

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No.: 2013-001348

South Carolina Second Injury Fund,.....Appellant,

v.

Abbeville County Memorial Hospital, Employer, and
PHTS Risk Management Services, Carrier,..... Respondents,

In re:
Billie New, ... Employee/Claimant,

v.

Abbeville County Memorial Hospital,.....Employer.

RECORD ON APPEAL

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AND

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ATTORNEY FOR RESPONDENTS

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SC Court of Appeals

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0511737

BILLIE JEAN NEW,

Employee,

Claimant,

vs.

ABBEVILLE COUNTY MEMORIAL
HOSPITAL

Employer,

AND

PALMETTO HOSPITAL TRUST,

Carrier,

Defendants.

SETTLEMENT AGREEMENT
AND RELEASE

APPROVED

NOV 15 2006

S. C. Workers' Comp. Comm.

[Handwritten signature]

WHEREAS, the undersigned, Billie Jean New, hereinafter referred to as Claimant, alleges to have sustained an injury to her neck, by accident arising out of and in the course of her employment with Abbeville County Memorial Hospital, hereinafter referred to as Employer, on or about 07/12/2005 when she allegedly attempted to prevent a patient from falling off of a shower seat; and

WHEREAS, Palmetto Hospital Trust, hereinafter referred to as Carrier, is the Insurance Carrier for the Employer; and

WHEREAS, the average weekly wage is \$345.86; and the compensation rate is \$230.58; and

WHEREAS, all parties are operating under and are subject to the provisions of the South Carolina Workers' Compensation Act; and

WHEREAS, the Claimant contends that that she has sustained permanent disability; that she has sustained a permanent impairment in excess of the rating(s) of the physician(s); and the Employer and Carrier deny the same; and

WHEREAS, Dr. Monda treated the Claimant and opined that she has 25% impairment to the whole person. The Claimant has also been treated by Dr. Kilburn; and

WHEREAS, there is a bona fide dispute between the Claimant and the Employer and Carrier as set forth above; and

WHEREAS, on account of the doubts that exist as to what benefits, if any, the Claimant would be adjudged to be entitled to recover under the Workers' Compensation Act, the Claimant and the Employer and Carrier, with the approval of the South Carolina Workers' Compensation Commission, have deemed it advisable, proper and in the best interests of all parties to compromise and settle all possible liabilities and controversies between them, now and in the future, the basis of such settlement being as follows:

WHEREAS, in consideration of the sum of One Hundred Thousand and No/100s Dollars (\$100,000.00) the undersigned, Billie Jean New, does hereby release and forever discharge Abbeville County Memorial Hospital and Palmetto Hospital Trust from any and all claims, demands, actions or causes of action under the South Carolina Worker's Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expense, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by the Claimant on or about 07/12/2005, and does hereby acknowledge that Abbeville County Memorial Hospital and Palmetto Hospital Trust have fully, finally and completely paid and discharged each and every of their obligations, liabilities and responsibilities under the South Carolina Workers' Compensation Act and that the sum set forth above is being paid to, and received by, the undersigned, Billie Jean New, in full and final satisfaction of all claims whatsoever as a result of the alleged accident described above

and that Abbeville County Memorial Hospital and/or Palmetto Hospital Trust shall not henceforth be liable for the payment of any amount whatsoever; and

WHEREAS, without in any way affecting the overall terms of this settlement insofar as the Defendants are concerned, and with the Claimant and the Claimant's attorney acknowledging that the Defendants make no representations as to the effect such allocation may have on the Claimant's receipt of other benefits, the Claimant and his attorney hereby request this Commission to approve the allocation of the proposed settlement sum of \$100,000.00 as follows:

A total of \$65,844.42 in compromise settlement of disputed permanent partial disability at the rate of \$33.95 per week paid for a period of 1,939.08 weeks, the total reflecting the Claimant's remaining life expectancy of 39.27 years pursuant to Section 19-1-150 of the 1976 Code of Laws of South Carolina, as interpreted by the South Carolina Supreme Court decision of *Utica-Mohawk Mills vs. Orr*, 277 S. C. 226, 87 S.E.2d 589 (1955); *Sciarotta v. Bowen*, 837 F.2d 135 [Third Circuit 1988]; POMS Section 52001.55[c][4]; and \$33,333.33 as attorney's fees and \$822.58 as costs of litigation, pursuant to agreement between the claimant and her attorney of record; and

WHEREAS, the Employer and Carrier have paid or have agreed to pay authorized medical expenses through November 7, 2006 incurred as a result of the alleged accident described above, in such amounts as may be approved by the South Carolina Workers' Compensation Commission; and

WHEREAS, it is not the intention of the Employer/Insurer or Claimant in this case to shift the responsibility for paying future medical expenses related to the Claimant's injuries to the Federal Government. The parties have considered and protected Medicare's interests in this case, however, this settlement does not meet the current criteria for review and approval by the Centers for Medicare and Medicaid Services.

As evidence of the Employer/Insurer and Claimant's intent not to shift the burden of payment for future medical expenses to the Federal Government, the amount of Sixteen Thousand Eight Hundred Fifty Three and 41/100 Dollars (\$16,853.41) is being allocated from the total settlement proceeds of One Hundred Thousand and no/100 (\$100,000.00) in this case to pay for Claimant's future medical expenses related to the injuries described herein. This amount is to be self-administered by the Claimant.

Should Medicare later determine that additional money should have been allocated to pay for future medical expenses that Medicare would otherwise cover, the Claimant agrees to pay such money and be solely responsible for same.

Further, the Claimant agrees to be responsible for and pay any and all conditional payment claims/past liens that may be asserted by Medicare for any expenses paid by Medicare for the Claimant's medical treatment.

The Claimant agrees to indemnify, defend and hold the Employer/Insurer harmless from any potential request or cause of action by Medicare seeking payment of past, current or future medical expenses for the Claimant.

WHEREAS, this Settlement Agreement and Release is full, final and complete regardless of whether the Claimant is able to keep any employment whatsoever, or is able to earn any wages at any time in the future; and

WHEREAS, full and complete medical reports are on file with the South Carolina Workers' Compensation Commission and these are duly considered by it in approving this Settlement Agreement and Release.

WHEREAS, the Claimant represents that she has been fully advised of her rights under the South Carolina Workers' Compensation Act and that she is of the opinion that the proposed settlement is reasonable and fair, and requests that the South Carolina Workers' Compensation Commission approve this settlement as set forth in this Settlement Agreement and Release. The parties acknowledge that the Commission relies upon the representation of counsel for the claimant that the claimant has been fully apprised of her rights under the laws of the South Carolina Workers'

Compensation Act and that she believes the settlement is reasonable and fair and thus requests that the South Carolina Workers Compensation Commission approve this settlement as set forth herein.

NOW THEREFORE, upon approval of this settlement by the South Carolina Workers' Compensation Commission, the Claimant hereby relinquishes and releases each and every claim related to this accident, which she now has, or may hereafter have, so that she shall not henceforth have any other or future claim or demand related to this accident, as a result of the alleged accident described above, nor shall anyone on her behalf or claiming by, through or under her or as dependent, have any claim or demand on account of this accident; as a result of the alleged accident described above; and

The undersigned further acknowledges that the consideration herein expressly recited is the sole and only consideration for the execution hereof, and that no promise, agreement or suggestions of any other or additional consideration has been made to, or received by, me.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Greenwood, this
10 day of November, 2006.

Billie Jean New
Billie Jean New

IN THE PRESENCE OF:

Cheryl C. Simon
Kathy W. McDaniel

ATTORNEY'S CERTIFICATE

I, Lena Meredith, Esquire, a practicing attorney of Greenwood, South Carolina, do hereby certify that I represent Billie Jean New and as her attorney and with her approval, I negotiated and secured the foregoing Agreement for the payment of the amount recited therein, on the conditions and terms and for the reasons therein stated, and that as attorney for Billie Jean New it is my opinion that such disposition is for the best interest of Billie Jean New, under all circumstances and that the consideration as recited in Agreement is full and adequate under the circumstances, and that as her attorney, I approve the Agreement, and I further certify that, before Billie Jean New signed and executed the above Agreement, the same was read over and explained to her and understood by her, and was executed freely and voluntarily on her part, and that the consideration therein recited is the sole and only consideration for the execution thereof.

Dated at Greenwood, South Carolina, this 10th day of November 2006.

Lena M. Meredith
Lena Meredith, Esquire
Attorney for Claimant

ORDER AND AWARD

Upon examination and consideration of the foregoing Agreement and Release, the Attorney's Certificate of Lena Meredith, Esquire, and the Workers' Compensation Commission File No. 0511737, and it appearing that the settlement set forth in the Agreement and Release is proper and complies with the requirements of the South Carolina Workers' Compensation Act;

Further, upon representation of the claimant and her counsel that her rights have been fully explained to her and that she understands them, that the settlement is reasonable and fair, and that it is the claimant's desire that the settlement as set forth herein be approved;

IT IS ORDERED AND AWARDED that the Settlement Agreement and Release be, and the same hereby is, approved and made the Order and Award of the South Carolina Workers' Compensation Commission, and that upon the payment of the amount recited, the Employer, Abbeville County Memorial Hospital, and the Carrier, Palmetto Hospital Trust, be, and are forever discharged from each and every liability or responsibility under the South Carolina Workers' Compensation Act on account of the Claimant's injuries on or about 07/12/2005, whether for compensation, disfigurement or for medical or related services or for any account whatsoever and each and every consequence or result thereof, past, present or future, whether for continuation, aggravation, recurrence or otherwise as a result of this accident.

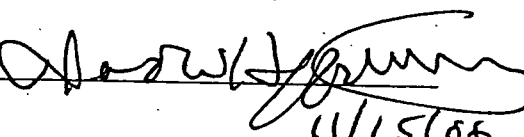
The sum set forth in the Settlement Agreement and Release shall be paid to the Claimant in a lump sum without commutation; whereupon, the Employer and Carrier are authorized to close their files in this matter and the Commission's files shall be, and they are hereby finally closed.

All orders, awards, and opinion heretofore issued by the South Carolina Workers' Compensation Commission in this case are hereby set aside, abrogated, and nullified.

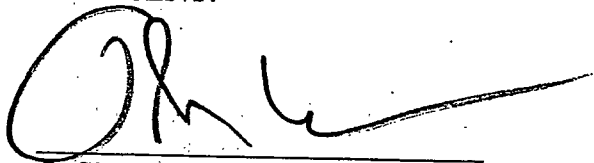
Dated at Columbia, South Carolina on _____.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BY:


11/15/06

I CONSENT:



O. Shayne Williams
Attorney for Employer and Carrier

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC NO. 0511737; SCSIF NO. 120087

PHT RISK MANAGEMENT SERVICES

V.

SOUTH CAROLINA SECOND INJURY FUND

[In Re: Billie New, Employee v. Abbeville County Memorial Hospital, Employer]

HEARING: September 7, 2011, in Laurens, South Carolina.

APPEARANCES: Abbeville County Memorial Hospital, Employer,
and PHT Risk Management Services, Carrier,
represented by T.J. Hadley, Esquire, of Gallivan,
White & Boyd, P.A., Greenville, South Carolina.

The South Carolina Second Injury Fund represented
Latonya Dilligard Edwards, Esquire, Boykin &
Davis, LLC, Columbia, South Carolina.

PURPOSE OF HEARING: To determine issues as set forth in the Forms 54 and
55.

