

THE STATE OF SOUTH CAROLINA
in The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
S.C. Workers Compensation Commission

Appellate Panel Judges:
T. Scott Beck
Melody L. James
Avery B. Wilkerson, Jr.

Case No. 2013-000759

Kevin S. Stokes, Employee

v.

Appellant,

Techno Loading Arms, a division of
Aluminum Ladder Company, Employer,
and Bridgefield Casualty Insurance
Company, c/o Summit Holdings, Inc., Carrier

Respondents.

RECORD ON APPEAL

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1113790

KEVIN S. STOKES, EMPLOYEE CLAIMANT/APPELLANT

VS.

TECHNO LOADING ARMS,
A DIVISION OF ALUMINUM LADDER COMPANY, EMPLOYER,

AND

BRIDGEFIELD CASUALTY INSURANCE COMPANY
C/O SUMMIT HOLDINGS, INC., CARRIER DEFENDANTS/RESPONDENTS.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on January 22, 2013, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, 4-3-13

APPEARANCES: CLAIMANT/APPELLANT represented by John W. Bledsoe, III, Esquire, of Columbia, South Carolina; and

DEFENDANTS/RESPONDENTS represented by Nicolas L. Haigler, Esquire, of Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by the claimant from the Decision and Order of Commissioner Andrea C. Roche, filed August 9, 2012.

By way of background, this claim was before the South Carolina Workers' Compensation Commission ("Commission") pursuant to the Form 50 filed by the claimant on January 4, 2012. It is the position of the claimant that he sustained an injury by accident to his back with bilateral radicular leg symptoms or an aggravation of a pre-existing condition arising out of and in the course of his employment with defendant-employer on August 26, 2011. Accordingly, the claimant now seeks the authorization of past and continued causally-related medical treatment for his back; temporary total disability benefits from September 26, 2011, and continuing until such time as maximum medical improvement (MMI) is reached.

It is the position of the defendants that the claimant did not sustain a compensable injury by accident or aggravation of a pre-existing condition, as alleged. Specifically, the defendants assert the claimant has failed to meet his burden of proof under Section 42-1-160 and/or Section 42-9-35 of the Act. As such, the defendants deny the claimant is entitled to any benefits under the Act. In addition, even if the claim were found compensable, the defendants deny liability for the unauthorized medical treatment received by the claimant in violation of Section 42-15-60. Finally, the defendants requested the undersigned make a determination as to the credibility of the claimant.

The Hearing in this matter was held on April 24, 2012, in Florence, South Carolina, before Commissioner Andrea C. Roche ("Hearing Commissioner"). By way of Decision and Order filed on August 9, 2012, the Hearing Commissioner determined the claimant did not sustain a compensable injury by accident or aggravation of a pre-existing condition on August 26, 2011. Specifically, the Hearing Commissioner determined the claimant failed to meet his burden of proof under Section 42-1-160 and/or Section 42-9-35 of the Act and, therefore, denied the claimant's claim for benefits.

Within the statutory period, the claimant filed Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the

Appellate Panel on January 22, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Full Commission Panel and has since been under study and consideration. Specifically, the claimant respectfully requests the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner based upon the following grounds:

1. Did the Commissioner err in finding that the claimant failed to prove an injury by accident?
2. Did the Commissioner err in "cherry picking" only that evidence which supports a finding of no accident while ignoring substantial evidence which supports a finding of injury by accident?

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed in its entirety.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant, the deposition testimony of Rakesh P. Chokshi, M.D., the deposition testimony of Will Belin, George Ray, and Cindy Smith, and the medical records and exhibits submitted through the APA, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Kevin S. Stokes as employee, Techno Loading Arms, a Division of Aluminum Ladder Company, as employer, and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., as carrier.
2. We find the claimant failed to carry his burden of proving he suffered an injury by accident on August 26, 2011. The contemporaneous medical records do not support a finding of an accident on that date. While we understand that sometimes things don't get recorded in medical notes or are recorded erroneously, none of the contemporaneous medical records mention an on the job injury. Furthermore, the date of onset in the records is not consistent with an August 26 date of accident or the claimant's testimony. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the medical records of Dr. Elder, Dr. Mancuso,

and Carolina Pines Regional Medical Center, as well as the Hearing testimony of the claimant. See Defendants' APA #2 and #3.

3. We find the claimant failed to carry his burden of proving he suffered an aggravation of a pre-existing condition on August 26, 2011. The medical records reveal the claimant was actively seeking medical treatment for back pain one month before the alleged injury and for several months preceding that. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the medical records of Dr. Elder and Carolina Pines Regional Medical Center. See Defendants' APA #2 and #3.
4. We find the claimant made a good witness, but we cannot ignore the objective medical evidence in the record. This Finding is based upon the greater weight of the evidence in the record.
5. We find the claim for benefits under the Act is **DENIED**.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of the Commission that:

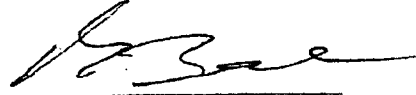
1. Under § 42-1-130, claimant was a covered employee at the time in question.
2. Under § 42-1-140, defendant-employer was a covered employer under the Act.
3. Under § 42-1-160, the claimant did not meet his burden of proving he sustained a compensable injury by accident on August 26, 2011; therefore, all benefits sought are denied as a matter of law.
4. Under § 42-9-35, the claimant did not meet his burden of proving he sustained a compensable aggravation of a pre-existing condition on August 26, 2011; therefore, all benefits sought are denied as a matter of law.
5. Under § 42-15-60, claimant is not entitled to authorized medical treatment.

ORDER

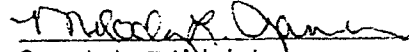
IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on August 9, 2012, is hereby **AFFIRMED**.

AND IT IS SO ORDERED.

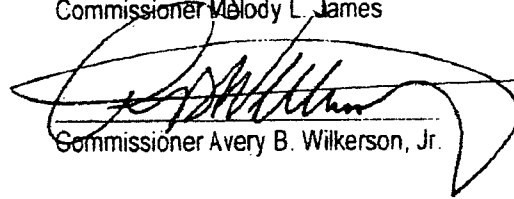
SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



Commissioner T. Scott Beck
For the Appellate Panel



Commissioner Melody L. James



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

By Valerie Deller on April 3, 2013

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1113790

Kevin S. Stokes,)
)
Employee,)
)
Claimant,)
)
v.)
)
Techno Loading Arms, a division of Aluminum)
Ladder Company,)
)
Employer,)
)
and)
)
Bridgefield Casualty Insurance Company c/o)
Summit Holdings, Inc.,)
)
Carrier,)
)
Defendants.)
_____)

DECISION AND ORDER

HEARING: Hearing held in Florence, South Carolina, on April 24, 2012.

APPEARANCES: Claimant represented by Bledsoe Law Firm, with John W. Bledsoe, III, Esquire, appearing.

Defendants represented by Sowell Gray Stepp & Laffitte, L.L.C., with Nicolas L. Haigler, Esquire, appearing.

PURPOSE OF HEARING: To determine issues as set forth in Forms 50 and 51.

DECISION AND ORDER: By Honorable Andrea C. Roche, Commissioner

FILED: August 9, 2012

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the claimant submitted records, reports, and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1. Rakesh P. Chokshi, M.D.	McLeod Regional Medical Center	09/15/09 – 11/02/09	1 – 5
2.	Carolina Pines Regional Medical Center	08/27/11	6 – 15
3. Robert Elder, M.D.		08/31/11 – 12/01/11	16 – 19
4. Lisa Mancuso, M.D.	Pee Dee Pain Care	09/19/11	20 – 26
5.	Carolina Pines Regional Medical Center	09/21/11	27 – 28
6.	Pee Dee Orthopaedic Associates, PA	09/27/11 – 01/04/12	29 – 56
7.	McLeod Regional Medical Center	09/30/11 – 10/03/11	57 – 64
8.	Carolina Pines Regional Medical Center	11/23/11	65 – 74
9.	McLeod Regional Medical Center	01/12/12 – 01/13/12	75 – 80
10.	Hartsville Physical Therapy	02/06/12 – 03/22/12	81 – 90
11. Rakesh P. Chokshi, M.D.		05/09/12	Deposition

Pursuant to the Administrative Procedures Act, the defendants submitted records, reports, and correspondence from the following into evidence:

Physician	Practice	Dates of Service	Page Numbers
1. Rakesh P. Chokshi, M.D.	Pee Dee Orthopaedic Associates, PA	08/24/09 – 11/02/09	1 – 12
2. Robert L. Elder, M.D.	The Medical Group	08/13/10 – 09/21/11	13 – 33
3.	Carolina Pines Hospital	04/25/11 – 09/21/11	34 – 42

Exhibits	Dates of Service	Page Numbers
A. Portions of the claimant's personnel file	08/10/10 – 10/25/12	1 – 8
B. Claimant's deposition		
C. Deposition of William Belin	04/18/12	Deposition

D. Deposition of George Ray	04/18/12	Deposition
E. Deposition of Cindy Smith	04/18/12	Deposition

STIPULATIONS

At the call of the claim, the parties stipulated to the following issues:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim;
2. Venue in the County of Florence is proper for this claim;
3. The claimant alleges he sustained a compensable injury by accident to his back with bilateral radicular leg symptoms on August 26, 2011;
4. By way of Consent Order filed on May 23, 2012, the claimant's average weekly wage and compensation rate are \$591.33 and \$394.24, respectively; and
5. With the exception of any self-serving statements or unstipulated medical reports, the Commission file was made part of the record.

STATEMENT OF THE CASE

The undersigned held a Hearing in this matter at the date and location referenced above. All parties of interest were timely and properly notified of the Hearing, and the parties and/or their representatives appeared at the Hearing. The claimant appeared and was represented by John W. Bledsoe, III, Esquire. The defendants were represented by Nicolas L. Haigler, Esquire.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 50 filed by the claimant on January 4, 2012. It is the position of the claimant that he sustained an injury by accident to his back with bilateral radicular leg symptoms or an aggravation of a pre-existing condition arising out of and in the course of his employment with defendant-employer on August 26, 2011. Accordingly, the claimant now seeks the authorization of past and continued causally-related medical treatment for his back; temporary total disability benefits from September 26, 2011, and continuing until such time as maximum medical improvement (MMI) is reached.

It is the position of the defendants that the claimant did not sustain a compensable injury by accident or aggravation of a pre-existing condition, as alleged. Specifically, the defendants assert the claimant has failed to meet his burden of proof under Section 42-1-160 and/or Section 42-9-35 of the Act. As such, the defendants deny the claimant is entitled to any further benefits under the Act. In addition, even if the claim were found compensable, the defendants deny liability for the unauthorized medical treatment received by the claimant in violation of Section 42-15-60. Finally, the defendants requested the undersigned make a determination as to the credibility of the claimant.

Accordingly, the primary issues for determination are: (1) whether the claimant sustained a compensable injury by accident under Section 42-1-160 of the Act; (2) whether the claimant sustained a compensable aggravation of a pre-existing condition under Section 42-9-35 of the Act; (3) if compensable, whether the defendants are liable for the unauthorized medical treatment received by the claimant; (4) if compensable, whether claimant is entitled to temporary total disability benefits; and (5) the credibility of the claimant.

EVIDENCE OF THE CASE

The undersigned has carefully considered all of the evidence presented by the parties in this claim, including the Hearing testimony of the claimant, the deposition testimony of Rakesh P. Chokshi, M.D., the deposition testimony of Will Belin, George Ray, and Cindy Smith, and the medical records and exhibits submitted through the APA. From this evidence, the following is specifically noted:

A. HEARING TESTIMONY

The claimant testified he has been employed as a welder by Aluminum Ladder since 2005. See H.T., p. 7. The claimant confirmed his job requires the lifting of safety equipment, counterweights, handrails, safety cages, TC-10 ladders, TC-8 ladders, and platforms. See H.T., p. 8. However, any lifting of these objects is performed with the assistance of a crane. See H.T., p. 8. The claimant testified he works ten hours per day, Monday through Thursday. See H.T., p. 9.

The claimant testified that on August 26, 2011, he felt a sharp pain in his back and hurting in his legs after flipping over a counterweight. See H.T., p. 10. He testified he fell to the ground, but was assisted up by George Ray and Will Belin. See H.T., p. 10. The claimant testified that after taking a short break he proceeded to weld a TC-10 ladder. During this process he testified his "knee buckled." See H.T., p. 11.

The claimant testified he presented to the emergency room on August 27, 2011, but was told his back pain was the result of kidney stones. See H.T., p. 13. The claimant then proceeded to an appointment with Dr. Elder; the claimant testified Dr. Elder ordered an x-ray of his back. See H.T., p. 14. The claimant confirmed he underwent surgery with Dr. Chokshi on September 30, 2011. See H.T., p. 14. Prior to the surgery, however, the claimant testified he immediately presented to Cindy Smith at Aluminum Ladder to inform her that his back injury was caused by a work accident on August 26, 2011. See H.T., p. 15. Ms. Smith then directed the claimant to inform Michael Blackmon, which the claimant testified he did. See H.T., p. 15.

When asked how the date of September 9, 2011, was identified as the date of accident on the first report of injury, the claimant testified "[m]e and Cindy was trying to figure out when the accident date was and I think she backed it up to when I had missed a day or something." See H.T., p. 16. The claimant then testified he discovered the date was actually August 26, 2011, during a subsequent conversation with his wife. See H.T., p. 16.

Under cross-examination, the claimant admitted presenting to the emergency room on August 27, 2011, with complaints of "passing stones." See H.T., p. 24. The claimant denied informing the attending physician that his problems started six days prior and, in fact, testified he actually told the physician he injured his back at work on the day before. See H.T., pp. 25-26. The claimant then testified he presented to Dr. Elder on August 31, 2011, and informed Dr. Elder that of the work accident on August 26, 2011; however, he could not explain why the accident was not referenced in the corresponding medical report.

See H.T., p. 27. In addition, the claimant could not explain why Dr. Elder's report indicated his back problems started two weeks prior. See H.T., p. 27.

The claimant then testified with regard to his visit with Dr. Mancuso on September 19, 2011. Specifically, he denied complaining of chronic low back pain for several years with worsening pain over the prior three to four months. See H.T., p. 29. He also testified he told Dr. Mancuso about his accident on August 26, 2011, but again could not explain why this was not referenced in Dr. Mancuso's report. See H.T., p. 29. The claimant then admitted presenting to Carolina Pine Regional Medical Center for an MRI his lumbar spine, but denied informing the attending physician that his low back pain and bilateral leg pain and numbness was ongoing for the last few months. See H.T., p. 31.

In addition, the claimant testified with regard to his treatment with Dr. Alexander and Dr. Chokshi. Specifically, the claimant could not explain why his mention of a work accident on August 26, 2011, is not noted in either physician's reports on or after September 27, 2011. See H.T., p. 32-33. In short, the claimant testified he could not explain why none of his treating physicians reported the claimant's complaints of a work-related low back injury on August 26, 2011. See H.T., p. 35.

