RATING WITH REGARD TO THE
18 LEG IS FLAWED FROM THE OUTSET, THAT'S IT'S A SEVEN
19 PERCENT TO THE ANKLE, THAT DR. TAYLOR DID NOT EVEN
20 MAKE THE RATING TO THE LEG. HIS ANKLE IS NOT HIS
21 FOOT, AND THAT'S THE LEAST OF THE PROBLEMS WITH THAT
22 RATING, AS FAR AS THE CLAIMANT IS CONCERNED. AND
23 THE CLAIMANT, THEREFORE, SOUGHT AN EVALUATION AND
24 RATING FROM DR. O'DELL, AND THE CLAIMANT CONTENDS
25 THAT -- AGAIN, I HAVEN'T READ THIS EITHER, BUT THE

1 DETAIL THAT DR. O'DELL PROVIDED AND THE RATIONALE
2 FOR HIS IMPAIRMENT RATING SHOULD LEAD THE COMMISSION
3 TO RESOLVE THAT THE O'DELL RATING SHOULD BE GIVEN
4 MUCH GREATER WEIGHT. AND, AGAIN, IT'S A MERE
5 STARTING POINT, AND THERE ARE OTHER IMPAIRMENT
6 RATINGS AS WELL.

7 I'M NOT GOING TO ELABORATE TOO MUCH UPON IT,
8 BUT SUFFICE IT TO SAY THAT DR. MILLS -- DR. EDWARDS
9 MAKES IT CLEAR THAT THE IMPAIRMENT RATING TO THE
10 CERVICAL AND LUMBAR SPINE IS NEW IMPAIRMENT AND
11 UNRELATED TO THE THORACIC SPINE INJURY OF 2010. AS
12 FAR AS THE SPINE, HOWEVER, THE CLAIMANT DOES BELIEVE
13 THAT THE POLETTI RATING SHOULD BE GIVEN GREATER
14 WEIGHT AS THE CLAIMANT'S EXPERT FOR REASONS THAT DR.
15 POLETTI SETS FORTH IN HIS EVALUATION AND NARRATIVE.
16 THERE IS NO SPINAL RATING, I BELIEVE, FROM DR.
17 MILLS. AS FAR AS CREDIT IS CONCERNED, AGAIN, THE
18 CLAIMANT CONTENDS THAT THE CREDIT, IF THERE IS ANY
19 GIVEN, SHOULD BE -- THE FIRST POSITION WOULD BE FROM
20 MARCH THE 5TH, 2014, BECAUSE THE CLAIMANT WAS STILL
21 TREATING UP UNTIL THAT DATE AND STILL CONSIDERING
22 SURGERY; AND, THEREFORE, THE DATE CHOSEN BY THE
23 DEFENDANTS IS REALLY INAPPROPRIATE. HOWEVER, IF I
24 DON'T AGREE WITH THE MARCH 5TH, 2014, DATE, THE
25 CLAIMANT'S BACKUP POSITION WOULD BE THE DATE OF THE

1 FILING OF THE 21, WHICH WAS JANUARY 21ST, 2014. SO
2 THE CLAIMANT WOULD LIKE ME TO CONSIDER THAT IF ANY
3 ISSUE OF CREDIT IS VIABLE INSTEAD OF MOOT IF THE
4 CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

5 AND, FINALLY, AS FAR AS FUTURE MEDICALS ARE
6 CONCERNED, THE CLAIMANT BELIEVES THAT THE CLAIMANT
7 HAS, IN FACT, HAD FUSION SURGERY RECOMMENDED, AND
8 NOT JUST BY THE CLAIMANT'S EXPERT, DR. POLETTI, BUT
9 ALSO BY AN UNAUTHORIZED PHYSICIAN, AND, THEREFORE --
10 AND THE PARTIES DISAGREE ABOUT THAT SOMEWHAT, SO
11 I'VE GOT TO READ THOSE RECORDS, OBVIOUSLY. BUT THE
12 CLAIMANT BELIEVES THAT NOT ONLY ONE BUT I BELIEVE
13 EVEN THREE PHYSICIANS HAVE RECOMMENDED FUSION
14 SURGERY. SO, THEREFORE, THE CLAIMANT SHOULD BE
15 ENTITLED TO RECEIVE THAT AS A FUTURE MEDICAL. THAT
16 PHYSICIANS HAVE COUNSELED HIM TO DEFER THE SURGERY
17 AS LONG AS POSSIBLE, THAT IT WOULD BE MORE IDEAL TO
18 WAIT. THE CLAIMANT DOESN'T FEEL LIKE HE SHOULD BE
19 PUNISHED BY NOT GOING AHEAD AND UNDERGOING THE
20 SURGERY. HE IS FOLLOWING THE ADVICE OF THE
21 PHYSICIANS TO WAIT. HE SHOULD HAVE THAT RIGHT
22 PRESERVED TO HAVE THE SURGERY. HE ALSO WOULD POINT
23 TO THE OPINION OF HIS EXPERT, DR. POLETTI, THAT HE
24 WOULD ALSO NEED PHYSICAL THERAPY AND INJECTIONS AS
25 WELL. BUT, OF COURSE, IF THE CLAIMANT IS

1 PERMANENTLY AND TOTALLY DISABLED, HE'S ENTITLED TO
2 LIFETIME CAUSALLY-RELATED MEDICALS UNDER EITHER
3 THEORY. SO, I'LL SAY THAT AS WELL

4 ALL RIGHT. YOU ALL SAID THAT A LOT BETTER THAN
5 I JUST DID. BUT IF THERE IS ANYTHING THAT I'VE
6 MISSTATED OR MISCHARACTERIZED OR OMITTED -- MS.
7 ALPHIN HAS ALREADY POINTED OUT THAT I CAN'T READ 52
8 FROM 32. SO, IS THERE ANYTHING THAT YOU ALL WANT TO
9 CORRECT? OBVIOUSLY, THAT'S VERY MUCH ABBREVIATED
10 FROM WHAT YOU TOLD ME, AND I HAVE A LOT TO READ,
11 WHICH I HAVE NOT READ YET. SO, HERE'S YOUR CHANCE,
12 UNLESS YOU'RE SATISFIED.

13 BY MS. ALPHIN:

14 I DON'T HAVE ANYTHING TO ADD, COMMISSIONER. I
15 THINK THE RECORDS ARE PRETTY CLEAR, AND I KNOW YOU
16 WILL READ THOSE.

17 BY MR. TEMPLE:

18 THE ONLY THING THAT I WOULD ADD -- AND I'M
19 SURPRISED. I THOUGHT THAT WAS AMAZING. BUT I'LL
20 TELL YOU THIS.

21 BY THE COMMISSIONER:

22 NO, IT WASN'T. BUT GO AHEAD AND TELL ME WHAT
23 YOU ---

24 BY MR. TEMPLE:

25 THE ONLY OTHER THING THAT I WOULD ADD IN THERE

1 IS THAT WHEN WE WERE TALKING ABOUT FUTURE MEDICAL
2 TREATMENT AND YOU INDICATED THAT IF IT WASN'T THE
3 CERVICAL SPINE, THAT THE ONLY PERSON WHO RECOMMENDED
4 ADDITIONAL MEDICAL TREATMENT WAS THE UNAUTHORIZED
5 DOCTOR. DR. EDWARDS, ON PAGE 92 OF HIS
6 CORRESPONDENCE DATED MARCH 27TH SAYS THAT IF -- IT
7 SAID, "IT IS MORE LIKELY THAN NOT THAT HE WILL NEED
8 FUTURE MEDICAL TREATMENT EVEN IF SURGICAL
9 INTERVENTION IS NOT REQUIRED. THIS WOULD INCLUDE
10 PHYSICAL THERAPY FOR MECHANICAL SYMPTOMS AND
11 THERAPEUTIC INJECTIONS, SUCH AS EPIDURAL STEROID
12 INJECTIONS, FOR ANY RADICULAR SYMPTOMS." SO, THAT'S
13

14 BY THE COMMISSIONER:

15 LET ME ASK YOU, DO YOU AMEND YOUR POSITION ON
16 THAT BECAUSE YOU TOLD ME THAT YOU DON'T ---

17 BY MS. ALPHIN:

18 COMMISSIONER, WE WOULD KEEP THE SAME POSITION
19 THAT DR. EDWARDS HAS SAID IF THE CONDITION
20 DETERIORATES HE WILL REQUIRE SURGERY.

21 BY THE COMMISSIONER:

22 SO YOU STILL MAINTAIN YOUR POSITION?

23 BY MS. ALPHIN:

24 I DO, COMMISSIONER.

25 BY THE COMMISSIONER:

1 WELL, THANK YOU FOR THAT, MR. TEMPLE. OF
2 COURSE, I WILL READ IT, AND I WILL HAVE TO INTERPRET
3 IT THE WAY I THINK IT NEEDS TO BE INTERPRETED.

4 BY MR. TEMPLE:

5 THANK YOU, YOUR HONOR.

6 BY THE COMMISSIONER:

7 THANK YOU.

8 BY MR. TEMPLE:

9 AND THAT WOULD BE THE ONLY ADDITION AND
10 CERTAINLY NO EXCEPTION TO WHAT YOU SAID.

11 BY THE COMMISSIONER:

12 OKAY, GREAT. OKAY. MS. ALPHIN, YOU ARE
13 RELYING ON THE MEDICALS, THE RIGHT TO CROSS EXAMINE
14 MR. LEDFORD, AND THE RIGHT TO PRESENT ANY REBUTTAL
15 WITNESSES, IS THAT RIGHT?

16 BY MS. ALPHIN:

17 THAT'S CORRECT.

18 BY THE COMMISSIONER:

19 AND I DO APPRECIATE SO MUCH YOU STANDING UP,
20 BUT, PLEASE, FREE FEEL -- I KNOW MR. TEMPLE IS GOING
21 TO WANT TO COME OVER HERE AND POINT TO HIS CHART,
22 BUT HE'S ALREADY POINTED EVERYTHING OUT TO ME. SO
23 ---

24 BY MR. TEMPLE:

25 I THINK I'M THROUGH WITH THE CHART. - WE'VE BEEN

1 THROUGH THIS. I THINK WE'VE BEATEN THAT HORSE.

2 BY THE COMMISSIONER:

3 ALL RIGHT. MR. LEDFORD, IF YOU WILL RAISE YOUR
4 RIGHT HAND, PLEASE. IS HE OKAY WHERE HE IS, OR DO
5 YOU WANT HIM NEXT TO YOU?

6 BY THE COURT REPORTER:

7 WHATEVER IS BEST FOR YOU.

8 BY THE COMMISSIONER:

9 I'M OKAY WITH HIM RIGHT HERE. AS LONG AS YOU
10 CAN ---

11 BY MR. TEMPLE:

12 I'M SORRY; I THOUGHT HE WAS GOING TO GET UP AND
13 GO, AND HE DIDN'T.

14 BY THE COMMISSIONER:

15 THAT'S OKAY. BUT I WANT TO TELL YOU A COUPLE
16 OF THINGS. FIRST OF ALL, JUST TURN UP THE VOLUME ON
17 YOUR VOICE BECAUSE IT'S GOT TO PROJECT ALL THE WAY
18 OVER HERE TO HER, OVER HERE, AND EVEN THE LADY
19 BEHIND YOU WANTS TO HEAR WHAT YOU HAVE TO SAY.

20 BY THE WITNESS:

21 YES, MA'AM.

22 BY THE COMMISSIONER:

23 AND NUMBER TWO, WHICH I CAN'T EVEN REMEMBER
24 WHAT NUMBER TWO WAS NOW.

25 BY MR. TEMPLE:

1 YOU'RE UNDER OATH?

2 BY THE COMMISSIONER:

3 NO, I HAVEN'T EVEN PUT HIM UNDER OATH. I'M
4 SORRY. IT'LL COME TO ME IN A MINUTE. MAYBE IT
5 WASN'T IMPORTANT, OBVIOUSLY. IF YOU WILL RAISE YOUR
6 RIGHT HAND, PLEASE.

7 * * * * *

8 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
9 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
10 MATTER HEREIN:

11 SCOTT LEDFORD,

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

14 BY THE COMMISSIONER:

15 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

16 BY THE WITNESS:

17 SCOTT ALLEN LEDFORD.

18 BY THE COMMISSIONER:

19 IS ALLEN, A-L-A-N OR ---

20 BY THE WITNESS:

21 A-L-L-E-N, MA'AM.

22 BY THE COMMISSIONER:

23 THANK YOU SO MUCH AND I REMEMBER WHAT THE
24 OTHER THING WAS AT ANY TIME THAT YOU NEED TO GET
25 UP, MOVE AROUND, STAND UP, WALK, AS LONG AS WE CAN

1 HEAR YOU, YOU FEEL FREE TO DO THAT, BUT YOU DON'T
2 NEED TO ASK.

3 BY THE WITNESS:

4 YES, MA'AM. THANK YOU.

5 BY THE COMMISSIONER:

6 OKAY. THAT'S WHAT IT WAS. ALL RIGHT, MR.
7 TEMPLE.

8 BY MR. TEMPLE:

9 THANK YOU, YOUR HONOR. IF IT PLEASE THE
10 COMMISSION.

11 DIRECT EXAMINATION BY MR. TEMPLE:

12 Q. TROOPER LEDFORD, FIRST OF ALL, LET'S START OFF BY
13 THE EASY QUESTIONS. HOW OLD ARE YOU?

14 A. I'M 39 TODAY, SIR.

15 Q. OKAY. HAPPY BIRTHDAY.

16 BY THE COMMISSIONER:

17 HAPPY BIRTHDAY.

18 BY THE WITNESS:

19 THANK YOU, YOUR HONOR.

20 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

21 Q. IN TERMS OF EDUCATION, YOU HAVE TWO YEARS OF COLLEGE
22 IN CRIMINAL JUSTICE?

23 A. YES, SIR.

24 BY THE COMMISSIONER:

25 AND WHAT DID YOU STUDY IN COLLEGE?

1 BY THE WITNESS:

2 CRIMINAL JUSTICE, MA'AM.

3 BY THE COMMISSIONER:

4 OKAY, ALL RIGHT.

5 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

6 Q. YOU ARE MARRIED, BEEN MARRIED FOR 14 YEARS, AND YOUR
7 BRIDE'S NAME IS CARRIE, WITH A "C"?

8 A. YES, SIR.

9 Q. ALL RIGHT. YOU HAVE THREE CHILDREN, AGES 11, 9, AND
10 7, BOY, BOY, GIRL; IS THAT CORRECT?

11 A. YES, SIR.

12 Q. ALL RIGHT. AND ALL OF THOSE, ARE THEY ALL DEPENDENT
13 ON YOU?

14 A. THEY ARE.

15 Q. YOU ATTEND CHURCH HERE IN MYRTLE BEACH?

16 A. I DO.

17 Q. AND WHERE IS THAT?

18 A. FIRST BAPTIST AT MYRTLE BEACH.

19 Q. ALL RIGHT. NOW, TELL ME WHEN YOU BEGAN YOUR
20 EMPLOYMENT WITH THE SOUTH CAROLINA HIGHWAY PATROL.

21 A. JULY OF 2005.

22 Q. OKAY. AND DID YOU REMAIN EMPLOYED WITH THE HIGHWAY
23 PATROL UNTIL YOU WERE PLACED ON MEDICAL DISABILITY
24 RETIREMENT; IS THAT CORRECT?

25 A. YES, SIR.

1 Q. ALL RIGHT. AND WAS THAT RECOMMENDED TO YOU, THAT
2 YOU PURSUE THAT?

3 A. YES.

4 Q. OKAY, ALL RIGHT. PRIOR TO THAT, TELL ME WHAT YOUR
5 RANK WAS.

6 A. I WAS A LANCE CORPORAL.

7 Q. ALL RIGHT. AND DID YOU SERVE ON ANY SPECIFIC TEAM
8 WITH THE HIGHWAY PATROL?

9 A. THE ACE TEAM.

10 Q. ALL RIGHT. TELL ME ABOUT THE ACE TEAM, AND WHAT
11 DOES IT TAKE TO BE CHOSEN FOR THAT?

12 A. THERE'S -- YOU HAVE TO PUT IN FOR IT. SIXTEEN MOTOR
13 OFFICERS IN THE STATE WHEN I WAS -- APPLIED FOR IT.
14 THERE MAY BE MORE OR LESS TODAY, BUT THERE WAS 16.
15 AND YOU WERE CHOSEN OVER MAYBE A HUNDRED APPLICANTS
16 TO RIDE A MOTORCYCLE AND ENFORCE THE LAWS THAT --
17 IT'S NOT SO MUCH SEPARATE, BUT IT'S CALLED THE ACE
18 TEAM. IT'S THE AGGRESSIVE CRIMINAL ENFORCEMENT.
19 YOU'RE JUST RELIED ON TO DO PRESIDENTIAL ESCORTS,
20 DIGNITARY-TYPE STUFF. YOU MAY HAVE TO LEAVE ON A
21 QUICK NOTICE TO GO SOMEWHERE, BUT IT'S BASICALLY --
22 THERE'S TWO PARTS OF IT. THERE'S AN INTERDICTION
23 PART, WHICH IS MORE OF THE DRUG SIDE, WHICH WE WERE
24 INVOLVED IN A LITTLE BIT, AND THEN THE MOTORCYCLE
25 SIDE, WHICH IS WHAT I DID.

1 Q. ALL RIGHT. WAS IT AN HONOR TO BE CHOSEN FOR THIS?

2 A. ABSOLUTELY.

3 Q. DID YOU WORK HARD TO BE CHOSEN?

4 A. ABSOLUTELY.

5 Q. LET ME BACK UP JUST A MOMENT AND TALK ABOUT YOUR --
6 WHY YOU CHOSE TO BE IN LAW ENFORCEMENT, SPECIFICALLY
7 THE SOUTH CAROLINA HIGHWAY PATROL. WHEN DID THAT
8 DREAM BEGIN?

9 A. ACTUALLY, WHEN I WAS IN -- MY WHOLE LIFE MY -- THE
10 SHERIFF LIVED NEXT DOOR TO US IN NEW YORK, AND HIS
11 SON NOW IS A STATE POLICE OFFICER IN NEW YORK. BUT,
12 I MEAN, EVEN IN SECOND GRADE IN MY AUTOBIOGRAPHY I
13 WROTE, WHICH I STILL HAVE IT, STATED IT IN THERE MY
14 WHOLE -- IT'S ALL I'VE EVER WANTED TO DO WAS BE A
15 COP, WHETHER IT BE A STATE TROOPER; I DIDN'T KNOW
16 DIFFERENCE, OBVIOUSLY, IN THE SECOND GRADE, BUT I
17 WANTED TO BE IN LAW ENFORCEMENT JUST BECAUSE I GREW
18 UP WITH IT. YOU KNOW, WE GREW UP PLAYING IN POLICE
19 CARS AND COPS AND ROBBERS, AND THAT'S JUST ALWAYS
20 WHAT I WANTED TO DO

21 Q. DID YOU ENJOY IT?

22 A. I LOVED IT.

23 Q. IF YOU COULD, WOULD YOU STILL BE DOING IT?

24 A. ABSOLUTELY.

25 Q. HOW DOES THAT AFFECT YOU NOW?

- 1 A. IT'S -- YOU KNOW, IT'S SOMETHING YOU'VE ALWAYS
2 WANTED TO DO, AND ANYTHING THAT YOU LOVE TO DO, IF
3 IT'S TAKEN FROM YOU IT'S TERRIBLE. SO...
- 4 Q. ALL RIGHT. IN ADDITION TO THE HIGHWAY PATROL IT'S
5 MY UNDERSTANDING THAT YOU PURSUED SOME BUSINESSES TO
6 SUPPLEMENT YOUR INCOME WITH THE HIGHWAY PATROL?
- 7 A. I DID.
- 8 Q. NOW, YOU HAVE THREE KIDS AND A WIFE, AND UP UNTIL
9 THE TIME OF YOUR ACCIDENT WAS YOUR WIFE A STAY-AT-
10 HOME MOM?
- 11 A. SHE WAS.
- 12 Q. OKAY. AND WERE YOU ABLE TO AFFORD HER THAT
13 LIFESTYLE?
- 14 A. I WAS.
- 15 Q. WHY WAS THAT IMPORTANT TO YOU, SCOTT?
- 16 A. JUST, YOU KNOW, IT WAS THE WAY I WAS BROUGHT UP.
17 IT'S -- WHEN YOU HAVE YOUR OWN KIDS, I DIDN'T WANT
18 TO PUT THEM IN DAYCARE. I MEAN, MY WIFE OBVIOUSLY
19 HAD A FOUR-YEAR DEGREE, AND SHE WORKED VERY HARD.
20 SHE WAS A GOOD SCHOOL TEACHER, BUT WE DIDN'T WANT TO
21 -- IF WE COULD AFFORD IT, WE DIDN'T WANT TO HAVE OUR
22 KIDS IN DAYCARE. A LOT OF THINGS HAPPEN IN DAYCARE,
23 AND, YOU KNOW, IT'S -- WE'RE VERY FAMILY ORIENTED.
24 WE'VE NEVER BEEN TO DINNER ONE TIME WITHOUT OUR
25 KIDS. WE'VE NEVER LEFT THEM ONE TIME. SO, WE'RE

1 VERY -- AND IT WAS REALLY IMPORTANT TO HER THAT SHE
2 HAVE THAT TIME WITH THEM GROWING UP, AS ANY MOTHER
3 WOULD -- I WOULD ASSUME, WOULD WANT. SO, I MEAN, WE
4 JUST MADE ENDS MEET. YOU KNOW, I WORKED EVERY DAY
5 ALL DAY, YOU KNOW, TO AFFORD HER THE ABILITY TO DO
6 THAT, KNOWING THAT, YOU KNOW, ONE DAY IF THEY WERE
7 ALL GROWN UP, SHE, YOU KNOW, OBVIOUSLY HAS A FOUR-
8 YEAR DEGREE, AND SHE WAS A TEACHER. SHE COULD AT
9 ONE POINT, YOU KNOW, DECIDE, BUT, YOU KNOW, IT WAS
10 REALLY IMPORTANT FOR HER TO STAY AT HOME. IT WAS
11 IMPORTANT NOT ONLY FOR HER, BUT IT WAS IMPORTANT FOR
12 OUR CHILDREN, I THINK, YOU KNOW, TO HAVE THEIR
13 MOTHER THERE EVERY DAY.