OPINION AND AWARD: By Avery B. Wilkerson, Jr., Commissioner

FILED: October 28, 2011

ADMINISTRATIVE PROCEDURE ACT (APA) SUBMISSIONS

<u>APA NO.</u>	<u>ITEM</u>	<u>DATE</u>	<u>PAGES</u>
1	Family Medicine Associates of Abbeville	05/20/91 – 04/04/05	1-4
2	Self Regional Healthcare	08/17/05	5-7
3	Self Regional Healthcare Optimum Life Center	12/05/05 – 02/13/06	8-18
4	Abbeville County Memorial Hospital	01/11/06	19
5	Carolina Rehabilitation Associates	02/06/06 – 07/11/06	20-26
6	Post Trauma Resources	08/02/06	27-31
7	Page Rehabilitation Services, Inc.	08/15/06	32-39

EXHIBITS

A	Notice of Possible Second Injury Fund Claim Form	10/26/06	40
B	Amended Notice of Possible Second Injury Fund Claim Form	06/20/11	41
C	Employer Knowledge Statement	06/08/06	42
D	Comprehensive Health Survey	1996	43-46
E	Dr. Michael P. Kilburn, Medical Certificate	01/27/06	47
F	Nicholas A. Lind, Psy.D., Medical Certificates	06/13/11	48-49

STIPULATIONS

The parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission had jurisdiction to hear the case.
2. Venue was proper in Laurens County.
3. Notice was timely and proper.
4. The Commission's file became a part of the record with the exception of self-serving declarations and unstipulated medical reports.

STATEMENT OF THE CASE

This is a claim for partial reimbursement from the South Carolina Second Injury Fund (the "Fund") by Abbeville County Memorial Hospital, Employer, and PHTS Risk Management Services, Carrier (collectively "Carrier") pursuant to S.C. Code Ann. § 42-9-400. Carrier alleged that it incurred substantially greater liability for compensation and medical benefits when Billie New's (the "Claimant") preexisting arthritis, anxiety and depression were either aggravated by or combined with her July 12, 2005 work related neck and arm injuries. Carrier further alleged that Claimant's preexisting conditions were a hindrance or obstacle to her employment. The Fund argued that Claimant's preexisting conditions were not permanent and serious enough to constitute a hindrance or obstacle to her employment, did not substantially increase Carrier's liability for medical costs and disability and, as, such, denied that the claim met the requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400.

EVIDENCE OF THE CASE

On July 12, 2005, Claimant sustained an injury by accident during the course of her employment with Abbeville County Memorial Hospital. In 1991, approximately fourteen (14) years prior to Claimant's work injury, she was treated for numbness in her fingers. Carrier APA p.1. The treatment records from this 1991 record note full range of motion in Claimant's left arm, no neck pain, and no paresthesias in the cervical spine. Carrier APA p.1. A 1998 medical report notes that Claimant was treated for shoulder pain noting that she had "a couple of episodes recently where she had chest pain that went to her back and went up into her shoulders" and into the left side of her neck. Carrier APA p.2.

On April 16, 2002, approximately three (3) years prior to the work injury, Claimant presented to Family Medicine Associates and was diagnosed with anxiety for which she received medication. Carrier APA p.3. On May 14, 2002, Claimant reported that she was feeling much better after taking prescription medication. Carrier APA p.3. On March 8, 2004, approximately one (1) year prior to her work injury, Claimant presented to Family Medicine Associates for unrelated medical issues where anxiety is not noted nor does it indicate that she was taking medication for anxiety or depression. Carrier APA p.4. On April 4, 2005, Claimant presented to Family Medicine Associates complaining of aching neck, shoulders, and legs in conjunction with a fever, nausea, sneezing, cough and congestion. Carrier APA p.5

After Claimant sustained her July 12, 2005 work injury, she presented to Self Regional Healthcare approximately one (1) month later on August 17, 2005, for a

cervical discectomy. Carrier APA pp.6-7. On December 22, 2005, approximately three (3) months post cervical discectomy, Claimant presented to Self Regional Healthcare for an initial evaluation. Carrier APA pp.9-13. During this initial evaluation, Claimant reported having received physical therapy prior to the cervical discectomy and noted that while she initially had relief after the surgery, her pain returned to pre-surgery levels. Claimant's examination revealed decreased range of motion in the cervical spine with pain, radicular symptoms, and decreased strength in the left arm. Carrier APA p.11. Claimant's treatment plan included physical therapy with the goal of decreasing pain and returning to work. Carrier APA p.12.

On January 11, 2006, Claimant's cervical spine MRI revealed stable and mild degenerative changes with disc bulging. Carrier APA p.19. On February 6, 2006, Claimant presented to Self Regional Healthcare for follow up of her neck pain. Carrier APA p.20. Claimant reported no improvement over the past several months and her physical examination revealed slight weakness in her grip and strength. Carrier APA p.20. Claimant's treatment plan included medication and rehabilitation. Carrier APA p.20. One (1) month follow up was recommended. Carrier APA p.20. On February 13, 2006, Claimant returned to Self Regional Healthcare for evaluation regarding her work conditioning. Carrier APA p.16. Claimant's work conditioning evaluation revealed that she gave maximal effort but due to increased pain, a functional capacity evaluation ("FCE") was ordered. Carrier APA p.16.

On March 7, 2006, Claimant followed up with Self Regional Healthcare where records indicate she was in mild distress and exhibited a slight decreased range of motion in the left arm. Carrier APA p.21. Claimant's FCE concluded that she was able to

perform light duty work for eight (8) hours per day. Carrier APA p.22. Claimant's treatment plan included medication, follow up every one (1) to two (2) months, and a long term goal of reducing her medication. Carrier APA p.22. Claimant was assigned a twenty-five (25%) percent whole person impairment rating and was instructed to follow up in six (6) weeks. Carrier APA p.22.

On April 18, 2006, Claimant followed up with Self Regional Healthcare where she reported hand cramping when driving longer than thirty (30) minutes. Carrier APA p.24. Claimant's treatment plan included medication and a three (3) month follow up. Carrier APA p.24. On July 11, 2006, Claimant presented to Carolina Rehabilitation Associates where she continued to experience left shoulder and cervical spine pain and she had additional complaints of insomnia and depression. Carrier APA p.25. Claimant received prescription medication and was instructed to follow up in three (3) months. Carrier APA p.25.

On August 2, 2006, Claimant underwent an independent medical evaluation ("IME") wherein it was noted that her "potential adaptation to a work environment appears to be restricted by her physical pain but not by her emotional functioning." Carrier APA p.29. This IME also noted that Claimant's symptoms of anxiety and depression were more likely than not due to the physical limitations that resulted from her July 12, 2005 work injury. Carrier APA p.30 and 31. On August 15, 2006, Claimant presented to Page Rehabilitation Services for a vocational evaluation. Carrier APA pp.32-39. Claimant's vocational evaluation revealed that Claimant was employable in various capacities without the need for additional training. Carrier APA p.37 and 39.

On June 8, 2006, Claimant's supervisor signed a statement indicating that she was aware that Claimant periodically missed work due to pain in all parts of her body prior to the work injury. Carrier APA p.42. Claimant had also completed a comprehensive health survey indicating that she did not have arthritis or various other enumerated conditions. Carrier APA pp.43-46. Claimant also indicated that she had never been refused employment for health reasons, did not have any handicap or disability, did not have any condition that required a special work assignment, was not under a doctor's care and had never been out of work for more than one week at a time. Carrier APA pp.44-45.

On January 27, 2006, Dr. Michael Kilburn completed a questionnaire supporting reimbursement with respect to Claimant's prior cervical spine condition. Carrier APA p.47. On June 13, 2011, Nicolas Lind, Psy.D., completed questionnaires supporting reimbursement with respect to Claimant's preexisting depression and anxiety. Carrier APA pp.48-49.

FINDINGS OF FACT

Based upon the evidence in the record and the arguments of the parties, I make the following findings of fact based upon the preponderance of the reliable, probative, and substantial evidence:

1. On July 12, 2005, Claimant sustained an injury by accident during the course of her employment as a certified nurse assistant with Abbeville County Memorial Hospital. This finding is based upon Carrier APA pp.40-41.

2. Claimant had prior anxiety for which she was treated with medication. This finding is based upon Carrier APA p.3.

3. Claimant also had a prior incident of shoulder pain in 1991 where her physical examination revealed full range of motion in the left arm, no neck pain and no paresthesias in her cervical spine. In 1998, Claimant also reported chest pain that radiated into her back and shoulders, and a 2005 medical narrative indicates that she experienced aching in her shoulder, neck and legs associated with fever and nausea. This finding is based upon Carrier APA pp.1-2, and 5.

4. Carrier alleges that Claimant had preexisting arthritis but the prior medical records do not reveal preexisting arthritis and Claimant did not indicate arthritis on her health survey. Thus, I find that the greater weight of the medical evidence supports a finding that Claimant did not have preexisting arthritis. I further find that even if Claimant had preexisting arthritis the medical evidence in the record indicates that it was not serious enough to constitute a hindrance or obstacle to her employment because she is noted to have missed work only periodically. This finding is based upon Carrier APA pp.1-5 and 42, 44-45.

5. Claimant's preexisting anxiety was not permanent and serious enough to constitute a hindrance or obstacle to her employment. I base this finding on the prior medical reports, which indicate that Claimant's anxiety was treated with medication and Claimant noted that the medication had improved her symptoms of anxiety. Thus, I find, based on the greater weight of the medical evidence that Claimant's anxiety and depression were well controlled with medication prior to the work injury. This finding is based upon Carrier APA p.3.

6. Claimant's preexisting neck and shoulder problems were not permanent and serious enough to constitute a hindrance or obstacle to her employment. When

Claimant presented for treatment of neck pain in 1991, her physical examination revealed full range of motion in the left arm, no neck pain, and no increased paresthesias in the cervical spine. Claimant's subsequent visit for treatment of shoulder and neck pain was in conjunction with aching flu like symptoms. This finding is based upon Carrier APA pp.1-2 and 5.

7. Claimant also noted on her medical health survey that she had never been refused employment for health reasons, did not have any handicap or disability, did not have any condition that required a special work assignment, was not under a doctor's care, had never been out of work for more than one (1) week at a time and had never had back problems. This finding is based on Carrier APA pp.44-45.

8. The knowledge statement also indicates that Claimant "periodically" complained and missed work due to pain. I find that Claimant's periodic complaints of pain and missed work does not rise to the level being a hindrance or obstacle to her employment. This finding is based upon Carrier APA p.42.

9. Carrier did not establish all elements of reimbursement pursuant to S.C. Code Ann. § 42-9-400. Accordingly, Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund.

CONCLUSIONS OF LAW

Based upon the totality of the evidence in the record, I conclude as a matter of law:

1. Reimbursement from the South Carolina Second Injury Fund is governed by S.C. Code Ann. § 42-9-400.

2. The right of Carrier to receive reimbursement from the South Carolina Second Injury Fund depends upon complete compliance with the requirements for recovery. South Carolina Second Injury Fund v. American Yard Products, 496 S.E.2d 862 (S.C. 1998).

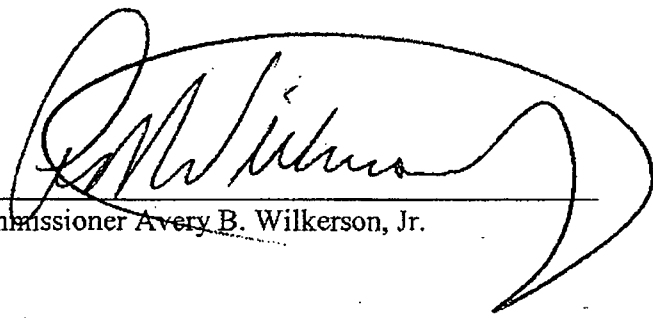
3. To qualify for reimbursement, Carrier had the burden to prove that Claimant's preexisting anxiety, depression, and neck problems were permanent and serious enough to be a hindrance or obstacle to Claimant's employment. Carrier failed to meet its burden of proof on this issue; and, therefore, failed to meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400.