Furthermore, the claimant testified regarding his treatment with Carolina Pines Regional Medical Center and Dr. Elder in April of 2011. Specifically, the claimant testified he did not remember presenting to Carolina Pines on April 25, 2011, with complaints of 10/10 back pain. See H.T., p. 38. He also could not recall presenting to Dr. Elder on April 27, 2011, with complaints of back pain for one week, or being diagnosed with lumbar radiculitis. See H.T., pp. 39 and 41. The claimant did recall receiving prescriptions from Dr. Elder for Motrin, Flexeril and Percocet, as well as a work note taking him out of work for two days. See H.T., p. 40. However, he denied receiving a referral from Dr. Elder to undergo an MRI "ASAP". See H.T., p. 41. Finally, the claimant testified he did not recall presenting to Dr. Elder on July 28, 2011, with back and leg pain which began two months prior. See H.T., p. 42. With regard to any back and leg

problems prior to the alleged accident, the claimant admitted that "if the medical records say I do, I did."

See H.T., p. 44.

B. APA SUBMISSIONS:

1. Medical Evidence

a. Prior to Alleged Date of Injury by Accident on August 26, 2011

On August 24, 2009, the claimant presented to Rakesh P. Chokshi, M.D., of Pee Dee Orthopaedics, with complaints of low back pain radiating down the right side. See Defendants' APA #1, p. 3. Dr. Chokshi reviewed an MRI of the lumbar spine, which revealed degenerative disc disease at L4-5 and a central herniated nucleus pulposus at L4-5. See Defendants' APA #1, p. 4. The claimant was taken out of work and provided pain medication. On September 15, 2009, the claimant underwent a lumbar microdiscectomy at L4-5. See Claimant's APA #1, pp. 1-2. On November 2, 2009, Dr. Chokshi reported the claimant's pre-operative symptoms were improved, and allowed the claimant to return to work with no restrictions on November 23, 2009. See Defendants' APA #1, p. 10.

On August 13, 2010, the claimant reported to Robert L. Elder, M.D., with complaints of back and leg stiffness; the claimant was prescribed Mobic. See Defendants' APA #2, pp. 13-14. On April 25, 2011, the claimant presented to Carolina Pines Regional Medical Center with lower back pain; the claimant reported the "onset of acute symptoms was 6 days ago." See Defendants' APA #3, p. 35. The corresponding physical examination revealed a positive right and left straight leg raise, and bilateral paralumbar tenderness. The claimant was prescribed Flexeril and Oxycodone, and instructed to follow-up in three days. See Defendants' APA #3, p. 36.

On April 27, 2011, the claimant returned to Dr. Elder with back pain which was ongoing for one week. See Defendants' APA #2, p. 16. Dr. Elder's physical examination also revealed a positive right and left straight leg raise, and bilateral paralumbar tenderness. See Defendants' APA #2, p. 16. Dr. Elder diagnosed the claimant with low back pain and lumbar radiculitis, and referred him for an "MRI ASAP."

See Defendants' APA #2, p. 17. On July 11, 2011, the claimant presented to Dr. Elder with bilateral leg and back pain, ongoing intermittently for six weeks. See Defendants' APA #2, p. 19. On July 28, 2011, the claimant again complained of lower back and leg pain, which the claimant described as continuous for two months. See Defendants' APA #2, p. 22. Dr. Elder prescribed Flexeril and Lorcet. See Defendants' APA #2, p. 23.

b. Subsequent to the Alleged Date of Accident on August 26, 2011

On August 27, 2011, the claimant presented to Carolina Pines Regional Medical Center with complaints of "left flank pain since Monday (August 22, 2011) . . . sts had some blood and passed some "pebbles" . . . sts still hurting and pain is going down into left leg." See Claimant's APA #2, p. 6. The claimant reported the pain was 10/10, but denied any musculoskeletal pain, numbness or tingling. See Claimant's APA #2, p. 10.

On August 31, 2011, the claimant presented to Dr. Elder with low back and left leg pain, which the claimant described as suddenly occurring and continuous for two weeks. See Defendants' APA #2, p. 25. Dr. Elder again reported the physical examination revealed a positive straight leg raise. See Defendants' APA #2, p. 25.

On September 19, 2011, the claimant presented to Dr. Lisa Mancuso of the Pee Dee Pain Center, at the referral of Dr. Elder, with complaints of "chronic low back pain for years, worse in the last 3-4 months." See Defendants' APA #2, p. 27. Dr. Mancuso reported the claimant had not had a lumbar spine MRI in the last year (despite the recommendation of Dr. Elder in April of 2011). See Defendants' APA #2, p. 27. Dr. Mancuso also recommended that a comprehensive pain management program is necessary to achieve maximum function. See Claimant's APA #2, p. 28.

On September 21, 2011, the claimant presented to Carolina Pines Medical Center for an MRI of the lumbar spine. The history portion of the corresponding report indicates the claimant's complained of low back pain with bilateral leg pain and numbness for a "few months." See Defendants' APA #3, p. 41.

The MRI revealed a large recurrent central and rightward disc herniation at L4-5. See Defendants' APA #3, p. 41.

On September 27, 2011, the claimant presented to Anthony Alexander, M.D., of Pee Dee Orthopaedics, with "severe, dull, stabbing, throbbing pain in the lower back region off and on since undergoing back surgery." See Claimant's APA #6, p. 29. Dr. Alexander notes the date of onset is August 1, 2011, with the symptoms getting "worse over the past two weeks." See Claimant's APA #6, p. 29. Dr. Alexander referred the claimant to Dr. Chokshi. On September 28, 2011, the claimant presented to Dr. Chokshi with complaints of severe low back pain and bilateral lower extremity pain. See Claimant's APA #6, p. 33. Dr. Chokshi reported the "patient has been having this pain for the last two to three months progressively getting worse." See Claimant's APA #6, p. 33. On September 30, 2011, the claimant underwent a laminectomy, and right-sided facetectomy and interbody fusion at L4-5. See Claimant's APA #7, p. 64.

On October 19, 2011, Dr. Chokshi reported the claimant's pre-operative symptoms were improved, although the "patient continues to have some back pain." See Claimant's APA #6, p. 37. On December 14, 2011, Dr. Chokshi reported the claimant was having some occasional right leg pain, and recommended an MRI of lumbar spine. See Claimant's APA #6, p. 40. The MRI, performed on December 29, 2012, revealed a right seroma fluid collection compressing over the L4-5 nerve root. See Claimant's APA #6, p. 44. The claimant underwent a seroma removal with decompression of the nerve root on January 12, 2012. See Claimant's APA #9, p. 79. On March 7, 2012, the claimant reported continued complaints of left leg pain but improvement in the right leg pain following the surgery in January. See Claimant's APA #6, p. 54. He also complained of calf and S1 distribution pain, and heaviness in both legs. See Claimant's APA #6, p. 54. Dr. Chokshi recommended another MRI of the lumbar spine. The MRI, performed on March 12, 2012, revealed no changes in the spine. See Claimant's APA #6, p. 56. On March 14, 2012, Dr. Chokshi prescribed the claimant a TENS unit and referred him for eight to twelve sessions of physical therapy.

2. Deposition Rakesh P. Chokshi, M.D. – May 9, 2012

Rakesh P. Chokshi, M.D., testified the claimant underwent a transforaminal lumbar interbody fusion in September of 2011. See Deposition of Rakesh P. Chokshi, M.D., p. 8. Dr. Chokshi testified the claimant underwent a follow-up procedure in January of 2012 to address his right-sided leg pain. See Deposition of Dr. Chokshi, p. 10. Dr. Chokshi then testified as follows:

Q: When you saw him, did he give you a history of any kind at that point, especially whether or not he had any recent injury at work?

A: You know, he's a patient of mine who -- from before. I had seen him in the past, '09. Let me go back and try and remember. He had very severe back pain and bio lower extremity pain three years ago, back difficulty with his work. I can't specifically tell you if he did or did not tell me that. I don't have it in my notes.

Deposition of Dr. Chokshi, p. 6, ll. 4-14.

On cross-examination, Dr. Chokshi again testified his "notes" did not reflect an acute injury at work. See Deposition of Dr. Chokshi, p. 17. Dr. Chokshi then testified with regard to the date to onset identified on the report dated September 28, 2011. Specifically, Dr. Chokshi testified "this is taken by nurse typically as to roughly when his problems started and that's what that came from." See Deposition of Dr. Chokshi, p. 18. Dr. Chokshi further testified that the claimant's problems had progressively worsened over the prior two to three months. See Deposition of Dr. Chokshi, p. 18. Dr. Chokshi then admitted these report of the claimant's progressive problems is inconsistent with the claimant's claim that he sustained an acute work-related on August 26, 2011. See Deposition of Dr. Chokshi, p. 22.

Dr. Chokshi then reviewed the report of Dr. Mancuso dated September 19, 2011, and confirmed the report did not reference an acute accident on August 26, 2011, but instead of worsening back pain in the past two to three months. See Deposition of Dr. Chokshi, p. 24. In addition, Dr. Chokshi reviewed the reports of Dr. Elder starting in April of 2011. Dr. Chokshi confirmed the claimant reported to Dr. Elder in April of 2011 that he had a sudden onset of low back pain one week prior. See Deposition of Dr. Chokshi, p. 29; see also Defendants' APA #2, p. 16. Dr. Chokshi further acknowledged that Dr. Elder recommended

an MRI of the claimant's lumbar spine "ASAP." See Deposition of Dr. Chokshi, p. 30. Dr. Chokshi then testified as follows:

Q: And so then I assume you can't state to a reasonable degree of medical certainty whether the problems he was having in September when he came to see you were the result of something that happened in August or something that was going on - - actually going on in April?

A: Correct. I mean, I couldn't tell you and when we saw him with the findings of his MRI, it was significantly bad that we had to do some kind of intervention at that point in time.

Deposition of Dr. Chokshi, p. 31, l. 21-p. 32, l. 6.

Additionally, Dr. Chokshi testified with regard to the report of Dr. Elder dated August 31, 2011, five days after the accident. Dr. Chokshi confirmed the report does not reference a work accident, but instead indicates the low back problems began two weeks prior. See Deposition of Dr. Chokshi, pp. 35-36. Finally, when asked whether he had any evidence to support the claimant sustained a work-related accident, Dr. Chokshi testified, "not at this time." See Deposition of Dr. Chokshi, p. 44.

3. Deposition of Cindy Smith – April 18, 2012

Cindy Smith testified she has been employed as a benefits specialist for Aluminum Ladder for approximately four years. See Deposition of Cindy Smith, p. 5. Ms. Smith testified the claimant notified her on September 28, 2012, that he sustained an injury to his back on September 9, 2012. See Deposition of Cindy Smith, p. 17. Ms. Smith then testified the claimant informed her on September 28, 2012, that his back surgery was scheduled for September 30, 2012. See Deposition of Cindy Smith, p. 16. Finally, Ms. Smith confirmed that prior to April of 2012 neither she nor anyone else at Aluminum Ladder were provided knowledge of an accident on August 26, 2011. See Deposition of Cindy Smith, p. 19.

4. Deposition of George Ray – April 18, 2012

George Ray testified he has been employed by Aluminum Ladder for two years. See Deposition of George Ray, p. 5. Mr. Ray testified he had a discussion with the claimant in September of 2011 during

which time the claimant mentioned hurting his back pulling a welding machine. See Deposition of George Ray, p. 7. However, Mr. Ray confirmed he did not witness the claimant's alleged back injury. See Deposition of George Ray, p. 9. Finally, Mr. Ray testified as follows:

Q: Were you aware that he was still having problems in 2010 and 2011?

A: He was -- he always -- like I say, he always talked about his back bothering him a little bit, but the last few months or months or so he was there, I mean, he was down pretty good.

Deposition of George Ray, p. 13, ll. 7-12.

5. Deposition of William Belin – April 18, 2012

William Belin testified he has been employed by Aluminum Ladder for six years. See Deposition of William Belin, p. 5. Mr. Belin testified the claimant told him he hurt his back while moving a "flat section of TC10 ladder." See Deposition of William Belin, p. 6. Importantly, Mr. Belin confirmed the ladder is different than a welding machine. See Deposition of William Belin, p. 10.

6. Personnel File

On August 14, 2010, Robert Elder, M.D., completed the Certification of Health Care Provider for Employee's Serious Health Condition, wherein he indicated he treated the claimant for low back problems in 2009 and 2010. See Defendants' Ex. A, pp. 3-4. Dr. Elder also indicated the claimant would have "intermittent flare-ups of low back pain" and would require periodic medical treatment. See Defendants' Ex. A, pp. 4-5.

On October 12, 2011, Rakesh P. Chokshi, M.D., completed an Attending Physician's Statement, part of the claimant's short-term disability benefits application, wherein he indicated the claimant's symptoms first appeared on September 28, 2011, but did not indicate the problems were work-related. See Defendants' Ex. A, p. 7.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant, the deposition testimony of Rakesh P. Chokshi, M.D., the deposition testimony of Will Belin, George Ray, and Cindy Smith, and the medical records and exhibits submitted through the APA, as well as my personal observations of the claimant, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Kevin S. Stokes as employee, Techro Loading Arms, a Division of Aluminum Ladder Company, as employer, and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., as carrier.
2. I find the claimant failed to carry his burden of proving he suffered an injury by accident on August 26, 2011. The contemporaneous medical records do not support a finding of an accident on that date. While I understand that sometimes things don't get recorded in medical notes or are recorded erroneously, none of the contemporaneous medical records mention an on the job injury. Furthermore, the date of onset in the records is not consistent with an August 26 date of accident or the claimant's testimony. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the medical records of Dr. Elder, Dr. Mancuso, and Carolina Pines Regional Medical Center, as well as the Hearing testimony of the claimant. See Defendants' APA #2 and #3.
3. I find the claimant failed to carry his burden of proving he suffered an aggravation of a pre-existing condition on August 26, 2011. The medical records reveal the claimant was actively seeking medical treatment for back pain one month before the alleged injury and for several months preceding that. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the medical records of Dr. Elder and Carolina Pines Regional Medical Center. See Defendants' APA #2 and #3.
4. I find the claimant made a good witness, but I cannot ignore the objective medical evidence in the record. This Finding is based upon the greater weight of the evidence in the record.
5. I find the claim for benefits under the Act is **DENIED**.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Commissioner that:

1. Under § 42-1-130, claimant was a covered employee at the time in question.
2. Under § 42-1-140, defendant-employer was a covered employer under the Act.
3. Under § 42-1-160, the claimant did not meet his burden of proving he sustained a compensable injury by accident on August 26, 2011; therefore, all benefits sought are denied as a matter of law.
4. Under § 42-9-35, the claimant did not meet his burden of proving he sustained a compensable aggravation of a pre-existing condition on August 26, 2011; therefore, all benefits sought are denied as a matter of law.
5. Under § 42-15-60, claimant is not entitled to authorized medical treatment.