14 Q. AND I WANT TO TALK A LITTLE BIT ABOUT YOUR FAMILY.
15 ARE YOU CLOSE WITH YOUR BOYS?

16 A. YES.

17 Q. YOU ENJOY THOSE KINDS OF ACTIVITIES WITH THEM?

18 A. ABSOLUTELY.

19 Q. DO YOU DRINK?

20 A. NO.

21 Q. DO YOU SMOKE?

22 A. NO.

23 Q. WHEN WAS THE LAST TIME YOU'VE HAD ANYTHING TO DRINK
24 IN YOUR LIFE?

25 A. OVER 20 YEARS AGO.

1 Q. OKAY, ALL RIGHT. IS THAT ALSO IMPORTANT TO YOU?

2 A. ABSOLUTELY. MY WHOLE LIFE GROWING UP I KNEW WHAT I
3 WANTED TO DO, SO I KNEW I COULDN'T DO -- I COULDN'T
4 GET IN TROUBLE. I COULDN'T DRINK. I COULDN'T --
5 YOU KNOW, I COULDN'T DO A LOT OF THINGS BECAUSE MY
6 WHOLE GOAL WAS TO BE IN LAW ENFORCEMENT.

7 Q. NOW, YOUR CONCURRENT EMPLOYMENT, YOU'RE SOMEWHAT OF
8 A HUSTLER, AND YOU WORK A LOT?

9 A. YES.

10 Q. AND YOU HAVE A COUPLE OF BUSINESSES, AND COUNSEL HAS
11 SUBPOENAED THOSE TAX RETURNS FROM YOU. AND I WANT
12 TO TALK ABOUT THE TIME -- WE'VE GOT TWO ACCIDENTS
13 THAT WE'RE DEALING WITH HERE, AND THE FIRST ACCIDENT
14 WAS BACK IN JULY OF 2010 AND THIS WAS ---

15 BY THE COMMISSIONER:

16 I WANT THE RECORD TO REFLECT I WAS NOT ASSIGNED
17 TO THAT CLAIM, AND I KNOW WE'RE GOING TO TALK ABOUT
18 IT BRIEFLY, BUT I JUST WANT THE RECORD REFLECT THAT
19 I ONLY GOT JURISDICTION OVER THE 2012 CLAIM.

20 BY MR. TEMPLE:

21 YES, MA'AM.

22 BY THE COMMISSIONER:

23 GO AHEAD.

24 BY MR. TEMPLE:

25 AND THAT WAS, JUST FOR THE RECORD, JULY 15TH

1 2010.

2 BY THE COMMISSIONER:

3 OKAY, THANK YOU.

4 BY MR. TEMPLE:

5 AND THANK YOU, COMMISSIONER

6 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

7 Q. BUT YOU HAVE -- AT THAT TIME DID YOU HAVE THESE
8 BUSINESSES, THESE SECONDARY PURSUITS?

9 A. YES.

10 Q. IS THAT FAIRLY COMMON AND TYPICAL FOR THE TROOPERS
11 TO HAVE SECONDARY BUSINESSES?

12 A. ABSOLUTELY.

13 Q. OKAY, ALL RIGHT.

14 A. WHETHER THEY OWN THEM OR THEY WORK A SECONDARY JOB.
15 YOU COULDN'T -- I MEAN, YOU COULD MAYBE LIVE OFF OF
16 JUST BEING A HIGHWAY PATROLMAN, BUT YOU WOULD -- IT
17 WOULDN'T BE VERY GOOD.

18 Q. ESPECIALLY WITH THREE CHILDREN?

19 A. RIGHT.

20 Q. SO, YOU HAD A COUPLE OF BUSINESSES. ONE -- AND I'M
21 GOING TO FOCUS ON LEDFORD OUTDOOR. THAT BUSINESS,
22 ALTHOUGH IT'S STILL AN OPEN CORPORATION, IT'S ONLY
23 BECAUSE THE BOOKS CAN'T CLOSE YET; IS THAT CORRECT?

24 A. YES.

25 Q. AND YOU HAVEN'T MADE ANY MONEY ON THAT IN QUITE SOME

1 TIME?

2 A. NO.

3 Q. IN FACT, I LOOKED AT YOUR TAX RECORDS THAT WERE
4 BROUGHT IN, AND IT LOOKS LIKE FOR 2012, ACCORDING TO
5 YOUR K-1, YOU HAD A LOSS OF 7,349; IS THAT CORRECT?

6 A. YES.

7 Q. OKAY. AND IN 2013 YOU HAD A LOSS OF 17,945?

8 A. PROBABLY, YES.

9 Q. IS THAT BECAUSE YOU COULDN'T BE PERSONALLY INVOLVED
10 IN THAT?

11 A. YES.

12 Q. AND JUST IN SUMMARY -- AND I DON'T WANT TO LEAD YOU.

13 BY MR. TEMPLE:

14 AND, COUNSEL, IF I STEP OVER THE LINE, LET ME
15 KNOW, AND I'LL STOP.

16 BY MS. ALPHIN:

17 I WILL.

18 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

19 Q. BUT THIS WAS KIND OF A HUNTING GUIDE-TYPE THING?

20 A. IT WAS. IT WAS A PASSION OF MINE AND MY KIDS, MY
21 WHOLE FAMILY, AND IT WAS SOMETHING THAT WE THOUGHT
22 WE COULD TURN INTO A BUSINESS.

23 Q. AND THAT HAS NOT -- SINCE YOU'VE BEEN TAKEN OUT OF
24 THAT EQUATION, THAT HAS NOT BEEN ---

25 A. NO.

1 Q. --- A PRODUCTIVE OR PROFITABLE BUSINESS AT ALL; IN
2 FACT, IT'S BEEN A LOSS THE LAST TWO YEARS?

3 A. YES.

4 Q. IN ADDITION TO THAT, YOU HAVE A LAWN CUTTING SERVICE
5 AND LANDSCAPING?

6 A. YES.

7 Q. IT'S CALLED PROCUTTERS LAWN AND LANDSCAPING, IS THAT
8 RIGHT?

9 A. MM-HMM.

10 Q. ALL RIGHT. AND IN THAT, PRIOR TO THIS ACCIDENT, WHO
11 DID THE MAJORITY OF THE PHYSICAL LABOR IN THAT?

12 A. MYSELF.

13 Q. AND YOU CUT GRASS AND MAINTAINED -- IS IT
14 RESIDENTIAL OR COMMERCIAL?

15 A. A LITTLE BIT OF BOTH BUT MOSTLY COMMERCIAL. I TRY
16 TO KEEP -- JUST BECAUSE THAT WOULDN'T ALLOW ME TO
17 CONTINUE THROUGH THE WINTER MONTHS.

18 Q. ALL RIGHT. AND SINCE THAT TIME ---

19 BY THE COMMISSIONER:

20 AND HOW MANY EMPLOYEES DID YOU HAVE PRIOR TO
21 THIS ACCIDENT HAPPENING?

22 BY THE WITNESS:

23 ONE. I WOULD HAVE SOMEBODY THAT WOULD HELP ME,
24 YOU KNOW, ONE OR TWO MAYBE IN THE SUMMERTIME I
25 WOULD HIRE AN EXTRA HAND, MA'AM. AND; OBVIOUSLY,

1 WITH ME BEING HURT THAT'S CHANGED SOME.

2 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

3 Q. AND SINCE THAT TIME HAVE YOU -- HAS YOUR WIFE KIND
4 OF STEPPED UP A LITTLE BIT AND COME BACK IN TO HELP
5 YOU WITH THAT?

6 A. ~~ABSOLUTELY.~~

7 Q. ARE THERE DAYS THAT YOU CAN'T PHYSICALLY GO MANAGE
8 THAT?

9 A. ABSOLUTELY.

10 Q. AND DOES SHE HELP YOU WITH THAT AS WELL?

11 A. YES, SIR.

12 Q. AND HAS SHE ACTUALLY GONE BACK NOW TO WORKING AS
13 WELL?

14 A. SHE'S HAD TO, YES.

15 Q. NOW, ACCORDING TO THE TAX RETURNS THAT WERE
16 PROVIDED, IN YOUR K-1 PROCUTTERS HAD AN ORDINARY
17 INCOME OF \$716; DOES THAT SOUND RIGHT TO YOU?

18 A. IT DOES; YEAH, WHATEVER IS...

19 Q. OKAY. AND THEN FOR 2013 IT HAD AN ORDINARY INCOME
20 AFTER EXPENSES AND DEPRECIATION, ETCETERA, \$688; IS
21 THAT CORRECT?

22 A. YES.

23 Q. SO, ARE YOU LIVING OFF OF THAT MONEY?

24 A. NOT REALLY.

25 Q. OKAY, ALL RIGHT. NOW, ARE YOU GOING TO CONTINUE

1 YOUR PROCUTTERS; ARE YOU GOING TO CONTINUE DOING
2 THAT BUSINESS IF YOU CAN?

3 A. YEAH, I -- YES. I DON'T HAVE A CHOICE.

4 Q. OKAY, ALL RIGHT. NOW, IN TERMS OF THAT INCOME,
5 PRIOR TO THIS ACCIDENT AND AT THE TIME OF THIS
6 ACCIDENT, DID WE HAVE A DISCUSSION ABOUT CONCURRENT
7 INCOME WHERE YOU TOLD ME YOU DID NOT WANT TO USE
8 THIS IN THIS CLAIM?

9 A I DID.

10 Q. EXPLAIN TO THE COMMISSION WHY YOU FELT SO
11 PASSIONATELY ABOUT NOT BURDENING THE HIGHWAY PATROL
12 WITH THIS INCOME.

13 A. WELL, I JUST -- I DIDN'T THINK IT WAS THEIR
14 RESPONSIBILITY. I MEAN, WE ALL MAKE CHOICES IN
15 LIFE, AND UNFORTUNATELY I DIDN'T DO SOMETHING THAT
16 PAID ME A LITTLE BIT BETTER. I WAS A STATE TROOPER,
17 SO I HAD TO DO SOMETHING TO SUPPLEMENT MY INCOME ON
18 THE SIDE, AND I JUST DIDN'T THINK IT WAS THEIR
19 RESPONSIBILITY OF THE LIFE I CHOSE. I DIDN'T THINK
20 THAT THEY HAD TO BE RESPONSIBLE TO PAY FOR SOMETHING
21 THAT I CHOSE TO DO OUTSIDE OF LAW ENFORCEMENT. I
22 DID IT ON MY OWN BECAUSE I WANTED MY WIFE TO STAY
23 HOME AND I WANTED NICER THINGS, BUT IT WAS NEVER --
24 I JUST -- YOU KNOW, THEY WERE NICE ENOUGH TO ALLOW
25 ME TO DO THAT ON THE SIDE, SO I DIDN'T FEEL LIKE I

1 SHOULD BURDEN THEM.

2 Q. OKAY. AND I ADVISED YOU OTHERWISE IN TERMS OF THE
3 LAW AND YOUR RIGHTS ACCORDING TO THAT CONCURRENT
4 INCOME; IS THAT CORRECT?

5 A. YES.

6 Q. AND YOU GAVE ME SPECIFIC INSTRUCTIONS-----

7 A. NOT TO.

8 Q. --- AND ORDERED ME NOT TO DO THAT; IS THAT CORRECT?

9 A. YES.

10 Q. NOW, AT THIS POINT, YOU HAD AN ACCIDENT JULY THE
11 15TH OF 2010, AND THAT'S NOT BEFORE THIS COMMISSION.
12 BUT, BRIEFLY, YOU WERE ON VACATION; YOU WERE
13 REQUIRED TO COME BACK FOR TASER TRAINING; YOU WERE
14 HELD -- YOUR ARMS WERE HELD, THEY TASED YOU, AND
15 WHEN YOU DID YOU SNAPPED BACK AND FRACTURED THREE OR
16 FOUR VERTEBRAE IN YOUR SPINE FROM THE T-6 TO T-9; IS
17 THAT CORRECT?

18 A. YES, SIR.

19 Q. ALL RIGHT. YOU RECEIVED TREATMENT FOR THAT?

20 A. YES.

21 Q. AND YOU RETURNED TO WORK, BUT YOU STILL HAD SOME
22 PAIN IN YOUR BACK; IS THAT CORRECT?

23 A. YES.

24 Q. AND TO DATE YOU STILL HAVE SOME PAIN IN YOUR
25 THORACIC SPINE?

1. A. YES.

2. Q. OKAY. BUT YOU CAME BACK TO FULL-DUTY WORK?

3. A. I DID.

4. Q. WITHOUT RESTRICTIONS?

5. A. I DID.

6. Q. AND, IN FACT, YOU WENT TO THE ACE TEAM WHEN YOU CAME
7. BACK TO WORK?

8. A. I DID. I DID; I WAS CLEARED.

9. Q. ALL RIGHT. AND YOU WERE BACK WITHOUT RESTRICTIONS,
10. DRIVING THE MOTORCYCLE, AND DOING ALL THE ORDINARY
11. PARTS ON YOUR JOB, YOUR REGULAR REQUIREMENTS OF YOUR
12. JOB?

13. A. YES, THAT'S TRUE.

14. Q. HUMOROUS -- IT WAS HUMOROUS. DO YOU RECALL SEEING
15. ME AT THE HOPKINS COUNTY POLICE DEPARTMENT RIGHT
16. OUTSIDE OF GLENNS BAY ROAD?

17. A. YEP; THE SUBSTATION THERE.

18. Q. WOULD YOU TELL THE COMMISSIONER WHAT HAPPENED ON
19. THAT DAY AND WHY THAT'S RELEVANT TO TODAY.

20. A. YOU JUST ASKED ME HOW I WAS FEELING. I TOLD HIM I
21. WAS FEELING GOOD AND GLAD TO BE BACK. I WAS RIDING
22. A MOTORCYCLE AND ---

23. Q. AND THAT WAS BEFORE THE ACCIDENT THAT WE ARE HERE
24. ABOUT TODAY?

25. A. YES.

- 1 Q. ALL RIGHT. IN PARTICULAR, IN REGARDS TO SEEING ME,
2 WHAT DID YOU SAY?
- 3 A. I MADE A -- I THINK I MADE A STATEMENT ALONG THE
4 LINES OF -- YOU WERE WITH SOMEBODY ELSE, AND I SAID,
5 "I'M GLAD I DON'T NEED YOU ANYMORE," TO THOSE
6 EFFECTS. JUST NOT BEING RUDE, JUST SAYING, HEY, I'M
7 BETTER NOW, YOU KNOW, AND WE'RE NOT HAVING A MONTHLY
8 INTERACTION OR A QUARTERLY INTERACTION. I WAS JUST
9 GOOFING AROUND. BUT, YEAH, I WAS DOING WELL.
- 10 Q. RIGHT. SO YOU WERE BACK AT THE JOB; YOU WERE DOING
11 YOUR FULL WORK; YOU WERE STILL HAVING SOME PAIN IN
12 YOUR THORACIC SPINE ---
- 13 A. YEAH.
- 14 Q. --- THAT YOU COULD TOLERATE.
- 15 A. BUT I KNOW THAT WHEN WE WERE DONE THAT THAT WAS
16 GOING TO BE SOMETHING THAT WAS GOING TO CONTINUE.
- 17 Q. OKAY. AND YOU WERE ON THE ACE TEAM AND DOING THAT
18 ---
- 19 A. YES.
- 20 Q. --- PARTICULAR, INTENSE JOB; IS THAT CORRECT?
- 21 A. YES.
- 22 Q. ALL RIGHT. NOW, LET'S TAKE US BRIEFLY TO THE DATE
23 OF THIS ACCIDENT. THIS IS AN ADMITTED CLAIM, SO I
24 DON'T WANT TO GO INTO THE DETAILS. BUT JUST FOR THE
25 RECORD, TELL ME BRIEFLY WHAT HAPPENED.

1 A. ON WHICH ---

2 BY THE COMMISSIONER:

3 2012.

4 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

5 Q THE ACCIDENT WE'RE HERE ABOUT TODAY, THE MOTORCYCLE
6 ACCIDENT.

7 A. I WAS AT 16TH AVENUE WITH TWO OTHER GUYS FROM THE
8 ACE TEAM, MY CORPORAL AND ANOTHER GUY BY THE NAME OF
9 TROOPER GEDDINGS. GENERALLY HAVE A CUP OF COFFEE IN
10 THE MORNING TO GET STARTED A LITTLE BIT BEFORE WE
11 SIGN ON. WE FUELED UP OUR BIKES. THEY WERE GOING
12 TO WORK IN ONE DIRECTION, BUT WE STAY CLOSE TO EACH
13 OTHER. I KIND OF WAS SITTING AT 16TH AVENUE IN THE
14 MEDIAN KIND OF SECTION AFTER FUELING UP, AND I SAW
15 SOME VIOLATIONS GO BY. UPON TRYING TO APPREHEND ONE
16 OF THE SUSPECTS, I WAS TURNING -- ALREADY GOING BUT
17 DOING A TURN TO TRY TO SPEED UP. MA'AM, ONCE A
18 VEHICLE PROCEEDS PAST YOU AT 45, 50 MILES AN HOUR,
19 YOU HAVE TO GO RELATIVELY QUICK ON YOUR MOTORCYCLE
20 TO CATCH UP BEFORE YOU LOSE THEM IN TRAFFIC,
21 ETCETERA, AND WHEN I DID THAT I REMEMBER A TRUCK
22 BEING THERE I HAD TO CUT A LITTLE BIT CLOSER, AND
23 I CRASHED I DON'T -- I MEAN, I CAN'T -- I WRECKED
24 MY MOTORCYCLE. I WENT DOWN, SKIDDED FOR A WAYS, AND
25 I REMEMBER TRYING TO GET UP. OBVIOUSLY I COULDN'T;

1 I WAS PINNED UNDERNEATH MY BIKE. AN OFF-DUTY
2 FIREFIGHTER FROM NORTH MYRTLE BEACH, WHO ACTUALLY
3 ALMOST HIT ME, HE WAS AS SCARED AS I WAS, CAME UP
4 AND HELPED ME LIFT THE MOTORCYCLE OFF. THEN SOME
5 PEOPLE CAME OVER FROM THE GAS STATION TO HELP ME AS
6 WELL, THAT WERE DRINKING COFFEE, AND I TRIED TO --
7 ACTUALLY, I BELIEVE I TRIED TO GET BACK ON THE
8 MOTORCYCLE AND COULDN'T, MY LEG, AND SO THEY PUSHED
9 IT ACROSS THE STREET. I WAS GOING TO PUSH. I
10 DIDN'T KNOW WHAT KIND OF CONDITION IT WAS IN. I WAS
11 A LITTLE SHOOK UP. BUT THAT'S BASICALLY THAT.

12 BY THE COMMISSIONER:

13 THAT'S GOOD ENOUGH. YOU'RE NOT HERE TO PROVE
14 YOU GOT HURT. WE ALL KNOW YOU DID.

15 BY THE WITNESS:

16 YES, MA'AM.

17 BY THE COMMISSIONER:

18 THANK YOU FOR GIVING ME AN IDEA.

19 BY MR. TEMPLE:

20 THANK YOU, COMMISSIONER.

21 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

22 Q. NOW, AFTER THAT YOU WERE TREATED AT THE EMERGENCY
23 ROOM, AND THEN YOU SAW -- YOU WERE REFERRED TO DR.
24 TAYLOR; IS THAT CORRECT?

25 A. I WAS SEEN IN THE EMERGENCY ROOM, AND THEN FOR ABOUT

1 A MONTH OR FIVE WEEKS, MAYBE A LITTLE BIT LONGER,
2 THEY KEPT SENDING ME TO WORK -- TO WORK OR ---

3 Q. WORK HARDENING?

4 A. NO. THEY SENT ME TO A PLACE IN CONWAY, THE -- IT'S
5 JUST LIKE A GENERIC PLACE YOU GO.

6 Q. THAT'S OKAY. JUST TELL ME WHAT THEY DID FOR YOU.

7 A. THEY DIDN'T DO ANYTHING THEY KEPT TELLING ME THAT
8 I HAD TO BE REFERRED TO AN ORTHOPEDIC SURGEON AND --
9 DOCTORS CARE. IT'S DOCTORS CARE THEY SENT ME TO.
10 AND, FINALLY, LIKE THE FOURTH VISIT, THE GUY SAID,
11 "LISTEN, I'M GOING TO -- I'VE GOT TO SEND YOU BACK
12 TO WORK BECAUSE THERE'S NOTHING WE CAN DO FOR YOU
13 HERE, BUT I THINK YOU NEED TO GO SEE AN ORTHOPEDIC
14 SURGEON." SO AT THE TIME I DID WHAT HE TOLD ME TO
15 DO. I TRIED TO GO BACK TO WORK. THE NEXT DAY AT
16 WORK MY LEG SWELLED UP SO BAD I ACTUALLY SHOWED MY
17 CORPORAL AND THEN WENT HOME, COULDN'T GET MY BOOT
18 OFF, WAS GOING TO CUT MY MOTORCYCLE BOOT OFF, ENDED
19 UP GETTING MY MOTORCYCLE BOOT OFF, AND THAT'S WHEN
20 -- I ACTUALLY ENDED UP GOING BACK TO DOCTORS CARE
21 ONE MORE TIME, AND THE GUY SAID, "LISTEN, I'M
22 TELLING YOU, YOU HAVE GOT TO GO SEE AN ORTHOPEDIC
23 SURGEON." SO, IN THE MEANTIME, I WAS TRYING TO CALL
24 WORKMAN'S COMP, WHICH IS A STRUGGLE, AND I MADE MY
25 OWN APPOINTMENT TO GO SEE -- BECAUSE AT CONWAY

1 HOSPITAL THERE WAS A DOCTOR ON CALL, WHO WAS DR.
2 MILLS. I JUST DID IT BECAUSE IT WAS CLOSE TO THE
3 HOUSE AS WELL, MA'AM. AND I MADE AN APPOINTMENT,
4 AND THEN THEY APPROVED IT AFTER THE FACT. THEY
5 SAID, "OKAY, YOU CAN GO."

6 Q. NOW, YOU ENDED UP SEEING ROSS TAYLOR WITHIN THAT
7 PRACTICE WITH DR. MILLS?

8 A. DR. MILLS LOOKED AT IT, AND HE SAID, "LISTEN, I'VE
9 'GOT A FOOT SPECIALIST, AN ANKLE SPECIALIST HERE; YOU
10 REALLY NEED TO SEE HIM." SO I WAS TRANSFERRED OVER
11 TO A DR. ROSS TAYLOR.