4. To qualify for reimbursement, Carrier had the burden to prove that Claimant had preexisting arthritis. Carrier did not prove that Claimant had preexisting arthritis and therefore, failed to prove its entitlement to reimbursement based on preexisting arthritis.

5. Since Carrier did not meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400, it is not entitled to reimbursement from the South Carolina Second Injury Fund, and its claim is denied.

AWARD

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS SO ORDERED that Carrier's claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to its statutory right to appeal.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

October 28, 2011

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0511737

PHTS RISK MANAGEMENT SERVICES, ... CARRIER/APPELLANT,

- V -

SC SECOND INJURY FUND, ... DEFENDANT/RESPONDENT.

[In Re: Billie New v. Abbeville County Memorial Hospital and PHTS Risk Management
Services]

Appellate Panel Review held in Columbia,
South Carolina on March 19, 2012, per notices
timely and properly served on all parties.

Appellate Panel Decision and Order filed

_____ 5/22, 2012.

APPEARANCES: Carrier/Appellant represented by Robert C. Rogers, Esquire
Gallivan White & Boyd, P.A, Greenville, South Carolina.

Defendant/Respondent represented by Latonya Dilligard
Edwards, Esquire, Dilligard Edwards, LLC, Columbia, South Carolina.

STATEMENT OF CASE

On October 28, 2011, Commissioner Avery B. Wilkerson, Jr., held a hearing on this matter in Laurens, South Carolina and issued the following Order:

“Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS SO ORDERED that Carrier’s claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to Carrier’s statutory right to appeal.”

Within the statutory period, counsel for the Employer and Carrier filed a Request for Commission Review setting forth one hundred two (102) grounds for appeal with copies furnished to all interested parties prior to being presented to the Appellate Panel on March 19, 2012. All proffered testimony has been taken and together with all documentary evidence has been delivered to the individual members of the Full Commission and has since been under advisement and consideration.

In accordance with S.C. Code Ann. § 42-17-50, the Appellate Panel shall review the award, and if good and proper grounds are shown, may reconsider evidence, receive further evidence, rehear the parties and amend the award. Furthermore, the Appellate Panel may make its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C.App. 1984). After careful review in the instant case, the Commission has determined that all of the Hearing Commissioner’s Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become the law of the case, and are sustained in their entirety.

FINDINGS OF FACT

After hearing arguments from the parties and reviewing the evidence, the following findings of fact are made:

1. On July 12, 2005, Claimant sustained an injury by accident during the course of her employment as a certified nurse assistant with Abbeville County Memorial Hospital.
2. Claimant had prior anxiety and depression, for which she was treated with medication.
3. Claimant also had a prior incident of shoulder pain in 1991, where her physical examination revealed full range of motion in the left arm, no neck pain and no paresthesias in her cervical spine. In 1998, Claimant also reported chest pain that radiated into her back and shoulders, and a 2005 medical narrative indicated that she experienced aching in her shoulder, neck and legs associated with fever and nausea.
4. Carrier alleged that Claimant had preexisting arthritis, but the prior medical records did not reveal preexisting arthritis and Claimant did not indicate arthritis on her medical health survey. Thus, we find that the greater weight of the medical evidence supports a finding that Claimant did not have preexisting arthritis. We further find that even if Claimant had preexisting arthritis, the medical evidence in the record indicated that it was not serious enough to constitute a hindrance or obstacle to her employment because she was noted to have missed work only periodically.
5. Claimant's preexisting anxiety and depression was not permanent and serious enough to constitute a hindrance or obstacle to her employment. We base this finding on the prior medical reports, which indicated that Claimant's anxiety was treated with medication and Claimant noted that the medication had improved her symptoms of anxiety. Thus, we find based

on the greater weight of the medical evidence that Claimant's anxiety and depression were well controlled with medication prior to the work injury.

6. Claimant's preexisting neck and shoulder problems were not permanent and serious enough to constitute a hindrance or obstacle to her employment. When Claimant presented for treatment of neck pain in 1991, her physical examination revealed full range of motion in the left arm, no neck pain, and no increased paresthesias in the cervical spine. Claimant's subsequent visit for the treatment of shoulder and neck pain was in conjunction with aching flu like symptoms.

7. Claimant also noted on her medical health survey that she had never been refused employment for health reasons, did not have any handicap or disability, did not have any condition that required a special work assignment, was not under a doctor's care, had never been out of work for more than one (1) week at a time and had never had back problems.

8. The knowledge statement also indicated that Claimant "periodically" complained and missed work due to pain. We find that Claimant's periodic complaints of pain and missed work did not rise to the level being a hindrance or obstacle to her employment.

9. Carrier did not establish all elements of reimbursement pursuant to S.C. Code Ann. § 42-9-400. Accordingly, Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund.

CONCLUSIONS OF LAW

Based upon the totality of the evidence in the record, We conclude as a matter of law:

1. Reimbursement from the South Carolina Second Injury Fund is governed by S.C. Code Ann. § 42-9-400.

2. The right of Carrier to receive reimbursement from the South Carolina Second Injury Fund depends upon complete compliance with the requirements for recovery. South Carolina Second Injury Fund v. American Yard Products, 496 S.E.2d 862 (S.C. 1998).

3. To qualify for reimbursement, Carrier had the burden to prove that Claimant's preexisting anxiety, depression, and neck problems were permanent and serious enough to be a hindrance or obstacle to Claimant's employment. Carrier failed to meet its burden of proof on this issue; and, therefore, failed to meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400.

4. To qualify for reimbursement, Carrier had the burden to prove that Claimant had preexisting arthritis. Carrier did not prove that Claimant had preexisting arthritis and therefore, failed to prove its entitlement to reimbursement based on preexisting arthritis.

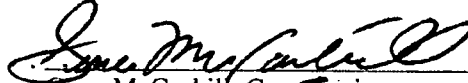
5. Since Carrier did not meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400, it is not entitled to reimbursement from the South Carolina Second Injury Fund, and its claim is denied.

ORDER

IT IS THEREFORE ORDERED that the Order of the Single Commissioner filed on October 28, 2011, is hereby affirmed by the Appellate Panel, and constitutes the Decision and Order of the Full Commission.

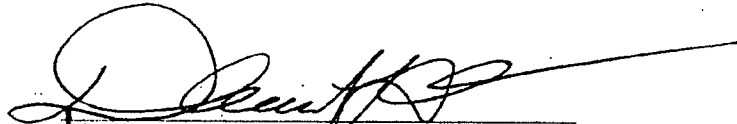
IT IS FURTHER ORDERED that Carrier's claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to Carrier's statutory right to appeal.

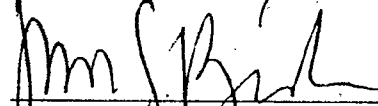
S.C. WORKERS' COMPENSATION COMMISSION


Gene McCaskill, Commissioner

FULL AFFIRMATION

CONCUR:


Derrick Williams, Commissioner


Susan S. Barlen, Commissioner

CERTIFICATE OF SERVICE

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

This 24 day of May, 2013
By Valerie D. Butler

Administrative Assistant to the Commissioner

LaTonga Edwards
O. Shayne Williams
H. Mills Gallivan
Lena Y. Meredith
Robert C. Rogers

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-01-00195

PHTS Risk Management Services and

South Carolina Second Injury Fund

Abbeville County Memorial Hospital

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jared M. Pretulak

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☒ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
PHTS Risk Management Services	S. C. Second Injury Fund	\$124,939.01
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

{ For Clerk of Court Office Use Only }

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
2013 MAY 14 AM 8:44
EMILY Y MCMAHAN
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

PHTS Risk Management Services,
Carrier,

And

Abbeville County Memorial Hospital,
Employer,

vs.

South Carolina Second Injury Fund,
Defendant.

(In Re: Billie New v. Abbeville County
Memorial Hospital)

IN THE COURT OF COMMON PLEAS

FOR THE EIGHTH JUDICIAL CIRCUIT

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

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

W.C.C. FILE NO. 0511737

C.A. No.: 2012-CP-01-195

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Filed MAY 14 A.D. 2013
at 8:41 o'clock A.M.
[Signature]
Clerk of Court

ORDER

This matter is before the Court on the motion of Abbeville County Memorial Hospital (Employer) and PHTS Risk Management Services (Carrier), collectively Plaintiffs/Appellants, wherein they appeal from the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter "Appellate Panel") denying them full Second Injury Fund reimbursement for benefits paid or to be paid to the injured employee, Billie New (hereinafter "Ms. New"), on the underlying workers' compensation claim stemming from Ms. New's July 12, 2005 work accident.

The parties submitted briefs to the Court and appeared for oral arguments on February 1, 2013. After hearing the arguments of counsel, reviewing the memoranda and other documents submitted to the Court and the applicable authority, the Court hereby reverses the decision of the Appellate Panel insofar as it denies Plaintiffs/Appellants full Second Injury Fund reimbursement pursuant to S.C. Code Ann. § 42-9-400.

[Signature]

FACTS OF THE CLAIM

Ms. New injured her neck on July 12, 2005 when she attempted to catch a falling patient while she was employed at Abbeville County Memorial Hospital. PHTS Risk Management Services admitted the claim and authorized appropriate medical treatment. Prior to this incident, Ms. New had complained of and sought treatment for pain affecting her neck and had experienced radicular symptoms affecting her left extremity. Additionally, Ms. New was diagnosed with anxiety and depression in 2002 and received treatment in relation to those conditions prior to her work accident in July 2005.

Plaintiffs/Appellants sought Second Injury Fund reimbursement pursuant to S.C. Code Ann. § 42-9-400 under multiple theories, including preexisting arthritis (neck condition, cervical stenosis and cervical osteophytes), anxiety and/or depression, contending that: (1) these pre-existing impairments were permanent and serious enough so as to constitute a hindrance or obstacle to Ms. New's employment; (2) they were entitled to a presumption of hindrance for Ms. New's preexisting cervical arthritis under S.C. Code Ann. § 42-9-400(d)(4) and for all of Ms. New's preexisting impairments both individually and collectively under S.C. Code Ann. § 42-9-400(d)(34)(b); (3) that Abbeville County Memorial Hospital had knowledge of Ms. New's preexisting neck condition, but that Ms. New concealed her other impairments; and (4) they incurred substantially greater liability for medical costs, disability, and compensation based upon Ms. New's preexisting conditions combining with or being aggravated by her July 12, 2005 work accident. In so contending, Plaintiffs/Appellants relied upon medical evidence and medical questionnaires completed by physicians, including Ms. New's authorized treating physician, establishing the elements of reimbursement under S.C. Code Ann. § 42-9-400.



PROCEDURAL HISTORY

Commissioner Avery B. Wilkerson, Jr. held a hearing on September 7, 2011 in Laurens, South Carolina. The Commissioner's Decision and Order, filed October 28, 2011, denied Plaintiffs/Appellants reimbursement pursuant to S.C. Code Ann. § 42-9-400. On November 11, 2011, Plaintiffs/Appellants filed an Application for Full Commission Review of the Hearing Commissioner's Decision and Order. The parties submitted briefs in support of their respective positions and appeared before the Appellate Panel on March 19, 2012 for oral argument. On May 22, 2012, the Appellate Panel issued its Decision and Order denying Plaintiffs/Appellants full reimbursement from the Second Injury Fund and affirming the Decision and Order of the Hearing Commissioner.