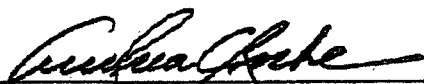
ORDER

IT IS THEREFORE ORDERED that the claim is denied as the claimant did not sustain a compensable injury by accident to his back or aggravation of a pre-existing condition on August 26, 2011. Therefore, the claimant is not entitled to any benefits under the Act. No hearing costs are assessed in this matter.

CLAIM DENIED.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



Commissioner Andrea C. Roche

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties 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.

August 9, 2012

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Roche

- 1 Q Do y'all have any children?
- 2 A Yes, sir, one son.
- 3 Q How old is he?
- 4 A Eight years old.
- 5 Q All right. How far did you go in school?
- 6 A Ninth grade, tenth grade.
- 7 Q All right. Went into the tenth?
- 8 A Yes, sir.
- 9 Q Didn't finish it?
- 10 A No, sir.
- 11 Q Okay. When did you start -- do you remember
- 12 when you started working at Aluminum Ladder?
- 13 A In 2005.
- 14 Q All right. And have you worked there
- 15 continuously since that date?
- 16 A Yes, sir.
- 17 Q Okay. So you've been there about seven
- 18 years?
- 19 A Yes, sir.
- 20 Q What is your job at Aluminum Ladder?
- 21 A I'm a welder.
- 22 Q And what do you have to do as a welder?
- 23 A You -- you weld out their product until it
- 24 becomes finished and the next day put sealant on it.
- 25 You climb and you bend and you twist some. To get the

1 product finished and get it out the door, you have to
2 galvanize it or (inaudible) it.

3 Q Do you have to do any lifting?

4 A Yes, sir.

5 Q What do you have to lift or handle?

6 A You lift whatever they bring to you. When
7 you weld it you have to put it -- to make all the
8 welds, lift it over and work on it and wherever the
9 weld goes you have to weld it.

10 Q What kind of things do you weld?

11 A Safety equipment, counterweights, handrails,
12 safety cages, TC-10 ladders, TC-8 ladders, platforms.

13 Q How heavy are these objects?

14 A They range anywhere from 100 to two to 3000
15 pounds.

16 Q How do you handle an object that weighs two
17 or 3000 pounds?

18 A We have a crane in our area which is called
19 a Jib Crane. It picks straight up and down and then
20 you have to handle -- manually push it where you want
21 it -- try to lift over.

22 Q Okay. Now what is a counterweight?

23 A It's a weight that assists us if they have a
24 platform or loading arm that's -- something that's
25 heavy so when we -- a person lifts something on it

1 they can move it easier to load -- makes the arm of
2 the platform move up and down.

3 Q Okay. Generally how heavy are these
4 counterweights?

5 A They can range anywhere from 500 to 2000
6 pounds -- 1000 to 2000 pounds.

7 Q Okay. Now what are your hours work -- what
8 hours do you work or did you work at Aluminum Ladder?

9 A On Mondays to Thursdays you go in at 6:30
10 and get off at 5:00 and on Fridays you go in at 6:30
11 and get off at 3:00 unless you're working overtime and
12 then you work Monday to Friday from 6:30 to 7:00 and
13 on Friday you work 6:30 to 3:00 and you work from 6:30
14 to 10:00 on Saturday, 10:30.

15 Q Okay. So you're working ten hours a day?

16 A Yes, sir.

17 Q Monday through Thursday?

18 A Yes, sir.

19 Q So you were working 48 hours a week,
20 basically, every week?

21 A Yes, sir.

22 Q Over -- so you worked eight hours overtime
23 every week and then you were working more hours than
24 that sometimes?

25 A Yes, sir, when we were required.

1 Q Okay. Did you get paid time and a half for
2 overtime?

3 A Yes, sir.

4 Q And what was your hourly wage?

5 A \$13.50.

6 Q \$13.50 an hour?

7 A Yes, sir.

8 Q Okay. Now I want to direct your attention
9 to August the 26th of 2011. What happened that day?

10 A After lunch we came back and I was finishing
11 up the counterweights that we had built and there was
12 26 of them and when I got down to the last one I got
13 finished with it and was flipping it over getting
14 ready to stack it with the pile, I had a sharp pain in
15 my back like somebody stabbed me. Both legs was
16 hurting. I went down to the ground; that's when Will
17 Beaman and George Ray had came over and it was just
18 excruciating pain. At that -- I was real white and
19 sweaty George told me. I was down there for a few
20 minutes and I got up and went to the bathroom and came
21 back about ten minutes and George told me that I
22 looked -- I was going back through his area and my
23 area, said I looked like I was about to pass out; real
24 white and sweating, a cold sweat. I needed to get in
25 front of a fan so I went behind the welder; there's a

1 fan blows off behind the welder and I had a chair back
2 there and I sat down for about ten minutes and then I
3 went back to work. I started to weld a handrail. I
4 got the crane hooked around it and brought it to me.
5 I welded everything I could and put it up to weld it
6 flat and when I went to flip it I experienced the same
7 pain and went down to the ground. And the cleaners
8 had brought a ladder over for me to -- I had missed a
9 weld on a step about an inch long.

10 Q What kind of ladder?

11 A It was a TC-10 ladder; it's a safety ladder
12 for like on trains and stuff. So they had laid it in
13 a position for me and I made the little inch weld and
14 I called Will over there to help me.

15 Q Will who?

16 A Will Beaman.

17 Q Okay.

18 A And he flipped it back flat and as soon as I
19 grabbed it and went to pick it up my knees buckled and
20 I broke out to a sweat again and he told me to, "Look,
21 stop. You don't need to be doing this and hurt and
22 whatever. Just sit down." He said, "You need to sit
23 down." And I went over to sit behind the weld for
24 about 15 or 20 minutes until the bell rung and he
25 moved me around --

1 Q What do you mean until the "bell rung"?

2 A It was time to go home.

3 Q Okay.

4 A The -- the 3:00 bell rings for us to go
5 home.

6 Q This was a Friday?

7 A Yes, sir.

8 Q All right. Were you having pain the entire
9 time from the time you pushed the counterweight up
10 until the time you got off work?

11 A Yes, sir.

12 Q Did you see Michael Blackmon before you left
13 work?

14 A Yes, sir, I was -- I walked to the time
15 clock and I was behind everybody else washing my
16 hands; I went to the sink to wash my hands and he come
17 down the stairs to shut the doors; he locks up and
18 makes sure the doors is locked, and I told him that I
19 had hurt my back and he said he'd see me Monday. And
20 I went on over to leave and was coming down and got in
21 the truck and he went on to the front door and locked
22 and when he waved out in the parking lot he was going
23 to his truck and I drove by.

24 Q Okay. All right. Did you continue to have
25 pain that day?

1 A Yes, sir, that day and that night I was
2 having excruciating pain and that Saturday, which was
3 the 27th, I went to the emergency room.

4 Q All right. And did you have any problems at
5 the emergency room?

6 A Yes, sir. They -- they proceeded to tell me
7 that it was my kidneys and I told them that it was my
8 back. The doctor told me that if I was refusing the
9 CT Scan that there wasn't nothing he could do because
10 he thought it was my kidney. So they done a CT Scan
11 and there was no stones to be found and he told me
12 that it was probably in my urethra tube, I think
13 that's correct; and they sent me home. And I was
14 still having problems and that Monday when I went into
15 work I went straight to Michael Blackmon's office and
16 I told him that they said it was my kidney stones.
17 And he told me sometimes you have kidney stones your
18 back and all will hurt -- so I told him it was my back
19 was hurting and he said, "Well, sometimes when you
20 have kidney stones your back will hurt", and said,
21 "you know, it's real bad pain."

22 Q Did you ever have any kidney stones?

23 A No, sir.

24 Q Was it your back?

25 A Yes, sir.

- 1 Q Did you seek further medical attention?
- 2 A Yes, sir.
- 3 Q Who did you go see?
- 4 A Dr. Elder.
- 5 Q And is he your regular doctor?
- 6 A Yes, sir.
- 7 Q Okay. And did you ultimately have an MRI
- 8 done?
- 9 A I had a MRI done, yes, sir. The first thing
- 10 they done x-rays and then later on I had a MRI.
- 11 Q Okay. And what did the MRI show?
- 12 A That I had two badly herniated discs or
- 13 ruptured discs.
- 14 Q Okay. And did you have surgery?
- 15 A Yes, sir.
- 16 Q When was the surgery?
- 17 A On September the 30th.
- 18 Q Okay. Who did the surgery?
- 19 A Dr. Chokshi.
- 20 Q What kind of surgery did he do?
- 21 A He removed the herniated discs, put plates
- 22 in and -- two plates and four screws.
- 23 Q In what area of your back?
- 24 A In my L4 and L5.
- 25 Q All right. Now, on September the 28th,

1 before you had the surgery did you have any
2 discussions with anybody at work?

3 A Yes, ma'am -- yes, sir. When I -- when I
4 found out that I was -- it was definitely my back and
5 I was having surgery I went -- after the doctor's
6 appointment I went straight to Florence and they told
7 me that Cindy was -- Ms. Cindy Smith was in
8 Darlington. And I went -- and I went to Darlington
9 straight to talk to Miss Cindy. She was out in one of
10 the trailers doing something at work and I told her
11 and told her I was having --

12 Q What did you tell her?

13 A I told her that I had seen the doctor and it
14 was my back and they were going to do surgery and that
15 I was hurt -- I got hurt at work and she told me that
16 I needed to make sure that Michael Blackmon knew. And
17 I left Cindy and I went and talked to Michael
18 Blackmon, which is the supervisor. She told me to
19 make sure he knew exactly what was going on and I told
20 him.

21 Q Did you tell him you hurt your back on the
22 26th?

23 A Yes, sir.

24 Q Did Cindy Smith fill out a form -- a
25 workers' comp form that day?

1 A Yes, sir.

2 Q All right. How did -- at one point the date
3 of September the 9th was put down on that form as the
4 accident date; how did that come about?

5 A Me and Cindy was trying to figure out when
6 the accident date was and I think she backed it up to
7 when I had missed a day or something. When --

8 Q You can't ask her.

9 A Oh, I'm sorry. I can't -- we had tried to
10 figure out what the date was while we was there and
11 that's how we determined it was the 9th.

12 Q Okay. And did you later determine that it
13 was not the 9th?

14 A Yes, sir.

15 Q How did you figure out it was August the
16 26th?

17 A I got to thinking about it and my wife says
18 -- well, I had went to the emergency room on the 28th
19 -- the 27th with my back and that it happened the day
20 before the 27th because that was the emergency room,
21 so that's the 26th on a Friday. That's when I
22 realized that September the 9th was not the date of
23 the accident, that it was August the 26th.

24 Q All right. Did you come out of work on
25 September the 20th?

- 1 A Yes, sir.
- 2 Q Have you been back to work since that time?
- 3 A No, sir.
- 4 Q Are you able to go back to work now?
- 5 A No, sir.
- 6 Q Are you still under Dr. Chokshi's care?
- 7 A Yes, sir.
- 8 Q Okay. When do you see Dr. Chokshi again?
- 9 A Next month.
- 10 Q Okay. Are you receiving any care right now,
11 any medical care?
- 12 A No, sir, I'm going to physical therapy.
- 13 Q And where do you get that therapy?
- 14 A At Hartsville. I think -- I think the name
15 of it is Hartsville Physical Therapy, if I'm correct.
- 16 Q And who sent you there?
- 17 A Dr. Chokshi and I --
- 18 Q Go ahead.
- 19 A -- I use a Tens machine that they sent me.
- 20 Q Who prescribed the Tens machine?
- 21 A Dr. Chokshi, and I do that about three times
22 a day -- two or three times a day -- at night and
23 during the day -- or in the evening for an hour a day.
- 24 Q Does it help your back pain any?
- 25 A A little bit. It doesn't knock the pain

1 THE COURT: Sustained.

2 Q What -- just tell us what was wrong? What
3 was your problem the reason you had a second surgery?

4 A I was having a lot of pain -- excruciating
5 pain -- large amount of pain and they done x-rays;
6 hurting down both legs, couldn't sleep. So he sent
7 for another MRI and the MRI said that I had infection,
8 I think it was, and they -- they thought it was seroma
9 or sanoma I think. I'm not sure the exact words.

10 Q Okay.

11 A So he just gave a little surgery again.
12 They went in and cleaned it up and stapled me back.

13 Q Okay. Now you had a previous back surgery
14 in 2009; is that correct?

15 A Yes, sir.

16 Q Who did that surgery?

17 A Dr. Chokshi.

18 Q All right. Did Dr. Chokshi, after that 2009
19 surgery, release you to return to work?

20 A Yes, sir, he -- he released me to go back
21 full duty, back to my normal job with no restrictions.

22 Q Okay. All right. And you went back to work
23 at ten hours a day?

24 A Yes, sir, ten and 12 hours a day when
25 overtime was required, we were working ten and 12

1 hours a day.

2 Q Okay. All right. Did you -- after 2009 did
3 you ever have to seek any medical attention before the
4 accident in August 26th, 2011?

5 A Yes, sir.

6 Q Who did you go see?

7 A Dr. Robert Elders.

8 Q All right. What would you learn on those
9 occasions?

10 A Just I went to see him -- nothing -- nothing
11 that I missed work. Just soreness and stiffness, I
12 mean he prescribed me some medicine and I'd go back to
13 work.

14 Q All right. Were you able to carry out your
15 duties?

16 A Yes, sir.

17 Q Was there any difference in your job
18 performance before 2011 and 2009 back surgery?

19 A No, sir.

20 Q Are you -- in addition to the Tens Unit and
21 the physical therapy now, has Dr. Chokshi prescribed
22 any pain medicine for you?

23 A Yes, sir, and Dr. Elders did.

24 Q All right. What are you taking?

25 A Lorcets and Lyrica, I think it is.

1 A Yes, sir, I did.

2 Q He quoted that, so --

3 A Yes, sir.

4 Q -- is that your testimony? Do you agree
5 with that?

6 A Yes, sir.

7 Q And you also told Dr. --

8 MR. HAIGLER: I'm reading from page 7 of
9 Claimant's APA.

10 Q On August 20th -- on August 27th when you
11 went to Carolina Pines Medical Center that you had had
12 that problem for six days, right?

13 A I don't remember telling them that, no, sir.

14 Q Okay. Are you denying that you told them
15 that or do you just not remember?

16 A I just don't remember telling them that, no,
17 sir.

18 Q If, in fact, you did tell the doctor that
19 you had some problems for six days my calendar says
20 that would have been Sunday. Did you work on a
21 Sunday?