12 Q. ALL RIGHT. NOW, PRIOR TO -- WHEN YOU SAW DR. TAYLOR
13 PRIOR TO HAVING SURGERY, DID YOU DO ANYTHING ELSE?
14 DID HE HAVE ANY OTHER TREATMENT; DID YOU HAVE ANY
15 THERAPY, OR DID YOU JUST GO RIGHT FOR SURGERY?

16 A. NO, I HAD THERAPY. I HAD THERAPY FOR, I WOULD
17 GUESS, ALONG THE LINES OF SEVERAL MONTHS.

18 Q. ALL RIGHT. NOW, IT LOOKS LIKE ON JANUARY 30TH IS
19 WHEN HE PERFORMED THE SURGERY ON YOUR ANKLE?

20 A. YES.

21 Q. AND AFTER THAT HOW LONG ---

22 BY THE COMMISSIONER:

23 AND THAT'S 2013, CORRECT?

24 BY MR. TEMPLE:

25 YES, MA'AM.

1 BY THE COMMISSIONER:

2 OKAY.

3 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

4 Q. AND HOW LONG DID YOU STAY IN THE HOSPITAL AFTER THE
5 SURGERY?

6 A. IT WAS -- I STAYED THE REST OF THAT DAY, AND THEN I
7 CAME HOME, AND THEN I WAS BEDRIDDEN FOR AT LEAST A
8 WEEK. IT WAS BAD. AND THEN I WAS -- I HAD A
9 WHEELCHAIR SO I COULD GET UP AND FUNCTION FOR THE
10 NEXT MONTH OR SO. IF IT WAS LIKE A SHORT PLACE, I
11 COULD GO WITH A SET OF CRUTCHES, BUT MORE THAN
12 LIKELY IF I WENT ANYWHERE OR DID ANYTHING IT WAS
13 WITH A WHEELCHAIR.

14 Q. AND THEN DID YOU HAVE PHYSICAL THERAPY AFTER THAT?

15 A. I DID. I DID. I ACTUALLY STARTED PHYSICAL THERAPY,
16 I BELIEVE IT WAS, TWO WEEKS AFTER. HE FELT IT WAS
17 REALLY IMPORTANT TO GET RIGHT IN. BECAUSE WHEN THEY
18 GOT INTO MY ANKLE, HE STATED THAT IT WAS A LOT WORSE
19 THAN WHAT HE HAD -- WHAT HE THOUGHT HE WAS GOING TO
20 HAVE TO DO AND THAT IT WAS REALLY IMPORTANT THAT I
21 WENT IN AND STARTED DOING SOME STRETCHING, JUST REAL
22 LIGHT STUFF AT FIRST. I OBVIOUSLY STILL HAD ALL MY
23 INCISIONS AND EVERYTHING WAS BAD, BUT THEY WOULD DO
24 SOME STUFF WITH SOME BANDS, JUST TRYING TO LOOSEN IT
25 UP A LITTLE BIT. AND THEN AS TIME WENT ON I

1 PROGRESSIVELY GOT BETTER AND BETTER, DOING MORE
2 THINGS AT PHYSICAL THERAPY.

3 Q. AND HE ACTUALLY, WHEN HE WENT INTO YOUR ANKLE,
4 SHAVED THE BONE DOWN AND DID A DEBRIDEMENT IN THERE
5 AND A RESECTION OF THAT ANTERIOR DISTAL TIBIAL
6 OSTEOPHYTE, IS THAT RIGHT?

7 A. YES.

8 Q. ALL RIGHT. WAS THE SURGERY SUCCESSFUL FOR YOU?

9 A. MY OPINION? I'M NOT A DOCTOR, BUT, NO, ABSOLUTELY
10 NOT. I FELT BETTER BEFORE THE SURGERY THAN I DO
11 NOW.

12 BY THE COMMISSIONER:

13 SO YOU FEEL WORSE AFTER THE SURGERY?

14 BY THE WITNESS:

15 ABSOLUTELY.

16 BY THE COMMISSIONER:

17 OKAY.

18 BY THE WITNESS:

19 MA'AM, IF I CAN CLARIFY THAT.

20 BY THE COMMISSIONER:

21 SURE.

22 BY THE WITNESS:

23 IT'S JUST, YOU KNOW, BEFORE I DIDN'T FEEL LIKE
24 I WAS WEAK, AND I NEVER -- I HAD A LOT OF SWELLING
25 AND FELT A LITTLE DISCOMFORT, BUT IT WAS NOTHING

1 LIKE I EXPERIENCE NOW. I CAN WALK AROUND NOW AND
2 YOU WOULD SWEAR IF YOU SAW ME IN A MALL I COULD JUST
3 -- MY LEG WILL 'GIVE OUT. 'BUT IT'S -- THE SIZE OF IT
4 RIGHT NOW IS LIKE I HAVE A GOLF BALL STICKING OUT.
5 THE SIDES OF MY ANKLE RIGHT NOW, AND IT JUST REALLY
6 -- YOU KNOW, BEFORE I FELT LIKE MAYBE -- I DIDN'T
7 RUN, MA'AM, BUT I FELT LIKE I COULD RUN AND DO
8 CERTAIN THINGS, AND NOW EVEN ROSS TAYLOR WILL TELL
9 YOU, I CAN'T -- I MEAN, I JUST CAN'T -- I CAN'T DO
10 ANY OF THAT STUFF. SO, THE WAY HE TOLD ME I WOULD
11 -- WHICH I KNOW IT'S NOT THE DOCTOR'S FAULT, AND I
12 KNOW THINGS HAPPEN, AND EVERYTHING IN THIS WORLD
13 HAPPENS FOR A REASON. BUT IT WAS, "HEY, YOU'RE
14 GOING TO DO THIS, AND I'M GOING TO GET YOU BACK
15 HERE, AND, YOU KNOW, WE'RE GOING TO BE A TEAM." AND
16 THE SECOND THE SURGERY WAS OVER, HE TOLD ME, HE WAS
17 LIKE, "IT WAS WORSE THAN I THOUGHT, AND WE'RE GOING
18 TO HAVE TO KIND OF PLAY IT BY EAR." SO IT WAS
19 ALMOST LIKE -- IT WAS ALMOST LIKE IT WAS A STEP BACK
20 INSTEAD OF A STEP FORWARD. BUT I'VE ALWAYS HAD A
21 GOOD MINDSET. JUST LIKE WHEN MY FIRST BACK INJURY
22 WAS, YOU KNOW, I'M GOING TO DO WHATEVER IT TAKES TO
23 GET BACK UP ON MY FEET SO, THAT'S THE WAY I
24 PROCEEDED WITH IT

25 BY MR. TEMPLE:

1 COMMISSIONER, AT SOME POINT I WOULD LIKE FOR
2 YOU TO PERSONALLY VIEW THE KNOT.

3 BY THE COMMISSIONER:

4 OKAY. I WOULD ORDINARILY COME TO YOU ALL, BUT
5 I CAN'T GET BACK IN HERE BECAUSE I DON'T HAVE THE
6 LITTLE MAGIC CARD, SO.... AND I WOULD LIKE YOU TO
7 TAKE OFF BOTH SHOES.

8 BY THE WITNESS:

9 YEAH, YEAH.

10 BY THE COMMISSIONER:

11 NO, YOU'RE -- YOU'RE FINE RIGHT THERE. OH,
12 YEAH, I CAN SEE.

13 BY THE WITNESS:

14 YOU CAN SEE THE SCAR AND EVERYTHING. DO YOU
15 SEE IT?

16 BY THE COMMISSIONER:

17 OKAY, AND LET ME SEE THE OTHER.

18 BY THE WITNESS:

19 YOU CAN SEE THE SCAR. SEE HOW IT'S OFF?

20 BY THE COMMISSIONER:

21 DID YOU SEE, MS. ALPHIN?

22 BY MS. ALPHIN:

23 I DID SEE THAT.

24 BY THE COMMISSIONER:

25 ALL RIGHT.

1 BY THE WITNESS:

2 I CAN'T PUT ALL MY WEIGHT ON THIS ANKLE.

3 BY THE COMMISSIONER:

4 DO YOU WANT TO SIT DOWN?

5 BY THE WITNESS:

6 YEAH.

7 BY MR. TEMPLE:

8 THERE'S A CHAIR RIGHT HERE.

9 BY THE WITNESS:

10 OH, I CAN PUT SOME WEIGHT ON IT.

11 BY THE COMMISSIONER:

12 BE CAREFUL.

13 BY MR. TEMPLE:

14 SCOTT, THAT TABLE IS GOING TO FALL.

15 BY THE WITNESS:

16 SEE, IT'S ALL -- OTHER THAN MY NICE LITTLE
17 TATTOO I GOT WHEN I WAS 18, BUT SEE, JUST THE BONE,
18 STICKING; THERE'S NOTHING SWOLLEN OR STICKING OUT.

19 BY MS. ALPHIN:

20 THERE'S A CHAIR RIGHT BEHIND YOU.

21 BY THE WITNESS:

22 OH, I'M GOOD. I JUST DIDN'T WANT TO..

23 BY THE COMMISSIONER:

24 THAT'S GOOD. THANK YOU.

25 BY THE WITNESS:

1 SO, IT WAS ---

2 BY MR. TEMPLE:

3 WELL, JUST SIT DOWN AND PUT YOUR ---

4 BY THE WITNESS:

5 I'M SORRY.

6 BY MR. TEMPLE:

7 THAT'S OKAY.

8 BY THE WITNESS:

9 BUT IT WAS JUST DISCOURAGING BECAUSE I FELT
10 LIKE -- I FELT LIKE I WAS -- YOU KNOW, ANYTIME YOU
11 GO INTO SURGERY YOU ALWAYS FEEL LIKE YOU'RE GOING TO
12 COME OUT BETTER, AND I DIDN'T. SO, I THINK IT WAS
13 DISCOURAGING.

14 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

15 Q. ALL RIGHT. AND SO AFTER THAT, HOW LONG DID YOU
16 PARTICIPATE IN THERAPY WITH YOUR ANKLE?

17 A. I DON'T HAVE A SPECIFIC TIME; PROBABLY SEVERAL
18 MONTHS, THREE MONTHS, TWO, THREE MONTHS AT LEAST.
19 AND I DID MAKE GAINS DURING THAT, BUT NOTHING LIKE
20 WHAT I THOUGHT.

21 Q. ALL RIGHT. IN ADDITION TO THE FORMAL PHYSICAL
22 THERAPY, WERE YOU GIVEN SOME HOME STRETCHES AND
23 EXERCISES?

24 A. YES, STILL DO.

25 Q. AND HOW OFTEN DO YOU DO THOSE?

1 A. I DO IT EVERY MORNING, AND I DO THEM GENERALLY EVERY
2 NIGHT. I CAN'T SAY I DO THEM EVERY NIGHT, BUT I DO
3 THEM EVERY MORNING, BECAUSE WHEN I GET OUT OF BED
4 I'M SO STIFF, AND IT'S GENERALLY SO SWOLLEN THAT IT
5 -- I JUST HAVE A BAND, AND I DO STRETCHES.

6 Q. IS THAT THE GREEN BAND THAT WE'RE TALKING ABOUT?

7 A. YES. I'VE GOT SEVERAL OF THEM NOW. OR I'LL DO,
8 LIKE, REALLY LIGHT LIKE HALF RAISES, ANYTHING TO GET
9 THE BLOOD FLOWING AND TO MAKE IT FEEL A LITTLE BIT
10 BETTER. AND THEN GENERALLY AT NIGHT -- I HAVEN'T
11 BEEN ON IT REALLY AT ALL TODAY. AT NIGHT IF I WAS
12 TO WALK ON IT OR DO SOMETHING, IT WOULD -- IT SWELLS
13 UP REALLY BAD, AND I HAVE A WRAP ICE THING, AND THEN
14 GENERALLY I WON'T DO ANY OF THOSE EXERCISES IF I
15 HAVE TO ICE IT FOR A LONG PERIOD OF TIME.

16 Q ALL RIGHT. NOW, IN TERMS OF -- TALK TO US ABOUT
17 YOUR FEELINGS ABOUT PRESCRIPTION MEDICATION

18 A. I DON'T DO VERY WELL. IT'S DOCUMENTED IN THERE.
19 IT'S NOTHING AGAINST -- I THINK EVERY PERSON DEALS
20 WITH MEDICATION MORE SO THAN OTHER PEOPLE DO LIKE
21 I STATED, I'VE NEVER BEEN A DRINKER. I'VE NEVER
22 BEEN A SMOKER, AND I DON'T DO WELL WITH PRESCRIPTION
23 MEDICINE. IT MAKES ME FEEL OUT OF CONTROL. I
24 WOULDN'T NECESSARILY SAY LIKE I'M LOSING MY MIND,
25 BUT SORT OF TO THE POINT WHERE I DON'T LIKE FEELING

1 LIKE I CAN'T DO SOMETHING, AS FAR AS WHETHER IT BE
2 HELP MY KIDS, HELP MY WIFE, GET OUT OF BED. I FEEL
3 LIKE I JUST DON'T DO WELL.

4 Q. SO, INSTEAD, WHAT DO YOU DO; WHAT DO YOU TAKE?

5 A. I TAKE TWO ALEVE GENERALLY EVERY MORNING. IT
6 LOOSENS IT UP, AND THEN AT NIGHT TO GO TO BED
7 GENERALLY I'LL TAKE WHATEVER TYPE OF P.M., MOTRIN
8 P.M., TYLENOL P.M., JUST SOMETHING TO TAKE THE ICING
9 OFF, IF YOU WILL, AND -- SO I CAN FALL TO SLEEP.

10 Q. ALL RIGHT. IS THERE EVER A TIME IN REGARDS TO YOUR
11 ANKLE THAT YOU DON'T HAVE PAIN?

12 A. NO.

13 Q. IS THERE EVER A TIME THAT YOU DON'T HAVE SWELLING IN
14 YOUR ANKLE?

15 A. NO.

16 Q. IS THERE EVER A TIME THAT YOU FEEL COMFORTABLE
17 WALKING ON YOUR RIGHT ANKLE?

18 A. I THINK THAT'S 'KIND OF A MINDSET. I MEAN, YOU JUST
19 NEVER KNOW WHEN IT'S GOING TO GIVE OUT. THAT'S THE
20 ONLY BAD THING. YOU KNOW, I'VE KIND OF LIVED WITH
21 THE PAIN, BUT, I GUESS, THERE'S JUST THE
22 UNCERTAINTY, WHETHER YOU'RE IN WALMART OR YOU'RE IN
23 THE MALL OR YOU'RE WALKING IN TO GET A BURGER AT RED
24 ROBIN, THE THOUGHT OF LOOKING NOT SO NICE BECAUSE
25 YOU FALL DOWN IS SOMETHING. SO ---

1 Q. NOW, YOU'RE RIGHT-HANDED?

2 A. I AM.

3 Q. ALL RIGHT. AND THIS IS YOUR RIGHT LEG?

4 A. RIGHT.

5 Q. NOW, IN THE MORNING WHEN YOU WAKE UP, ON A SCALE OF
6 ONE TO TEN, TEN BEING THE WORST PAIN YOU'VE EVER HAD
7 AND ONE BEING NO PAIN AT ALL, WHERE IS YOUR PAIN
8 LEVEL?

9 A WHEN I WAKE UP IN THE MORNING, IT'S GENERALLY PRETTY
10 CALM, MAYBE LIKE A -- I WOULD SAY FROM A TWO, THREE,
11 FOUR STANDPOINT IN THE MORNING, JUST BECAUSE I'VE
12 BEEN OFF OF IT GENERALLY AT NIGHT AND I SLEEP WITH
13 AN ELEVATED, LIKE A LITTLE ROLLER. I GENERALLY WILL
14 LEAVE IT ON THERE, AND IT DOESN'T LAST ALL NIGHT
15 BECAUSE SOMETIMES I GET RESTLESS. SO I TRY TO
16 ELEVATE IT, AND THAT'S FROM THE DOCTOR, WHAT THE
17 DOCTOR TOLD ME TO DO BUT, I GUESS, THAT WOULD BE A
18 STARTING POINT FOR WHERE YOUR DAY GOES, AND THEN IT
19 WOULD JUST DEPEND ON WHAT YOU DO THAT DAY

20 Q. NOW, YOU ARE HARD-HEADED?

21 A YES.

22 Q YOU'RE STUBBORN?

23 A. ABSOLUTELY.

24 Q. NOW, WHEN YOU GO TO YOUR JOB SITES, DO YOU TRY FROM
25 TIME TO TIME TO HELP AND TO GET INVOLVED DRIVING THE

1 TRACTOR, DOING THINGS LIKE THAT?

2 A. NOT SO MUCH THE TRACTOR BUT OTHER THINGS, YES. I

3 MEAN, I'M NOT ---

4 Q. WHAT HAPPENS WHEN YOU DO THAT?

5 A. I HURT. I HURT BEFORE I DO IT, BUT I HURT WORSE

6 AFTER I DO IT.

7 Q. AS YOU GO THROUGH THE DAY, WHERE DOES YOUR PAIN

8 LEVEL -- WHERE IS YOUR CONSISTENT PAIN LEVEL ON THAT

9 SAME SCALE OF ONE TO TEN?

10 A. CONSISTENTLY THROUGHOUT THE DAY ONCE I'M UP AND

11 GOING ON IT, PROBABLY BETWEEN A FIVE OR SIX IF I

12 REALLY DO STUFF OR HAVE TO STAND FOR A LONG PERIOD

13 OF TIME, YOU KNOW, JUST LIFE THINGS. YOU GO TO A

14 GROCERY STORE AND YOU HAVE TO GET GROCERIES, OR YOU

15 DO CERTAIN THINGS, OBVIOUSLY IT'S GOING TO BE WORSE,

16 BUT I WOULD SAY THE MINIMUM, BETWEEN A FIVE AND A

17 SIX. IT CAN GO ALL THE WAY UP TO A, YOU KNOW,

18 SEVEN, EIGHT. IT'S -- I WOULDN'T COMPARE IT TO THE

19 WAY I FEEL IN MY BACK, BUT IT'S PAINFUL.

20 Q. NOW, AS YOU GO FORWARD WITH THIS, WITH YOUR LEG, ARE

21 THERE THINGS THAT YOU USED TO DO FOR FUN THAT YOU

22 CAN'T DO ANYMORE; HOBBIES, AND THINGS LIKE THAT?

23 A. YEAH.

24 Q. TALK TO US ABOUT THAT.

25 A. I MEAN, YOU CAN -- YOU KNOW, I WOULDN'T SAY THAT YOU

1 CAN'T NECESSARILY DO THEM, BUT YOU DO THEM WITH
2 DISCOMFORT, GREAT DISCOMFORT. YOU KNOW, I CAN'T --
3 I USED TO BE A HUGE HUNTER, WHICH I STILL LOVE THE
4 OUTDOORS; I STILL HUNT AND HIKE. YOU KNOW, WE GO TO
5 GATLINBURG HIKING, AND THERE'S CERTAIN THINGS THAT I
6 CAN'T DO ANYMORE THAT I WISH I COULD. YOU KNOW, YOU
7 CAN'T GO CLIMB CLINGMANS DOME ANYMORE BECAUSE I KNOW
8 THAT IT'S NOT A MATTER OF WHEN BUT IT'S HOW BAD IT'S
9 GOING TO BE AFTERWARDS. I CAN'T -- SO, THERE'S
10 CERTAIN THINGS THAT YOU JUST HAVE TO NOT DO.

11 Q. OKAY. WELL, TELL ME THIS. HOW LONG CAN YOU
12 COMFORTABLY STAND AT ONE TIME?

13 A. COMFORTABLY? IF IT WAS EARLY IN THE MORNING AND I
14 HAVEN'T DONE A LOT, PROBABLY 30 MINUTES.

15 Q. ALL RIGHT. HOW ABOUT TOWARDS THE END OF THE DAY?

16 A YOU KNOW, COMFORTABLY, PROBABLY NOT THAT LONG. YOU
17 KNOW, EVERY DAY IS A DIFFERENT DAY, AND IT'S HARD TO
18 TELL YOU EXACTLY, BUT IT'S JUST A MATTER OF WHAT YOU
19 DO THAT DAY. BUT, I MEAN, IT COULD BE NO TIME; I
20 COULD NOT WANT TO STAND UP AT ALL. YOU KNOW, AS
21 SOON AS I COME IN I MAY HAVE TO JUST SIT DOWN AND
22 START ICING IT SO, IT'S EVERY DAY, BUT IT'S
23 DEFINITELY WORSE AS THE DAY PROGRESSES.

24 Q. ALL RIGHT. NOW, WHEN YOU WALK, HOW FAR CAN YOU WALK
25 COMFORTABLY?

1 A. I THINK IT'S A LOT LIKE STANDING. IF IT'S UNEVEN
2 GROUND, HARDLY AT ALL BECAUSE IT HURTS RIGHT AWAY,
3 JUST THE BENDING AND FLEXATION OF YOUR FOOT IF
4 YOU'RE ON UNEVEN GROUND. BUT IF IT'S STRAIGHT
5 AROUND MY NEIGHBORHOOD, IT'S LIKE A HALF A MILE, IF
6 MY LITTLE DAUGHTER IS RIDING HER BIKE, I CAN -- YOU
7 KNOW, I CAN WALK FOR 15 MINUTES OR SO, 15 MINUTES,
8 20 MINUTES AND FEEL DECENT. BUT IF IT'S AT THE
9 BEACH OR, YOU KNOW, GOING SOMEWHERE ON UNEVEN
10 GROUND, YOU'RE CAMPING OR YOU'RE -- YOU KNOW, EVEN
11 THROUGH LIKE A GRASSY AREA THAT'S UNEVEN, NOT -- YOU
12 CAN FEEL IT A LOT WORSE.