Plaintiffs/Appellants submitted a Notice of Appeal and Petition for Judicial Review by the Court on June 21, 2012, listing fifty-four (54) Grounds for Review and Exceptions to the Decision and Order of the Appellate Panel. The parties submitted briefs and appeared for oral arguments before the Court on February 1, 2013.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (hereinafter "APA") establishes the standard for judicial review of decisions by the Appellate Panel of the Workers' Compensation Commission. Fredrick v. Wellman, Inc., 385 S.C. 8, 15-16, 682 S.E.2d 516, 519 (Ct. App. 2009); see Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981). Under the scope of review established by the APA, the Court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable,

probative and substantial evidence on the whole record. Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 483, 730 S.E.2d 324, 326 (Ct.App. 2012); see S.C. Code Ann. § 1-23-380. Substantial evidence is defined as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion as the Appellate Panel. Carolinas Recycling Group, 398 S.C. at 483, 730 S.E.2d at 326 (citing Lark, 276 S.C. at 135, 276 S.E.2d at 306). More specifically, substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion that the Appellate Panel reached. Bazen v. Badger R. Bazen Co., Inc., 388 S.C. 58, 62, 693 S.E.2d 436, 438 (Ct.App. 2010) (citing Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000)).

ANALYSIS

Plaintiffs/Appellants submitted expert medical testimony in the form of opinions from Dr. Kilburn, Ms. New's treating physician, and Dr. Lind, a psychologist who treated Ms. New for anxiety and depression (Exhibit E, p. 47; Exhibit F, pp. 48-49). These uncontroverted medical opinions establish: (1) that Ms. New's impairments of arthritis (neck condition, cervical stenosis and cervical osteophytes), anxiety and depression preexisted her July 12, 2005 work injury; (2) these preexisting impairments were permanent and of such seriousness so as to constitute a hindrance or obstacle to her employment or re-employment; and (3) the preexisting impairments combined with or were aggravated by Ms. New's work injury to substantially increase Plaintiffs/Appellants' overall liability and medical expenses.

In addition to submission of the aforementioned medical questionnaires, Plaintiffs/Appellants submitted medical records that corroborate the medical opinions outlined in said questionnaires. Specifically, medical records from shortly after Ms. New's work accident

note diagnoses of spondylosis, cervical stenosis, disc degeneration and osteophytes, all of which are degenerative conditions, indicating they predated the work accident (APA No. 1, p. 1-2, 19; APA No.2, p. 6). Medical records from Ms. New's family physician likewise confirm diagnoses of depression and anxiety predating her work accident and note treatment for both conditions at that time (APA No. 1, p. 3). Medical records from Dr. Lind indicate that Ms. New's preexisting anxiety and depression were aggravated by her work injury and required psychiatric treatment related thereto, thus supporting substantially increased liability for Plaintiffs/Appellants (APA No. 6, p. 27-31). Other medical records reference continuing numbness, pain and weakness in Ms. New's neck and upper extremities following her work accident, resulting in additional medical treatment; thus, supporting an aggravation of her preexisting impairments (APA No. 3, p. 9; APA No. 5, pp. 20-21, 25). When this evidence is viewed in conjunction with expert medical evidence submitted by Plaintiffs/Appellants, the only reasonable conclusion that can be drawn is that the substantial evidence in the record supports Second Injury Fund reimbursement.

Plaintiffs/Appellants also are entitled to a presumption of permanency and hindrance for Ms. New's preexisting cervical arthritis under S.C. Code Ann. § 42-9-400(d)(4) and for all of Ms. New's preexisting impairments both individually and collectively under S.C. Code Ann. § 42-9-400(d)(34)(b). Under S.C. Code Ann. § 42-9-400(c), Plaintiffs/Appellants have satisfied the employer knowledge requirement by submitting a statement from Ms. New's supervisor specifying that Ms. New often complained of pain in all parts of her body, including her neck, and missed work on several occasions on account of such pain (Exhibit C, p. 42). Regarding Ms. New's preexisting anxiety and depression, S.C. Code Ann. § 42-9-400(c) was satisfied because the evidence indicates Ms. New had previously been diagnosed with the conditions and received

treatment related thereto, but concealed such information on her employee health questionnaire (Exhibit D, p. 43–46).

In sum, Plaintiffs/Appellants satisfied each and every requirement for Second Injury Fund reimbursement pursuant to S.C. Code Ann. § 42-9-400 via expert medical opinions, supporting medical records, evidence in the record and/or presumptions as provided for in S.C. Code Ann. § 42-9-400. The South Carolina Second Injury Fund/Respondent did not submit any medical opinions or evidence contradicting that submitted by Plaintiffs/Appellants.

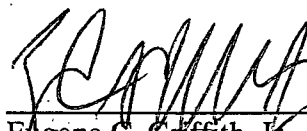
In Carolinas Recycling Group, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012), the South Carolina Court of Appeals elaborated on what constitutes substantial evidence, and particularly, what type of evidence the Appellate Panel may rely upon to support its decision. In that case, the South Carolina Court of Appeals found that the record was “replete with expert medical testimony” supporting reimbursement and “the Fund failed to present any expert medical testimony . . . to discredit the overwhelming medical testimony and evidence [the carrier] presented to the Appellate Panel.” Carolinas Recycling Group, 398 S.C. at 485, 730 S.E.2d at 327. As such, the court found that the decision of the Appellate Panel denying reimbursement was not supported by substantial evidence; correspondingly, the court reversed the Order of the circuit court affirming the Decision and Order of the Appellate Panel. *See Id.* at 486, 730 S.E.2d at 328.

Under the authority of Carolinas Recycling Group, once Plaintiffs/Appellants submitted expert medical opinions and supporting medical evidence establishing each element of reimbursement under S.C. Code Ann. § 42-9-400, the South Carolina Second Injury Fund/Respondent was required to submit some form of reliable, probative and substantial evidence of its own contradicting that submitted by Plaintiffs/Appellants. In this instance, the

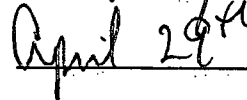
South Carolina Second Injury Fund/Respondent did not submit any such evidence. As such, the Decision and Order of the Appellate Panel was not supported by substantial evidence in the record and should be reversed to the extent that it denies Plaintiffs/Appellants reimbursement.

CONCLUSION

The Decision and Order of the Appellate Panel, wherein it denied Plaintiffs/Appellants Second Injury Fund reimbursement, is not supported by substantial evidence in the record. For the reasons discussed herein this Order, the decision of the Appellate Panel is reversed insofar as it denies Plaintiffs/Appellants full Second Injury Fund reimbursement. The South Carolina Second Injury Fund shall immediately and fully reimburse Plaintiffs/Appellants as provided for under S.C. Code Ann. § 42-9-400 and as specified in the Entry of Judgment to be entered by the Abbeville Clerk of Court contemporaneously with this Order.



Eugene C. Griffith, Jr.
Presiding Judge


_____, South Carolina
, 2013



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0511737

PALMETTO HOSPITAL TRUST)	)	SC WORKERS' COMPENSATION COMMISSION
PLAINTIFF	)	
VS.	)	HEARING OF
	)	PALMETTO HOSPITAL TRUST
SC SECOND INJURY FUND	)	
	)	VS
DEFENDANT	)	
IN RE:	)	SOUTH CAROLINA SECOND INJURY FUND
	)	
BILLIE NEW VS ABBEVILLE)	)	IN RE: BILLIE NEW VS ABBEVILLE
<u>CTY MEMORIAL HOSPITAL</u>)	)	MEMORIAL HOSPITAL

This is the Transcript of the South Carolina Workers' Compensation Hearing of Palmetto Hospital Trust versus South Carolina Second Injury Fund, In Re: Billie New versus Abbeville Memorial Hospital, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:27 P.M., Wednesday, September 7, 2011, at Church Street Complex, 3 Catherine Street, Laurens, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

PALMETTO COURT REPORTING
321 Mac Circle Lexington, SC 29073
(803) 358-0515

APPEARANCES

FOR THE PLAINTIFF:
Kyle Houghman, Esquire
Gallivan White & Boyd, PA
One Liberty Square
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603

FOR THE DEFENDANT:
Latonya D. Edwards, Esquire
Boykin & Davis, LLC
220 Stoneridge Drive, Suite 100
P.O. Box 11844
Columbia, SC 29211

ALSO PRESENT:

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

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I N D E X

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Argument for the Plaintiff by Mr. Houghman	4:20
Argument for the Defendant by Ms. Edwards	18:4
Response from the Plaintiff by Mr. Houghman	25:11
Certificate	31

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1 employment or re-employment; along with increased
2 liability for medical costs, disability and
3 compensation under the Statute 42-9-400 (A). To -- and
4 by way of background -- I'll give you a little
5 background on the case and then we can move into our
6 argument; if that's okay with you, Commissioner?

7 Commissioner Wilkerson: That's fine.

8 Mr. Houghman: Okay. Ms. New was working for
9 Abbeville County Memorial Hospital, which is PHTS, as a
10 CNA when she tried to break the fall of a patient who
11 weighed approximately two hundred (200) to two hundred
12 and fifty (250) pounds using her left arm causing a
13 herniated disc in the course and scope of her
14 employment. Prior to the date of the injury Ms. New
15 was diagnosed with arthritis and treated for
16 depression/anxiety. She regularly complained to her
17 Team Leader, Denise Campbell, and other employees --

18 Commissioner Wilkerson: Keep going.

19 Mr. Houghman: -- about her prior pain, including
20 neck pain. We have employer knowledge statements from
21 -- I believe we have it from Ms. Campbell. Obviously,
22 this accident clearly combined with and aggravated her
23 pre-existing impairments. We've met the employer
24 knowledge requirement. And I'll give you these,
25 Commissioner.

1 Commissioner Wilkerson: I'm sorry, I forgot to
2 ask.
3 Mr. Houghman: I'm sorry.
4 Commissioner Wilkerson: Let me -- let me ask you
5 all a question before we start off again.
6 Mr. Houghman: Yes.
7 Commissioner Wilkerson: Are there any objections
8 to APA's, jurisdiction, venue or any other items
9 from --
10 Ms. Edwards: None.
11 Commissioner Wilkerson: -- I didn't think so.
12 Okay.
13 Mr. Houghman: Okay.
14 Commissioner Wilkerson: Sometimes I'll just jump
15 right into these things to get through them.
16 Okay.
17 Ms. Edwards: None, from the Fund.
18 Mr. Houghman: Yes. Sorry about that,
19 Commissioner.
20 Commissioner Wilkerson: Have you got any
21 submissions, APA's?
22 Ms. Edwards: None in addition to what they have
23 submitted.
24 Commissioner Wilkerson: Nothing, so we'll --
25 thank you.