22 A No, sir.

23 Q Okay. And you -- do you dispute the fact
24 that this problem started on August 21st instead of
25 August 27th?

1 A Yes, it happened on August the 20th -- I
2 mean August the 26th.

3 Q Okay. So do you -- do you remember having
4 problems six days prior to when you went in to
5 Carolina Pines?

6 A No, sir, because when I went in I told them
7 it was my back and they were trying to tell me -- they
8 were trying to tell me it was my kidneys the whole
9 time and I kept telling them that it wasn't my
10 kidneys. I even told Dr. Elder how rude Dr. Tapman
11 was and how he was so -- trying to tell me that it was
12 my kidneys the whole time I was trying to tell him it
13 was my back.

14 Q Okay. Did you tell the doctor at the ER
15 that you had had a work accident the day before?

16 A I told him that I had hurt my back at work,
17 yes, sir.

18 Q Did you tell him it was the day before?

19 A On the 26th, yes, sir.

20 Q You did tell that to the doctor?

21 A Yes, sir.

22 Q Have you got any -- do you know why he
23 didn't put that in his report?

24 A I have no clue. He was rude and didn't want
25 to hear nothing I had to say about my back.

1 Q Okay. And then you said you went to Dr.
2 Elder, at least according to the records that your
3 attorney submitted, you went to Dr. Elder on the 31st
4 of August, five days later; is that right?

5 A Yes, sir.

6 Q Did you mention to Dr. Elder that you had a
7 work accident on the 26th?

8 A Yes, sir.

9 Q You did?

10 A Yes, sir.

11 Q Do you know why he didn't put that in his
12 report?

13 A I have no clue.

14 Q Okay. In fact, you -- are you aware that
15 Dr. Elder reports on August 31st, 2011 he states that
16 your -- that the onset of your back pain started two
17 weeks prior, which was -- by my calculation would have
18 been August 16th? Are you aware of that?

19 A No, sir.

20 Q Did you tell Dr. Elder that?

21 A I don't remember telling Dr. Elder that. I
22 got hurt on the 26th.

23 Q So do you dispute what's in his report?

24 A Right.

25 Q You do?

1 Q So I assume you also don't remember that Dr.
2 Elder diagnosed you with low back pain and lumbar
3 radiculitis back in April of 2011?

4 A No.

5 Q Four months before this accident; you don't
6 remember that?

7 A (No verbal response).

8 Q And I assume you also don't remember that he
9 sent you for an MRI --

10 MR. HAIGLER: Commissioner, I'm on page 17 of
11 Defendants' APAs.

12 Q -- MRI of the lumbar spine ASAP; you don't
13 remember that?

14 A No, sir.

15 Q I assume you did go get that MRI did you?

16 A I don't remember.

17 Q Okay. Do you remember going to see, in
18 fact, Dr. Elder in July -- a month and a half prior to
19 this accident do you remember going to see him again
20 in July?

21 A I don't remember, but I know from time to
22 time that I've seen him when my shoulders are hurting.

23 Q Okay. Do you remember --

24 A But I don't remember specific dates.

25 Q Okay. So it's -- you don't -- do you deny

WILLIAM BELIN 4-18-12

- 1 Q. Okay. Who is your supervisor?
- 2 A. Michael Blackman.
- 3 Q. Michael Blackman.
- 4 And Terrell Tapp is the plant manager?
- 5 A. Yes, sir.
- 6 Q. And Cindy Smith is the HR person?
- 7 A. Yes, sir.
- 8 Q. Okay. Now, back around August, the last of
- 9 August, or 1st of September of 2011, did you see or
- 10 have a conversation with Scott Stokes about him hurting
- 11 his back?
- 12 A. Yes, sir.
- 13 Q. Tell me about that.
- 14 A. We were moving a flat section of a TC10
- 15 ladder, and when we were moving it, Scott -- Scott's
- 16 knees buckled, and he -- his back tweaked and he had a
- 17 look of anguish on his face, and I was like, Are you
- 18 all right?
- 19 He was like, No. I think I rehurt my back.
- 20 And I was like, Put the ladder down. I'll
- 21 get the crane and we will finish moving it like that,
- 22 and we did that and then that was it.
- 23 Q. Okay. So who was moving the ladder? You
- 24 and --
- 25 A. Me and Scott.

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WILLIAM BELIN 4-18-12

1 Q. You and Scott. Okay.

2 What kind of ladder is it?

3 A. It's a -- it's a -- it's a flat section of a
4 ladder that -- that goes up and down like -- like that,
5 where you put a cable winch on it and you roll it up,
6 and it goes up, and it's used -- it's self-supporting
7 so you can safely access railcars and things of that
8 nature.

9 Q. Okay. How heavy is the ladder or that
10 section of the ladder?

11 A. Probably about 100, 120, 130 pounds.

12 Q. 130 pounds or so. Okay.

13 And you saw Scott's knees buckle and a look
14 of anguish on his face, and he said he thought he had
15 hurt his back?

16 A. Yes, sir.

17 Q. Okay. Did he stop working for a period of
18 time right after that happened, right then?

19 A. Well, yeah. He kind of just like -- just
20 held his back. He walked back over to -- walked over
21 to his area.

22 Q. Okay. Did you talk to him any more that day
23 about it?

24 A. Yeah. I -- I was like, You all right?
25 Because I'm, you know, a coworker, concerned, to make

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GEORGE RAY 4-18-12

1 A. Oh, yeah.

2 Q. -- he can see you? Okay.

3 I'm going to direct your attention to August,
4 September of last year, 2011. Was there a time when
5 you had a discussion with Scott about something that
6 happened to him at work?

7 A. Yes, sir.

8 Q. Would you tell me about that.

9 A. He just told me that -- he was coming to work
10 and he was complaining about his back and told me that
11 he had hurt it. I want to say he said something about
12 pulling a welding machine. We was moving the welding
13 machines around or something like that. I mean, it was
14 up in that time. I've known him -- and he's had a bad
15 back for a while. I mean, as far as -- we had quite a
16 few conversations about his back stuff.

17 Q. Okay. But he told you he had hurt his back
18 pulling the --

19 A. It was -- it was -- I don't know if it was
20 pulling the welding machine. I can't remember exactly
21 what it was he was pulling on or moving or whatever,
22 but it was around the time we was moving the welding
23 machines, which -- we tote ladders there a lot. I
24 mean, we do a -- do a lot of lifting there.

25 Q. Okay. Do you remember when this conversation

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GEORGE RAY 4-18-12

1 took place that he --

2 A. Not the exact date.

3 Q. -- told you he hurt his back?

4 A. Not the exact date.

5 Q. Not the exact date. Okay.

6 Would it have been around August or September
7 of 2011?

8 A. I'm not sure.

9 Q. Okay. All right. And he told you he hurt
10 his back pulling or pushing or lifting something.

11 A. Yes, sir.

12 Q. Okay. Did you at some point that day -- at
13 that point in time, did you come over to him and
14 observe him and say that he looked white and he needed
15 to get behind the fan?

16 A. Yep.

17 Q. You did?

18 A. He was -- I want to say he was sweating a
19 little bit. He popped out in a cold sweat, like.

20 Q. Okay. And what did you say to him?

21 A. I told him he needed to -- to rest for a
22 little bit. I mean, just -- I can't remember exact
23 word for word what I told him. It was something like
24 you need to rest for a little while or -- and just take
25 it easy with his back. If it was hurting that bad, he

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1 could probably go home or go to the doctor or something
2 with it.

3 Q. Okay. Okay. And this is right after he told
4 you he had hurt it?

5 A. Yes, sir.

6 Q. Okay. Have you had any discussions with him
7 since then about what happened that day?

8 A. No, sir. I mean, the day he -- the last day
9 I seen him at work -- I called him one time to check on
10 him, see how he was doing, and we didn't -- the
11 conversation was very short. I mean, it wasn't about
12 nothing like that. I just asked him how the surgery
13 went, how he was doing and stuff like that.

14 Q. Okay. Okay. Have you had any conversations
15 with anybody at Aluminum Ladder about this incident?

16 A. Other than just like Will. Me and Will, I
17 mean, we talked about it a little bit, but, I mean, it
18 wasn't -- just pretty much what I told you.

19 Q. Okay. Did you talk to any supervisors or
20 anybody like that about it?

21 A. Not until like last weekend or last week.

22 Q. Okay. And what did they tell you about it?

23 A. We was just in a conference just -- just
24 talking and -- and they was just asking me different
25 questions. I mean, I can't -- I think it was like

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GEORGE RAY 4-18-12

- 1 A. Michael Blackman.
- 2 Q. Michael Blackman. Okay.
- 3 How long has he been your supervisor?
- 4 A. For about a little over a year.
- 5 Q. A little over a year.
- 6 Is he Scott's supervisor also?
- 7 A. Yes, sir.
- 8 Q. Okay. And who is Terrell Tapp?
- 9 A. That's the plant supervisor.
- 10 Q. Plant supervisor?
- 11 A. Yes, sir.
- 12 Q. He is the big boss.
- 13 A. Yes, sir.
- 14 Q. Okay. All right. Did you ever talk with
- 15 either one of them about what happened to Scott?
- 16 A. No, sir.
- 17 Q. Okay. Okay. All right. But there is no
- 18 doubt in your mind that on that date, whatever it was,
- 19 that he told you he hurt his back and he appeared to be
- 20 in pain at that time.
- 21 A. Yeah.
- 22 Q. Okay. That is correct?
- 23 A. Yes.
- 24 MR. BLEDSOE: Okay. All right. That is all
- 25 I have. Thank you. Answer any questions --

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1 A Let me see. Last year, that's 2010.

2 Q 2011. September 28th of 2011.

3 A Let me see. I did.

4 Q When you saw him, did he give you a
5 history of any kind at that point, especially
6 whether or not he had any recent injury at work?

7 A You know, he's a patient of mine who --
8 from before. I had seen him in the past, '09.
9 Let me go back and try and remember. He had very
10 severe back pain and bio lower extremity pain
11 three years ago, back difficulty with his work.

12 I can't specifically tell you if he did
13 or did not tell me that. I don't have it in my
14 notes.

15 Q Okay. When you examined him, what were
16 your findings?

17 A Well, he just had a lot of pain with,
18 you know, just examination of his lower
19 extremity. Even though neurologically he was
20 okay, he had a positive straight leg raise test.
21 He had difficulty with reproduction of the pain
22 with lumbar extension. So those were the main
23 findings we saw.

24 Q Okay. Did you review a MRI that had
25 been taken recently or just not too long before

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1 you saw him on September 28th?

2 A Yeah. He had a MRI done recently. I
3 don't know exact date of it, but that's what my
4 notes said, recently. It showed a fairly large
5 herniated disk at L4-5 and it was close to 70
6 percent of his space being occupied in the canal
7 from it.

8 Q What does that indicate to you, Dr.
9 Chokshi?

10 A Well, that's a concern, you know. If
11 you leave -- say if this room is the full size of
12 the canal and if 70 percent of it is taken up by
13 a foreign material, which in this case happens to
14 be a disc. People can develop what's called
15 cauda equina syndrome or neurologic emergency
16 basically, so when you see that, we don't like to
17 leave it like that, especially in somebody who is
18 already showing a lot of signs of severe pain.

19 Even though they're not having any
20 neurologic deficit, it can turn very quickly into
21 bladder problems or, you know, urination issues
22 or just develop flank neurologic problems. I
23 can't pick up my foot anymore. But at this point
24 in time, you -- whatever little window of
25 opportunity we had, we sort of missed that is

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1 A It does.

2 Q Based on the -- your examination, the
3 MRI findings, and your surgery, could you
4 determine whether or not this was an acute or
5 recent injury?

6 A It was probably a recent. You don't
7 get this kind of a large herniated disc chronic.
8 People just can't live with that type of space
9 occupying disc material for long periods of time.

10 Q All right, sir. Did you follow up with
11 him after the first surgery, or the surgery in
12 September of 2011?

13 A Oh, yes. He's still -- he's still my
14 patient. We're still trying to work through some
15 of his pain issues.

16 Q Okay. I believe he had a second
17 surgery in January of 2012?

18 A Correct.

19 Q Would you describe what -- why it was
20 necessary and what it was?

21 A You know, he was doing okay immediately
22 after his first surgery and he started developing
23 this right sided leg pain and, you know, we just
24 couldn't quite, you know, put it in any one
25 particular explanation, so we wanted to make sure

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1 Q All right.

2 A So altered sensation in his legs. In
3 fact, I saw him today and he was still
4 complaining of some anterior thigh pain, and it's
5 a little unclear as to where all these problems
6 are coming from, so I'm going to order another
7 MRI just to make sure that everything has healed
8 up like it's supposed to. He may need long-term
9 pain management depending on how his body behaves
10 long term here.

11 Q Is he at -- well, at this point, is he
12 still unable to go back to his work at the
13 welding job?

14 A That's correct. I don't think that
15 that would be helpful with all the symptoms he's
16 having now.

17 Q All right, sir. What specific symptoms
18 is he having now?

19 A His complaint today was, he was
20 complaining of a lot of back pain and anterior
21 thigh symptoms, pain around his hip area.

22 Q Are you prescribing pain medication for
23 him?

24 A Oh, yeah. We are taking care of his
25 pain medication.

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1 Q What kind of medication are you
2 prescribing?

3 A I couldn't tell specific each one. I
4 -- let me see what my last note says. Maybe that
5 will help us.

6 Last time we saw him on 3-14. We
7 prescribed him Narco, which is hydrocodone and
8 acetaminophen, so he might have probably gotten
9 the same drug or something similar to it.

10 Q All right, sir. Is it -- I take it
11 that he is not at MMI at this point?

12 A No, he's not.

13 Q Okay. Doctor, can you -- at this
14 point -- and you may not be able to answer this,
15 but at this point do you have an opinion that you
16 could state with a reasonable degree of medical
17 certainty as to whether or not he will be able to
18 go back to the heavy work he did welding?

19 A Well, the way his -- his treatment --
20 the way his postoperative course has been, you
21 know, a little bit more rocky than the usual,
22 it's a little harder to predict whether he's
23 going to be able to go, but that would be a
24 fairly heavy work for him, which could certainly
25 flare up his back pain if he decides to do that,

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1 but we have to wait and see.

2 Q All right, sir. Doctor, do you recall
3 when he came in to see you in September of 2011
4 having a conversation with he and his fiancée
5 about a workers' comp claim?

6 A At that time?

7 Q Yes, sir.

8 A I believe I did, yes.

9 Q In September of 2011?

10 A Correct.

11 Q Do you recall the nature of that
12 conversation?

13 A Yeah. He was concerned, you know, when
14 I told him what his MRI showed and all the pain
15 he was having, and we talked about impending
16 cauda equina and things like that, he said, well,
17 this is related to his work injury.