13 Q. NOW, YOU UNDERSTAND THAT DR. TAYLOR, THE AUTHORIZED
14 DOCTOR, HAS SAID YOU SHOULDN'T RUN, CUT, PIVOT ---

15 BY MS. ALPHIN:

16 OBJECT TO LEADING.

17 BY THE COMMISSIONER:

18 SUSTAINED.

19 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

20 Q. ARE YOU FAMILIAR WITH -- HAVE YOU RECEIVED THE
21 REPORTS FROM DR. TAYLOR?

22 A. I HAVE.

23 Q. HAVE YOU READ THOSE REPORTS?

24 A. YES.

25 Q. ARE YOU FAMILIAR WITH THE RESTRICTIONS THAT HE'S

1 IMPOSED?

2 A. YES.

3 Q. ALL RIGHT. NOW, I'M GOING TO SHOW YOU WHAT WE'VE
4 INDICATED, AND THIS IS DR. TAYLOR'S APA ---

5 BY THE COMMISSIONER:

6 I HAVE THE REPORT. IT'S GOT RESTRICTIONS IN
7 THERE.

8 BY MR. TEMPLE:

9 FANTASTIC.

10 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

11 Q. AND ARE YOU TRYING TO ABIDE BY THOSE RESTRICTIONS?

12 A. I DO.

13 Q. OKAY, ALL RIGHT. AND IF YOU DON'T ABIDE BY THOSE
14 RESTRICTIONS, WHAT HAPPENS?

15 A. I HURT WORSE.

16 Q. LET ME TALK TO YOU ABOUT YOUR CERVICAL SPINE, NECK.
17 IN YOUR PRIOR CLAIM, IN THE THORACIC, THE TASER
18 INCIDENT ---

19 BY THE COMMISSIONER:

20 2010 CLAIM, RIGHT?

21 BY MR. TEMPLE

22 YES, MA'AM; THE 2010 CLAIM

23 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

24 Q. DID YOU HAVE ANY RATING TO YOUR NECK?

25 A. NO.

1 Q. ALL RIGHT. AND THE RATING THAT YOU GOT WAS FOR WHAT
2 PART OF YOUR SPINE?

3 A. THORACIC SPINE.

4 Q. THORACIC SPINE ONLY?

5 A. YES.

6 Q. OKAY. NOW, THE COMMISSION FOUND THAT YOU SUSTAINED
7 A COMPENSABLE INJURY TO YOUR CERVICAL SPINE,
8 CORRECT? YOU ARE AWARE OF THAT?

9 A. YES.

10 Q. NOW, YOU'VE SEEN DR. MILLS FOR THAT CONDITION; IS
11 THAT CORRECT?

12 A. YES.

13 Q. WHAT RECOMMENDATIONS DID DR. MILLS MAKE?

14 A. SURGERY.

15 Q. ALL RIGHT. AND WHEN HE DID THAT, WERE YOU THERE FOR
16 HIS DEPOSITION WHEN HE RECOMMENDED SURGERY?

17 A. YES.

18 Q. ALL RIGHT. AND HAVE YOU REVIEWED HIS REPORT WHEREIN
19 HE INDICATED THAT SURGERY WAS APPROPRIATE FOR YOU?

20 A. YES.

21 Q. ALL RIGHT. NOW, IN THAT -- AND DO YOU RECALL THAT
22 TO BE THE REPORT OF JUNE 4TH, 2012?

23 A. YES.

24 BY MR. TEMPLE:

25 FOR THE RECORD, COMMISSIONER, I THINK ---

1 BY THE COMMISSIONER:

2 I'M GOING TO READ IT. THANK YOU.

3 BY MR. TEMPLE:

4 NUMBER FIVE.

5 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

6 Q. TELL ME WHY INITIALLY YOU WANTED A SECOND OPINION
7 BEYOND DR. MILLS.

8 A. LIFE EXPERIENCE YOU DON'T EVER PUT ALL YOUR EGGS
9 IN ONE BASKET, IF I'M ALLOWED TO SAY THAT. BUT YOU
10 JUST DON'T -- I MEAN, I -- YOU'RE TALKING ABOUT
11 MAJOR SURGERY, IN MY EYES, IN MY LIFE. THAT WAS
12 MAJOR TO ME, ESPECIALLY AFTER COMING OFF A NOT SO
13 SUCCESSFUL SURGERY. I WAS SCARED AND WANTED A
14 SECOND OPINION FROM ANOTHER DOCTOR, AS I WOULD
15 IMAGINE ANYBODY WOULD.

16 Q. WERE YOU PRESENT WHEN DR. MILLS TESTIFIED THAT HE
17 WANTED TO DO BOTH -- OR HE COULD DO BOTH OPERATIONS
18 IN ONE -- AT ONE TIME?

19 A. YEAH, AT ONE TIME.

20 Q. DID THAT CAUSE YOU CONCERN?

21 A. ABSOLUTELY.

22 Q. NOW, YOU SAW DR. EDWARDS, AND DID HE EVALUATE YOUR
23 CONDITION?

24 A. HE DID.

25 Q. WHAT RECOMMENDATIONS DID HE MAKE FOR YOU?

1 A. THE SAME. AND HE ALSO STARTED OFF BY SAYING HE WAS
2 A LITTLE BIT MORE CONSERVATIVE OF A DOCTOR, VERY
3 CONSERVATIVE. SURGERY FOR HIM WAS -- THAT'S LIKE
4 WHEN I MET WITH DR. MILLS, LITERALLY HE LOOKED AT MY
5 MRIs AND LOOKED AT STUFF, AND HE LOOKED AT HIS
6 ASSISTANT; IT WAS LIKE, OKAY, WE NEED TO SCHEDULE
7 SCOTT FOR ALL THESE WORDS THAT I CAN'T SAY. BUT IT
8 ---

9 BY THE COMMISSIONER:

10 GO AHEAD AND TELL ME ABOUT EDWARDS. I'M
11 FAMILIAR WITH WHAT MILLS HAS DONE.

12 WITNESS RESUMES:

13 A. IT WAS SURGERY. AND THEN DR. EDWARDS IS A LITTLE
14 MORE CONSERVATIVE. HE SAID, "HEY, LET'S -- I FEEL
15 THAT YOU'RE GOING TO NEED SURGERY, BUT IF WE CAN
16 PROLONG IT, LET'S MAYBE SEE IF SOME OTHER THINGS
17 WILL ALLEVIATE SOME OF THE PAIN. BUT IF -- I FEEL
18 THAT YOU'RE GOING TO NEED IT, BUT LET'S -- LET'S
19 SEE, LET'S -- YOU KNOW, WE'LL WAIT A LITTLE WHILE.
20 LET'S SEE WHAT HAPPENS."

21 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

22 Q. ALL RIGHT. AND DID YOU WANT TO WAIT AT THAT POINT?

23 A. YES.

24 Q. AND WAS THAT A GOOD RECOMMENDATION FOR YOU?

25 A. YES.

1. Q. AND BETWEEN THE TIME YOU SAW HIM AND YOU WANTED TO
2 GET ANOTHER OPINION FROM DR. POLETTI, WERE YOU STILL
3 DOING WHAT HE TOLD YOU TO DO AND TAKING YOUR
4 MEDICATION AND DOING YOUR EXERCISES AND THINGS OF
5 THAT NATURE?

6 A OH, YEAH, ABSOLUTELY.

7 Q AND AT THAT POINT WERE YOU STILL CONSIDERING WHETHER
8 YOU WERE GOING TO HAVE THE NECK AND THE LOW BACK
9 SURGERY?

10 A. ABSOLUTELY.

11 Q. OKAY, ALL RIGHT. NOW, AT THE POINT YOU SAW DR.
12 POLETTI, WAS THAT THE DEFINITIVE DECISION FOR YOU IN
13 TERMS OF WAITING?

14 A. IT WAS. I -- OUT OF ALL THE DOCTORS THAT I'VE SEEN,
15 NOT BECAUSE HE WAS ONE THAT I --- I MEAN, I CHOSE TO
16 GO TO SOUTHEASTER SPINE, BUT IF YOU LOOK AT THE
17 TRACK RECORD ---

18 Q I DON'T MEAN TO ---

19 A. YES. I'M SORRY; YES. HE WAS THE DECIDING FACTOR,
20 THAT I SAID I'M GOING TO TRY TO PROLONG AS LONG AS I
21 CAN, KNOWING I'M PROBABLY GOING TO HAVE TO HAVE IT,
22 BUT I DON'T WANT TO PROCEED. I CALLED YOU
23 AFTERWARDS AND SAID I DON'T WANT TO PROCEED WITH
24 SURGERY.

25 Q. YOU WANT TO WAIT AS LONG AS YOU CAN?

1 A. I WANT TO WAIT AS LONG AS I CAN.

2 Q. ALL RIGHT. NOW, AT THAT POINT, WAS THAT MARCH OF
3 2014?

4 A. YES.

5 Q. AND THAT'S THE LAST TIME YOU'VE SEEN DR. POLETTI?

6 A. THAT'S THE LAST I'VE SEEN HIM.

7 Q. NOW, LET'S TALK ABOUT YOUR NECK. HOW IS YOUR NECK
8 TODAY?

9 A. TERRIBLE.

10 Q. ALL RIGHT. TELL ME, DESCRIBE HOW IT FEELS.

11 A. I DON'T -- YOU CAN'T PUT -- YOU CAN'T PUT IT INTO
12 WORDS, UNLESS YOU HAVE AN INJURY LIKE THIS; AND I
13 DON'T MEAN TO DRAG IT OUT, BUT IT'S TERRIBLE. IT'S
14 LIFE CHANGING. IT'S SOMETHING THAT NOBODY IN THIS
15 ---

16 BY THE COMMISSIONER:

17 HOW DOES IT FEEL? IS IT SHARP, DULL? IS IT
18 INTERMITTENT; IS IT CONSTANT? TRY TO EXPLAIN IT.

19 BY THE WITNESS:

20 IT'S CONSTANT; IT'S SHARP; IT MAKES MY ARMS GO
21 NUMB, ESPECIALLY MY RIGHT ARM; IT'S -- YOU ALWAYS
22 FEEL LIKE YOU HAVE A BULGE UP TOP THAT'S BURNING.
23 IT'S -- YOU KNOW, THE ONLY WAY I CAN EXPLAIN IT THAT
24 I'VE BEEN THROUGH IN LIFE, IT'S LIKE A TOOTHACHE
25 THAT DOESN'T EVER GO AWAY. IT'S -- IT'S AWFUL.

DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

Q. ALL RIGHT. NOW, TELL ME THIS. WHEN YOU SAY -- SO, IT'S CONSTANT PAIN?

A. IT'S CONSTANT PAIN; IT BURNS. SOMETIMES IT'S SHARP, AND SOMETIMES IT GOES AWAY A LITTLE BIT, BUT IT'S LIKE A BURNING SENSATION THAT YOU HAVE THAT -- YOU KNOW, IT'S OBVIOUSLY WORSE AT SOME TIMES THAN IT IS OTHERS. BUT IT'S ---

Q. LET ME STOP YOU THERE, THEN. SO, IN THE MORNINGS WHEN YOU WAKE UP, TELL ME ON A SCALE OF ONE TO TEN HOW IT FEELS.

A. YOU KNOW, AND THAT'S ONE THING ABOUT MY BACK INJURY IS SLEEP SOMETIMES IS WORSE FOR ME LAYING DOWN THAN IT IS STANDING UP. SO, SOMETIMES I WAKE UP AND I'M A NINE. OTHER DAYS I WAKE UP AND I MAY BE A FIVE OR SIX. IT'S -- IT'S NEVER BELOW THAT, BUT I CAN'T TELL YOU -- AND THAT'S WHAT'S SO HARD TO EXPLAIN, ESPECIALLY TO PEOPLE THAT DON'T HAVE IT. IT'S ---

Q. ALL RIGHT LET ME STOP YOU THERE. BEFORE THIS ACCIDENT OCCURRED, HOW MANY HOURS OF CONTINUOUS SLEEP WERE YOU GETTING A NIGHT?

A. EIGHT, TEN

Q. OKAY. NOW, HOW ABOUT NOW; HOW MANY HOURS OF CONTINUOUS SLEEP DO YOU GET?

A. THREE, FOUR ON A GOOD NIGHT.

1 Q. OKAY, ALL RIGHT. DOES ANYTHING YOU DO RELIEVE THAT
2 PAIN OR MAKE IT ANY BETTER?

3 A. YOU KNOW, IT MAY REQUIRE THAT IF I'M SITTING DOWN, I
4 STAND UP. IT MAY REQUIRE THAT IF I'M STANDING UP
5 AND DOING SOMETHING, THAT I JUST HAVE TO LAY DOWN ON
6 A HEATING PAD, ESPECIALLY ON MY LOWER BACK. I KNOW
7 WE'RE TALKING ABOUT MY NECK AREA, BUT IT JUST -- IT
8 JUST ALL DEPENDS. IT'S JUST HOW YOU HAVE TO DEAL
9 WITH IT AT THE TIME. A LOT OF TIMES, LIKE WHEN MY
10 ARM GOES NUMB, MY HAND, MY ELBOW, BACK LIKE THAT,
11 THAT YOU HAVE TO SIT DOWN BECAUSE IT HURTS SO BAD
12 YOU DON'T WANT TO STAND UP.

13 Q. ALL RIGHT. ARE THERE TIMES THAT YOU HAVE NO PAIN IN
14 YOUR NECK?

15 A. NO.

16 Q. LET'S MOVE ON TO YOUR LOW BACK NOW. IN TERMS OF
17 YOUR LUMBAR SPINE, DESCRIBE THAT AS BRIEFLY AS YOU
18 CAN, THE PAIN THAT YOU HAVE IN YOUR LOW BACK.

19 A. IT IS NOT LIKE MY CERVICAL SPINE. IT WAS A LOT MORE
20 TOLERABLE TO CERTAIN DEGREES. I WOULD SAY AS LOW AS
21 WAKING UP IN THE MORNING AND BEING A TWO, THREE,
22 FOUR, SORT OF LIKE MY ANKLE. YOU KNOW, IT WAS KIND
23 OF MORE -- YOU COULD KIND OF LIKE TELL WHEN IT WAS
24 GOING TO FLARE UP, WHEN YOU WERE GOING TO HURT REAL
25 BAD. BUT IT'S GOING TO HURT, BUT -- I DON'T KNOW.

1 A COUPLE WEEKS AGO, AND THIS IS JUST -- I HURT SO
2 BAD IN MY LOWER BACK THAT I THOUGHT -- I MEAN, IT
3 HURT ME SO BAD THAT THAT NIGHT I WENT TO THE CONWAY
4 E.R. I HURT SO BAD. I MEAN, IT WAS -- IT WAS WORSE
5 THAN MY ANKLE; IT WAS WORSE THAN MY CERVICAL SPINE;
6 IT WAS -- IT WAS TO THE POINT WHERE I DIDN'T CARE
7 WHAT HAPPENED TO ME.

8 BY THE COMMISSIONER:

9 DO I HAVE THOSE RECORDS?

10 BY MR. TEMPLE:

11 YES, MA'AM; YOU DO.

12 WITNESS RESUMES:

13 A. I ABSOLUTELY HAD TO BE -- I HAD TO KNOW WHAT WAS
14 GOING -- I MEAN, I HURT SO BAD THAT IT HURT THE
15 MUSCLES AROUND MY BACK.

16 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

17 Q. WAS IT JUST IN YOUR BACK, OR DID YOU HAVE IT ---

18 A. NO. IT WAS DOWN MY BUTT; IT WAS -- I MEAN, I REALLY
19 THOUGHT THAT THERE WAS A POSSIBILITY THAT SOMETHING
20 ELSE WAS GOING ON BECAUSE I HAVE NEVER ---

21 Q. HAD YOU HAD ANOTHER ACCIDENT OR ANY INTERVENING
22 INCIDENT?

23 A. NO NO, AND THAT'S JUST -- IT HAD BEEN LIKE THAT
24 BEFORE. I REMEMBER ONE TIME I WAS AT -- ME AND MY
25 WIFE WERE COMING BACK FROM LAKE CITY, AND IT HURT

1 THAT -- TO THAT EXCRUCIATING, BUT IT KIND OF WENT
2 AWAY. BUT THIS WASN'T GOING AWAY. IT WAS -- IT WAS
3 -- WE WERE INTO A SEVEN-DAY PERIOD.

4 Q. ALL RIGHT. NOW, ARE THERE ANY TIMES WHEN YOUR LOW
5 BACK DOESN'T BOTHER YOU TO SOME DEGREE?

6 A. NO, I WOULDN'T SAY -- IT JUST DOESN'T BOTHER ME TO
7 THE EXTENT THAT MY CERVICAL SPINE AND STUFF HURT.
8 IT -- BUT, I MEAN, IT'S NEVER -- IT'S NEVER GREAT.
9 IT'S NEVER ALWAYS LIKE I WAS.

10 Q. ALL RIGHT. NOW, LET'S TALK ABOUT YOUR ABILITY TO DO
11 OTHER JOBS. OTHER THAN BEING IN LAW ENFORCEMENT,
12 ARE YOU TRAINED TO DO -- AND OBVIOUSLY YOU CUT
13 GRASS, OR YOU HAVE A COMPANY THAT DOES THAT. BUT DO
14 YOU HAVE ANY TRANSFERABLE SKILLS: WELDING, HVAC,
15 PLUMBING, ANYTHING OF THAT NATURE?

16 A. NOTHING.

17 Q. OKAY, ALL RIGHT. AND YOUR SCHOOL THAT YOU WENT TO
18 WAS WHERE; WHERE DID YOU GO TO ---

19 A. HORRY GEORGETOWN TECHNICAL COLLEGE.

20 Q. OKAY. AND TWO YEARS THERE IN CRIMINAL JUSTICE?

21 A. CRIMINAL JUSTICE.

22 Q. ALL RIGHT. COULD YOU -- DO YOU KNOW OF ANY JOB IN
23 CRIMINAL JUSTICE YOU COULD DO WITH THE RESTRICTIONS
24 YOU HAVE NOW AND THE PAIN YOU HAVE?

25 A. NO.

1 Q. IF YOU COULD, WOULD YOU DO THAT?

2 A. YEAH

3 Q. OKAY. NOW, IN THE VOCATIONAL ASSESSMENT IT SUGGESTS
4 THAT MAYBE YOU COULD DO SOMETHING TO EARN \$9 AN
5 HOUR. DO YOU KNOW OF ANYTHING THAT YOU COULD DO AT
6 THIS POINT, WORKING A FULL-TIME BASIS, STANDING AND
7 SITTING DOWN?

8 A. NO, NO.

9 Q. SO, OTHER THAN WHAT YOU'RE DOING RIGHT NOW, ---

10 A. RIGHT.

11 Q. --- IN TERMS OF YOUR WORK ---

12 A. RIGHT

13 Q. --- WITH YOUR SECOND COMPANY AND YOUR OWN ---

14 A. AND THE REASON WHY I CAN DO THAT IS BECAUSE I CAN
15 CATER IT TO HOW I FEEL THAT DAY. THAT'S THE ONLY
16 REASON WHY I CAN CONTINUE TO DO THINGS OF THAT
17 NATURE, IS BECAUSE IT'S UP TO ME HOW I PROCEED
18 THROUGHOUT THE DAY. I MEAN, SOME DAYS I WAKE UP AND
19 I DO ABSOLUTELY NOTHING; I HAVE TO LAY THERE. AND
20 THERE'S OTHER DAYS THAT I CAN GET OUT AND DRIVE
21 AROUND AND DO STUFF

22 Q. ALL RIGHT NOW, IN TERMS OF GOING FORWARD IN THE
23 FUTURE, ARE YOU ASKING THIS COMMISSION TO ALLOW YOU
24 THE BENEFIT OF SURGERY TO YOUR NECK AND YOUR LOW
25 BACK, AS INDICATED BY DRS MILLS, EDWARDS, AND

1 POLETTI, AT THE TIME IT GETS BEYOND ---

2 A. YES.

3 Q. --- THE POINT WHERE YOU CAN TOLERATE IT?

4 A. YES.

5 Q. ALL RIGHT. AND AT THAT POINT WOULD YOU BE WILLING
6 TO UNDERGO THAT TREATMENT?

7 A. OH, ABSOLUTELY. I MEAN, I FEEL THAT THERE IS
8 DEFINITELY -- AFTER TALKING TO ALL THREE OF THESE
9 DOCTORS, AND ALL THREE OF THEM ARE WELL-KNOWN
10 DOCTORS, THEY'VE ALL CLEARLY STATED, "YOU'RE GOING
11 TO HAVE THIS. IT'S A MATTER OF WHEN, WHETHER YOU
12 HAVE IT NOW" ---

13 BY MS. ALPHIN:

14 OBJECT TO HEARSAY.

15 BY THE COMMISSIONER:

16 SUSTAINED.

17 BY MR. TEMPLE:

18 OKAY, VERY GOOD.

19 DIRECT EXAMINATION RESUMED BY MR. TEMPLE:

20 Q. ALL RIGHT. BUT IN TERMS OF YOUR PERSONAL OPINION,
21 IF IT GOT TO THAT POINT, YOU WOULD HAVE THE SURGERY?

22 A. YES, YES.

23 Q. ALL RIGHT, OKAY. NOW, LET ME LOOK AND SEE IF I HAVE
24 ANYTHING ELSE. HOW OFTEN DO YOU TAKE YOUR ALEVE
25 MEDICATION?..

1 A. EVERY DAY.

2 Q. HOW MANY A DAY DO YOU TAKE?

3 A. TWO.

4 Q. TWO IN THE MORNING?

5 A. TWO IN THE MORNING.

6 Q. AND THEN DO YOU TAKE -- WHAT DO YOU TAKE AT NIGHT?

7 A. JUST REALLY ANYTHING WITH LIKE A P.M., SOMETHING TO
8 HELP ME FALL ASLEEP AT NIGHT, MOTRIN P.M., AND
9 GENERALLY I ONLY TRY TO TAKE ONE OF THOSE AND
10 THERE ARE A DAY OR TWO OR THREE WHERE I MAY FEEL
11 OKAY TO A CERTAIN DEGREE, AND I CAN GO HOME AND JUST
12 LAY DOWN. I TRY NOT TO TAKE ANYTHING THAT I DON'T
13 HAVE TO. THE ALEVE IS EVERY DAY.