1 Mr. Houghman: Okay. We'll go from there. And,
2 Commissioner, I would draw your attention to APA,
3 Exhibit C and D, of the Employer's, pages 42 through
4 46. We feel as though this meets the knowledge
5 requirement by the signed Employer Knowledge Statement
6 and the Claimant's annual health screening. Ms. New
7 clearly had pre-existing impairments before the date of
8 the injury; this clearly demonstrates Employer
9 knowledge of the impairments and satisfies the
10 requirement under 42-9-400 (C). Regarding pre-existing
11 impairment, 42-9-400 (A), the impairment can be from
12 any cause or origin. Physical impairments are further
13 defined as any permanent condition, whether it's
14 congenital or due to injury or illness. Ms. New's
15 permanent impairments pre-exist her compensable work
16 injury as evidenced by medical questionnaires we have,
17 which are APA, Exhibits E, by Dr. Kilburn, her treating
18 physician who performed the fusion at her C-6, 7 level,
19 and also by Dr. Lind, APA Exhibit F, pages 48 through
20 49, this is for depression/anxiety. Furthermore, Dr.
21 Kilburn's operative note, which is APA 2, page 67,
22 indicates she had stenosis and spondylosis prior to the
23 date of the accident and keep in mind that Dr. Kilburn
24 performed the cervical fusion. The medical records
25 from Dr. Monda, which is APA number 3, pages 20 through

1 26, also show that she had pre-existing -- a
2 pre-existing impairment prior to her injury. MRI, on
3 APA number 4, page 19, I'd like to call your attention
4 to, specifically, if I can. If you notice while this
5 medical record shows -- it looks like 1/11/2006, you
6 will also see where the -- whoever reading -- Dr.
7 Charles Park reading the MRI shows disc degeneration
8 and anterior disc protrusion at C 5 and 6, is
9 unchanged. This reference is a prior MRI, which we do
10 not have but he speaks to it at that point. Regarding
11 hindrance, Commissioner, Ms. New's pre-existing
12 impairments were hindrances and obstacles for the
13 following reasons: The statute affords the Carrier,
14 us, a presumption of hindrance under 42-9-400 (D) (4)
15 for arthritis. Ms. New clearly had arthritis and pain
16 associated with arthritis prior to the date of the
17 injury; its listed condition number one (1) and that is
18 confirmed by APA 2, pages 6 and 7. In addition, Ms.
19 New missed days of work due to her pre-existing pain
20 and complained of such to her Employer as evidenced by
21 APA Exhibit C, page 42. Even without this presumption
22 or hindrance the medical questionnaires completed by
23 treating physicians support hindrance or obstacle to
24 employment or re-employment; that's page -- that APA
25 Exhibits E and F, pages 47 and 49. I guess,

1 Commissioner, the only evidence that speaks directly to
2 the question of hindrance and/or obstacle to employment
3 or re-employment in this case is the Carrier's medical
4 certificates, APA Exhibits E and F. Those medical
5 certificates are unchallenged. There is no other
6 evidence suggesting any other opinion from the treating
7 physicians other than those supplied to you, which you
8 are looking at there, Commissioner. Just by way of
9 argument in this area, hindrance is not the inability
10 to completely do a job but rather the Claimant may not
11 be able to do the job to her full ability and/or the
12 pre-existing condition may have been an obstacle or
13 hindrance to obtaining a job or obtaining another job
14 if the person were to become unemployed. In this case
15 Ms. New missed work due to her pain, including pain in
16 her neck. Her neck pain is related to the arthritis
17 and osteophyte present in her neck prior to the injury.
18 Anyone who applies for a job without any pre-existing
19 conditions the conditions are not a consideration but
20 when a potential hire mentions that he or she may have
21 some type of pre-existing impairment then it becomes an
22 issue, which again is defined by definition an obstacle
23 or a hindrance to employment. If you'll look,
24 Commissioner, as far back as 1991, Ms. New began
25 treating for paresthesias on the left side, which is

1 the side in which she would injure; that is APA 1,
2 pages 1 through -- let me look, Commissioner, I'm sorry
3 -- 5. If you'll see that, she had an injury to her
4 left shoulder; there was no diagnostic testing done, no
5 MRI's or anything like that. What we -- it looks like
6 the paresthesias runs down to the left side. From that
7 point on she continued to have problems with the left
8 side, paresthesias for -- in general, some pain; that
9 is documented by our Employer knowledge statement from
10 the Employer. Additionally, if you look at it,
11 Commissioner, if you will take a quick look at -- and,
12 I'm sorry, let me -- before I go that way.
13 Additionally, if you look at her Employer -- the
14 questionnaire that we gave her prior to her employment,
15 which -- give me one (1) moment, Commissioner, I'm
16 sorry -- which is Exhibit D, Employer Exhibit D. She
17 does not address any type of previous injury to her
18 arm, any paresthesias, also, any depression or anything
19 as a result of that pain. However, I know that Defense
20 Attorneys love the case Fredrick v wellman, while,
21 we're using that to stand for the proposition that we
22 can file for any reason, if you look it was a fraud
23 case and in that case she, I guess, hid some previous
24 impairment or injury. And what the court said -- and
25 if you'll look at it, Commissioner, and let me pull my

1 notebook here; I have the language. The -- the Wellman
2 decision states that these types of questionnaires that
3 we look at disclose -- where the Claimant should
4 disclose everything provides the Employer a rational
5 base to make a decision regarding job duties. And the
6 Wellman case stands for the proposition that's a
7 critical subjective factor for the job and the job
8 duties, which this is a hindrance for us, if we had
9 known about it she may have not have worked in that
10 capacity as a CNA and we wouldn't have had her doing
11 some of the jobs; however, we did not know about that
12 but if you look at our Employer Knowledge Statement she
13 will confirm that the Claimant was complaining of pain
14 in the left side, she was also complaining of some type
15 of everyday problems with her, I guess, pain and
16 everything like that, which we think speaks to the
17 anxiety and the depression. Additionally,
18 Commissioner, if you would please look at --

19 Commissioner Wilkerson: Has there ever been a
20 Claimant that doesn't have anxiety when they get
21 hurt?

22 Mr. Houghman: -- I don't know that.

23 Commissioner Wilkerson: Okay.

24 Mr. Houghman: I don't know that.

25 Commissioner Wilkerson: I would think if I got

1 hurt I'd have some anxiety.

2 Mr. Houghman: Yes. And we -- we contend that
3 this pre-existed. If you'll look at her pre-existing
4 medical records she treated with Zolof and at some
5 point we picked up the prescription of Zolof as a
6 result of the accident. And, Commissioner, I'm sorry,
7 give me one (1) second. I want to give one (1) more
8 other basis at this point. Come on, baby; don't do
9 that. And let me look at my outline real quick. I'm
10 sorry, Commissioner; one (1) moment please. If you'll
11 look at Employer's APA's it would be Dr. Monda, which
12 is Carolina Rehabilitation Associates, and specifically
13 I'm looking at page 22. We also believe that this
14 qualifies as a presumption -- a presumption of
15 hindrance under 34 (B). If you look, Dr. Monda
16 basically gave a twenty-five percent (25%) impairment
17 to the whole person based on altered motion segment and
18 this was for the cervical fusion. Commissioner and
19 Latonya, I'm going to hand you the AP -- AMA Guides
20 Number Five, which was used by Dr. Monda to come up
21 with this.

22 Ms. Edwards: I don't need it.

23 Commissioner Wilkerson: I don't need it.

24 Mr. Houghman: Commissioner, are you sure?

25 Commissioner Wilkerson: I mean, you can give it

1 to me; it doesn't matter.

2 Mr. Houghman: Okay. That's fine. Basically,
3 what we're looking at here is he gave a twenty-five
4 percent (25%) whole person rating as a result of the
5 spine using the DRE method and converting that to the
6 spine it results in a -- basically, a seventy-one
7 percent (71%) impairment to the cervical spine, which
8 is two hundred and thirteen (213) weeks, which is well
9 above the seventy-eight (78) weeks we need under 34
10 (B). Additionally, if you look at it, the whole
11 person, that would be a hundred and twenty-five (125)
12 weeks basically to the whole person, divided that by
13 the -- divide that by the value of the spine, three
14 hundred (300) weeks, and you get a forty-one percent
15 (41%) impairment. So, again, we think that affords us
16 the presumption under 34 (B) as well. Regarding
17 increased liability, the greater weight of the evidence
18 supports that the Carrier incurred substantially
19 greater liability for compensation, medical costs and
20 disability than if the subsequent injury had not
21 occurred alone under 42-9-400 (A) and (D) (4). This is
22 evidenced by the signed medical questionnaires, which
23 are APA Exhibit E and F, page 47 and 49. As a result
24 of the injury Ms. New treated conservatively. She then
25 required a C-6, 7 fusion. After the fusion she

1 continued to have problems following the fusion with
2 numbness and pain on the left side. She required
3 additional treatment for increased pain and decreased
4 functionality following the fusion and medical records
5 from Dr. Monda, APA 5, page 20 through 26, and physical
6 therapy records, APA 7, confirm. The treating
7 physicians felt that Ms. New had not -- that had Ms.
8 New not had a pre-existing condition the medical costs,
9 lost time from work and permanent disability would not
10 have qualified the Carrier for reimbursement from the
11 Second Injury Fund under 42-9-400; and that's evidenced
12 by our medical questionnaires that are uncontested at
13 this point. In this case Ms. New had significant
14 pre-existing impairments, which the treating physicians
15 felt increased the Carrier -- Carrier's liability for
16 compensation, disability and medical costs. We are
17 presenting all this evidence in good faith,
18 Commissioner, supporting our request for reimbursement
19 from the Fund. The Fund has not submitted any evidence
20 to contradict our evidence or any evidence directly
21 addressing the question of hindrance. For all these
22 reasons the Carrier contends it met the statutory
23 requirements under 42-9-400 and ask you enter an order
24 requiring the Fund to reimburse the Carrier pursuant to
25 the statute. Thanks.

1 Commissioner wilkerson: Let me -- let me ask a
2 question. Is the -- is the compromised settlement
3 for sixty-five thousand (\$65,000.00) or is it a
4 hundred thousand (\$100,000.00)?

5 Mr. Houghman: I'll have to pull that out.

6 Commissioner wilkerson: I think it's a hundred
7 thousand (\$100,000.00).

8 Mr. Houghman: Okay. Let me pull that our,
9 Commissioner, I'm sorry.

10 Commissioner wilkerson: So, the increase medical
11 is one-third (1/3) of the total cost? If I'm
12 reading -- make sure I'm not reading that wrong.

13 Mr. Houghman: Give me one (1) second,
14 Commissioner. I'm sorry, Commissioner, I don't have it
15 front of me.

16 Commissioner wilkerson: That's all right.

17 Mr. Houghman: Oh, here's the settlement
18 agreement, one (1) moment -- one (1) second. It's a
19 hundred thousand (\$100,000.00) it looks like.

20 Commissioner wilkerson: How much is for the
21 medical?

22 Mr. Houghman: It looks like sixty-five (65) --
23 well, it -- Commissioner, it looks like sixty-five
24 thousand, eight forty-four (\$65,844.00) was the
25 compromised settlement disputed permanent and partial

1 disability; the rest would have been for medical.

2 Commissioner Wilkerson: well -- and the reason I
3 asked that is on page 4 it's got, as evidence of
4 the Employer ensuring Claimant's intent not to
5 shift the burden of payment for future medical to
6 the Federal Government the amount of sixteen
7 thousand, eight hundred and fifty-three dollars
8 and forty-one cents (\$16,853.41) as being
9 allocated from the total settlement proceeds, in
10 this case to pay for Claimant's future medical
11 expense.

12 Mr. Houghman: Yes.

13 Commissioner Wilkerson: That's why I was
14 confused.

15 Mr. Houghman: And my guess is, Commissioner, and
16 I -- I'm sorry, we were not handling this and what I
17 would tend to look at is, if you look at the
18 sixty-five, eight forty-four (\$65,844.00) number that I
19 reference, Commissioner --

20 Commissioner Wilkerson: Right.

21 Mr. Houghman: -- it looks like that's the Utica
22 Mohawk language. My guess is the Attorney's fees were
23 backed out of that prior to the language. There you
24 go, if you'll look.