18 And I believe his previous treatment
19 was under workers' comp if I'm not mistaken. I
20 could be wrong. This is coming from my memory.

21 And so I said, Well, that's fine.
22 Let's go ahead and do whatever we need to do.

23 But we were not sure how quickly that
24 will get processed and I just didn't want to have
25 any real medical emergency on my hand with his

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1 problem, so at that point in time, he decided,
2 well, let me go ahead and just process this
3 particular surgery through my regular insurance,
4 and that's what he did, and then he said then,
5 I'm going to talk to whosoever to try to sort it
6 out on the back end.

7 Q All right, sir. Doctor, based on your
8 examination and your surgeries and the continued
9 treatment that you've had with him since the
10 surgeries, do you have an opinion which you can
11 state to a reasonable degree of medical certainty
12 whether this injury was an aggravation of a
13 preexisting condition or a new injury?

14 A Let's see. I believe his herniated
15 disc was as the same level as before, so he had a
16 discectomy done at 4-5, and, obviously, once you
17 have that disc that's weak, you can have a
18 recurrent herniation and that's what he had. So
19 I would say it was the same weak disc that
20 reruptured, so I guess it would be an aggravation
21 of a previously degenerative disc.

22 Q All right, sir.

23 A Or previously injured disc.

24 MR. BLEDSOE: Thank you, Doctor. I
25 believe that's all the questions I have.

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1 MR. HAIGLER: Dr. Chokshi, I've just
2 got a few follow-ups for you.

3 EXAMINATION

4 BY MR. HAIGLER:

5 Q When we started out you -- and correct
6 me if I'm wrong, but the attorney for Mr. Stokes
7 asked you if there was anything -- just reading
8 anything about a work accident, he mentioning a
9 work accident, and you said nothing in my notes
10 about a work accident. Is that true?

11 A Well, yeah. If I didn't write it, it
12 doesn't mean that we didn't talk about it.
13 Sometimes, you know, a lot of stuff happens in a
14 visit, if you're focusing on what we're going to
15 take care of immediately.

16 Q Okay.

17 A So, yes, you're right, according to my
18 notes from that particular day, I don't remember
19 -- I don't have it in here, but I do remember the
20 discussion about his insurance, that he was
21 really concerned about that.

22 Q And I'm reading your first report. It
23 looks like the time you saw him was the 28th of
24 September, first report for this new injury,
25 correct, September 28, 2011. Do you have that

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1 report?

2 A Let's see. That's the one we talked
3 about, right?

4 Q Correct.

5 A Okay. Yes, I have it in front of me.

6 Q Did you anywhere in here mention any
7 kind of acute accident that he'd sustained?

8 A No. That's what I was saying. My --
9 he's having difficulty at work. That's -- same
10 thing we repeated. It was just -- so it sounded
11 like he was having some ongoing trouble with work
12 and his pain.

13 Q Okay. Did you mention anywhere in your
14 report that he had had an acute injury at work?

15 A None that I can see in my notes.

16 Q Okay. And did he mention to you -- do
17 you recall -- since you recall that conversation
18 that occurred almost eight months ago, do you
19 remember the date he gave you as far as when he
20 injured himself?

21 A I don't have any independent
22 recollection at this point in time.

23 Q I'm reading your report, you indicated
24 that, and correct me if I'm wrong, the date of
25 onset was 8-1-2011; is that right?

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1 A Which one are you reading?

2 Q I'm reading right here.

3 A Tell me the date on that.

4 Q 9-28.

5 A Okay. So date of onset -- I wouldn't
6 -- that is -- that is for this particular group
7 of symptoms. This is taken by nurse typically as
8 to roughly when his problem started and that's
9 what that came from.

10 Q Okay. And I'm actually reading your
11 History of Present Illness, and you indicate, and
12 correct me if I'm wrong, the patient has been
13 having this pain for at least two to three months
14 or the last two to three months?

15 A Right.

16 Q Progressively getting worse?

17 A Correct.

18 Q Does that indicate to you an acute
19 onset or a progressive onset?

20 A Well, I don't know how it started, but
21 it was getting worse over a period of time is how
22 I would interrupt that. Hurts --

23 Q Okay. Would you -- I'm sorry. I
24 didn't meant to interrupt you.

25 A That's okay.

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1 that -- I make note to myself -- for that
2 particular visit what the intake sheet was, might
3 shed some light on it.

4 Q Okay. My question to you is, Doctor,
5 based on this report, is that consistent with him
6 having an acute injury on August 26, 2011, based
7 on his report to you of his symptomology?

8 A No, it's not. But --

9 Q Okay. And based on --

10 A But I told you --

11 MR. BLEDSOE: Let him finish.

12 BY MR. HAIGLER:

13 Q Okay.

14 A But like I told you earlier, you know,
15 when somebody is in a lot of pain, we're trying
16 to make a decision of what we're going to do with
17 it, so it's possible that a lot of that
18 communication that occurred may not have been
19 fully put in the notes.

20 Q Did he indicate to you that he'd seen
21 any doctors before you for this problem?

22 A I can't remember independently about
23 that. He might have seen his primary care
24 doctor. I don't know if Dr. Elder saw him. A
25 lot of my patients, you know, will see a family

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1 MR. HAIGLER: And for the record I'm on
2 Page 23 of Claimant's APAs.

3 BY MR. HAIGLER:

4 Q And, Doctor, is this signed
5 electronically by Dr. Lisa Mancuso on that date?

6 A It is.

7 Q Okay. And does this indicate, at
8 least, that Mr. Stokes was complaining of low
9 back pain for years which had gotten worse over
10 the last three to four months?

11 A Right.

12 Q Is that consistent with exactly what he
13 told you pretty --

14 A Correct.

15 Q I mean, told you two to three months.

16 A Right.

17 Q Did he mention anything in this report
18 -- I want you to read this report. Did he
19 mention anything in that report about an acute
20 work accident, any kind of work accident,
21 whatsoever?

22 A Let' see. Complaining of low back pain
23 for years. Got worse in three or four months.
24 Agonizing pain, last saw 2010.

25 No, I don't.

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1 Q Nothing in History of Present Illness
2 references a work related accident?

3 A Correct.

4 Q And that's consistent with your report,
5 isn't it?

6 A Right.

7 Q Doctor, have you seen any of Dr.
8 Elder's notes from earlier in 2011?

9 A No.

10 Q You have not.

11 First of all, I want to show you some
12 records from Carolina Pines Hospital. Are you
13 familiar with Carolina Pines Hospital?

14 A I am.

15 MR. HAIGLER: Okay. And this is
16 Defendant's APA Page -- I'm going to start on
17 Page 35.

18 BY MR. HAIGLER:

19 Q He complained of what on -- it looks
20 like on April 25, 2011; is that right, Doctor?

21 A Yes.

22 Q What was his complaints on April 25,
23 2011 when he went to Carolina Pines?

24 A Complaining of low back pain, acute
25 onset of symptoms six days ago.

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1 Q He also had positive straight leg
2 raise, positive -- both -- bilaterally, didn't
3 he?

4 A Correct.

5 Q Had you seen these before?

6 A No.

7 Q And on that particular report, did it
8 reference acute low back pain?

9 A That was the clinical impression that
10 day.

11 Q Okay. Doctor, I'm going to show you --
12 and I don't know if you've seen this, I believe
13 you probably have, but this is the MRI that he
14 actually had on September 21st, this is Page 41
15 of Defendant's APAs, and, again, what was the --
16 I'm asking you to read the highlighted part where
17 they take -- I assume they take a History of
18 Present Illness.

19 A No. That history that you're looking
20 at is probably what the person who ordered the
21 MRI sent to the person that --

22 Q Who ordered it?

23 A This is -- let's see. That's the
24 radiologist and --

25 Q Dr. Conner?

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1 Q Second diagnosis was lumbar
2 radiculitis; is that correct, Doctor?

3 A Right.

4 Q And it also looks like need MRI ASAP,
5 is what Dr. Elder recommended.

6 A Yes.

7 Q So he -- according to Dr. Elder, he
8 needed a MRI back in April, 2011?

9 A Right.

10 Q If he did not get -- in your opinion,
11 if a person was having these type problems and
12 didn't -- didn't get the treatment they needed --
13 and let me just tell you for the record, he
14 didn't get this MRI until September of 2011.

15 A Okay.

16 Q Right before he came to see you.

17 If he didn't get that MRI and didn't
18 continue to treat, would his symptoms begin to
19 get worse if he was continuing to live his daily
20 life, his normal life?

21 A Again, going back, I guess clinical
22 situation in general, people's symptoms can wax
23 and wane.

24 Q Sure.

25 A So, you know, again, I don't know the

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1 circumstances of what happened at that specific
2 time, but it's certainly possible that, you know,
3 things got worse, went to the emergency room, Dr.
4 Elder saw him, things got worse, got treated, and
5 then I don't know why he decided not to get the
6 MRI unless -- the assumption on my part would be
7 he was doing okay at that point in time. He
8 said, well, I'm going to hold off, and something
9 else changed the process.

10 Q Okay. And, Doctor, how do you know
11 that the problems he came to see you with in
12 September were not actually the same problems he
13 was having back in April?

14 A Well, there's no 100 percent way for me
15 to know that because we're looking in the same
16 area that he had problems before.

17 Q Okay. Well, Doctor --

18 A L4-5 was a weak area in his body from
19 prior surgical intervention for his herniated
20 disc.

21 Q Okay. And so then I assume you can't
22 state to a reasonable degree of medical certainty
23 whether the problems he was having in September
24 when he came to see you were the result of
25 something that happened in August or something

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1 that was going on -- actually going on in April?

2 A Correct. I mean, I couldn't tell you
3 the chronology of the process, but what we saw
4 and when we him with the findings of his MRI, it
5 was significantly bad that we had to do some kind
6 of intervention at that point in time.

7 Q Okay. Doctor, is it possible that it
8 was significantly bad enough back in April as
9 well, which is why Dr. Elder ordered a MRI ASAP?

10 A Well, his symptoms might have been,
11 but, again, I didn't see him so I couldn't tell
12 you exactly what was what.

13 Q And, Doctor, you mentioned that he
14 hadn't -- you were questioning whether -- well,
15 not questioning, but you, at least, stated that
16 you weren't sure if he had continued to get
17 treatment for this problem after April?

18 A That is correct.

19 Q Well, Doctor, I'm going to show you,
20 and I'm on Page 19 of Defendant's APAs, a report
21 of Dr. Elder dated July 11th, which is
22 coincidentally --

23 A Afterwards.

24 Q -- when he told you that his problems
25 started to develop, two to three months prior to

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1 when that occurred?

2 A According to that it says, again, two
3 weeks. Two weeks.

4 Q So it was two months the last time he
5 saw him. Now, he's saying it occurred two weeks
6 before?

7 A It says -- you know, if I had to
8 picture in my mind what was going on back then,
9 you know, he had these little flare-ups that he
10 kept going and seeing people for, and then it
11 sounds like this is the time when it was acute
12 again and that's the documentation by Dr. Elder.

13 Q Again, this is five days after he
14 alleged an accident. Is that -- if he's telling
15 Dr. Elder that it occurred two weeks prior, is
16 that consistent with an accident on August 26,
17 2011?

18 A Well, it's obviously from
19 documentation. It sounds like it could be
20 before, but, you know, again, I wasn't present at
21 the time on this particular discussion, so I
22 don't know exactly what the chronology of the
23 symptoms were.

24 Q Okay. Did Dr. Elder anywhere in this
25 report mention anything about a work accident,

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1 Dr. Chokshi?

2 A I don't believe so.

3 Q And we were looking at that x-ray -- or
4 that MRI that -- from September 21st, trying to
5 figure out who the referring physician was and
6 I've got another copy on Page 31 of Defendant's
7 APAs. Is there an ordering physician on that, at
8 the top?

9 A There is. It says Dr. Robert Elder.

10 Q So Dr. Elder ordered this MRI?

11 A Right.

12 Q Okay. And do you remember -- and I
13 assume it's part of your practice occasionally to
14 fill out physician statements as part of
15 disability claims and things of that nature. Do
16 you do that on occasion?

17 A It is, yeah. I mean, people in our
18 office does it.

19 Q Doctor, is this your signature at the
20 bottom?

21 A Not my official signature, but that's
22 my name, yes.

23 Q Okay. Someone from you office issued
24 that on your behalf?

25 A Correct.

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1 along that took place, we might have talked about
2 it.

3 Q Do you remember anything about that?

4 A I don't have any independent
5 recollection of it, but, you know, it's not
6 uncommon when people say, well, you know, I got
7 hurt on the job and this is when it started, like
8 it said onset, and that's where I think that
9 intake sheet might give us some information, you
10 know.

11 Q Okay. Doctor, based on the information
12 I've shown you, all the records I've shown you
13 from April, from June, from July, from August,
14 from September, the doctor's -- Dr. Mancuso's
15 notes, based on all of that, are you able to give
16 an opinion to a reasonable degree of medical
17 certainty that Mr. Stokes sustained a
18 work-related accident on August 26, 2011,
19 injuring his back and causing the problems you
20 treated him for?

21 A Yeah. Well, the problem that he had
22 could -- it sounded from his history of many
23 months prior to -- you showed me all different
24 notes, that he was having exacerbations and
25 improvements, obviously, as he was being treated.

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1 Now, clearly, something along the way could have
2 triggered another of those episodes.

3 Q Are you able to state within a
4 reasonable degree of medical certainty that that
5 occurred?

6 A But I didn't see him immediately after
7 that, so I couldn't tell you exactly. You know,
8 the treating physicians at that time who saw him
9 immediately after that -- and I don't know -- if
10 any occupational doctor or somebody like that who
11 saw him, they might be able to give us all a
12 better idea as to what happened. I saw him much
13 later.

14 Q Okay. Well, Doctor, he --

15 A He had been treated by several doctors
16 in between.

17 Q Sure. Sure. In fact, he saw not only
18 Dr. Elder, Dr. Mancuso, Carolina Pines --

19 A Yeah.

20 Q And none of those doctors indicated a
21 work-related accident?

22 A So, you know, it's a little hard for me
23 to tell what exactly was the point where an
24 exacerbation occurred, because it sounds like he
25 has multiple exacerbation along the way.

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RAKESH P. CHOKSHI, MD 5-9-2012

1 first report and you noted that he had been
2 progressively getting worse for three -- two to
3 three months; is that not right?

4 A Well, that's the history he gave me.

5 Q Is that not exactly what I just asked
6 you?

7 A You did.

8 Q Okay. So Dr. Mancuso's notes indicated
9 that he had been progressively getting worse for
10 three to four months; is that not right, Dr.
11 Chokshi?

12 A That -- I believe that's what's
13 reflected in there.

14 Q Okay. Is that not exactly what I just
15 asked you?

16 A I believe those were your words.

17 Q So you -- I guess what my -- to go full
18 circle, my question is, can you state to a
19 reasonable degree of medical certainty that --
20 let me ask you this question.