14 Q. ALL RIGHT. HAVE YOU ANSWERED MY QUESTIONS HONESTLY?

15 A. ABSOLUTELY.

16 Q. IS THERE ANYTHING THAT YOU WANT TO CHANGE?

17 A. NO.

18 BY MR. TEMPLE:

19 COUNSEL MAY HAVE -- THAT'S ALL I HAVE OF THIS
20 WITNESS, COMMISSJONER

21 BY THE COMMISSIONER:

22 THANK YOU MS ALPHIN.

23 BY MS. ALPHIN.

24 THANK YOU, COMMISSIONER.

25 CROSS EXAMINATION BY MS. ALPHIN:

- 1 Q. MR. LEDFORD, HAVE YOU LOOKED FOR OR APPLIED FOR ANY
2 JOBS?
- 3 A. MA'AM?
- 4 Q. HAVE YOU LOOKED FOR OR APPLIED FOR ANY JOBS?
- 5 A. NO.
- 6 Q. YOUR PROCUTTERS BUSINESS, THAT'S THE NAME OF YOUR
7 LAWN COMPANY?
- 8 A. IT IS; YES, MA'AM.
- 9 Q. AND IT'S PROCUTTERS LAWN AND LANDSCAPING, LLC,
10 CORRECT?
- 11 A. YES.
- 12 Q. AND THAT'S OWNED BY BOTH YOU AND YOUR WIFE?
- 13 A. IT IS; YES.
- 14 Q. ALL RIGHT. I WON'T BEGIN TO UNDERSTAND TAX RETURNS.
- 15 A. THANK YOU 'CAUSE I DON'T ---
- 16 Q. SO I'M NOT GOING TO ASK YOU ---
- 17 A. I DON'T EITHER; I JUST BROUGHT THEM TO YOU.
- 18 Q. I'M NOT GOING TO ASK A COMPLICATED TAX QUESTION.
19 BUT DO YOU KNOW HOW MUCH INCOME YOUR BUSINESS
20 CLAIMED IN YOUR INCOME TAXES IN 2013?
- 21 A. I DON'T. I CAN LOOK REAL QUICK AND TELL YOU.
- 22 Q. OKAY. LET ME ASK THIS. YOUR INCOME TAXES CLAIM
23 THAT IN 2013, AND THIS IS THE INCOME TAX FOR YOUR
24 PROCUTTERS, ---
- 25 A. RIGHT.

1 Q. --- THAT YOU HAD \$334,906 IN GROSS RECEIPTS AND
2 SALES. WOULD YOU AGREE THAT THAT'S CORRECT?

3 A IF THAT'S WHAT IT SAYS, DONE BY MY ACCOUNTANT,
4 ABSOLUTELY.

5 Q. OKAY. AND YOU WRITE OFF A LOT OF BUSINESS EXPENSES;
6 IS THAT A FAIR STATEMENT?

7 A. ABSOLUTELY.

8 Q. OKAY, RIGHT. AND THAT'S SOMETHING YOUR ACCOUNTANT
9 DOES?

10 A. YES, MA'AM.

11 Q. OKAY. SO AT THE END OF YOUR TAXES, ONCE THAT'S ALL
12 DONE, THERE IS A TAXABLE INCOME AMOUNT, BUT THAT'S
13 NOT ACTUALLY HOW MUCH MONEY YOU GENERATE FOR THE
14 COMPANY, IS THAT ---

15 BY MR. TEMPLE:

16 I'M GOING TO OBJECT TO THIS LINE OF
17 QUESTIONING. I DON'T THINK IT'S ---

18 WITNESS ANSWERS:

19 A. I DON'T UNDERSTAND.

20 BY MR. TEMPLE:

21 I DON'T THINK IT'S RELEVANT BECAUSE WE HAVEN'T
22 CLAIMED IT AS CONCURRENT, BUT I'M NOT SURE HE'S
23 QUALIFIED TO -- SINCE AN ACCOUNTANT DID THESE
24 RECORDS FOR HIM.

25 BY THE COMMISSIONER:

1 WELL, I THINK IT IS RELEVANT, AND I REALIZE
2 THAT NONE OF US IN HERE ARE ACCOUNTANTS, AND I'M THE
3 WORST OF THE BUNCH, BUT I THINK IT'S RELEVANT AS FAR
4 AS ABILITY TO WORK, AND I'LL LET YOU CONTINUE. NOW,
5 WE'RE NOT GOING TO GO ON TOO LONG ABOUT THIS, BUT
6 IT'S CROSS EXAMINATION, SO I'M GOING TO ALLOW IT.
7 YOU HAVE A RUNNING OBJECTION, MR. TEMPLE. GO AHEAD.

8 BY MR. TEMPLE:

9 THANK YOU, YOUR HONOR.

10 BY MS. ALPHIN:

11 THANK YOU, COMMISSIONER, AND I'M REALLY JUST
12 SUBMITTING IT IN TERMS OF WAGES EARNED.

13 CROSS EXAMINATION RESUMED BY MS. ALPHIN:

14 Q. YOU HAVE CONTRACTS WITH YOUR PROCUTTERS COMPANY THAT
15 YOU DO REGULAR BUSINESS FOR?

16 A. YES.

17 Q. OKAY. AND YOU HAVE NO REASON TO DISPUTE THE TAX
18 RETURNS THAT HAVE BEEN HANDED UP THAT SHOW THAT YOU
19 BROUGHT IN \$334,906 IN GROSS RECEIPTS AND SALES?

20 A. NO, NONE AT ALL.

21 Q. OKAY, PERFECT. YOU HAVE NOT HAD ANY SURGERY RELATED
22 TO THIS CLAIM OTHER THAN YOUR ANKLE SURGERY,
23 CORRECT?

24 A. YES, MA'AM.

25 Q. OKAY. SO THERE'S NOT BEEN ANY SURGERY ON YOUR BACK?

1 A. NO.

2 Q. OR ON YOUR NECK OR YOUR LOW BACK?

3 A. NO.

4 Q. AND, IN FACT, HAVE YOU HAD ANY TREATMENT WHATSOEVER
5 TO YOUR BACK?

6 A. JUST SOME INJECTIONS.

7 Q. AND THAT WAS YOUR LOW BACK OR YOUR CERVICAL?

8 A. MY LOWER BACK.

9 Q. OKAY. AND IN THE CERVICAL, YOU HAVEN'T HAD ANY
10 INJECTIONS?

11 A. I TRIED TO GET SOME, BUT WORKMAN'S COMP DENIED IT.

12 Q. OKAY. AND LET ME ASK YOU ABOUT THE PRIOR ACCIDENT
13 THAT YOU ANSWERED SOME QUESTIONS ABOUT. THAT WAS
14 YOUR 2010 CLAIM WITH THE TASER?

15 A. YES.

16 Q. YOU TESTIFIED THAT THAT WAS A T-SPINE INJURY ONLY,
17 CORRECT?

18 A. YEAH.

19 Q. I BELIEVE THAT WAS YOUR TESTIMONY. WELL, DID YOU
20 NOT GO TREAT WITH A DR. SARB IN 2011 RELATED TO THAT
21 INJURY?

22 A. YEAH.

23 Q. AND DR. SARB TREATED YOU FOR YOUR NECK AND RADICULAR
24 SYSTEMS IN YOUR ARM; IS THAT CORRECT?

25 A. SHE TREATED -- SHE DID A NERVE STUDY; THAT'S WHAT

1 SHE DID.

2 Q. OKAY. AND DR. SARB ACTUALLY ASSIGNED YOU A FIVE
3 PERCENT IMPAIRMENT RATING TO YOUR CERVICAL SPINE; IS
4 THAT CORRECT?

5 A. I HAVE -- IF YOU SAY; I DON'T KNOW.

6 BY MS. ALPHIN:

7 I'D LIKE TO SUBMIT -- I'LL LET HIM TAKE A LOOK
8 AT IT. IT IS A LETTER FROM THE DOCTOR HE TREATED
9 WITH TO YOU.

10 BY MR. TEMPLE:

11 WAS THAT IN THE -- I DON'T OBJECT TO THAT.
12 YEAH, IT CAN COME IN, BECAUSE I THINK ALL OF THAT
13 SHOULD BE IN THE FILE.

14 BY THE COMMISSIONER:

15 MARK THIS AS DEFENDANTS' ONE.
16 (COURT REPORTER MARKS LETTER DEFENDANTS' EXHIBIT NUMBER
17 ONE, RETAINED IN COMMISSION FILE.)

18 CROSS EXAMINATION RESUMED BY MS. ALPHIN:

19 Q. THIS HAS BEEN MARKED DEFENDANTS' EXHIBIT NUMBER ONE.
20 I'M JUST GOING TO HAND THIS TO YOU. TAKE A LOOK AND
21 TELL ME, THAT DOCUMENT RIGHT THERE IS FROM DR. SARB,
22 CORRECT?

23 A. I DON'T SEE WHERE IT -- YEAH, BARBARA L. SARB.

24 Q. OKAY. AND THAT APPEARS TO BE A LETTER OR A
25 STATEMENT THAT SHE SENT TO YOUR ATTORNEY; IS THAT

1 CORRECT? OR IT'S "TO WHOM IT MAY CONCERN." I'M
2 SORRY.

3 A. TO WHOM IT MAY CONCERN.

4 Q. IN THAT LETTER IT STATES THAT SHE ASSIGNED YOU A
5 FIVE PERCENT IMPAIRMENT TO YOUR CERVICAL SPINE,
6 CORRECT?

7 A. YES.

8 Q. AND THAT IS DATED IN 2011, WHICH IS PRIOR TO THE
9 MOTORCYCLE ACCIDENT WE'RE HERE ABOUT TODAY?

10 A. RIGHT.

11 Q. OKAY. THAT'S ALL I HAVE ABOUT THAT. I'LL TAKE THAT
12 DOCUMENT FROM YOU. THANK YOU. SO IT IS NOT CORRECT
13 TO SAY THAT YOUR 2010 ACCIDENT WAS ONLY A T-SPINE
14 INJURY SINCE DR. SARB RATED YOUR CERVICAL SPINE; IS
15 THAT CORRECT?

16 A. YEAH. I ONLY SAW HER ONCE, BUT IT WAS MY THORACIC
17 SPINE THAT -- MY T-6 THROUGH MY T-9, WHAT WAS
18 TREATED. SO, YEAH, I DIDN'T COMPLAIN OF ANY -- I
19 MEAN, WHETHER SHE DID SOMETHING -- SHE ONLY DID A
20 NERVE STUDY. SO ---

21 BY THE COMMISSIONER:

22 SO YOU DIDN'T COMPLAIN OF ANY NECK PAIN?

23 BY THE WITNESS:

24 NO, MA'AM. I JUST COMPLAINED OF THE NUMBNESS
25 AND THE TINGLING FEELING, THAT I WAS HAVING THE

1 BURNING SENSATION IN MY THORACIC AREA, AND THAT'S
2 WHY DR. MILLS SENT ME DOWN THERE TO HAVE A -- THEY
3 DID ALL KINDS OF -- A NERVE STUDY.

4 CROSS EXAMINATION RESUMED BY MS. ALPHIN:

5 Q. AND THAT WAS DOWN YOUR ARM, THOUGH, TOO; YOU HAD THE
6 SYMPTOMS DOWN YOUR ARM?

7 A. YES.

8 Q. AND THAT WAS BEFORE YOUR MOTORCYCLE ACCIDENT?

9 A. YEAH, IT WAS LIKE RADIATING.

10 Q. AND THAT WAS BEFORE YOUR MOTORCYCLE ACCIDENT?

11 A. IT WAS.

12 Q. OKAY. SO YOUR 2010 TASER ACCIDENT, YOU RECEIVED A
13 SETTLEMENT AMOUNT FROM THE INSURANCE COMPANY FOR
14 THAT, CORRECT?

15 A. YES.

16 Q. OKAY. YOU TESTIFIED YOU WERE STILL ABLE TO HUNT,
17 CORRECT?

18 A. I MEAN, I TAKE MY KIDS, BUT NOT LIKE I USED TO, IF
19 YOU WANT TO GET TECHNICAL.

20 Q. OKAY. YOU DON'T HUNT AS MUCH AS YOU USED TO?

21 A. I DON'T.

22 Q. DO YOU ---

23 A. AND I DON'T DO THE TRIPS THAT I USED TO DO. I DON'T
24 GO TO COLORADO. I DON'T DO -- I MEAN, IT'S -- IF
25 YOU TALK ABOUT, DO YOU STILL HUNT? YEAH, I GO DOWN

1 THE STREET AND I PUT MY KIDS IN A GROUND BLIND. BUT
2 DO I HUNT LIKE I USED TO HUNT? ABSOLUTELY NOT. I
3 CAN'T.

4 Q. YOU TAKE YOUR KIDS HUNTING SOMETIME?

5 A. ABSOLUTELY.

6 Q. OKAY. AND YOU KEEP UP A D.N.R. LICENSE OR WHATEVER
7 LICENSE YOU NEED TO HUNT?

8 A. I HAVEN'T GOTTEN ONE THIS YEAR, BUT, YES, I WILL.

9 Q. OKAY. YOU PLAN TO GET ONE?

10 A. YES, I DO.

11 Q. OKAY. YOU TESTIFIED TO YOUR ATTORNEY THAT THERE ARE
12 NO JOBS THAT YOU KNOW OF THAT YOU COULD DO IN YOUR
13 CONDITION. HAVE YOU TRIED TO WORK ANYWHERE?

14 A. NO.

15 BY MS. ALPHIN:

16 I DON'T HAVE ANY OTHER QUESTIONS. THANK YOU.

17 BY THE COMMISSIONER:

18 ALL RIGHT. MR. TEMPLE, ANYTHING ON REDIRECT?

19 BY MR. TEMPLE:

20 YES, MA'AM; THANK YOU.

21 REDIRECT EXAMINATION BY MR. TEMPLE:

22 Q. IN TERMS OF -- LET ME JUST REVIEW THE TAX RETURNS
23 ONE MORE TIME SINCE COUNSEL HAS BROUGHT THAT UP. IN
24 TERMS OF THE -- WHAT SHE TALKED ABOUT WAS THE GROSS
25 RECEIPTS HERE.

- 1 A. RIGHT.
- 2 Q. THE INCOME REFLECTED ON YOUR K-1 STATEMENT FOR 2013
- 3 FOR PROCUTTERS IS HOW MUCH?
- 4 A. SIX HUNDRED AND EIGHTY-EIGHT.
- 5 Q. OKAY. AND, AGAIN, YOUR ACCOUNTANT DID THAT FOR YOU?
- 6 A. YES.
- 7 Q. NOW, BEFORE THIS IN 2012 YOUR INCOME, ACCORDING TO
- 8 YOUR K-1 STATEMENT, AFTER EXPENSES AND DEPRECIATION
- 9 WERE TAKEN ---
- 10 A. RIGHT. 716, IT SAYS.
- 11 Q. ALL RIGHT. AND TO THE BEST OF YOUR KNOWLEDGE, ARE
- 12 THOSE ACCURATE?
- 13 A. YEAH; THEY'RE DONE BY MY ACCOUNTANT.
- 14 Q. ALL RIGHT. NOW, IN TERMS OF THE PRIOR CLAIM, WERE
- 15 YOU EVER COMPENSATED FOR OR HAD A FINDING FROM THE
- 16 COMMISSION, TO YOUR KNOWLEDGE, THAT YOU HAD A
- 17 CERVICAL IMPAIRMENT?
- 18 A. NO, NOT AT ALL. EVERYTHING THAT WAS DONE WAS DONE
- 19 FOR MY THORACIC SPINE FROM DAY ONE. IT WAS MY T-6
- 20 THROUGH MY T-9, WHICH IS ALL DOCUMENTED. I MEAN,
- 21 WHETHER SHE WROTE IT UP OR NOT, I HAVE NO CONTROL
- 22 OVER THAT, BUT THAT'S -- MY TASER INCIDENT WAS MY
- 23 T-6 THROUGH MY T-9.
- 24 Q. AND THAT WAS THE ADMITTED PART OF THAT CLAIM?
- 25 A. IT WAS.

1 BY MR. TEMPLE.

2 THAT'S ALL I HAVE, YOUR HONOR.

3 BY THE COMMISSIONER:

4 ANYTHING ELSE, MS. ALPHIN?

5 BY MS. ALPHIN:

6 NO, COMMISSIONER.

7 BY THE COMMISSIONER:

8 ANY WITNESSES?

9 BY MS. ALPHIN:

10 NO, COMMISSIONER

11 BY THE COMMISSIONER:

12 THAT CONCLUDES THIS PROCEEDING.

13 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
14 CONCLUDED AT THE HOUR OF 1:02 P.M.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1202545

EMPLOYEE/CLAIMANT: SCOTT LEDFORD

EMPLOYER: DEPARTMENT OF PUBLIC SAFETY

CARRIER: STATE ACCIDENT FUND

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 72 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF SCOTT LEDFORD, TAKEN ON THE 15TH DAY OF AUGUST, 2014.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 1ST DAY OF SEPTEMBER, 2014.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

BEFORE THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C FILE NOS.: 1202545

SCOTT LEDFORD, Employee,	)	
	)	
Claimant/Appellant,	)	
	)	
vs	)	APPELLANT'S MOTION FOR
	)	A REHEARING
DEPARTMENT OF PUBLIC	)	
SAFETY, Employer, and STATE	)	
ACCIDENT FUND, Carrier,	)	
	)	
Defendants/Respondents.)	)	

TO COMMISSIONERS AISHA TAYLOR, GENE McCASKILL, and R
MICHAEL CAMPBELL, II; and SARAH S. ALPHIN, Attorney for the
Defendants/Respondents

The Claimant/Appellant, SCOTT LEDFORD, by his undersigned attorneys,
respectfully filed a Motion for Rehearing by the Appellate Panel of the Decision and
Order of the Appellate Panel filed on January 21, 2016. This motion is filed
pursuant to the case of Rhame v. Charleston County School District, 412 S.C. 273,
772 S.E.2d 159 (2015), § 1-23-280 (1), S.C. Code Anno. (Supp. 2014); S.C. Code
Anno Reg 67-712. and Rule 203 (b) (6), S.C.A.C.R. A copy of the Decision is
attached hereto and a copy of this motion is being served on the Commissioners

The Claimant/Appellant is sincerely grateful the Appellate Panel's
amendments to the Single Commissioner's Decision and Order that have saved him
and his family from financial bankruptcy, authorized him to receive the ongoing
physical therapy and injections recommended by his physicians, and have preserved

his right to seek a change of condition, within one year from the last payment of compensation under § 42-17-90, S.C. Code Anno, 1976 as amended. The problem is the Appellate Panel, by adopting the majority of the Single Commissioner's findings, has left the Claimant/Appellant still accused of being a liar and a cheat whose reputation has been destroyed. The Claimant/Appellant has been faithfully married for fourteen years to his school teacher wife. He joined the police force and proudly served for seventeen years. He was a Lance Corporal on the South Carolina Highway Patrol, selected to be a member of the prestigious ACE motorcycle team. His law enforcement career was exemplary and untarnished until he suffered two admitted career ending accidents for which he was awarded State disability retirement benefits. The Claimant/Appellant is a good, decent, law abiding citizen. Far from being a "hustler," he is the proud owner of small businesses built up over eighteen years to supplement his law enforcement salary. The attack on his reputation and integrity is not just personally devastating to him, it is shocking and undermines public confidence in the Commission.

This motion for rehearing is based on the following grounds:

1. THE APPELLATE PANEL COMMITTED AN ERROR OF LAW IN FINDING AND RULING THERE IS NO EVIDENCE THE SINGLE COMMISSIONER VIOLATED THE CODE OF JUDICIAL CONDUCT BY THREATENING THE CLAIMANT/RESPONDENT WITH CRIMINAL PROSECUTION UNLESS HE SETTLED HIS CLAIM ON GROSSLY UNFAIR TERMS.

¹ The single Commissioner and the Appellate Panel specifically his disability award was subject to reevaluation in 2015. That review has been completed and his disability continued without the necessity for further yearly review.

The first ground for a rehearing and reconsideration is that the Single Commissioner's failure to recuse herself to avoid an appearance of impropriety. The alleged improper conduct never involved any claim the Single Commissioner had any personal prejudice against the Claimant/respondent, any personal relationship with the State Fund, or any personal interest in the outcome of the case. The alleged improper conduct was very specific and was fully supported by the sworn affidavit of the Claimant/Appellant's attorney as an Officer of the Court. The Defendants/Respondents' counsel was party to the conference in which alleged improper conduct occurred and was given every opportunity to challenge or dispute that it had, in fact, occurred in her response to the Motion to Recuse that was filed, in her Defendants/Respondents' brief to the Appellant and in her argument before the Appellate Panel but chose not to do so.

Although the Single Commissioner called the allegation of misconduct false and frivolous, she admitted the substance of allegation in her Order. Settling his claim would have required the Claimant/Respondent to forfeit his right to have his claim determined, not just by Commissioner, but by this Appellate Panel and the Appellate Courts in due course. Had the Appellate Panel found the Claimant/Respondent failed to prove the misconduct alleged based on the preponderance of the disputed evidence, or found that it was all just some misunderstanding and the Single Commission was merely trying to encourage a settlement, not force one, the Claimant/Respondent would let the matter rest

Finding there is no evidence supporting the alleged misconduct is an error of law and is not supported by the substantial evidence contained in the record. For the Appellate Panel to affirm the Single Commissioner's Decision and Order on the ground there is no evidence supporting that improper conduct occurred will force the Claimant/Appellant to pursue Appellate Court review of this issue potentially undermining public confidence in the fairness and impartiality of the Commission. The Appellate Panel should reconsider its Decision and Order and make specific findings of fact based on the disputed evidence in the record to avoid committing an error of law on this important issue.

2. THE APPELLATE PANEL, COMMITTED AN ERROR OF LAW IN FAILING TO RULE THE SINGLE COMMISSIONER DID HAVE THE AUTHORITY TO OVERRULE COMMISSIONER ROCHE'S UNAPPEALED FINDINGS OF FACT AND RULINGS OF LAW IN THE CHANGE OF CONDITION CLAIM ARISING OUT OF W.C.C. FILE NO. 1009581.

The second ground for a rehearing and reconsideration is that Appellate Panel failed to rule on the issue whether the Single Commissioner committed an error of law by overruling the unappealed ruled of another Commissioner. The Claimant/Appellant sustained an admitted injury by accident to his spine on July 15, 2010, W C C File No 1009581, muscle contractions during a tazer demonstration resulting in him suffering compression fractures to his T6 and T9 vertebra. The parties settled the 2010 claim on a Form 16 for a 25% permanent impairment of the spine on September 29, 2011. The Claimant/Appellant sustained a second admitted injury by accident to his right foot, right leg, and spine on March 10, 2012 the, W C C File No 1201545, when he was involved in a motorcycle

accident. The Claimant/Appellant was unsure whether his neck and back pain were the result of a change of condition from his 2010 accident or caused by his 2012 motorcycle accident and prudently filed claims for both a change of condition and for a new accident. The change of condition claim was heard before Commissioner Roche on January 15, 2013. The Defendants/Respondents specifically denied the Claimant/Appellant had suffered a cervical spine injury in his 2010 accident.