25 Commissioner Wilkerson: Yes, I see the -- down

1 there thirty (30); that's why I was --
2 Mr. Houghman: Yes, that is --
3 Commissioner Wilkerson: -- so, of the sixty-five,
4 eight forty-four, forty-two (\$65,844.42), sixteen
5 thousand (\$16,000.00) comes off of the sixty-five
6 (\$65,000.00); so, it's about forty-nine thousand
7 (\$49,000.00).
8 Mr. Houghman: Yes.
9 Commissioner Wilkerson: Okay. That makes a
10 little more sense to me then.
11 Mr. Houghman: Yes, that would make more sense,
12 Commissioner.
13 Commissioner Wilkerson: Yes, forty-nine thousand
14 (\$49,000.00) divided by -- the comp rate is two
15 thirty (\$230.00).
16 Mr. Houghman: My apologies for not having that
17 out.
18 Commissioner Wilkerson: No, that's fine. Three
19 hundred (300) -- okay, I'm fine with that. Okay.
20 Mr. Houghman: Okay.
21 Commissioner Wilkerson: All right. Anything
22 else?
23 Mr. Houghman: That's all from this side.
24 Commissioner Wilkerson: Thank you. Tell me why
25 he shouldn't get a penny.

1 Ms. Edwards: All right, Commissioner, I will do
2 that.

3 ARGUMENT FOR THE DEFENDANT

4 By Ms. Edwards:

5 The Second Injury Fund -- and let me address the
6 conditions separately. The Second Injury Fund is
7 denying that this claim meets the requirements for
8 reimbursement because we deny that Claimant's
9 pre-existing conditions were a hindrance to employment
10 or a substantially increased liability as it relates to
11 the neck and shoulder, neck/shoulder. Carrier did
12 reference their APA pages 1 through 5. Carrier APA,
13 page 1, these are the prior medical records dating back
14 to 1991, Carrier APA, page 1, and that particular
15 medical narrative indicates that the Claimant had full
16 range of motion in left arm, no neck pain, no increased
17 paresthesias in the cervical spine and he had temporary
18 paresthesias in the left fingers. Carrier APA, page 2,
19 notes chest pain that was radiating into the back and
20 shoulders; this is the 1998 medical narrative. Now,
21 those two (2) pages or those few pages from 1991 and
22 then again in 1998, that represents the extent of the
23 treatment that Claimant had for pre-existing neck and
24 shoulder problems. At Carrier APA, page 5, this notes
25 that her shoulder, neck and legs were aching relating

1 to fever and nausea. As it relates to the anxiety and
2 depression, Carrier APA, page 3, she was diagnosed with
3 anxiety in 2002, which is a few years before this work
4 injury. She was started on meds but at her next visit
5 on May 14th of 2002, on that same page, it notes she
6 was feeling much better regarding anxiety and
7 depression. Carrier APA, page 4, which is a 2004
8 medical record, when she went into -- 2004, which is
9 just before this work injury, when she went in for
10 unrelated medical issues the depression and anxiety are
11 not noted as problematic nor does it reference any
12 medication she's taking for anxiety or depression. At
13 Carrier APA -- post injury, Carrier APA, page 20, the
14 medical notes do note depression. At Carrier APA, page
15 20, it notes pain medication only, Lyrica and Lidoderm.
16 Carrier APA, page 22, Claimant's impairment rating --
17 and let me say that while it's on my mind. The
18 Claimant's impairment rating is twenty-five percent
19 (25%), certainly we believe if Carrier wanted a
20 regional rating they should have requested one and,
21 certainly, if the Doctor gives a rating and its
22 something other than what Carrier thinks it is then
23 certainly, as they always indicate that the Fund could
24 have done a deposition or could have gotten competing
25 medical or whatever; they certainly could have gotten a

1 regional rating if that was their desire. So, I think
2 that the conversion --

3 Commissioner Wilkerson: Should they have?

4 Ms. Edwards: -- what? Well, it -- well -- well,
5 the reason I say that is -- the reason I say that is,
6 Carrier is providing their own conversion --

7 Commissioner Wilkerson: I understand.

8 Ms. Edwards: -- based on their interpretations --

9 Commissioner Wilkerson: I understand.

10 Ms. Edwards: -- of the APA guidelines -- and
11 certainly --

12 Commissioner Wilkerson: I understand.

13 Ms. Edwards: -- I believe that would be better
14 left to the physicians in this particular circumstance.
15 At Carrier APA, page 22, the impairment rating is based
16 on the cervical fusion. He received a twenty-five
17 percent (25%) whole person rating; no indication that
18 depression was a contributing factor in -- in receipt
19 of that rating. Carrier APA, page 25, this is a July
20 11, 2006 report, this is when depression is noted post
21 injury, a year post injury, and she is given
22 medication. Carrier APA, page 29, it says that her
23 potential adaptation to a work environment appears to
24 be restricted by her physical pain but not by her
25 emotional functioning. Carrier APA, pages 30 and 39,

1 Claimant's current symptoms of anxiety and depression
2 -- and this is what the Doctor is saying -- are more
3 likely than not due to the physical limitations
4 resulting from the July 12th, 2005 injury. So,
5 certainly that Doctor is attributing her physical
6 limitations and depression to the July 12th, 2005
7 injury because that's what he's talking about when he
8 talks about the fall. Carrier APA, page 37, it notes
9 that Claimant is employable in a variety of capacities
10 without the need for additional training. Carrier APA,
11 page 42, this is the -- one (1) of the -- well, a part
12 of what the Carrier has submitted for knowledge and the
13 individual that completed that statement indicates that
14 the Claimant periodically missed work due to pain. So,
15 it didn't appear to be consistent, not based on any
16 reports or any personnel records, that she was missing
17 more than just periodically as anyone could do.
18 Carrier APA, pages 44 and 45, this is the health survey
19 and it indicates that she has no handicaps or
20 disabilities, no condition -- condition requiring
21 special work assignment, never out of work more than a
22 week at a time, never been injured on the job
23 previously and no back problem. Certainly we believe
24 that all of that medical evidence that I have cited
25 would support our argument that the pre-existing

1 conditions were not a hindrance to employment. We are
2 requesting a denial because the minor instances of pain
3 in 1991 and '98 did not appear to rise to the level of
4 being a hindrance to employment. The incidence of
5 anxiety did not appear to be a hindrance to employment.
6 When you consider that in addition to the APA's that
7 I've cited and the fact that the physician indicated
8 that Claimant was employable in a variety of capacities
9 without additional training and we also would assert
10 that these -- the -- the pre-existing conditions the
11 carrier is alleging is not a hindrance or obstacle to
12 employment, did not substantially increase liability.
13 As it relates to -- no, I'm not going to address that.
14 And also, I -- I think Carrier referenced a case
15 relative to fraud. Unless I missed something I -- I
16 didn't think they were alleging that the Claimant -- I
17 didn't realize that fraud was -- was an issue but let
18 me just say I think they'll --

19 Mr. Houghman: And I'll address that further.

20 Ms. Edwards: -- well, let me -- let me finish
21 first, please. I certainly believe that they're
22 alleging that it's a known condition, therefore I -- I
23 -- I'm -- you know, I'm not the sharpest knife in the
24 drawer but I can't really figure out how the fraud
25 comes in when they're not alleging that is was

1 concealed. So, I would assert that that case is not
2 even relevant to our reimbursement issue.

3 Commissioner Wilkerson: Yes --

4 Ms. Edwards: And so --

5 Commissioner Wilkerson: -- I was going to ask you
6 about that at the end.

7 Ms. Edwards: -- so.

8 Commissioner Wilkerson: How would that case be
9 relevant to this?

10 Mr. Houghman: And here's what -- the only reason
11 that I brought it up, Commissioner, is if you read
12 the Wellman -- and the only reason I gave you the
13 fraud was that was what that case was based on;
14 I'm not basing it off this. But what the court
15 says, if you look at it and if you read the
16 language --

17 Commissioner Wilkerson: But there are different
18 stipulations for reimbursement under the Workers'
19 Comp Act for that as opposed to a compensable
20 accident.

21 Mr. Houghman: -- right and I understand,
22 Commissioner. And I guess the reason we're -- the
23 reason I argue this is just to show that the court
24 placed great weight on the post employment medical
25 questionnaire and saying that was a critical

1 subjective factor as to what type of job they
2 could have done. And in this situation we're
3 saying if she had said this, like the medical
4 records confirm, that she had the prior neck
5 problems with the shoulder and left hand, we may
6 not have put her in this type of work where she
7 was working alone and she could have picked up two
8 hundred (200) pound -- two hundred and fifty (250)
9 pound individuals; she may have worked in a team.
10 We never had that opportunity.

11 Commissioner Wilkerson: Yes, but you would have
12 known that if she worked for you six (6) years.

13 Mr. Houghman: That she was having difficulties
14 with that?

15 Commissioner Wilkerson: Yes.

16 Mr. Houghman: And we're just saying this -- yes
17 and no, she continued to complain of pain but we
18 didn't know the extent of what was going on. Had
19 we known there was a shoulder issue we never would
20 have put her, probably, in that position,
21 therefore, anyways and we never would have been
22 the situation --

23 Commissioner Wilkerson: I understand. All right.

24 Mr. Houghman: -- is what I'm saying. It's a
25 hindrance because we didn't know about it. We

1 could have put her in a different type of
2 situation.

3 Commissioner Wilkerson: Okay.

4 Mr. Houghman: And that's the only reason I bring
5 that case up; it has nothing to do with fraud.

6 Ms. Edwards: I don't have anything further.

7 Commissioner Wilkerson: Okay. All right.

8 Mr. Houghman: And, if I could address some of the
9 -- the issues that we talked about there?

10 RESPONSE FROM THE PLAINTIFF

11 By Mr. Houghman:

12 Regarding the vocational evaluation that the
13 Fund's Attorney brings up, if you look, the reason it
14 is included is to show that -- the vocational
15 evaluation says she can go back to work without any
16 training but in a sedentary position. This woman has
17 worked as a CNA entire time, heavy lifting; doing that
18 type of work. We're just saying -- we're putting that
19 in there showing that really she can't go back to what
20 she had as -- as that type of a job. Regarding my own
21 interpretation of the twenty-five percent (25%)
22 impairment rating to the whole person that was given by
23 Monda; if you look at it it's given to the cervical
24 because of the fusion. And if you look at the AMA
25 Guides and can use a scientific conversion, which is

1 used by Dr. Monda, who said he used the AMA Guides; if
2 you look at that that gets you above the twenty (20) --
3 it gets you to, as I stated earlier, and my -- I don't
4 know that my math is correct but if you look at the
5 table just to the cervical you're looking at two
6 hundred and thirteen (213) weeks just --

7 Commissioner Wilkerson: Yes, but that's only part
8 of the evidence.

9 Mr. Houghman: -- right.

10 Commissioner Wilkerson: It's my -- because if
11 that was the case then why wasn't more -- this is
12 a compromised settlement --

13 Mr. Houghman: Yes.

14 Commissioner Wilkerson: -- then if that's the
15 case how -- why didn't the Plaintiff's Attorney go
16 after more money?

17 Mr. Houghman: I guess the Plaintiff's Attorney
18 made a mistake on that one (1).

19 Commissioner Wilkerson: They don't --

20 Mr. Houghman: I don't know.

21 Commissioner Wilkerson: -- not when it comes to
22 money.

23 Mr. Houghman: I hear you. I don't know. I mean,
24 I -- Commissioner, like you I --

25 Commissioner Wilkerson: I promise you they don't

1 make mistakes on money.