21 Do you even have -- do you even know
22 whether he had a work accident? Do you have
23 anything to show that he had a work accident on
24 August 26, 2011?

25 A Like I told you, there was an issue

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 with the -- his insurance, and he was concerned
2 that this was a work injury and he was not going
3 to be able to work it through in order to get
4 what we felt at that point in time medically he
5 needed, so that --

6 Q Okay. Doctor, let me ask this
7 question, do you have any documentation to show
8 that he had a work related accident?

9 A I have to look at my intake sheet. I
10 don't have it on my notes of 9-28-11, and if my
11 intake sheet indicates something like that, then
12 I would look at it.

13 Q Okay. Other -- of what you've seen
14 today and what's present at this table, what's
15 been submitted into evidence, do you have any
16 documentation?

17 A Not at this point in time.

18 Q Okay. Do you -- so I assume you can't
19 state to a reasonable degree of medical certainty
20 then that he either had an acute injury or
21 aggravation of a preexisting condition or any
22 other type of accident on August 26, 2011?

23 MR. BLEDSOE: Well, he said he did.

24 THE WITNESS: Based on my recalling of
25 the events when we made the decision for his

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 surgical treatment, that's the conversation we
2 had, which is that he specifically told me that
3 he was concerned that this problem that he's
4 dealing with for which we are talking about doing
5 a surgical intervention, you know, he believed
6 that it was related and aggravated by his work
7 problem and he wanted workers' comp to step in
8 and help him with this process.

9 And I said, Well, that's fine if that's
10 what you want to do.

11 But because of the pain that he was
12 having and the concern we had, impending cauda
13 equina type problem, we didn't want him to wait
14 too, too long, and that's when he did, on his
15 own, decide that he'll deal with that issue on
16 the other end of the spectrum, but then he wanted
17 us to go and take care of his medical issues
18 right then.

19 BY MR. HAIGLER:

20 Q Doctor, when Mr. Bledsoe was asking you
21 questions, the very second question he asked you
22 was whether you thought this was related to a
23 work-related accident, and you said, I can't say
24 one way or the other. So how are you now giving
25 an opinion that you thought that was related to

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 his work?

2 A No. I'm saying based on my
3 conversation with him. I'm not giving you --

4 Q My question --

5 A -- an opinion.

6 Q Okay. I want a medical opinion stated
7 to a reasonable degree of medical certainty. Can
8 you give one as to whether -- given all the
9 evidence you've seen, the preexisting problems,
10 the continuation of problems --

11 A I --

12 Q -- can you give an opinion to a
13 reasonable degree of medical certainty?

14 A I cannot because I didn't -- I wasn't
15 the treating doctor immediately after his injury
16 occurred.

17 MR. HAIGLER: Okay. Those are all the
18 questions I have for you. Thank you.

19 REEXAMINATION

20 BY MR. BLEDSOE:

21 Q Dr. Chokshi, when you saw him on
22 September the 28th of 2011, according to your
23 notes, he was having severe pain; is that
24 correct?

25 A He was.

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 Q And he had a MRI that was taken a week
2 before that showed a herniated disc that occupied
3 70 percent of the disc space; is that correct?

4 A That's correct.

5 Q At that point in time, he was not able
6 to work; is that correct?

7 A Correct.

8 Q Now, all the notes that you've been
9 shown of treatment prior to that time in 2011,
10 April, May, July, he was continuing to work
11 during that period of time.

12 MR. HAIGLER: I'm going to object on
13 the basis of Claimant has already testified that
14 he was taken out of work for a period of time in
15 May.

16 BY MR. BLEDSOE:

17 Q He missed four or five days. He
18 continued to work during that period of time
19 except for one period of time when he missed
20 those, I think, four or five days of work. Other
21 than that, he worked continuously that entire
22 year up until the time he got hurt in August and
23 came out of work shortly thereafter. He was
24 working eight and ten -- excuse me, ten and
25 twelve hours a day doing heavy lifting.

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 Is it consistent with what you would --
2 with that history that when -- because of what
3 his condition was when you saw him, that he had a
4 recent occurrence that made his back injury much
5 worse?

6 A Certainly possible.

7 MR. BLEDSOE: All right. Thank you
8 sir.

9 REEXAMINATION

10 BY MR. HAIGLER:

11 Q Possible is not a reasonable degree of
12 medical certainty, is it, Doctor?

13 A I've already told you what I know.

14 MR. HAIGLER: Fair enough.

15 Thank you, Doctor.

16 FURTHER REEXAMINATION

17 BY MR. BLEDSOE:

18 Q Can you -- Doctor, can you state, based
19 on those facts, to a reasonable degree of medical
20 certainty, that it would appear that he had some
21 event that caused this 70 percent disc bulge and
22 suddenly not being able to work after he'd been
23 working the whole year except for missing four or
24 five days?

25 A Certainly possible, yes.

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 Q Can you state that to a reasonable
2 degree of medical certainty?

3 A I can.

4 MR. BLEDSOE: Okay. Thank you.

5 FURTHER REEXAMINATION

6 BY MR. HAIGLER:

7 Q Doctor, do you know whether that event
8 occurred on August 26th or sometime in August
9 or -- sometime in July or sometime August. Do
10 you know when that occurred?

11 A I don't, because I don't have that
12 record. The intake sheet are the only thing that
13 I can look at to help you guys with what you're
14 trying to assert.

15 Q Okay. And based on the records that
16 I've shown you of his problems throughout 2011,
17 do you -- is it possible for you to state when
18 that event occurred?

19 A If I can reconstruct it in my mind,
20 things like, okay, when did it get so bad that he
21 stopped working or when did it get to a point
22 that he just felt like he had to see a spine
23 specialist. You know, Dr. Elder was treating him
24 in the past. Dr. Mancuso was treating him in the
25 past. I didn't see any referral to anybody

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 immediately at that point in time, so --

2 Q Doctor, he was referred for an
3 immediate MRI.

4 MR. BLEDSOE: Let him finish his -- let
5 him finish his statement.

6 THE WITNESS: For a MRI, yes. I'm
7 talking to a specialist, because Dr. Mancuso nor
8 Dr. Elder are spine surgeons, so if somebody was
9 in acute pain and needed some kind of surgical
10 intervention, generally, those would not be a
11 group of people taking care of the patient.

12 BY MR. HAIGLER:

13 Q Sure.

14 A So I'm just trying to reconstruct it in
15 my mind as to what changed at that point in time
16 when -- which lead this particular individual to
17 say, Okay. Well, I got -- I only go to my
18 primary care doctor but I can't work and I need
19 to see somebody. And when I saw him, no reason
20 for me to believe that there was any malingering
21 going on there. We did what we thought was best
22 at that point in time.

23 Q Sure.

24 A And the only other thing that I told
25 you earlier was, I recall specifically about his

ABC REPORTING SERVICE 803-532-5255

RAKESH P. CHOKSHI, MD 5-9-2012

1 insurance issue, because he was concerned about
2 it, so I don't know if it ties into this or not,
3 but that's your decision how you want to sort
4 that, but that's what the medical facts are.

5 Q Sure. But is it -- but he told you and
6 he told Dr. Mancuso, not about an acute accident,
7 but about a progressive problem over the past --
8 or a few months prior.

9 A His symptoms were progressive or going
10 up and down as you saw. He went into the
11 emergency room, he got treated, got better. Then
12 he went back and saw primary care doctor,
13 treated, got better. Didn't see anybody else,
14 didn't get MRI. Then he got treated, got
15 treated. Maybe he needed a MRI, decided not to
16 do a MRI, got better, and then --

17 Q Doctor, how do you --

18 MR. BLEDSOE: Wait. Wait.

19 THE WITNESS: Got treated.

20 MR. HAIGLER: How do you know he got
21 better?

22 MR. BLEDSOE: Wait. Wait. Wait.

23 MR. HAIGLER: Where does it say he got
24 better?

25 MR. BLEDSOE: Let him answer the

ABC REPORTING SERVICE 803-532-5255

CINDY SMITH 4-18-12

1 A. No.

2 Q. And on the Form 12A that you were given
3 earlier, correct me if I'm wrong, but you wrote under
4 the Date of Injury/Illness: September 9, 2011. How did
5 you come up with that day?

6 A. Scott gave me that date.

7 Q. Okay. Did he -- and that is when he told you
8 that he was flipping a handrail?

9 A. Yes.

10 Q. Are you familiar with -- well, let me ask you
11 this before I ask you that question. Is there any
12 doubt in your mind that September 9, 2011, is the date
13 that he told you he hurt his back?

14 A. No, there's -- there's no doubt.

15 Q. Okay. And at what point did you -- were you
16 provided knowledge or did you -- were you told that he
17 injured himself on August 26th? When did you get that
18 information?

19 A. On the 28th.

20 Q. Of September?

21 A. September the 28th.

22 Q. I thought he told you on the 28th of
23 September that he hurt himself on August -- on
24 September 9th. My question is: When did you find out
25 that the accident that he is -- that he is alleging was

CINDY SMITH 4-18-12

1 A. Last week.

2 Q. The middle of April 2012; is that --

3 A. Yes. Yes.

4 Q. Okay. Did anyone at Aluminum Ladder know
5 that his accident occurred on August 26, 2011, before
6 last week?

7 A. No.

8 Q. No one at Aluminum Ladder.

9 A. No.

10 Q. Okay.

11 A. It was our understanding that it happened on
12 the 9th.

13 Q. Okay. And that is because that is what he
14 told you.

15 A. Yes.

16 Q. Are you -- are you familiar with the jobs
17 that they do? Like their --

18 A. Somewhat.

19 Q. Okay. Do you know if there is -- are you
20 able to testify as to whether there is a difference
21 between working on a handrail and moving a welding
22 machine? Is there a difference in doing that?

23 A. Yes. Yes.

24 Q. Is there a difference between using --
25 working on a handrail and carrying a ladder?

ABC REPORTING SERVICE (803) 532-5255

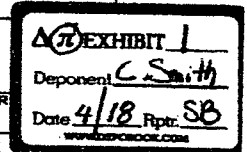
WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL. ZIP) Aluminum Ladder Company DBA: 1410(R)-1444 West Darlington Street Florence, SC 29501		CARRIER/ADMINISTRATOR CLAIM NUMBER 948620	OSHA LOG NUMBER	REPORT PURPOSE CODE	
		JURISDICTION		JURISDICTION CLAIM NUMBER	
		INSURED REPORT NUMBER			
		EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT) 1434 West Ebenezer Road Darlington, SC 29532		LOCATION # 002	PHONE # (843)662-2595
INDUSTRY CODE 3291	EMPLOYER FEIN 57-0399838				
CARRIER/CLAIMS ADMINISTRATOR					
CARRIER (NAME, ADDRESS, & PHONE #) Bridgefield Casualty Insurance Company P.O. Box 600 Gainesville, GA 30503-0600 www.bridgefieldcasualty.com 1-800-863-2181 (678) 430-5825		POLICY PERIOD 07/01/11 TO 07/01/12		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO)	
		CHECK IF APPROPRIATE <input type="checkbox"/> SELF INSURANCE			
CARRIER FEIN 59-3269531	POLICY/SELF-INSURED NUMBER 0196-11-09018-0100	ADMINISTRATOR FEIN 59-1683711			
AGENT NAME & CODE NUMBER					
EMPLOYEE WAGE					
NAME (LAST, FIRST, MIDDLE) STOKES, KEVIN S ADDRESS (INCL. ZIP) 2338 CONGAREE DR HARTSFIELD, SC 29550		DATE OF BIRTH 08-21-73	SOCIAL SECURITY NUMBER 249-19-4870	DATE HIRED 03/14/05	
		SEX M	MARITAL STATUS	STATE OF HIRE	
PHONE (843)858-6987		# OF DEPENDENTS <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN		OCCUPATION/JOB TITLE WELDER EMPLOYMENT STATUS FT MCCI CLASS CODE 3076	
		RATE PER: 13.50 DAY WEEK <input checked="" type="checkbox"/> MONTH OTHER		DAYS WORKED/WEEK 5 FULL PAY FOR DAY OF INJURY? DID SALARY CONTINUE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
OCCURRENCE/TREATMENT					
TIME EMPLOYEE BEGAN WORK	AM PM	DATE OF INJURY/ILLNESS 09-09-11	TIME OF OCCURRENCE (if CANNOT BE DETERMINED)	AM PM	
CONTACT NAME/PHONE NUMBER CINDY S		TYPE OF INJURY/ILLNESS All Other Specific Injuries, MOC		DATE EMPLOYER NOTIFIED 09/28/11	
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		PART OF BODY AFFECTED Lower Back Area-Lumbar and Lumbo Sacral		DATE DISABILITY BEGAN 09/24/11	
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED		TYPE OF INJURY/ILLNESS CODE 59			
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED		PART OF BODY AFFECTED CODE 42			
WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED			
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL. BE HAS A BACK CONDITION BUT DETAILS ARE UNKNOWN					
DATE RETURNED TO WORK		IF FATAL, GIVE DATE OF DEATH		CAUSE OF INJURY CODE 60	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) MCLEOD RMC FLORENCE, SC		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? WERE THEY USED?		INITIAL TREATMENT	
HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS)		YES <input type="checkbox"/> NO <input type="checkbox"/>		0 NO MEDICAL TREATMENT 1 MINOR BY EMPLOYER 2 MINOR CLINIC/HOSP <input checked="" type="checkbox"/> 3 EMERGENCY CARE 4 HOSPITALIZED > 24 HOURS 5 FUTURE MAJOR MEDICAL/LOST TIME ANTICIPATED	
OTHER					
WITNESSES (NAME & PHONE #)					
DATE ADMINISTRATOR NOTIFIED 10/04/11	DATE PREPARED 10/04/11	PREPARED BY NAME & TITLE CINDY S		PHONE NUMBER	

FORM IA-1(r 1-1-02)

SEE BACK FOR IMPORTANT INFORMATION

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INITIAL ASSESSMENT FORM

Carolina Pines RMC

PRIORITY: 3

Patient: STOKES, KEVIN S

Pt #: 9029095

Urgent

DOB: AGE: 38YRS. SEX: M

MR #: 0000036936

Date: 8/27/2011

EDP: TAPLITS, MICHAEL S

Worker's Comp:

PCP: ELDER, ROBERT L

Emp. Referred.

Presentation Time: 18:01

Triage Time: 18:54

Arrival Mode: POV-AMB

Height:

Weight: lbs

kgs.