On May 2, 2013 Commissioner Roche issued her Order ruling that the Claimant had not suffered a change of condition because the neck and low back symptoms he had suffered were temporary and had completely resolved. Commissioner Roche went on to rule, however, that the Claimant was entitled to ongoing medical care and treatment for his right leg and for the aggravation of his pre-existing neck and low back conditions. No appeal was taken from Commissioner Roche's Order.

The failure to appeal findings of fact and rulings of law duly made by a jurisdictional commissioner make those facts and rulings the "law of the case." See: Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2005); Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993) (findings of fact not within the scope of an exception in a prior appeal become the law of the case). The reversal of the findings and rulings of a jurisdictional commissioner are reserved for the Appellate panel under § 42-17-60, S.C. Code Anno., 1976 as amended. One judge, or commissioner for that matter, does not have the authority to overrule another. See: Enoree Baptist Church v. Fletcher, 287 S.C. 602, 340

S E 2d 546 (1986), Samonsen v. CGD, Inc, 377 S.C. 442, 661 S.E 2d 81 (2008). The purpose of this rule is to prevent exactly the kind of injustice inconsistent rulings can have and is manifest in this case

The Single Commissioner improperly reversed Commissioner Roche's findings of fact and ruling of law by attributing all of the Claimant/Appellant's neck and back problems to his 2010 tazer accident and awarding him a 0% impairment to his neck and back as a result of his 2012 motorcycle accident. The Appellate Panel has corrected the error by now awarding an additional 15% impairment for the Claimant/Appellant's neck and back injury but has left all of the Single Commissioner's finding intact making it appear like the Claimant/Appellant was a liar because he advanced the finding made by Commissioner Roche in her unappealed Decision and Order. The Appellate Panel's adoption of the Single Commissioner's findings of fact concerning whether or not he suffered a neck injury in his 2010 accident are inconsistent with the Appellate Panel's award, serve no legitimate purpose, personally insulting defamatory, and are inflammatory and should be deleted from the Appellate Panel's Decision and Order

3. THE APPELLATE PANEL'S ADOPTION OF THE SINGLE COMMISSIONER'S INSINUATIONS THE CLAIMANT/APPELLANT IS A LIAR WHO SHOULD BE PROSECUTED FOR INSURANCE FRAUD BECAUSE HE OWNS AND OPERATES A SUCCESSFUL LAMN CARE BUSINESS ARE SPECULATIVE AND INFLAMMATORY.

The Single Commissioner findings repeatedly present the Claimant/Appellant in a false light as being a "hustler." The Claimant/Respondent didn't say he was a "hustler" in the derogatory sense, he said he owned and

operated small businesses to supplement his income as a police officer so he could provide a better life for his wife and three small children. The Claimant is proud he was able to own and operate two small businesses, a lawn care company and a hunting and fishing guide companies for eighteen years while he served as a police officer.

The Single Commissioner omitted mentioning the Claimant/Appellant was forced to sell his boat and his hunting and fishing guide companies have gone completely out of business since his accidents. The Single Commissioner's reasoning the Claimant/Respondent's lawn care businesses remains successful is based on speculation. The Single Commissioner found the lawn care business must be successful because the Claimant/Respondent, like most husbands and fathers, wanted to provide them with "nicer things." She then jumps to the conclusion the business tax returns must be based on "creative accounting" because the profits from the business for the two years after his two admitted accidents, \$688.00 in 2012 and \$716.00 in 2013, would not be enough to give his family "nicer things." Then she concluded the Claimant/Appellant must still be performing physical labor because the business still had gross earnings of \$334,906.00. "What deductions the Claimant takes on his income tax returns [were] are of no concern to her." (Tr. p 65, lines 1 - 7, Barden Order, pg. 35, finding of fact 62) Apparently, the Single Commissioner thinks taking deductions for employee salaries of \$74,629.00, subcontractors fees of \$53,844.00, depreciation of \$35,521.00, fuel expenses of \$25,793.00, taxes of \$9,982.00, interest of \$6,651.00, insurance of \$8,476.00, legal

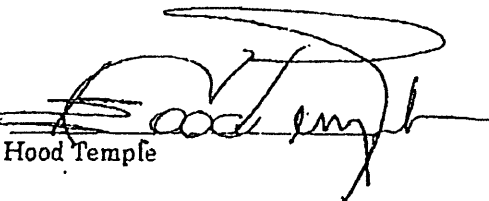
and accounting expenses of \$3,285.00, supply expense of \$2,444.00, telephone expenses of \$1,913.00, mileage expenses of \$4,438.00, and utilities of \$8,644.00 according to his tax returns prepared by his CPA in accordance with accepted accounting principles constitutes "creative accounting." In finding of fact 65 the Single Commissioner admitted she was merely speculating when she said, "I have no concrete idea as to whether the Claimant is performing most of the work himself (as he "works a lot" and is "somewhat of a hustler"), I would assume he is working and don't trust his testimony about having employees who perform the physical labor." The Appellate Panel having given the Claimant/Respondent an scheduled award under § 42-9-30, S.C. Code Anno., 1976 as amended, makes his earning capacity irrelevant. The Single Commissioner's findings with regard to his earning capacity are now irrelevant. They are based on speculation, couched in personally insulting and defamatory language, and serve no legitimate purpose. The Single Commissioner's findings of fact regarding his earning capacity should be deleted from the Appellate Panel's Decision and Order.

CONCLUSION

For the foregoing reasons the Claimant/Appellant respectfully requests the Appellate Panel grant a rehearing or reconsideration of its Decision and Order.

Respectfully submitted,

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(843) 662-5000
eh temple@htlawsc.com


By E. Hood Temple
E. Hood Temple

[add in the lawyer's name and address who
drafting the recusal memorandum in same
format as below if he will agree]

J. Kevin Holmes
THE STEINBERG LAW FIRM, L.L.P.
61 Broad Street
Post Office Box 9
Charleston, South Carolina 29402

Florence, South Carolina

February 9, 2015 ,

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File # 1202545
Carrier File #
Carrier Code #
Employer FEIN

Mr. Scott Ledford				South Carolina Department of Public Safety			
Claimant's Name				Employer's Name			
SSN				Post Office Box 1993			
Address				Blythewood, SC 29016-1993			
City				City			
State				State			
Zip				Zip			
Home Phone #				Insurance Carrier			
Work Phone #				E Hood Temple, Halfield Temple, LLP (843) 662-5000			
Preparer's Name				Preparer's Phone #			
Law Firm							

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of Injury 3/10/2012

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).

See attached

(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.67-212 by delivering a copy to

Sarah S. Alphin
Willson, Jones, Carter & Baxley, LLC
4500 Fort Jackson Blvd.
Columbia, SC 29209

on the 29 day of December, 2014 by ☒ first class mail ☐ personal service ☐ certified mail
Preparer's Signature Attorney for Claimant 12/29/14
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.

WCC Form # 30
Rev Date 3/97

30

REQUEST FOR COMMISSION REVIEW

Scott Ledford v. SC Department of Public Safety
WCC File #: 1202545
Date of Accident: 03/10/2012

Attachment to Form 30

1. Did the Single Commissioner err as a matter of law and further as unsupported by the substantial evidence in failing to recuse herself and assign the case to another Commissioner after threatening to target the Claimant for an investigation by the Attorney General's office unless he settled his claim?
2. Did the Single Commissioner err as a matter of law and further as unsupported by the substantial evidence in failing to recuse herself and assign the case to another Commissioner for judicially noticing materials without giving Claimant prior notice and an opportunity to contest the materials so noticed?
3. Did the Single Commissioner err as a matter of law and further as unsupported by the substantial evidence in failing to recuse herself and assign the case to another Commissioner when she described the Claimant's tax returns as "creative accounting" without hearing from an accountant or giving Claimant prior notice and an opportunity to be heard?
4. Did the Single Commissioner err as a matter of law and further as unsupported by the substantial evidence in failing to recuse herself and assign the case to another Commissioner after finding inconsistencies in Claimant's testimony without giving the Claimant a chance to explain and that, upon explanation, do not exist?
5. Did the Single Commissioner err in Findings of Fact 8, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
6. Did the Single Commissioner err in Findings of Fact 9 the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.

7. Did the Single Commissioner err in Findings of Fact 10, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
8. Did the Single Commissioner err in Findings of Fact 11, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
9. Did the Single Commissioner err in Findings of Fact 12, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
10. Did the Single Commissioner err in Findings of Fact 13, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
11. Did the Single Commissioner err in Findings of Fact 14, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
12. Did the Single Commissioner err in Findings of Fact 15, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
13. Did the Single Commissioner err in Findings of Fact 16, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
14. Did the Single Commissioner err in Findings of Fact 17, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
15. Did the Single Commissioner err in Findings of Fact 18, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
16. Did the Single Commissioner err in Findings of Fact 19, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.

17. Did the Single Commissioner err in Findings of Fact 20, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
18. Did the Single Commissioner err in Findings of Fact 21, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
19. Did the Single Commissioner err in Findings of Fact 22, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
20. Did the Single Commissioner err in Findings of Fact 24, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
21. Did the Single Commissioner err in Findings of Fact 25, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
22. Did the Single Commissioner err in Findings of Fact 26, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
23. Did the Single Commissioner err in Findings of Fact 27, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
24. Did the Single Commissioner err in Findings of Fact 28, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
25. Did the Single Commissioner err in Findings of Fact 29, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
26. Did the Single Commissioner err in Findings of Fact 30, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.

27. Did the Single Commissioner err in Findings of Fact 31, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
28. Did the Single Commissioner err in Findings of Fact 32, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
29. Did the Single Commissioner err in Findings of Fact 33, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
30. Did the Single Commissioner err in Findings of Fact 34, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
31. Did the Single Commissioner err in Findings of Fact 35, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
32. Did the Single Commissioner err in Findings of Fact 36, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
33. Did the Single Commissioner err in Findings of Fact 37, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
34. Did the Single Commissioner err in Findings of Fact 38, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
35. Did the Single Commissioner err in Findings of Fact 39, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
36. Did the Single Commissioner err in Findings of Fact 40, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.

37. Did the Single Commissioner err in Findings of Fact 41, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
38. Did the Single Commissioner err in Findings of Fact 42, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
39. Did the Single Commissioner err in Findings of Fact 43, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
40. Did the Single Commissioner err in Findings of Fact 44, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
41. Did the Single Commissioner err in Findings of Fact 45, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
42. Did the Single Commissioner err in Findings of Fact 46, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
43. Did the Single Commissioner err in Findings of Fact 47, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
44. Did the Single Commissioner err in Findings of Fact 48, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
45. Did the Single Commissioner err in Findings of Fact 49, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
46. Did the Single Commissioner err in Findings of Fact 50, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.

47. Did the Single Commissioner err in Findings of Fact 51, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
48. Did the Single Commissioner err in Findings of Fact 52, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
49. Did the Single Commissioner err in Findings of Fact 53, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
50. Did the Single Commissioner err in Findings of Fact 54, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
51. Did the Single Commissioner err in Findings of Fact 55, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
52. Did the Single Commissioner err in Findings of Fact 56, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
53. Did the Single Commissioner err in Findings of Fact 57, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
54. Did the Single Commissioner err in Findings of Fact 58, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
55. Did the Single Commissioner err in Findings of Fact 59, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
56. Did the Single Commissioner err in Findings of Fact 60, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.

57. Did the Single Commissioner err in Findings of Fact 61, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
58. Did the Single Commissioner err in Findings of Fact 62, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
59. Did the Single Commissioner err in Findings of Fact 63, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
60. Did the Single Commissioner err in Findings of Fact 65, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
61. Did the Single Commissioner err in Findings of Fact 66, the error being that the Finding is arbitrary, capricious, not supported by the substantial evidence, is based on speculation or surmise, and is an error of law.
62. The Single Commissioner erred as a matter of law in the Conclusion of Law 3, the error being the Conclusion of Law was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and was an error of law.
63. The Single Commissioner erred as a matter of law in the Conclusion of Law 4, the error being the Conclusion of Law was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and was an error of law.
64. The Single Commissioner erred as a matter of law in the Conclusion of Law 5, the error being the Conclusion of Law was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and was an error of law.
65. The Single Commissioner erred as a matter of law in the Conclusion of Law 6, the error being the Conclusion of Law was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and was an error of law.

66. The Single Commissioner erred as a matter of law in the Conclusion of Law 7, the error being the Conclusion of Law was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and was an error of law.
67. The Single Commissioner erred as a matter of law in the Conclusion of Law 8, the error being the Conclusion of Law was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and was an error of law.
68. The Single Commissioner erred as a matter of law in the Conclusion of Law 9, the error being the Conclusion of Law was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and was an error of law.
69. The Single Commissioner erred in ordering that the employer/carrier was entitled to stop payment of temporary total compensation effective October 31, 2013, the date on which Claimant reached maximum medical improvement, the error being the Order was arbitrary, capricious, based on speculation or surmise, not supported by the substantial evidence, and an error of law.
70. The Single Commissioner erred in ordering that:

The Claimant sustained a 10% permanent partial disability to the right lower extremity, for which he is entitled to 19 weeks of compensation, at the compensation rate of \$473.32 per week. From this amount, the Defendants are entitled to a credit or offset for their payment of temporary total compensation paid after October 31, 2013. Claimant is entitled to 0% permanent impairment to his spine for the 2012 accident.

the error being that this Order is arbitrary, capricious, based upon speculation or surmise, and not supported by the substantial evidence and an error of law.

71. The Single Commissioner erred in ordering that:

The Claimant reached maximum medical improvement on October 31, 2013, and as such, Defendants are not liable for any

medical, surgical, hospital or other medical treatment to the Claimant after said date, save the medical treatment aforementioned in Paragraph 61 of the Finding of Fact and Paragraph 5 of the Conclusions of Law.

the error being that this Order is arbitrary, capricious, based upon speculation or surmise, and is not supported by the substantial evidence and is an error of law.

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1,
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File # 1202545
Carrier File #
Carrier Code #
Employer FEIN

Mr. Scott Ledford		South Carolina Department of Public Safety	
Claimant's Name	SSN	Employer's Name	
	29588-9115	Post Office Box 1993, Blythewood, SC 29016-1993	
Address	State	City	State
Home Phone #	Work Phone #	State Accident Fund	Zip
	E. Hood Temple, Hatfield Temple, LLP (843) 662-5000	Insurance Carrier	
Preparer's Name	Law Firm	Preparer's Phone #	

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 3/10/2012

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.)

This is an appeal from an Order denying Claimant's motion for the Commissioner Barden to recuse herself and assign the case to another Commissioner. The appeal raises four issues:

1. May the Commissioner's impartiality be reasonably questioned for threatening to target Claimant for an investigation by the Attorney General's Office unless he settled?
2. May the Commissioner's impartiality be reasonably questioned for judicially noticing materials without giving Claimant prior notice and an opportunity to contest the materials so noticed?
3. May the Commissioner's impartiality be reasonably questioned for describing Claimant's tax returns as "creative accounting" without hearing from an accountant or giving Claimant prior notice and an opportunity to be heard?
4. May the Commissioner's impartiality be reasonably questioned for finding inconsistencies in the Claimant's testimony without giving the Claimant a chance to explain and that, upon explanation, do not exist?

(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 67-212 by delivering a copy to

Sarah S. Alphin
Willson, Jones, Carter & Baxley, LLC
4500 Fort Jackson Blvd.
Columbia, SC 29209

on the 14th day of Nov., 2014 by ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature Attorney for Claimant 11/14/14
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 67-7018. 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.

WCC Form # 30
Rev. Date 3/97

30

REQUEST FOR COMMISSION REVIEW

Exhibit B to W.C.C. Form 30 dated 11/14/14 is a copy of the Decision and Order of Commissioner Roche filed 5/1/13 printed at Record, Vol. I, pages 108 to 120.

Exhibit C to W.C.C. Form 30 dated 11/14/14 is a copy of the Order of Commissioner Barden filed 11/3/14 already printed at Record, Vol. I, pages 97 to 106.

Before the
South Carolina Workers' Compensation Commission
WCC File # 1202545 & 1009581

Mr. Scott Ledford,	)
	)
Claimant	)
	)
v	)
	)
	)
South Carolina Department of	)
Safety,	)
	)
Employer	)
	)
and	)
	)
State Accident Fund,	)
	)
Carrier	)
	)

A judge should disqualify herself in a proceeding in which her impartiality might reasonably be questioned. *Mortgage Elec. Sys. Inc. v. White*, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (2009). Facts that Commissioner Barden stated within the Order on appeal amply satisfy this objective standard. The Panel should recuse Commissioner Barden and remand for a hearing before another Commissioner.

Background

Claimant was a Lance Corporal in the South Carolina Highway Patrol and

a member of its distinguished "ACE" Team responsible for providing motorcycle escorts for dignitaries. Ex A, Hearing Tr., p. 21 ll.4-25. During his career, he suffered two admitted on-the-job injuries. In 2010, he was injured during taser training. In March 2012, he suffered a second admitted injury in a motorcycle accident. The Patrol medically retired Ledford later in 2012. Ex. B, Roche Order, pp. 2-3, 5.

On August 15, 2014, Commissioner Barden held a hearing on the 2012 claim for the admitted injuries from the motorcycle accident. Ex. C, Barden Order, p. 2.

1. The Commissioner threatened to target Claimant for a criminal investigation unless Claimant settled.

Over a month after the hearing, the Commissioner on September 16, 2014 conducted a conference call in which she told the parties' attorneys that she had ruled on issues such as Claimant's credibility and that she found inconsistencies in his testimony. Ex. C, Barden Order, p. 2; ¶ 14 pp. 5-6; ¶ 27 p. 8.

The Commissioner also told the attorneys that her findings required her to report Claimant to the AG's Office for an investigation into Claimant's suspected false statements. Specifically, she recited S.C. Code Ann § 42-9-440 to the attorneys and interpreted it to them to mean that her findings

required her to report Claimant to the AG's Office for investigation and possible prosecution. Ex. C, Barden Order, ¶¶ 11, 13-14, pp 5-6

As the Commissioner was explaining that her findings would trigger an AG investigation, she "reminded the parties of their right to enter into a settlement agreement under § 42-9-390, which would make unnecessary the promulgation of a written decision on the merits" Ex. C, Barden Order, p. 3.

So the basic facts are now admitted — Commissioner Barden told counsel that her findings required her to report Claimant to the AG's Office but that he could avoid a written decision if he settled Ex. C, Barden Order, pp. 2-3; ¶¶ 11, 13-14, pp 5-6. From these facts, an objective, reasonable observer could believe that the Commissioner threatened criminal proceedings unless a settlement made the case disappear.

The Commissioner raises two attacks on this description. She first argues that she did not threaten criminal proceedings because the AG's Office is the one that investigates and decides whether to prosecute Ex. C, Barden Order, ¶ 13, p 5 While true, the Commissioner's threatened report to the AG's Office is what starts this ball rolling. The statute that the Commissioner recited to counsel shows that the report is part of criminal proceedings because it is what triggers an investigation into whether or not Claimant committed a crime S.C. Code Ann. § 42-9-440

And besides, the threat is the same. The target of the AG investigation remains the target of the AG investigation whether or not the report is considered as part of criminal proceedings. The leverage for a settlement was the threat of getting the AG's Office involved at all.

The Commissioner next suggests that she was duty-bound to report Claimant to the AG whether or not the case settled. Ex. C, Barden Order, ¶¶ 11, 14, p. 5. Then why did the Commissioner interject the effect of a settlement into her views on S.C. Code Ann. § 42-9-440? Why remind counsel that a settlement "would make unnecessary the promulgation of a written decision on the merits[?]." Ex. C, Barden Order, p. 3. Absent another explanation, a reasonable person could believe that the Commissioner was saying that a settlement would avoid written findings that would trigger the AG's involvement.

2. The Commissioner violated Claimant's right to prior notice and the opportunity to be heard before she made harmful findings.

While the gravest concern, threatening an AG investigation is only the first of four problematic aspects of the conference call. The Commissioner also said that she was taking judicial notice of materials without giving Claimant a chance to contest the materials so noticed, described Claimant's tax returns as "creative accounting" without hearing from an accountant; and concluded

that Claimant lied when he offered testimony that is fully consistent with the medical records

On judicial notice, the Order states that Commissioner Barden undertook a post-hearing review of the 2012 claim file in its entirety, and that this review went beyond Commissioner Roche's earlier order and beyond the materials submitted to Commissioner Barden during the hearing. Ex. C, Barden Order, p. 1; ¶¶ 19-20, pp. 6-7.

The problem with this is not that the Commissioner took judicial notice but when she took it. Before taking judicial notice, the Commissioner must tell the parties "before or during the hearing" and afford them "an opportunity to contest the material so noticed." S.C. Code Ann. § 1-23-330(4). Basic due process similarly requires that administrative agencies give parties prior notice and an opportunity to be heard. S.C. Const. Art. I, § 22. Commissioner Barden never gave Claimant that chance. Because her judicial notice did not occur until after the hearing, she foreclosed Claimant's ability to contest materials that she reviewed in reaching her findings. Ex. C, Barden Order, p. 2 (describing the "post-hearing review").

The Commissioner's further description of Claimant's accounting as "creative" suffers a similar flaw because it derides the accountant without giving Claimant prior notice that his accountant's work was at issue

The Commissioner responds inconsistently. She first uses the term "alleged" to suggest that she did not call the accounting creative. She next says that it does not matter if she called the accounting creative because she was unconcerned with the deductions or accounting methodology. She ends by saying that it does not matter if she was concerned with the methodology because she is entitled to weigh evidence and draw conclusions from it. Ex. C, Order, ¶¶ 22-23, pp. 7-8.

Taking these in order, Claimant did more than just allege that the Commissioner described the accounting as creative. His counsel stated it under penalty of perjury. Ex. D, Temple Affidavit. The Commissioner did not deny it but tried to say, inconsistently, both that it did not matter to her and that she could draw conclusions from it.