2 Mr. Houghman: -- Commissioner, like you I would
3 have argued the same point. I would have argued the
4 same point. Now, regarding the hindrance, we're --
5 we're filing under arthritis as well --

6 Commissioner Wilkerson: Yes, I saw that.

7 Mr. Houghman: -- and we're given a presumption of
8 the hindrance.

9 Commissioner Wilkerson: Yes. Right.

10 Mr. Houghman: The Fund has put no medical
11 evidence whatsoever to rebut that presumption. We have
12 medical certificates showing spondylosis was present
13 prior to the accident, as a result aggravated -- you
14 can see the -- that there -- I think that alone,
15 without any other medical evidence -- pointing to small
16 portions of the medical evidence prior is losing the
17 trees for the forest; you can't see the --

18 Commissioner Wilkerson: But the settlement
19 doesn't take into consideration the arthritis.
20 Tell me where in the settlement it addresses
21 arthritis.

22 Mr. Houghman: -- I believe it addresses -- hold
23 on.

24 Commissioner Wilkerson: It says medical and
25 disability but it doesn't address arthritis; I

1 don't think. Does it?

2 Mr. Houghman: And I --

3 Commissioner Wilkerson: I mean, I'll look for
4 that, maybe I missed it and I'm okay if I missed
5 it.

6 Mr. Houghman: -- and I'll go back through and
7 look. "Any and all injuries, disabilities,
8 disfigurements, specific loss, death, operations".

9 Commissioner Wilkerson: So, is arthritis an
10 ailment or an illness?

11 Mr. Houghman: I would say it's a disability as
12 per --

13 Commissioner Wilkerson: Okay.

14 Mr. Houghman: -- per the --

15 Commissioner Wilkerson: Okay.

16 Mr. Houghman: -- by the medical evidence. I
17 don't see --

18 Commissioner Wilkerson: But you can work with
19 arthritis, right? So, it wouldn't be a
20 disability.

21 Mr. Houghman: -- it depends.

22 Commissioner Wilkerson: Okay.

23 Mr. Houghman: My grandmother has arthritis in her
24 hands; she can't work, she can't get them open. I
25 mean, unless you --

1 Commissioner Wilkerson: How old is your
2 grandmother though?

3 Mr. Houghman: -- my grandmother would be just
4 short of eighty (80).

5 Commissioner Wilkerson: well, we don't see any
6 eighty (80) year old employees --

7 Mr. Houghman: You --

8 Commissioner Wilkerson: -- many. I've seen one
9 (1).

10 Mr. Houghman: -- you'd be surprised.

11 Commissioner Wilkerson: I've seen one (1).

12 Mr. Houghman: We get quite a few. I -- and,
13 Commissioner, I understand --

14 Commissioner Wilkerson: I --

15 Mr. Houghman: -- I'm just saying that --

16 Commissioner Wilkerson: -- I'm just trying to see
17 if it was addressed in here.

18 Mr. Houghman: -- yes. Right.

19 Commissioner Wilkerson: Okay. That's fine.

20 Mr. Houghman: And, Commissioner, yes, to that
21 extent.

22 Commissioner Wilkerson: Okay.

23 Mr. Houghman: But I -- I still think that the
24 medical evidence in this situation does -- now,
25 regarding the pre-existing Zolof, we can -- obviously

1 she was treating prior. If you look, she has that
2 related to the pain; again, she addresses it after. I
3 still think that if you look at the totality of the
4 circumstances: There was the pre-existing, we have
5 medical evidence that shows it was aggravated, related
6 to; if you look at our medical questionnaires and we
7 also have increased liability on the Carrier when they
8 paid for the Zoloft later. There is no other medical
9 evidence suggesting that that is not the position in
10 this case.

11 Commissioner Wilkerson: Okay.

12 Mr. Houghman: Okay.

13 Commissioner Wilkerson: All right. I'm fine with
14 that.

15 Mr. Houghman: Thanks.

16 Commissioner Wilkerson: Okay. Thank you.

17 Ms. Edwards: I don't have anything further.

18 Commissioner Wilkerson: Thank you all.

19 Mr. Houghman: Thanks.

20 Commissioner Wilkerson: I appreciate it. This
21 concludes the hearing.

22 Ms. Edwards: Thank you.

23 Commissioner Wilkerson: Thank you all.

24 (There being no further arguments, the hearing concluded at

25 2:54 P.M.)

State of South Carolina)
) Court of Common Pleas
County of Abbeville) 2012-CP-01-00195

PHTS Risk Management)
Services, Carrier)
 vs.) Transcript of Record
)
South Carolina Second Injury)
Fund)
 DEFENDANT)

February 1, 2013
Abbeville, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

A P P E A R A N C E S:

Jared Matthew Pretulak, Esq.
Robert C. Rogers, Esq.
Attorney for the Plaintiff

Latonya Dilligard Edwards, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1

2 THE COURT: All right, folks, what have y'all got.

3 MR. PRETULAK: Your Honor, I am Jared Pretulak and
4 this is Robert Rogers, we are here from Gallivan, White
5 and Boyd in Greenville, South Carolina. Well, Your Honor,
6 we are here for a Second Injury Fund claim. We represent
7 Abbeville County Memorial Hospital and PHTS regarding this
8 claim. We are appealing an order from the Full Panel of
9 the South Carolina Workers' Compensation Commission who
10 has denied us reimbursement for our Second Injury Fund
11 claim that was filed.

12 THE COURT: Tell me your name one more time.

13 MR. PRETULAK: Jared Pretulak.

14 THE COURT: Go ahead.

15 MR. PRETULAK: Your Honor, regarding this Second
16 Injury Fund claim, the standard of review obviously is
17 whether the Commission's opinion can be reversed because
18 the decision is affected by an error of law or not
19 supported by substantial evidence. Specifically we are
20 relying on the Carolinas Recycling case which is a newer
21 case in regards to Second Injury Fund. And it says that
22 substantial evidence is evidence when viewed in light of
23 the whole record that would lead a reasonable mind to a
24 certain conclusion. Now, we say that Carolinas
25 establishes that when any party submits expert medical

1 evidence with supporting medical records that the burden
2 would then shift to the opposite, the other party to
3 submit some type of evidence of its own to rebut the
4 evidence that has been presented. There is a more recent
5 case, it is the Burnette case, and it essentially
6 piggybacks off of the Carolinas case. It is regarding an
7 underlying Workers' Compensation Claim but the Court of
8 Appeals recently has paid very close attention to what is
9 going on at the Workers' Compensation Commission. So they
10 are making sure that we are doing things the right way
11 down there. Regarding the case at hand we would submit
12 that we are the only party to have submitted expert
13 medical evidence. And that evidence is in fact supported
14 by the medical records that has been submitted as well.
15 Pursuant then to Carolinas and also this Burnette case we
16 would say that the Full Commission's order is not
17 supported by substantial evidence and should be overturned
18 thus entitling my clients to full Second Injury Fund
19 reimbursement. In order to discuss the Second Injury Fund
20 claim I find that it is good to understand what happened
21 with the underlying Workers' Compensation claim. And Ms.
22 New was a lady that injured her neck back in July of 2005.
23 She was working at a hospital and had a patient fall, she
24 reached out to grab that patient and injured her neck.
25 Now, this was an admitted accident so my clients

1 authorized medical treatment and as a result of the
2 aggravation of preexisting conditions in her cervical
3 spine she ultimately underwent a cervical disc replacement
4 at the C-6 and C-7 level. Ultimately once the case was
5 done she was determined to have sustained a twenty-five
6 percent whole person impairment. This can be found in the
7 record of appeal at page 143. I want to make sure we are
8 absolutely clear, we are not trying to take any benefits
9 away from Ms. New. She has been paid, she has received
10 her medical treatment, she has received indemnity payments
11 while she was out of work. So this case was concluded, so
12 she received an award for her injuries. What we are
13 trying to do is, my client is trying to reimburse, got
14 reimbursement for the benefits that they have paid. Now
15 we understand that we have to satisfy certain elements in
16 order to do that but we say that we have and now we are
17 being denied the opportunity to recoup some of the costs
18 that is put into this claim. Just by way of background
19 with regards to the Second Injury Fund itself, it is a
20 system that was created to encourage employers to hire
21 people that have preexisting conditions. Because it was
22 assumed it was unfair for someone to go hire an employee
23 that has this condition, they injure themselves and
24 aggravate that condition and then they can't work again
25 but then the employer is on the hook for everything.

1 Well, the way that system is funded is by the employers
2 and the insurance carriers paying into it. So really what
3 we are attempting to do here is, of course we have to
4 prove our case but we are trying to get back the money
5 that we have paid into the system. So taking all of that
6 into consideration in order to get Second Injury Fund
7 reimbursement there are several elements that have to be
8 satisfied. And 42-9-400 is the statute that we rely on
9 for Second Injury Fund reimbursement. And to really to
10 put it as straightforward as I can because there is a lot
11 in that statute. The first element is there has got to be
12 a preexisting impairment. So you have to have some type
13 of preexisting condition. Now, that preexisting
14 impairment has got to be a hindrance or obstacle to
15 employment or reemployment. So not necessarily just an
16 obstacle to employment but reemployment if you were to
17 become unemployed. After that, that preexisting
18 impairment has to have combined with the subsequent
19 accident or of an aggravated by the subsequent accident
20 and then the result of that combination or aggravation has
21 got to be greater liability to the employer and Carrier
22 for the subsequent injury. So that is additional medical
23 cost, more missed time from work and increased disability.
24 And finally there has got to be employer knowledge and
25 concealment is the same thing. If there is concealment of

1 a preexisting condition that suffices as the employer
2 knowledge as well. Now for our particular case we
3 presented three theories. And the first theory was
4 42-9-400(d) and if you look at that there is a provision
5 that is set out for arthritis, okay. And that is the neck
6 arthritis which is one of the theories that we have
7 presented. If you can prove that there is preexisting
8 arthritis there is automatically a presumption that that
9 condition was a hindrance or obstacle to employment or
10 reemployment. The next theory was 42-9-400(a) for the
11 anxiety/depression. So anxiety and/or depression and a
12 prior neck condition. Now these were all addressed by the
13 doctors. And so either one of those and then finally,
14 42-9-400(d)(34)(b) which says, it is kind of a catchall
15 actually and we are raising that with regards to the
16 anxiety and depression and/or this neck condition this
17 lady had. And really what it says, if you can show the
18 ultimate result of the aggravation was a disability in
19 excess of 78 weeks then you actually go back and assume
20 that there was a hindrance or obstacle to employment or
21 reemployment for that preexisting condition. It really
22 goes back, it is an interesting provision. I believe it
23 was taken out when the act was amended in 2007. So
24 looking at all of those conditions and all of those
25 standards that must be met, looking specifically now to

1 the preexisting impairment. Have we satisfied preexisting
2 impairment with regards to the arthritis and also this
3 neck condition. We say, yeah, we say there is medical
4 records that support that and we also say that a medical
5 expert came in and tied up all of the loose ends. So
6 looking at the record on appeal there is a medical record
7 on page 1 of the record on appeal, it is dated July 2nd of
8 1991. The claimant is there complaining to the doctor
9 about numbness in the left hand and fingers. So we move
10 on to 1998, March 11th there is a complaint of pain
11 radiating into the claimant's neck. Record on appeal,
12 page 2. In 2005, April of 2005 complaining of a aching
13 neck. Record on appeal, page 5. And then we have an
14 employer which has also been into evidence, record on
15 appeal, page 41 noting, yes, she complained about neck
16 pain, she missed time from work. One month after the
17 accident the claimant reported for, it was approximately a
18 month after the accident, the claimant reported for
19 surgery. If you take a look at that surgery note, the
20 post-surgical diagnosis was stenosis, spondylosis and
21 radiculopathy. All of those diagnosis are consistent with
22 what we see in the medical records and what the actual
23 employer tells us about in her statement. But they are
24 there, it is a doctor, it is a surgeon, that is the
25 diagnosis. Do they go in at that point and time and

1 address specific Second Injury Fund issues. Of course
2 they don't because that is not the issue at hand. That is
3 found, by the way, on record of appeal, page 6. Dr.
4 Kilburn was that physician that conducted that surgery and
5 rendered those diagnosis at the time of the actual
6 surgery. And when we asked him, when we presented him
7 with the specific Second Injury Fund issues he said, yes,
8 prior neck condition was there, it is a preexisting
9 impairment. Yes, the arthritis was there as a preexisting
10 impairment. And that can be found on the record on appeal
11 at page 47.