LMP:

Last Tetanus:

Acc. By:

Chief Complaint: FLANK PAIN

Vital Signs

Brief Assessment:

o/o left flank pain since monday...sts had some blood and passed some "pebbles"....sts still hurting and pain is going down into left leg

T: 97.4 PO

P: 54 regular

R: 18 unlabored

BP: 129/081

O2: 98 98 RA

Pain Intensity Scale: 10

Pain Location: flank

NIGHT SWEATS

NO

PNEUMONIA

NO

WEIGHT LOSS

NO

VACCINE w/ 5 YRS

ANOREXIA

NO

FLU VACCINE THIS

NO

HEMOPTYSIS

NO

SEASON

FEVER

NO

SAFETY

NO

SAFETY

NO

SAFETY

NO

SMOKER

NO

Sudden Onset:

Pre-Hospital Treatment:

Pediatric Assessment: N/A

Past Medical History: back surgery 21, back surgery 21

Allergies:

NKDA, NKDA

Medicines:

ASSESSMENT AND PLAN

1 LBP	Reviewed Instr. w/family/friend
2 Under Products	Labs/Xray Reviewed w/pl
Give her + water	Health Maintenance Reviewed
	Diet Instruction given
Get out of work until after 4 PM	Exercise Instruction given
	Meds reviewed w/pt
	Lab/Xray ordered
	Sample Meds &/or RX given
	Reassurance given
	Excuse given
Discussed medications and side effects/adverse reactions <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

Signed narcotic waiver	YES	NO	Initials
Injection Given			Initials

Consults	FAU ex persist	Follow-up	Days	Weeks	Months	PRN
Signature: _____						

017

PHYSICIAN OFFICE NOTES

PI Name Scott Stokes Date 7-11-11

CC. Follow up on chronic medical problems and/or HISTORY OF PRESENT ILLNESS

Problem 1 Both legs hurt - feet feel like they are burning - elbows and joint pain
 Problem 2
 Problem 3
From doctor
Physician
only

TIMING: Six started <u>gradual</u> <u>continuous</u> <u>intermittent</u>	ALLERGIES: <u>NECA</u>
DURATION: Six last <u>months</u> <u>years</u> <u>decades</u> <u>at a time</u> - Currently: <u>present</u> <u>absent</u>	Medications: <u>See Med List</u>
LOCATION: <u>See Med List</u>	P M Hx
QUALITY: cannot describe <u>stable</u> <u>improving</u> <u>worsening</u>	See Med. Hx.
BEVERITY: mild <u>moderate</u> <u>severe</u> 1-10 scale	Fm Hx
CONTEXT: <u>at rest</u> <u>activity</u> <u>Worse in night/morning</u>	<u>MA 2 RA</u>
EXACERBATED BY: <u>activity</u> <u>relieved by</u> <u>resting</u>	<u>Smthx</u>
ASSOCIATED SIGNS AND SYMPTOMS: <u>none</u> <u>C.P.</u> <u>B.C.B.</u> <u>NOV.</u> <u>RIC</u>	<u>Married/Single/Children</u>
	<u>Smoker</u> <u>ETOH</u> <u>ILICIT DRUGS</u>

Review of Systems: positive if circled

Constitutional: <u>fever</u> <u>chills</u> <u>weakness</u> <u>dysphoresis</u>	Neurological: <u>HA</u> <u>seizures</u> <u>weakness</u> <u>confusion</u>
ENT: <u>sore throat</u> <u>ear pain</u> <u>facial pain</u>	Psych: <u>anxiety</u> <u>depression</u>
Eyes: <u>pain</u> <u>visual changes</u>	Endocrine: <u>polyuria</u> <u>polydipsia</u> <u>heat/cold intoler.</u>
CV: <u>C.P.</u> <u>palpitations</u> <u>SOE</u> <u>PRD</u>	Infectious: <u>rashes</u> <u>pruritus</u> <u>lesions</u>
Resp: <u>S.O.B.</u> <u>cough</u> <u>congestion</u>	Haematologic: <u>ecchymosis</u> <u>bleeding disorders</u> <u>transfusion</u>
Gastro: <u>NA</u> <u>D/C</u> <u>pain</u> <u>nausea</u> <u>heartburn/acid</u>	Allergy/Imm: <u>frequent infections</u> <u>allergies</u> <u>hives</u>
GU: <u>flank pain</u> <u>dysuria</u> <u>hematuria</u> <u>frequency</u>	Other: <u>fatigue</u> <u>exercise intolerance</u>
Musculos: <u>joint pain</u> <u>neck/neck pain</u> <u>leg pain</u>	

YES/NO All other systems reviewed and are negative Comith

OBJECTIVE VITALS	HT	WT	BMI	TEMP	PULSE	RESP	BP
		<u>202</u>		<u>99.1</u>	<u>70</u>	<u>20</u>	<u>110/90</u>

<p>General: <u>NAO</u> <u>mid/mid/over distress</u> <u>WETAL</u> <u>Obese</u></p> <p>HEENT: <u>NOCP</u> <u>oropharynx</u> <u>chil</u> <u>erythematous</u> <u>exudate</u></p> <p>NECK: <u>swell</u> <u>gollar</u> <u>trache</u> <u>adenopathy</u></p> <p>CV: <u>RRR</u> <u>RRR</u> <u>S1</u> <u>S2</u> <u>subtle</u> <u>monotone</u> <u>N</u></p> <p>RESP: <u>CTAB</u> <u>rhales</u> <u>gurgles</u> <u>SOB</u></p> <p>GI: <u>NOBT/NDH/BS</u> <u>distended</u> <u>BB absent/dec/normal</u></p> <p>MS: <u>RDR/L</u> <u>clonus</u> <u>reflexes</u> <u>spastic</u></p> <p>SKIN: <u>wet/dry</u> <u>diaphoretic</u> <u>Teal</u></p> <p>NEURO: <u>NOBT</u> <u>grossly intact</u> <u>OTR</u> <u>equilibrium</u></p> <p>PSYCH: <u>NOBT</u> <u>MOOD</u> <u>NOBT</u></p> <p>BACK: <u>NOBT</u> <u>bilateral/R/L paraspinal tenderness</u> <u>CVA tenderness</u></p> <p>GU: <u>testicle tenderness/ass</u> <u>inguinal hernia</u> <u>scrotal tenderness/edema</u></p> <p>PELVIC: <u>edema</u> <u>amblyopia</u> <u>uterine tenderness</u> <u>deferens</u></p> <p>BREAST: <u>NH</u> <u>skin dimpling</u> <u>mass</u> <u>adenopathy</u> <u>ipple</u> <u>D/C</u> <u>deformed</u></p>	<p>LOCATION/DESCRIPTION OF SYSTEMS</p> <p><u>BNA</u> <u>CM</u></p> <p><u>Teal</u> <u>LP</u></p> <p><u>74</u> <u>20</u></p> <p>Past/Present use of Alcohol: Yes/No</p> <p>Past/Present use of Tobacco: Yes/No</p> <p>Past/Present use of Narcotics: Yes/No</p>
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019

PHYSICIAN OFFICE NOTE

PI Name Scott Stokes Date 7-28-11

CC: Follow up on chronic medical problems and/or HISTORY OF PRESENT ILLNESS
Joints aches - lower back pain

Problem 1 Low back Problem 2 Arth Pain Problem 3
Residual
WSP

TIMING: <u>2</u> started <u>2</u> ago <small>by patient/physician/episode continuous/intermittent</small>	ALLERGIES: <u>NCOA</u>
DURATION: <u>2</u> <small>min/hours/days/weeks/months/years</small>	Medications: <u>See Med List</u>
LOCATION: <u>at rest</u>	P M Hx: <u>See Med. Hx.</u>
QUALITY: <u>cannot describe</u> <u>stable</u> <u>improving</u> <u>worsening</u>	Fm Hx: <u>See Med. Hx.</u>
SEVERITY: <u>none</u> <u>mild/moderate</u> <u>severe</u> <u>1-10 scale</u>	Surgt Hx: <u>None</u>
CONTEXT: <u>at rest</u> <u>activity</u> <u>Worse at night/morning</u>	Married/Single/Children: <u>None</u>
EXACERBATED BY: <u>activity</u> <u>relieved by</u> <u>rest</u>	Smoker: <u>None</u>
ASSOCIATED SIGNS AND SYMPTOMS: <u>none</u>	ETOH: <u>None</u>
<u>C.P.</u> <u>S.O.B.</u> <u>NV</u> <u>P/C</u>	ILICIT DRUGS: <u>None</u>

Review of Systems : positive if circled

Constitutional: <u>fever</u> <u>chills</u> <u>weakness</u> <u>dysphoresia</u>	Neurological: <u>HA</u> <u>seizures</u> <u>weakness</u> <u>confusion</u>
ENT: <u>sore throat</u> <u>ear pain</u> <u>facial pain</u>	Psych: <u>anxious</u> <u>depressed</u>
Eyes: <u>pain</u> <u>visual changes</u>	Endocrine: <u>polyuria</u> <u>polydipsia</u> <u>heat/cold intolerance</u>
CV: <u>C.P.</u> <u>palpitations</u> <u>DOE</u> <u>PND</u>	Integument: <u>rashes</u> <u>pruritic lesions</u>
Resp: <u>S.O.B.</u> <u>cough</u> <u>congestion</u>	Hematologic: <u>anemia</u> <u>bleeding disorders</u> <u>transfusion</u>
Gastro: <u>NV</u> <u>D/C</u> <u>pain</u> <u>melena</u> <u>hematemesis</u>	Allergy/Imm: <u>frequent infections</u> <u>hives</u>
GU: <u>flank pain</u> <u>dysuria</u> <u>hematuria</u> <u>frequency</u>	Other: <u>fatigue</u> <u>anxiety</u> <u>dyspareunia</u>
Musco: <u>joint pain</u> <u>neck/back pain</u> <u>ext. pain</u>	

YES/NO All other systems reviewed and are negative ROT today

OBJECTIVE VITALS	PULSE OX	HT	WT	SKI	TEMP	LMP	PULSE	RESP	BP
			<u>196</u>		<u>98.2</u>		<u>83</u>	<u>18</u>	<u>139/87</u>

General: HA multifocal/severe distress W/D/N Obese
 HEENT: NOAD oropharynx clear erythematous exudate
 NECK: swollen thyroid enlarged adenopathy
 CV: RR 20 MHR 84 S2 S3 S4 subtle murmurs 0/6
 RESP: CTAB clear gallops 3/3/4 labored
 GI: no NT/ND/BS abdominal BS absent/abnormal
 MS: ROM clonus spasticity rigidity
 SKIN: normal diaphoretic rashes
 NEURO: CR 2/2 steady intact DTRs equilibratory
 PSYCH: AAO-X3 mood/affect stable
 BACK: NML bilateral R/L paraspinal tenderness CVA tenderness
 GU: testicle tenderness/mass inguinal hernia epididymitis prostate
 PELVIC: adnexa normal uterine tenderness distended
 BREAST: NML skin dimpling masses adenopathy nipple D/C distended

LOCATION/DESCRIPTION OF SYSTEMS
GI SR
AMA AE
CXIC ESR
 Past/Present use of Alcohol: Yes/No
 Past/Present use of Tobacco: Yes/No
 Past/Present use of Narcotics: Yes/No

022

PHYSICIAN OFFICE NOTES

Pt Name Scott Stokes Date 8-31-11

CC: Follow up on chronic medical problems and/or HISTORY OF PRESENT ILLNESS

Problem 1 Back pain Problem 2 LBP on DLs to start Problem 3 none

TIMING Sx started <u>2</u> <u>gradually</u> <u>2</u> min/hrs/days/weeks/months/years	ALLERGIES <u>NA</u>
<u>intermittent</u>	Medications
DURATION Sx last <u>2</u> min/hrs/days/wks at a time - Currently <u>present/absent</u>	See Med List
LOCATION	P M Hx
QUALITY cannot describe <u>stable</u> <u>improving</u> <u>worsening</u>	See Med. Hx.
SEVERITY mild <u>moderate</u> severe 1-10 scale	FmHx
CONTEXT <u>at rest</u> activity Worse at night/morning	SurgHx
EXACERBATED BY <u>nothing</u> activity relieved by <u>nothing</u>	Married/Single/Children
ASSOCIATED SIGNS AND SYMPTOMS: <u>none</u>	Smoker <u>/</u> ETOH <u>/</u> ILLICIT DRUGS

Review of Systems : positive if circled

Constitutional: fever chills weakness diaphoresis	Neurological: HA seizures weakness confusion
ENT: sore throat ear pain facial pain	Psych: anxious depressed
Eyes: pain visual changes	Endocrine: polyuria polydipsia heat/cold intoler.
CV: C.P. palpitations DOE PND	Integument: rashes pruritis lesions
Resp: S.O.B. cough congestion	Hematologic: anemia bleeding disorders transfusion
Gastro: NV D/C pain melena hematemesis	Allergy/Imm: frequent infections allergies hives
GU: flank pain dysuria hematuria frequency	Other: fatigue erectile dysfunction
Musco: joint pain neck/back pain ext. pain	

YES/NO All other systems reviewed and are negative

OBJECTIVE VITALS HT 170 BMI 20.4 TEMP 97.9 LMP 6/7 PULSE 16 RESP 14 BP 140/80

General: <u>NAD</u> mild/mod/severe distress <u>NO</u> Obese	LOCATION/DESCRIPTION OF SYSTEMS <u>LS 2-5</u> <u>WPA 4-5</u> <u># see above</u>
HEENT: <u>NA</u> oropharynx: <u>clear</u> erythematous / exudate	
NECK: <u>supple</u> bilaterally / R / L TMs <u>normal</u> erythematous / bulging Turbinate: <u>clear</u> erythematous	
CV: <u>RRR</u> <u>M</u> <u>MRG</u> <u>S1</u> <u>S2</u> <u>audible</u> <u>murmurs</u> / <u>0</u>	
RESP: <u>STAB</u> clicks gallops S3/S4 resp effort: <u>NI</u> Labored	
GI: <u>soft</u> <u>NT</u> <u>BS</u> <u>absent</u> / <u>distended</u> BS absent/decreased	
MS: <u>ROM</u> <u>NI</u> guarding rebound rigidity	
SKIN: <u>warm</u> <u>dry</u> clubbing cyanosis edema	
NEURO: <u>CN 2-12</u> grossly intact DTRs equal/symmetric	
PSYCH: <u>AAO</u> <u>X3</u> mood/affect <u>NI</u>	
BACK: <u>NML</u> Bilateral / R / L paraspinal tenderness CVA tenderness	
GU: testicle tenderness/mass inguinal hernia epidid tenderness/deferred	
PELVIC: edema/rnd/mass uterine rnd/mass deferred	
BREAST: <u>NML</u> / skin dimpling / mass / adenopathy / nipple D/C / deferred	

Pee Dee Pain Care
552 W CAROLINA AVENUE
Hartsville, SC 29550
Phone (843) 350-0100 Fax (877) 350-4590

STOKES, KEVIN (DOB: ID: 2008)

Sep 19, 2011 Mon 03:39 PM

CC Back and leg pain

HPI Kindly referred by Dr. R. Elder.
c/o CLBP for years. got worse in the last 3-4 months. Constant. "Agonizing pain." Intermittently shooting pain.
Last saw a NSG 2010.
The pain radiates down the hips and legs in a nondermatomal distribution, to both feet.
VAS 150 (one hundred fifty)/10 now. worst --/10.
Making this pain worse is lying on a soft couch, picking, riding.
Making it better is standing.
He says he just started taking Lorcet and NSAIDs, flexeril.
He says he's been taking 4-5 Lorcet a day, more than Rx he says.
The patient has not tried Neurontin nor Lyrica nor Cymbalta.
The patient has not been to a pain clinic or rec'd any kind of inj for pain.
He says that Dr Elder sent him to CPRMC for 1 LESI, that did not help. "It kept me from having surgery then."
The patient has had PT, in 2010.
The patient has not seen a chiropractor.
The functional goal is to walk farther.