This again misses the point. The point is that the tax returns bothered the Commissioner enough for her to describe them as "creative accounting" without hearing from an accountant or giving Claimant prior notice that this could be an issue. Once it became an issue, Claimant submitted his accountant's affidavit on the tax returns' soundness.

And now the Commissioner does not want the Panel to consider the accountant's affidavit because it does not comply with R.67-707. Ex. C. Barden Order, ¶ 24, p. 8. Regulation 67-707 does not apply, however, because

Claimant did not submit the affidavit to complete the record on his claim or as newly discovered evidence. He submitted the affidavit to show the prejudice he suffered from a mistaken *sua sponte* ruling made without notice or a chance to be heard.

On the final ground for recusal, the Commissioner dismisses Claimant's point that she took his testimony about his lack of prior neck pain out of context. In the motion to recuse, Claimant showed that his testimony in context was fully consistent with the medical records. Commissioner Barden does not dispute that the testimony, in context, is consistent but suggests that this is only a disagreement that can be resolved on appeal. Ex. C, Barden Order, ¶¶ 25-26, p. 8.

Yet the consistency between Claimant's testimony and the medical records yet again illustrates that the Commissioner is smearing Claimant's credibility without giving him a chance to clear up any perceived inconsistencies. So it too falls within the Commissioner's pattern of raising credibility issues *sua sponte* without prior notice or opportunity to be heard.

3 Claimant wants a first, fair bite at the apple

Commissioner Barden ends her Order by arguing that Claimant did not move to recuse until after he learned about the Commissioner's adverse

credibility findings and that the remedy for his dissatisfaction is an appeal. In her view, Claimant just wants a second bite at the apple so that he can qualify or explain his testimony. Ex. C, Barden Order, ¶¶ 27, 29, pp. 8-9.

You must have a first bite at the apple to ask for a second. Commissioner Barden never gave Claimant that first bite. She waited over a month after the hearing ended before telling Claimant that she had judicially noticed the entire file *sua sponte*; derided tax returns as "creative" without prior notice that the accounting was an issue; and identified inconsistencies that, upon explanation, do not exist.

These quarrels are not with what Commissioner Barden decided but with how she went about it. Years ago, the Supreme Court condemned *sua sponte* rulings that are made without notice and an opportunity to be heard. *State v. Brown*, 278 S.C. 281, 284, 294 S.E.2d 781, 782 (1982). That is what happened here.

And arguing that Claimant should have simply appealed overlooks the gravest ground for recusal — Commissioner's Barden threat to initiate an AG investigation against Claimant unless he settled. A settlement would not only render a written decision on the merits unnecessary. Ex. C, Barden Order, p. 3 A settlement would have also foreclosed an appeal.

Conclusion

This case is not about a disgruntled counsel who is trying to use recusal proceedings as a litigation tactic. No one in their right mind picks such a fight. Claimant's counsel is in his right mind, has spent decades practicing before the Commission, and knows how to appeal adverse rulings.

But this long experience did not prepare counsel for the Hobson's choice that Commissioner Barden proposed during her off-the-record telephone conference. Her message was clear. Claimant can become the target of an AG investigation. Or he can settle with the State Accident Fund — after I have told the Fund's counsel that the Fund will win.

Claimant and his counsel spent weeks struggling with what to do before they decided that they had to move to recuse. They did so, reluctantly, only because Commissioner Barden gave them no other choice.

The Panel should reverse Commissioner Barden and reassign the case to another Commissioner. Facts stated within her Order confirm that her impartiality might reasonably be questioned.

Florence, SC

11-14, 2014



E. Hood Temple
Attorney for the Claimant
SC Bar # 12962

HATFIELD TEMPLE, LLP
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000

1 Q. ALL RIGHT. AND WAS THAT RECOMMENDED TO YOU, THAT
2 YOU PURSUE THAT?

3 A. YES.

4 Q. OKAY, ALL RIGHT. PRIOR TO THAT, TELL ME WHAT YOUR
5 RANK WAS.

6 A I WAS A LANCE CORPORAL.

7 Q. ALL RIGHT. AND DID YOU SERVE ON ANY SPECIFIC TEAM
8 WITH THE HIGHWAY PATROL?

9 A. THE ACE TEAM.

10 Q. ALL RIGHT. TELL ME ABOUT THE ACE TEAM, AND WHAT
11 DOES IT TAKE TO BE CHOSEN FOR THAT?

12 A THERE'S -- YOU HAVE TO PUT IN FOR IT. SIXTEEN MOTOR
13 OFFICERS IN THE STATE WHEN I WAS -- APPLIED FOR IT.
14 THERE MAY BE MORE OR LESS TODAY, BUT THERE WAS 16.
15 AND YOU WERE CHOSEN OVER MAYBE A HUNDRED APPLICANTS
16 TO RIDE A MOTORCYCLE AND ENFORCE THE LAWS THAT --
17 IT'S NOT SO MUCH SEPARATE, BUT IT'S CALLED THE ACE
18 TEAM. IT'S THE AGGRESSIVE CRIMINAL ENFORCEMENT.
19 YOU'RE JUST RELIED ON TO DO PRESIDENTIAL ESCORTS,
20 DIGNITARY-TYPE STUFF. YOU MAY HAVE TO LEAVE ON A
21 QUICK NOTICE TO GO SOMEWHERE, BUT IT'S BASICALLY --
22 THERE'S TWO PARTS OF IT. THERE'S AN INTERDICTION
23 PART, WHICH IS MORE OF THE DRUG SIDE, WHICH WE WERE
24 INVOLVED IN A LITTLE BIT, AND THEN THE MOTORCYCLE
25 SIDE, WHICH IS WHAT I DID.

EXHIBIT

A

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE # 1202545

Mr. Scott Ledford,

Claimant,

Vs.

South Carolina Department of Public
Safety

Employer,

And

State Accident Fund

Carrier.

**MOTION TO RESCUE COMMISSIONER
BARDEN AND TO REASSIGN CASE
TO ANOTHER COMMISSIONER**

Commissioner Barden told the parties' counsel that she would initiate criminal charges against Scott Ledford unless he settled his admitted claim against the State Accident Fund. One can reasonably question the partiality of a Commissioner who would leverage criminal charges in a way that allows the State Accident Fund to settle an admitted claim for fractions of pennies on the dollar. The Commissioner should recuse herself and reassign the case to another Commissioner for a de novo hearing.

Statement of the Facts

On August 15, 2014, Commissioner Barden held a hearing on an admitted claim involving a motorcycle accident that Ledford had in 2012 while he was a State Highway Patrolman. On September 16, 2014, the Commissioner held a telephone conference with counsel for both parties. Ex. A (Affidavit of E. Hood Temple). During this

conference, the Commissioner told counsel that she had spent the last month "investigating" Ledford and had come to believe that he is a liar. The Commissioner further derided Ledford's tax returns as "creative accounting" and opined that he lied to her when he denied having prior neck pain. Commissioner Barden then opined that she was statutorily obligated to report claimants who are dishonest — and threatened to refer Ledford to the Attorney General's office for prosecution — unless Ledford settled his claim. Ex. A (Affidavit of E. Hood Temple)

The Commissioner never gave Ledford prior notice of her investigation of him or an opportunity to be heard before she relied on her investigation to conclude that Ledford is a liar. Ex. A (Affidavit of E. Hood Temple)

After hearing about the Commissioner's investigation and threat of criminal proceedings, counsel for the State Accident Fund made Ledford a minimal offer to settle his \$200,000 + claim. Ex. A (Affidavit of E. Hood Temple).

Argument

A judge should disqualify herself in a proceeding in which her impartiality might reasonably be questioned. *Mortgage Elec. Sys. Inc. v. White*, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (2009). In this case, Commissioner Barden's partiality might be reasonably questioned, in that she tried to coerce a settlement by threatening criminal proceedings. Lawyers can't do that. Rule 407, SCACR, Rule 4.5. Commissioners should not be able to either. Commissioners should not be allowed to threaten criminal proceedings to leverage favorable settlements for the State Accident Fund. The threat, by itself, warrants a recusal and reassignment.

And this is not all. The threat of criminal proceedings rests on two due process violations and a mistake about the scope of Ledford's testimony.

To bolster the threat of a criminal referral, the Commissioner said that she engaged in a month-long investigation into Ledford before drawing conclusions from it Ex. A (Affidavit of E. Hood Temple). But all this occurred without any notice. *Id*

Administrative agencies must give parties notice and an opportunity to be heard. S.C Const. Art. I, § 22. They cannot take judicial notice of anything unless a party first has an opportunity to contest the materials judicially noticed S.C. Code Ann. § 1-23-330(4). So one may also reasonably question the partiality of a judge who is willing to go outside the record, and make findings based on undisclosed materials, without first giving the aggrieved a chance to respond

The Commissioner similarly failed to give Ledford prior notice that he needed to defend his accountant's work. During the hearing, Ledford testified that his tax returns were done by his accountant. Ex B, Transcript p. 70 l.21 - p 71 l.13. The Commissioner still condemned Ledford for "creative accounting" without hearing from the accountant who actually prepared the returns or anyone else qualified to opine on them. The accountant who prepared the tax returns stands by the returns and avers that the returns were prepared using generally accepted accounting principles Exhibit C (Affidavit of Accountant)

Had Ledford known this could be an issue, he would have submitted evidence from his accountant much earlier. As it was, however, the Commissioner used the tax returns to make up her mind about Ledford's credibility before ever letting him know that this was an issue.

Commissioner Barden lastly mangles Ledford's testimony about his neck. When Ledford denied prior neck pain, he was not being questioned about all of his pre-2012 ailments. The question came sandwiched within Ledford's cross-examination about his treatment with Dr. Sarb. Ex. B, Hearing Tr. p. 66 l. 19 - p. 69 l. 11. Fairly read, the question asks only about the complaints that Ledford made to Dr. Sarb. Ex. B, Hearing Tr., p. 68 ll. 21-24. And Dr. Sarb confirms that Ledford denied neck pain. Claimant's APA at p. 37 ("He denies any neck pain"), p. 38 ("The patient denies neck pain with range of motion and palpation"); p. 49 ("The patient states that he has no further neck or arm symptoms"). So Commissioner Barden threatened perjury charges based on Ledford's testimony about Dr. Sarb that is fully consistent with Dr. Sarb's medical records. This too is enough to reasonably question the Commissioner's partiality.

Conclusion

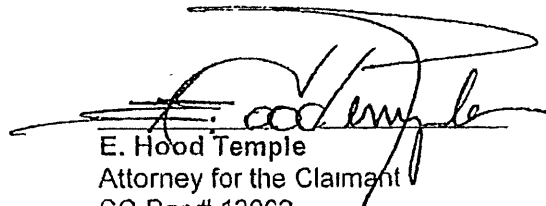
Ledford does not make this motion lightly. He and his counsel understand the motion's gravity and of offering evidence of coercion exerted during an off-the-record conference. But Ledford cannot let baseless criminal charges coerce him into taking on crushing medical bills that the State Accident Fund should pay. All Ledford wants is an impartial Commissioner to determine the amount that the State Accident Fund owes on his admitted claim.

Commissioner Barden unfortunately disqualified herself by threatening criminal proceedings unless the case settles, going outside the record to make findings from undisclosed materials, deriding "creative accounting" without hearing from an accountant, and jumping to conclude that Ledford lied by offering testimony that is fully consistent with the medical records.

Any one of these four factors justifies a recusal. Cumulatively, the appearance of partiality is overwhelming. Commissioner Barden should recuse herself and reassign the case to another Commissioner for a de novo hearing.

Florence, SC

October 10, 2014



E. Hood Temple
Attorney for the Claimant
SC Bar # 12962

Hatfield Temple, LLP
Post Office Box 1770
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(843) 662-5000

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE # 1202545

Mr. Scott Ledford,

Claimant,

Vs.

South Carolina Department of Public Safety

Employer,

And

State Accident Fund

Carrier.

AFFIDAVIT
OF
E. HOOD TEMPLE

The Affiant, E. Hood Temple, who, first being duly sworn, deposes and says:

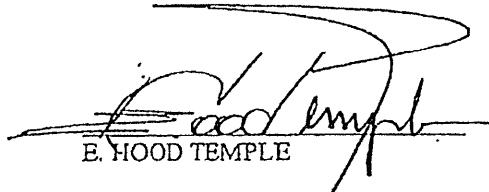
1. I am E. Hood Temple and I practice with the law firm of Hatfield Temple, LLP in Florence, South Carolina.
2. I represent Scott Ledford as counsel of record and represented him before the South Carolina Workers' Compensation Commission in Conway, South Carolina on August 15, 2014.
3. My office received a call from the Jurisdictional Commissioner, Susan Barden, on September 16, 2014 at approximately 9:00 a.m. requesting a conference call with counsel and defense counsel. At that time, I was at a doctor's appointment and not able to receive the call. Commissioner Barden's staff was advised that counsel would be returning very soon and advised that the counsel could participate in the conference call at approximately 10:00 a.m.



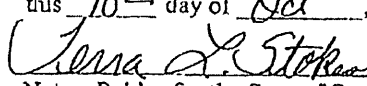
4. Commissioner Barden's staff advised that the Commissioner was in Appellate Panel hearings and would call shortly after her 10:00 a.m. appeal. At approximately 10:30 a.m., the conference call was held with the undersigned and Sarah Alphin, counsel for the State Accident Fund.
5. Commissioner Barden began the conference by stating that she regretted having to make this call but she felt she was obligated to do so. Specifically, throughout an extended conference, Commissioner Barden indicated that she thought the Claimant lied about not complaining about neck pain and that "while he may be a former member of the South Carolina Highway Patrol ACE Team, he was not a member of the "Truth Team." Further, she took exception with the Claimant's tax returns that were submitted and called them "creative accounting." Commissioner Barden went on to say that she "did not believe anything the Claimant said except his name and age."
6. Commissioner Barden indicated that she entered a month long investigation of documents which were outside of the record before her, however, she did not identify those documents. She said based upon her review of this file and the Claimant's testimony, that she believed he perjured himself and that she had an obligation to report him to the Attorney General for prosecution.
7. Commissioner Barden indicated, however, that if the parties were able to resolve the claim, she would not have a duty to report the Claimant to the Attorney General's Office for prosecution. In fact, Commissioner Barden said that her notes for the proposed order contain a statement at the beginning that the Claimant would be referred to the Attorney General's office for prosecution. This statement was made with defense counsel on the phone.

8 Commissioner Barden went on to say that she realized that by having this conference call, the State Accident Fund would probably make a minimal offer, however, if the Claimant did not accept their offer and resolve this claim, Commissioner Barden would have an ongoing duty to report him to the Attorney General for prosecution. In other words, if the Claimant did not settle his claim for whatever was offered, Commissioner Barden would report him to the Attorney General for prosecution. At the conclusion of the phone conference, the undersigned immediately prepared a memo detailing the conference (Attached as Exhibit A)

9 After the call, the State Accident Fund made Ledford a minimal offer to settle a claim that, in my opinion, has exposure to the carrier of at least \$200,000.00.


E. HOOD TEMPLE

SWORN to, and subscribed before me
this 10th day of Oct, 20 14.


Notary Public for the State of South Carolina
My Commission Expires 12/16/19

MEMO TO FILE

RE: Scott Ledford vs. South Carolina Department of Public Safety

FILE #: 2012053

DATE: 9/16/2014 11:30 AM

NOTES FROM PHONE CONF W/ COMM BARDEN - The phone conference started at 10:30am and we had about 30 minutes notice. She began the conversation by saying that she hated to call me like this but if the situation was reversed she would want me to call her.

Comm. Barden said she liked me alot and thought I was a "fabulous attorney and had done an outstanding job for the claimant," however she did not believe anything the Claimant said. She said that for the last month she has been investigating (and she used that word) and reviewing this matter in detail. She believed that she is responsible for going out and looking at other documents to determine if someone has been fraudulent or dishonest before the Commission. She said that based on the 2007 Act, she has an affirmative duty to report claimants who are dishonest.

She said that she believed that the Claimant lied when he said he did not have prior neck problems even though he asked for surgery for his neck before Commissioner Roche in the first hearing. I explained to her that the first hearing was our position to say that it was a change of condition or a new injury so that the defendants could not point to the other accident in denying responsibility.

The single commissioner (Roche) determined that he had sustained compensable injuries to his neck and low back and as a result, they were compensable and they owed treatment. At this point, now Commissioner Barden has gone back behind that and is trying to undo everything. This is very similar to what she did in Jay Duke's case. We need to figure out what recourse we have.

She was very concerned about the money he made in his side buisness and specifically referenced that he was making \$300,000.00 income from that business but only paying taxes on \$700.00. This was based on his "creative accounting " There was absolutely no evidence in the record that his tax returns were not appropriate. That obviously tainted her and caused her to be biased and prejudiced in this case.

Right after the case was over, she wanted the medical records relating to the back surgery and the knee surgery he had that was referenced in the medical report. Both parties stipulated and agreed that there was no prior back surgery or knee surgery and that was a mistake in the records as indicated by the medical report that said it was a mistake.

Obviously, she started looking for problems in this case and was very concerned and wanted to attack this guy. She spent an inordinate amount of time trying to impeach his testimony when his credibility was never an issue with the defendants in this case. This was a case where we asked for additional treatment becasue of his admitted injury and now she is threatening us that if we do not settle the claim, that she will report him to the Attorney General's office for prosecution.

Page. 1

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE # 1202545

Mr. Scott Ledford,

Claimant,

Vs.

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Employer,

And

State Accident Fund

Carrier.

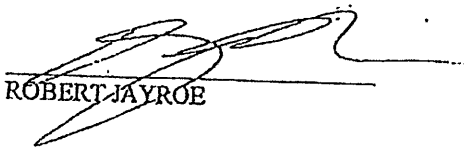
AFFIDAVIT
OF
ROBERT JAYROE

The Affiant, Robert Jayroe, who, first being duly sworn, deposes and says:

1. I am Robert Jayroe and I am a licensed practicing Accountant.
2. My accounting practice is located in Murrells Inlet, SC.
3. I have been a licensed Accountant for seventeen (17) years. In my practice, I prepare personal and business tax returns.
4. I have prepared the business tax returns for Scott Ledford for the past ten (10) years. This includes Mr. Ledford's business returns relating to Pro Cutters Lawn & Landscaping, LLC and Ledford Outdoor, LLC.
5. My practice prepared his returns for the years 2011, 2012, and 2013. Those returns were prepared in accordance with the Generally Accepted Accounting Principles and were submitted to the South Carolina Department of Public Revenue and the United States Treasury and received without penalty or correction.

6. It is my opinion within a reasonable degree of accounting certainty that those tax returns were prepared correctly and in accordance with the applicable Federal and State tax law pertaining to Mr. Ledford and these business entities

The Affiant sayeth nothing further.


ROBERT JAYROE

SWORN to and subscribed before me
this 9th day of Oct, 2014.


Notary Public for the State of South Carolina
My Commission Expires: May 27, 2018

South Carolina Workers' Compensation Commission
1612 Marlon Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File # 1009581
Carrier File #
Carrier Code #
Employer FEIN

Mr. Scott Ledford
Claimant's Name
SSN
SC 29588-9115
State Zip
Home Phone #
Work Phone #
Preparer's Name
Law Firm
Preparer's Phone #
South Carolina Department of Public Safety
Employer's Name
Post Office Box 1893, Blythewood, SC 29016-1893
Address City State Zip
State Accident Fund
Insurance Carrier
E Hood Temple, The Hyman Law Firm, LLP (843) 662-5000

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 7/15/2010
☒ Injury ☐ Illness ☐ Repetitive Trauma

1a The Claimant sustained an injury to spine and right leg on 7/16/2010 in
(Part(s) of Body Injured) (Month/Day/Year)
Florence County, State of South Carolina

1b Body part(s) affected are: spine and right leg
Briefly describe how the accident occurred: Claimant is a Lance Corporal with the South Carolina Highway Patrol. He was going through laser training. When he was hit with the laser, he received 50,000 bolts of electric charge and instead of going forward, his back spasmed rearing back fracturing at least three vertebrae in his spine.

2 Both the Claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury
3 The relationship of employer and employee existed at the time of injury.
4 At the time of 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 7/16/2010 in the following manner:
(Month/Day/Year)

Claimant notified his supervisor, Jay Parrish. On July 23, 2010, the Claimant notified his supervisor, Kevin Elia.
☒ 6 Due to injury, the Claimant is in need of (check one):
☐ (a) medical examination and treatment for.
☒ (b) additional medical examination and treatment for: spine and right leg

☒ 7 Due to injury, the Claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of From the date of the accident to the present with credit to the employer for benefits paid

☒ 8 Due to injury, the Claimant has permanent disability of the following nature and extent. (check one):
☒ (1) General Disability ☒ Total ☒ (2) Specific disability ☐ Total
☒ (3) Wage Loss ☐ Partial

☐ 9 Due to the injury, the Claimant has a serious bodily disfigurement consisting of. Not applicable at this point.
10a At the time of the injury, the Claimant was paid weekly wages of \$ TBD, 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.
Claimant is still employed with the South Carolina Department of Public Safety, Ledford Outdoors, and Pro-Cutters
Lawn and Landscaping, LLC

11a Further grounds or unusual aspects of claim. If the Claimant is found to be totally and permanently disabled, the Claimant seeks a lump sum payment. Further, the Claimant requests that the Decision and Order of the Commission finding the Claimant permanently and totally disabled to include Ulrica Mohawk language Ulrica Mohawk Mills v. Orr, 227 S.C. 226, 87 SE2d 593.

11b List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident
1) Dr. J. Stewart Haskin, Jr., Coastal Orthopaedic Associates, P.A., 2376 Cypress Circle #300, Conway, SC 29526, 2) Dr. William L. Mills, Coastal Orthopaedic Associates, P.A., 2376 Cypress Circle #300, Conway, SC 29526, 3) Dr. Barbara Sarb, Strand Regional Specialty Associates, 8171 Rourke Street, Myrtle Beach, SC 29577

11c To the best of your knowledge, did you have any prior permanent disability? No
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

Preparer's Signature Attorney for Claimant ehtemple@hymanlawfirm.com April 28, 2011
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 Claims Department

WCC Form # 50
Revised 9/07

50

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

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



WCC File #: 1009581
Carrier File #: 2010-2824
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Scott Lenford SSN: [REDACTED] Employer's Name: SC Department of Public Safety, State of SC
Address: _____ Address: P.O. Box 1993
City: Myrtle Beach State: SC Zip: 29588 City: Myrtlewood State: SC Zip: 29016-1993
Home Phone: _____ Work Phone: _____ Insurance Carrier: State Accident Fund
Date of Injury: 07/15/2010
Preparer's Name: Samuel T. Brunson, Esq. Law Firm: Brunson Law Firm Preparer's Phone #: (843) 669-8111

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

1. It is admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: Defendants admit injuries to spine only.
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 medical care as a result of injury or illness. The reasons for denial are: Claimant has reached MMI
7. It is denied the employee is entitled to temporary total disability for the period(s) of: Claimant has returned to work full duty.
8. It is denied the employee is permanently disabled. The reasons for denial are: Disability, if any, to be determined by WCC.
9. It is denied the employee has serious disfigurement
10. It is contended that an average weekly wage of \$ 763.00 applies, according to attached Form 20 as provided by law
11. Further contentions, grounds of defense, or unusual aspects are: None
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: Hood Temple, Esq.