The patient does all of their own ADLs.
Denies all of the following: recurrent fevers/poor appetite/wt change/neurogenic bowel/bladder issues.
The patient has numbness/tingling of the following leg: both.
The pain does interfere with sleep.

MRI L: none in the last year
Xray L: Apr 2011- muscle spasms
CT abd/pelvis - no stones
Last MRI spine- 2010

Pain impact questionnaire score = 21 , high avg.

LD Lorcet - today (1), yesterday (4)

CLIA-WAIVED QUICK DIP URINE DRUG SCREEN

OXY POS
OPI NEG
THC NEG
COC NEG
BZO NEG
BAR NEG
MTD NEG
TCA NEG
MDMA NEG
AMP NEG
PCP NEG
MET NEG

TEMP: in range not in range indeterminate

STOKES, KEVIN (DOB: ID: 2008)

Sep 19, 2011 Mon 03:39 PM

Strength: out of 5 max
Left/Rt 5/5 L1 hip flex
Left/Rt 5/5 L2 hip add
Left/Rt 5/5 L3 knee ext
Left/Rt 5/5 L4 foot dorsi/invert- ant. tibialis
Left/Rt 5/5 L5 toe walk/foot evert- EHL
Left/Rt 5/5 S1 hip ext/knee flex/plantar flex; peroneus longus and brevis
SLR- sit L: neg for pain down the L leg at 90 deg
SLR- sit R: neg for pain down the R leg at 90 deg

DTRs: patellar (L3) L 1+ R 1+
DTRs: Ankle (S1) L 1+ R 1+

A/P

LUMBAGO (724.2):
THORACIC OR LUMBOSACRAL NEURITIS OR RADICULITIS UNSPECIFIED (724.4):
POSTLAMINECTOMY SYNDROME OF LUMBAR REGION (722.83):
OPIOID TYPE DEPENDENCE CONTINUOUS USE (304.01):

The HakoMed therapy also has a program for neuromuscular education, which I think this patient will benefit from for decreased pain and improved support of the underlying spinal elements.

Patient educational handout was given about the HakoMed's patented horizontal therapy, and all of the patient's questions were answered to their satisfaction.

He had his first pain therapy today.

OSH records: MRI reports, etc.: MRI L1 needed. He says he had it in 2010.

PRESCRIBE: Neurontin 400 mg oral tablet, 1 po qhs x7 days then 1 po bid x 7 days then 1 po tid as tolerated, # 90, RF: 0.

I discussed the normal progression of chronic pain, like any other chronic state such as high blood pressure or diabetes, chronic pain is not cured but is managed, with the goal of maximum function so that patients are able to work or function at home the way they need to. A comprehensive pain management approach is needed to achieve maximum function, which includes injections intermittently as needed, PT and/or chiropractic care, and pain psychology if needed to address any poor coping skills that may be present, and to help treat depressive and anxious feelings that can often accompany living with chronic pain.

Patient is warned of potential side effects from this medication, such as drowsiness, particularly when it is mixed with other medications that can also cause drowsiness. The patient is warned not to drive or operate heavy machinery after starting this medication or when the dose has been increased, until it can be known how the medication will affect the person. The patient expressed their understanding of all of this.

I had a discussion with the patient about the biomechanics of chronic spine pain, using the spine model to show the patient where the likely pain generator(s) were originating from. Frequently a patient will have more than one pain generator, and this injection would likely not address all of them.

Recommend medial branch blocks L2, L3, L4, L5 right as the patient does not have a clear radicular pattern to the back pain and it is worse with rotational compression]. pending MRI .

The patient was warned NEVER to abruptly discontinue medicines like Neurontin and Lyrica, b/c that could cause a seizure. The safe way to discontinue these medications is a slow weaning. The patient expressed their understanding of this.

I thank Dr. Elder for sending over this nice patient for me to help, and hope that I can help improve this patient's quality of life by reducing his/her pain.

Report: PAB120
12/13/2011 09:43:51
Requested By: EJORDAN

Radiology Results
CAROLINA PINES REG MED CENTER
1304 W. BOBO NEWSOM HWY
HARTSVILLE SC 29550

RADIOLOGY TEST INFORMATION

Type/source: RAD MRI LUMBAR W/W/O CONTRAST
Medical Record Number: 0000036936 Account: 2861318 Patient Name: STOKES, KEVIN S
Status: Final DOB: Gender: MALE
Result Date/Time: 09/21/2011 15:21 Order Date: 09/21/2011 Order #: 117485097
Order Time: 11:16 Admit Date: 09/21/2011

PHYSICIANS Dictating: CONNOR, GREGORY S.

Signature: CONNOR, GREGORY S.

RESULT TEXT

LBP

LBP. BI-LAT LEG PAIN AND NUMBNESS. RT > LT. SYMPTOMS X
FEW MONTHS. HX OF LUMBAR SURGERY 2009.

Procedure Acknowledge Date: 09/21/2011 11:16:00

MRI OF THE LUMBAR SPINE, 09/21/2011:

INDICATION: Pain.

PROCEDURE: Standard multiplanar protocol was performed with and
without gadolinium. Prestudy GFR was greater than 60.

FINDINGS: There is a very large central and rightward disc
herniation at L4-5 with significant pressure on the nerve root
and thecal sac. Postsurgical changes of right hemilaminectomy
are seen at L4-5 with some enhancing scar lesion at the
operative site. No abnormality is seen at L3-4 or L5-S1. Normal
signal is seen from the marrow, the discs and the paraspinal
soft tissues.

There appears to be extrusion of disc material with superior
migration at L4-5 to the right of the midline. This extruded
disc material is covered with enhancing scar tissue. Posterior
osteophytic bar is seen at L4-5 causing pressure on the thecal
sac as well.

IMPRESSION:

LARGE RECURRENT CENTRAL AND RIGHTWARD DISC HERNIATION AT
L4-5 AS DISCUSSED ABOVE.

DD: 09/21/2011 13:35

Dictated By: CONNOR, GREGORY S

DT: 09/21/2011 14:01 SW

Signed By: CONNOR, GREGORY S

CONNOR GREGORY S

Dictated By

CONNOR GREGORY S



**Pee Dee
Orthopaedic
Associates, PA**

W.S. (Bill) Edwards, Jr., M.D. * Rakesh P. Chokshi, M.D.
Patrick K. Denton, M.D. * Anthony W. Alexander, M.D. * Barry L. Clark, D.O.
Nigel A.R. Watt, M.D. * Robert E. Evington, Jr. M.D. *
Matthew D. Weisch, M.D. * Jason B. O'Dell, M.D. * Dewey N. Ervin, M.D. *

901 E. CHEVES ST., SUITE 100 - FLORENCE, SC 29506-2769
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Initial Examination

PATIENT ID: 298816

PATIENT: Kevin Stokes

DOB:

Employer: Aluminum Ladder

Date of Service: 09/27/11

Age: 38 years old

Occupation: Welder

Referring Physician: Elder, Robert. ;

Other Physicians:

Date of injury/onset:

Date:
08/01/2011

Type:
onset

Chief Complaint: Low back pain

History of

Present Illness:

Kevin Stokes is a 38 years old, right hand dominant white male who presents complaining of experiencing a severe, dull, stabbing, throbbing pain in the lower back region off and on since undergoing lower back surgery. He states that the pain is worse over the past two weeks. The patient describes the pain as a very severe, dull, stabbing, throbbing pain in the lower back region/right buttock that radiates down to the right leg and foot. He also experiences numbness and tingling in the legs and feet with the right being worse than the left. He also experiences weakness in the right leg. On the visual analog scale, with 10 being most severe, he rates his pain as a 10. The pain is exacerbated by bending, lifting, sitting and prolonged standing and walking.

Allergies: . No known allergies

Current Meds: Lortab, Hydro/APAP

Past Med Hx: Hypertension

Surgical History: Back; Knee Surgery

Family History: Diabetes; Hypertension; Parents: Father-Living; Parents: Mother-Living

Social History: Alcohol use: None; Drug Use: Never; Employment: Full Time; Marital Status: Single; Tobacco: Never Smoked

REVIEW OF SYSTEMS:

Review of Systems: General, neuro, psychiatric, respiratory, cardiovascular, GI, GU, blood and lymph, EENT, musculoskeletal, skin and endocrine systems are normal except what is noted below:

General: Generalized pain

PHYSICAL EXAM:

Vitals: HEIGHT: 5'10" WEIGHT: 160 lbs 0 oz BMI: 23.0 PULSE: 80



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Follow Up Visit

Patient ID: 298816 **Date of Service:** 09/28/11
Patient: Kevin Stokes **Gender:** male
DOB: **Age:** 38 years old
Employer: Aluminum Ladder **Occupation:** Welder
Referring Physician: Elder, Robert, ;
Other Physicians:

DATE OF INJURY/ONSET OF SYMPTOMS:

Date: 08/01/2011 **Type:** onset

Allergies: No known allergies
Current Medications: Lisinopril, Lortab, NUCYNTA ER (Dosage: 150 MG SIG: 1 TAB PO BID HOURS PRN MODERATE TO SEVERE PAIN Dispense: 40 Refills: 0)

REASON FOR VISIT: 38 years old is here in follow up for lumbar pain

HPI/PE/X-RAY/PLAN:

Returns with severe low back pain and bilateral lower extremity pain right worse than the left side. Patient has been having this pain for the last two to three months progressively getting worse. He is having difficulty at work. No bowel or bladder dysfunction. Patient originally underwent lumbar microdiscectomy in 2009 almost three years ago. Currently pain is in the lower back. He is having difficulty with his work. He is having pain down in the L5 distribution in bilateral lower extremity.

Lumbar Spine Exam

Appearance: Well developed, well nourished male. Alert and oriented x 3. In no acute distress.
Observation: Normal gait and station
Lumbar Lordosis Normal
Thoracic Kyphosis Normal
Scoliosis None
Palpation:
Spinal process No tenderness
Paraspinous muscles No tenderness
Greater Trochanter No tenderness
Sciatic Notch No tenderness

CHIEF COMPLAINT/HISTORY OF PRESENT ILLNESS: JDK 04/25/2011 07:23
STOKES, KEVIN S is a 37 year old M that presented to the Emergency Department at 06:28 by POV-AMB. The patient was triaged at 06:56 with the following vital signs: T: 97.5 PO, , R: 18 unlabored, BP: 143/85, SPO2: 98 Am:RA RA, Pain: 10 lower back. The patient's primary care physician is ELDER, ROBERT L.

Chief Complaint – BACK PAIN—LOWER, HX OF SAME

Exam Time: 07:23.

Patient complains of lower back pain. Relates onset of acute symptoms was 6 day(s) ago. Associated signs and symptoms: Denies focal motor weakness. No history of bowel or bladder incontinence.

REVIEW OF SYSTEMS: JDK 04/25/2011 07:29

Patient denies fever.

PAST MEDICAL AND SURGICAL HISTORY: JDK 04/25/2011 07:29

Past Medical and Surgical histories reviewed.

PHYSICAL EXAMINATION: JDK 04/25/2011 07:29

General: Patient in moderate distress. Vital signs noted.

Respiratory: No respiratory distress. Lungs clear with equal breath sounds bilaterally.

Cardiovascular: PMI normal. RRR. S1, S2 normal with no murmurs, clicks, gallops or rubs. All distal pulses 2+ and symmetric.

Abdomen: Bowel sounds are normoactive. Abdomen is soft, flat, non-tender, without organomegaly or palpable mass.

Back: Right straight leg lift positive. Left straight leg lift positive. Bilateral paralumbar tenderness is noted. Paralumbar spasm is palpable bilaterally.

Neurologic: Within limits of examination, sensorimotor exam is non-focal. Dorsiflexion at great toe normal bilaterally. Deep tendon reflexes symmetric.

ED COURSE AND TREATMENT: JDK 04/25/2011 07:32

Patient was medicated with morphine sulfate, Phenergan. After medication, patient states pain is improved.

CLINICAL IMPRESSION: JDK 04/25/2011 07:32

1. Acute Low Back Pain
2. Acute Lumbar Myofascial Strain
3. Acute Muscular Spasm

THE STATE OF SOUTH CAROLINA
in The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
S.C. Workers Compensation Commission

Appellate Panel Judges:
T. Scott Beck
Melody L. James
Avery B. Wilkerson, Jr.

RECEIVED
OCT 17 2013
SC COURT OF APPEALS

Case No. 2013-000759

Kevin S. Stokes, Employee

Appellant,

v.

Techno Loading Arms, a division of
Aluminum Ladder Company, Employer,
and Bridgefield Casualty Insurance
Company, c/o Summit Holdings, Inc., Carrier

Respondents.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains no matter which is irrelevant to this appeal.

October 16, 2013



John W. Bledsoe, III
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Hartsville, SC 29551
(843) 332-2255
ATTORNEY FOR APPELLANT

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PROOF OF SERVICE

I certify that I have filed and served the Record on Appeal by personally delivering 16 copies [1 unbound, 15 bound] of it on October 17, 2013 to The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals, Columbia, SC 29211.

October 16, 2013



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ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
in The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
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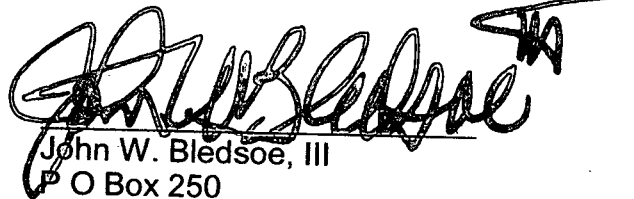
Techno Loading Arms, a division of
Aluminum Ladder Company, Employer,
and Bridgefield Casualty Insurance
Company, c/o Summit Holdings, Inc., Carrier

Respondents.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Techno Loading Arms and Bridgefield Casualty Insurance Company by depositing a [bound] copy of it in the United States Mail, postage prepaid, on October 17, 2013, to their attorney of record, Nicolas L. Haigler, P O Box 11449, Columbia, SC 29211.

October 16, 2013



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