Address: The Hyman Law Firm, PO Box 1770, Florence, SC 29503-1770

on the day of 05/17/11 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: Samuel T. Brunson Attorney at Law Email: htblaw@earthlink.net Date: 05/17/2011

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

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



WCC File # 1009581
Carrier File # 2010-2824
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Scott Ledford Employer's Name: SC Dept. of Public Safety
Address: _____ Address: PO Box 1993
City: Myrtle Beach State: SC Zip: 29588 City: Blythewood State: SC Zip: 29016
Home Phone: (803) 255-2833 Work Phone: () Carrier: State Accident Fund
Preparer's Name: Samuel T. Brunson Preparer's Phone #: (843) 669-8111

This form is only applicable to injuries by accident occurring on or after July 1, 2007 pursuant to Title 42-15-60 (A) as amended. The execution of this document is an agreement between the parties relating to a Workers' Compensation claim under §§42-1-160, 42-1-172 or 42-11-10.

Date of Injury or Illness 07/15/2010

The above parties agree to pay and accept compensation based on the following facts:

A compensable ☒ Injury ☐ Illness ☐ Repetitive Trauma occurred on: 07/15/2010 (month/day/year).

The injury was to Spine body part(s) injured and also the injury affected not applicable other body part(s).

The authorized treating physician Dr. William Mills has released the Claimant from his or her care and has found maximum medical improvement on 01/17/2011 (month/day/year) with an impairment rating of 15-18% whole person (rating given in deposition of April 27, 2011).

Average weekly wage \$763.00 Compensation rate \$508.69
By agreement of the parties, the following award has been referred to the Commission for approval:

<u>25</u> Percentage loss of use to: <u>spine</u> (body part(s) injured).	<u>75</u> weeks
<u>---</u> Percentage loss of use to: <u>n/a</u> (body part(s) affected).	<u>---</u> weeks
<u>---</u> Percentage loss of use to: whole person	<u>---</u> weeks
Disfigurement to: <u>N/A</u>	<u>---</u> weeks
Wage Loss: \$ <u>amount</u>	<u>---</u> weeks
Total and Permanent Disability: <u>N/A</u>	<u>---</u> weeks
Other <u>---</u>	<u>---</u> weeks

Estimated award (number of weeks times compensation rate) \$ 38,151.75

The estimated award is subject to verification by the Commission

Additionally, the Employer's Representative agrees to pay and the Claimant accepts the following medical care and treatment as recommended by the authorized treating physician pursuant to the attached physician's deposition, pages 10-12.

Additional medical ordered: ☒ Yes ☐ No

See attached deposition of Dr. William Mills of April 17, 2011, pages 10-12: Deposition of Dr. Mills states that claimant may need prescription strength Motrin 800 periodically to manage his symptoms.

This agreement is binding on approval by the Commission. A claim for additional compensation based on a worsening of the Claimant's condition must be filed no later than one (1) year from the date of the last payment of compensation. Only medical care specifically detailed herein will be paid under this agreement. If a dispute arises with regard to continued medical treatment, either party may request a hearing before the Commission pursuant to 42-15-60(B) 3 and (C).

Claimant's Signature: [Signature]

Date Agreement Signed: 9/29/11

Attorney/Witness/Translator: [Signature]

Employer's Representative: _____

Attorney for Carrier: Samuel T. Brunson

Deputy Commissioner: _____

Date agreement approved: 9/29/11

Jurisdictional Commissioner: [Signature]

WCC Form # 16A
9/07

16A

Agreement for Permanent Disability/
Disfigurement Compensation

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File # 1009581
Carrier File #
Carrier Code #

Employer FEIN

Mr. Scott Lafford

SSN

1-9115

State

Zip

South Carolina Department of Public Safety

Employer's Name

Post Office Box 1993, Blythewood, SC 29016-1993

Address

City

State

Zip

Address

Home Phone #

Work Phone #

E. Hood Temple, The Hyman Law Firm, LLP (843) 662-5000

State Accident Fund

Insurance Carrier

WCC File # 1009581

Preparer's Name

Law Firm

Preparer's Phone #

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 7/15/2010
☒ Injury ☐ Illness ☐ Repetitive Trauma

1a The Claimant sustained an injury to spine and right leg on 7/15/2010 in
(Part(s) of Body Injured) (Month/Day/Year)
Florence County, State of South Carolina

1b Body part(s) affected are, spine and right leg
Briefly describe how the accident occurred. Claimant is a Lance Corporal with the South Carolina Highway Patrol. He was going through laser training. When he was hit with the laser, he received 50,000 bolts of electric charge and instead of going forward, his back spasmed rearing back fracturing at least three vertebrae in his spine.

2 Both the Claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3 The relationship of employer and employee existed at the time of injury.

4 At the time of 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 7/16/2010 in the following manner.

(Month/Day/Year)

☒ 6 Claimant notified his supervisor, Jay Parrish. On July 23, 2010, the Claimant again notified his supervisor, Kevin Elia
Due to injury, the Claimant is in need of (check one):

☐ (a) medical examination and treatment for:

☒ (b) additional medical examination and treatment for: spine and right leg

☒ 7 Due to injury, the Claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of From the date of the accident to the present with credit to the employer for benefits paid

☒ 8 Due to injury, the Claimant has 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 not applicable at this point.

10a At the time of the injury, the Claimant was paid weekly wages of \$ TBD, 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.

Claimant is still employed with the South Carolina Department of Public Safety, Ledford Outdoors, and Pro-Cutters Lawn and Landscaping, LLC.

11a Further grounds or unusual aspects of claim If the Claimant is found to be totally and permanently disabled, the Claimant seeks a lump sum payment. Further, the Claimant requests that the Decision and Order of the Commission finding the Claimant permanently and totally disabled to include Ulrica Mohawk language. Ulrica Mohawk Mills v. Orr, 227 S.C. 226, 87 SE2d 693.

11b List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: 1) Dr. J. Stewart Haskin, Jr., Coastal Orthopaedic Associates, P.A., 2376 Cypress Circle #300, Conway, SC 29526; 2) Dr. William L. Mills, Coastal Orthopaedic Associates, P.A., 2376 Cypress Circle #300, Conway, SC 29526; 3) Dr. Barbara Sarb, Strand Regional Specialty Associates, 8171 Rourke Street, Myrtle Beach, SC 29577; 4) Dr. Steven C. Poletti, Southeastern Spine Institute, 1106 Chuck Dawley Blvd., Suite 200, Mt. Pleasant, SC 29464-3233

11c To the best of your knowledge, did you have any prior permanent disability? No

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.

Preparer's Signature

Attorney for Claimant

eh temple@hymanlawfirm.com

June 8, 2012

Title

Email

Date

Refer to R 87-204 through R 87-210 and R 87-801 through R 87-815. Questions about the use of this form may be directed to the Commission's Claims Department

WCC Form # 50

Revised 9/07

50

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

WCC
JUN 11 2012
JUDICIAL

South Carolina Workers' Compensation Commission
100 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 253-5739
www.wcc.sc.gov



WCC File #: 1009581
Carrier File #: 2010-2824
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Scott Leaford SSN: [REDACTED] Employer's Name: SC Department of Public Safety, State of SC
Address: P.O. Box 1993
City: Blythwood State: SC Zip: 29016-1993
Home Phone: _____ Work Phone: _____ Insurance Carrier: State Accident Fund
Date of Injury: 07/15/2010
Preparer's Name: Samuel T. Brunson, Esq. Law Firm: Brunson Law Firm Preparer's Phone #: (843) 669-8111

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

1. It is admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: Defendants admit injuries to thoracic spine only. Defendants deny claimant's current complaints related to admitted 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 medical care as a result of injury or illness. The reasons for denial are: Claimant's current complaints unrelated to 2010 accident.
7. It is denied the employee is entitled to temporary total disability for the period(s) of: _____
8. It is admitted the employee is permanently disabled. The reasons for denial are: Claimant paid PPD on Form 16A on 9/29/11.
9. It is denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 763.00 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Defendant's deny change of conditions for worse. Defendants reserve right to Amend Form 51.
12. Estimated time needed for hearing: 60 minutes

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

Name: E. Hood Temple, Esq.

Address: The Hyman Law Firm, PO Box 1770, Florence, SC 29503-1770

on the day of 06/28/12 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

Attorney at Law
Title

hubbaw@earthlink.net
Email

06/28/12
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

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 727-5723
www.wcc.sc.gov



WCC File # 1202545
Carrier File #
Carrier Code #
Employer FEIN

Mr. Scott Ledford
Claimant's Name SSN
Address City State Zip
Home Phone # Work Phone #
Preparer's Name E. Hood Temple, The Hyman Law Firm, LLP (843) 662-5000
Law Firm Preparer's Phone #

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 3/10/2012
☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The Claimant sustained an injury to right leg, right ankle, right ankle, and low back on 3/10/2012 in
(Part(s) of Body Injured) (Month/Day/Year)
Horry County, State of South Carolina
1b. Body part(s) affected are: right leg, right ankle, right ankle, and low back
Briefly describe how the accident occurred. Claimant had a wreck on his patrol motorcycle.
2. Both the Claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of 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 3/10/2012 in the following manner:
(Month/Day/Year)

Claimant's supervisor, Kevin Elia, was notified.

- ☒ 6. Due to injury, the Claimant is in need of (check one):
☐ (a) medical examination and treatment for:
☒ (b) additional medical examination and treatment for: right leg, right ankle, right ankle, and low back
☒ 7. Due to injury, the Claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: From the date of the accident to the present with credit to the employer for benefits paid.
☒ 8. Due to injury, the Claimant has permanent disability of the following nature and extent: (check one):
☒ (1) General Disability ☒ Total ☒ (2) Specific disability: ☒ Total
☒ (3) Wage Loss ☐ Partial
☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: not applicable at the present.

10a. At the time of the injury, the Claimant was paid weekly wages of \$ TBD, 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.
Claimant is still employed with the South Carolina Department of Public Safety, Ledford Outdoors and Pro Cutters Lawn & Landscaping.

11a. Further grounds or unusual aspects of claim: If the Claimant is found to be totally and permanently disabled, the Claimant seeks a lump sum payment. Further, the Claimant requests that the Decision and Order of the Commission finding the Claimant permanently and totally disabled to include Utica Mohawk language. Utica Mohawk Mills v. Orr, 227 S.C. 226, 87 SE2d 593. James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: 1) Dr. William L. Mills, Coastal Orthopaedic Associates, P.A., 2376 Cypress Circle # 300, Conway, SC 29526

11c. To the best of your knowledge, did you have any prior permanent disability? No.
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 need for hearing: 30 minutes

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

Preparer's Signature Attorney for Claimant Title ehtemple@hymanlawfirm.com Date September 26, 2012

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

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

WCC File # 1202545

Carrier File # 2012-000722

Carrier Code #

Employer FEIN

Scott Ledford

Claimant's Name

SSN

Department of Public Safety

Employer's Name

10311 Wilson Blvd., Blythewood, SC 29016

Address

City

State

Zip

Address

City

State

Zip

Home Phone

Work Phone

Sarah S. Alphin

State Accident Fund

Insurance Carrier

(803) 227-2885

Preparer's Name

Phone #

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

1. It is (admitted) (denied) that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: It is admitted the Claimant sustained an injury to the right ankle and right knee on the date alleged; however, it is denied he sustained compensable injuries to the extent alleged in the Form 50. All other alleged injuries are denied.
2. It is (admitted) (denied) that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See number 1 above.
3. It is (admitted) (denied) that the relationship of employer and employee existed at the time in question. The reasons for denial are: See number 1 above.
4. It is (admitted) (denied) that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See number 1 above.
5. It is (admitted) (denied) that notice of injury was given the employer. The reasons for denial are: See number 1 above.
6. It is (admitted) (denied) that the employee needs or is entitled to additional medical care as a result of injury. The reasons for denial are: See number 1 above.
7. It is (admitted) (denied) that the employee is entitled to temporary total disability for the period(s) of: See number 1 above.
8. It is (admitted) (denied) that the employee is permanently disabled. The reasons for denial are: See number 1 above.
9. It is (admitted) (denied) that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ 709.95 applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: Defendants reserve the right to amend and to assert defenses as they become aware of them.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to E. Hood Temple, Esquire,

170 Courthouse Square, P.O. Box 1770, Florence, SC 29503-1770, Samuel T. Brunson, P.O. Drawer 431
521 West Evans Street, Florence, SC 29503, and Virginia Crocker, Judicial Director, SC WCC, P.O. Box 1715, Columbia, SC 29202

on the 25th day of October, 2012 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.

Sarah S. Alphin
Preparer's Signature, Attorney for Defendants
Sarah S. Alphin

Ivey L. Gable
Ivey L. Gable, Certifier

October 25, 2012
Date

Willson Jones Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, SC 29209

Refer to R.67-205 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.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675



WCC File #: 1202545
Carrier File #: 2012-722
Carrier Code #:
Employer FEIN #:

Claimant's Name: Scott Ledford SSN: [REDACTED] Employer's Name: S.C. Department of Public Safety
Address: [REDACTED] Address: 10311 Wilson Blvd.
City: Myrtle Beach State: SC Zip: 29587 City: Blythewood State: SC Zip: 29016
Home Phone: () - Work Phone: () - Insurance Carrier: State Accident Fund
Preparer's Name: Erin Farthing, Esq. Law Firm: State Accident Fund Preparer's Phone #: (803) 896-5892

The date of injury reported on Form 12A is: 03/10/12 (m/d/yyyy)

Check appropriate section(s). The employer's representative requests a hearing to:

- I. ☒ Stop payment of compensation. Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 10/31/13 (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of 01/21/14 (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
A Form 17 was offered and refused on 01/23/14 (m/d/yyyy).

- II. ☐ Address suspension, termination, or reduction of temporary disability payments for any cause.

- ☐ a. At any time pursuant to § 42-9-260(E).
☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/suspension is _____

- III. ☒ Determine if compensation is due pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant rated by Dr. Edwards.

Claimant reached maximum medical improvement on 10/31/13 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.

- V. ☐ Determine amount of compensation for claims involving a fatality. (Dependency investigation must be attached).

- ☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

A hearing requested pursuant to this section will be set on an expedited basis.

- A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.
- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

Erin Farthing
Preparer's Signature

Asst. Chief Counsel
Title

1/24/14
Date

P.O. Box 102100, Columbia, SC 29221-5000
Address

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.

WCC Form # 21
Revised 04/18/2011

21

Employer's Request for Hearing



**Pee Dee
Orthopaedic
Associates, PA**

Date of Service: October 31, 2013 Patient: Scott Ledford Page: 1
Anthony W. Alexander, M.D., Robert P. Chakshi, M.D., Barry L. Clark, D.O.,
Patrick K. Denton, M.D., W.S. (Bill) Edwards, Jr., M.D., Robert E. Elvington, Jr., M.D.,
Drew H. Erbe, M.D., Jason B. O'Dell, M.D., Chadley M. Runyon, M.D.,
Nigel A.R. Watt, M.D., Matthew D. Yelich, M.D.

991 E. CLEVELAND ST., SUITE 100 - FLORENCE, SC 29506-2769
(843) 662-5233 - FAX (843) 678-9001 - WWW.PDOA.COM

MRI Review

PATIENT ID: 344946

PATIENT: Scott Ledford
DOB: [REDACTED]
Employer: SCDPS

Date of Service: 10/31/2013
Age: 38 year(s)
Occupation: Highway Patrol

Referring Physician: No data for Referred By
Other Physicians:

Vitals: No data for Vitals
Allergies: NKDA
Current Meds: none

MRI Review:

MRI scan was personally reviewed from 5/16/12 and discussed with the patient in detail. This study demonstrates degenerative changes at C5-6 and C6-7 without any significant compressive pathology. X-rays of the thoracic spine showed previous compression fractures at T6 and T9 with stable alignment.

Patient has bilateral radicular symptoms in the upper extremities associated with chronic mechanical neck pain due to disc protrusions at C5-6 and C6-7. He also has some ongoing mechanical symptoms in the thoracic spine related to previous compression fractures at T6 and T9. He is not interested in considering any aggressive treatment as it relates to his cervical spine nor have I have pushed him in this regard given the absence of focal neurologic deficit. He feels that his symptoms are stable and he does not wish to have any aggressive intervention. He is retired from the Highway Patrol and does not plan on trying to return to strenuous activities therefore believes that conservative efforts will be appropriate.

Plan:

He appears to be at maximum medical improvement. There is a 15% impairment of his spine based on cervical disc protrusion at C5-6 and C6-7 and additional 10% impairment of his spine based on compression fractures of T6 and T9. No return appointment has been made.

Diagnosis: T6/T9 compression fractures, healed. Lumbar disc degeneration L4-5; L5/S1. Cervical disc protrusion C5-6, C6-7 without radiculopathy or myelopathy.

W. S. Edwards, M.D.
Spine Surgeon
Pee Dee Spine Center

This document was electronically signed on 10/31/2013

Fax Created: Name: SHARIE CAURIE Number: 1-878-376-8070 Date: 11/7/2013 1:30:48 PM

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

WCC File # 1202545
Carrier File # 2012-000722
Carrier Code # 500 - SF
Employer FEIN 570000K05

Scott Ledford

DEPT OF PUBLIC SAFETY
10311 Wilson Blvd., Blythewood, SC 29016

(home) (843) 241-8750 (work) 0 -

Preparer's name: Brenna Alaman (803) 896-5906 State Accident Fund, Insurance Carrier

Date of injury: 03/10/2012

1. Temporary Compensation Paid:

	Number of Weeks	From	To	Amount
TT-AN	1.71	11-MAR-12	22-MAR-12	
TT-AN	4.43	01-APR-12	01-MAY-12	
TT	90.00	02-MAY-12	21-JAN-14	49,225.50

2. The claimant returned to work on

- () With restrictions but at a salary not less than before the injury
() Without restrictions

3. The claimant agrees he or she was able to return to work on 10/31/2013

I agree that I was disabled for the period(s) indicated and I was paid compensation as shown above. I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should not sign this form until 15 days after I have returned to work or agree I was able to return to work.

Claimant's Signature

Employer's Representative Signature

☐ Witness ☐ Claimant's Attorney

Date Agreement Signed

File this form with the Claims Department no later than 31 days from the date the claimant returned to work to terminate temporary compensation after the first 150 days after employer's notice of the injury according to R.67-505. Within the 150 day period, obtain a Form 17 to document that claimant agrees he or she is able to return to work.

WCC FORM # 17 REV. DATE 3/97

17

RECEIPT OF COMPENSATION

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

WCC File # 1202545
Carrier File # 2012-000722
Carrier Code # 500-SF
Employer FEIN 570000K05

Scott Bedford

DEPT OF PUBLIC SAFETY
10311 Wilson Blvd., Blythewood, SC 29016

(work)

Preparer's name: Brenna Alsmann (803) 896-5905 State Accident Fund, Insurance Carrier

A. Total Wages Paid

Date of Injury: 03/10/2012

1. Check Applicable Method:

- () Report of earnings of injured employee based on four completed quarters.
- () Report of earnings of injured employee who did not complete four quarters based on actual time worked.
- () Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury.
Hire date: 07/08/2005.
- () Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just. (Attach documentation to show how average weekly wage and compensation rate were calculated.)

2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1 st	12/31/2011	10398.72
2 nd	09/30/2011	10265.02
3 rd	06/30/2011	10326.72
4 th	03/31/2011	5927.18
Total Paid	2	36917.64

3. List total value of other allowances of any character made in lieu of wages during four quarters above.

3.

4. Add lines 2 and 3

TOTAL WAGES PAID:

4. 36917.64

5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.

6. 46.00

B. Average Weekly Wage

6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE: 6. 820.39

C. Compensation Rate

7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part 8 below to determine the actual compensation rate.

7. 546.96

8. The compensation rate is as follows (choose one):

() When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.

() When the estimate compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.

() When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.

() Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8:

() The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: 8. 546.96

Employer's representative shall prepare a Form 20 and serve per R.87-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.87-1003 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803)737-5723.

WCC FORM # 20 REV. DATE 3/97

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STATEMENT OF EARNINGS OF INJURED EMPLOYEE

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

WCC File # 1202545
Carrier File # 2012-000722
Carrier Code # 500 SF
Employer FEIN 570000K05

Scott Ledford
Wk#: Home#: (843) 241-8750

DEPT OF PUBLIC SAFETY
10311 Wilson Blvd., Blythewood, SC 29016

Preparer's name: Brenna Alsmen (803) 896-5905

State Accident Fund, Insurance Carrier

1. Date of Injury: 03/10/2012
month day year
2. Total Weeks of Compensation Paid: 97.14286
3. Type of Compensation Paid (TP or TT)/Periods of Payment:
- | | | |
|-------------|------------------|----------------|
| Type: TT-AN | From: 03/11/2012 | To: 03/22/2012 |
| Type: TT-AN | From: 04/01/2012 | To: 05/01/2012 |
| Type: TT | From: 05/02/2012 | To: 01/28/2014 |

4. Date of First Payment: 04/03/2012
month day year

5. Total Amount Paid (a) Compensation: \$ 49,772.45
(b) Medical (Include Nursing, Hospital Drugs, Etc.): \$ 20,991.50

6. Informal Conference is Requested: () yes (x) no
(check one)

7. Use these lines to send a memo to the Commission:

Johnnie Lee Wynn 896-5894
Employer's Representative Phone #

01/31/2014
Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

WCC FORM # 18 REV. DATE 3/96

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PERIODIC REPORT