12 So that moves us to our next impairment, all right,
13 anxiety and depression. Did that preexist the date of
14 accident. Once again, it absolutely did. In 2002 and
15 this is April the 16th of 2002 we see a diagnosis of
16 anxiety and a prescription being given for Zoloft. Record
17 on appeal, page 3. We move forward a little bit, May the
18 14th of 2002. We see this continued treatment for now
19 anxiety and depression and a refill given for the Zoloft.
20 Record on appeal, page 3. Flashforward to June the 18th
21 of 2004. They are continuing to refill the Zoloft.
22 Record on appeal, page 4. Scoot forward to March the 11th
23 of 2005, refill for Zoloft. This is approximately four
24 months prior to the work accident. Record on appeal, page
25 5. During the underlying claim this lady was sent to a

1 doctor by the name of Dr. Lind over at post-trauma
2 resources, okay, and Dr. Lind gave some opinions about
3 anxiety and depression. At that point and time he wasn't
4 concerned with Second Injury Fund issues. But when we
5 specifically asked Dr. Lind, were these preexisting
6 impairments he said, yes, they were. And this can be
7 found on the record on appeal, page 48 and 49. So we
8 think by virtue of that evidence preexisting impairment
9 taken care of.

10 So that moves us to the next one, hindrance or
11 obstacle which really if you read the briefs it appears
12 that is going to be the biggest contention from the Second
13 Injury Fund. So we have already said, yes, there is these
14 preexisting conditions and we say that we have already
15 provided the evidence to show they were there. And I had
16 also mentioned this earlier on, under 42-9-400(d), with
17 regards to that arthritis, a presumption, a statutory
18 presumption comes with that. So if you proved it there is
19 a presumption of hindrance or obstacle of employment. We
20 have shown that that is there. So there is already this
21 presumption. But that presumption also exists under
22 42-9-400(d)(34)(b) with regards to now the anxiety and the
23 depression and a prior neck condition. So we say there is
24 a presumption there already and they must rebut that
25 presumption. But let's assume for a moment we failed to

1 meet the presumption, statutory. We have the two treating
2 physicians, again Dr. Lind and Dr. Kilburn, these are
3 folks that treated this lady during the course of the
4 underlying claim saying that both of those preexisting or
5 all of those preexisting conditions were hindrances and
6 obstacles to employment or reemployment. And it is in
7 those same documents that I have cited already, it is a
8 questionnaire that is provided. So did they combine with
9 or were they aggravated these preexisting impairments,
10 once again the experts say, yes. Did it result in greater
11 liability and you turn to the experts and they say, yes
12 and their medical records to back it up. So finally it is
13 employer knowledge, I mentioned the statement, the
14 supervisor to Ms. New said, yes, she complained about neck
15 pain, she complained about pain all over her body as well.
16 She missed time from work as a result of that. Employer
17 knowledge covered. Now there is an employee survey that
18 is included in the records and Ms. New had the opportunity
19 to disclose a lot of information. And one can argue, well
20 okay, maybe she was, maybe she just misunderstood the
21 document itself. But there is a catchall provision in
22 that document and this can be found on the record of
23 appeal, page 44. And she specifically denied arthritis,
24 she specifically denied back problems, she specifically
25 denied psychological problems but in that section that

1 says, are there any other preexisting conditions out there
2 that you are receiving treatment for. She just left it
3 blank. We would say that based on the medical history,
4 Ms. New actually going for this medical treatment and the
5 problems that we have discussed, this is a clearcut case
6 of concealment. So we say, yes, we provided all the
7 evidence necessary to prove each and every element for
8 Second Injury Fund reimbursement. Now, we would say by
9 definition we have according to the two cases that I have
10 mentioned and that is the Burnette case and the Carolinas
11 Recycling case. And as I mentioned early on once we have
12 done that we say the burden shifts under those cases to
13 the opposition to rebut the evidence that has been put up.
14 And so the question becomes, have they done that. And
15 what I would say, really is what we see is a situation
16 where isolated medical records are relied upon, they
17 really don't provide any explanation for anything. And a
18 piece-meal interpretation is created of what those mean,
19 not by an expert and then submitted as substantial
20 evidence. Now, if you look at both of the cases, the
21 Burnette case and the Carolinas case I would say the Court
22 is telling the Commission and telling the parties to stay
23 away from that very thing. You need to have something to
24 back up your allegations, to back up your position. And
25 the Second Injury Fund, it is a different type of

1 situation, there are specific issues that have to be
2 addressed. And looking at isolated medical records isn't
3 necessarily going to take care of that for you. The
4 issues need to be addressed by someone who knows what they
5 are talking about. We have done that, we have got the
6 treating physicians to address those specific issues based
7 upon the record as a whole. Now, and we did those in
8 questionnaires. Now, interestingly enough and we have
9 seen this unfortunatley over and over, not just in this
10 case but other cases. The Second Injury Fund and the
11 Commission a lot of times tries to discount these
12 questionnaires that we have submitted. If you take a look
13 at what the Fund puts out, they put out this book, it is
14 called a Step-by-Step Approach for Handling Second Injury
15 Fund Claims. In that book they have a questionnaire and
16 that questionnaire is to be completed by a physician and
17 they tell us, you need to submit this if you are going to
18 have any kind of reimbursement chances. So what do we do,
19 we get the questionnaire, we go to the doctors and we say,
20 hey listen, do you agree with these answers. They don't
21 always check off on it and say, yes. In this particular
22 case we were fortunate enough to have two of the doctors
23 that treated Ms. New sign off on every single question in
24 the affirmative on our behalf. So we are only following
25 their instructions when it comes to using these medical

1 questionnaires. This is not something new. And so we
2 find it, it is a little strange to be standing here having
3 this conversation when we have done the exact thing that
4 the Second Injury Fund has asked us to do. I would also
5 like to address and it is in the brief, it is in the
6 Second Injury Fund's brief, it is a new position. I would
7 say a new position that has kind of come up as we have
8 continued to work through a lot of these claims. And what
9 the argument essentially is by the Second Injury Fund is
10 that Carolinas Recycling and Burnette do not apply because
11 the issue regarding hindrance or obstacle in nature, the
12 thing that I have talked about already, is somehow
13 vocational in nature as opposed to medical in nature. And
14 I can to a certain degree understand where they are coming
15 from. You would say, oh, well employment, vocational in
16 nature, that makes a lot of sense. The question that I
17 would present to them is, if so where is your vocational
18 evidence. As I indicated earlier, what's being done is we
19 are looking at individual isolated medical records and
20 piece-milling them into some type of interpretation as
21 opposed to our position where we have actually gone out
22 and had the issues addressed and in this case by medical
23 experts. So regardless of whether this is really a
24 medical or vocational issue you still have to come back
25 around to, does substantial evidence exist to support the

1 position. And the piece-mill interpretation does not jive
2 with what the Court's are telling us. Also as I indicated
3 earlier, in this same book and I will be happy to hand you
4 up a copy of the questionnaire if you would like. One of
5 the questions presented to the physician is, is this
6 preexisting impairment a hindrance or obstacle to
7 employment or reemployment. It is the exact issue that
8 needs to be addressed and it seemed to have been just fine
9 when this was put out but now we are saying that it is not
10 and once again it doesn't make a lot of sense. So we
11 still say, regardless of the nature you have got to have
12 substantial evidence backing up your position. We feel
13 that the order of the Full Commission right now is not
14 supported by substantial evidence, we feel that our
15 position is very much supported by substantial evidence
16 and for the reasons that I have outlined above I would ask
17 that you please overturn the ruling of the Full Commission
18 and rule on behalf of the employer and Carrier granting
19 full Second Injury Fund reimbursement for the July 12th,
20 2005 accident.

21 THE COURT: All right, Ms. Edwards.

22 MS. EDWARDS: Yes, Your Honor, I am Latonya Dilligard
23 Edwards. I am here for the Second Injury Fund. And let
24 me address a few things that Mr. Pretulak said. Mr.
25 Pretulak goes into great detail about the underlying case.

1 I am not going to do that because frankly the standards
2 are different, that is not even what we are here about.
3 We are here on a reimbursement pursuant to 42-9-400. But
4 let me also address a few more things. The
5 questionnaires, a questionnaire does not make or break a
6 case. A questionnaire has to be consistent with the
7 totality of the evidence is. It appears that Mr. Pretulak
8 is having a problem with the weight that is given to that
9 questionnaire and it wasn't given as much weight as what
10 he would have liked. But the weight of the evidence is
11 what is determined by the Commission, not by the Carrier,
12 not by the Fund. And they can assign what weight they
13 want to to the evidence that is supplied in the case.
14 Now, let me also just say, talk about the standard just
15 for a few seconds and I am sure Your Honor knows what the
16 standard is but I just want to reiterate a few things so
17 that Your Honor, so that I will be clear why I am even
18 addressing it. The standard is not that the case should
19 be reversed because the Carrier disagrees with the
20 decision, that is not what the standard is. The standard
21 is not that it should be reversed because Commissioner B
22 may have decided something differently from Commissioner
23 A. In fact the case law instructs that the fact that you
24 could get two different decisions does not mean the case,
25 the decision is not supported by substantial evidence.

1 Now, I am going to cite to the substantial evidence in the
2 record that supports the Commissions decision. As it
3 relates to the preexisting arthritis. Mr. Pretulak cited
4 these documents and I am going to cite them as well. APA
5 pages, pages 1 and 2, this is a 1991 and a 1998 treatment
6 record where claimant received treatment for neck and
7 shoulder problems. Okay. These medical references do not
8 indicate the presence of arthritis. And so my immediate
9 question is, if they don't indicate the presence of
10 arthritis how then could arthritis be a hindrance to
11 somebody's employment if at that point it doesn't even
12 indicate that they have it. At Carrier APA pages 43
13 through 46, claimant completed a comprehensive health
14 survey denying she had arthritis. Now, certainly we
15 believe the reasonable inferences is that she doesn't have
16 arthritis. Why would you lie about having arthritis. She
17 didn't have arthritis but another alternative that if she
18 had it she wasn't aware of it. Okay. Now 42-9-400, that
19 still would bar them from reimbursement because the
20 Carrier has to have knowledge because no condition were
21 eliminated prior to the date of injury or the fallback
22 provision they are going on is concealment which we don't
23 think applies in this case because there is no evidence
24 that she concealed it, the prior medical records don't
25 show the existence of arthritis before this injury. Also

1 there was substantial evidence and back on the
2 concealment, concealment again doesn't apply because how
3 can you conceal something if you don't know you have it or
4 you don't have it. And we believe that those are the two
5 reasonable inferences that can be drawn from the absence
6 of arthritis from those prior medical records. As it
7 relates to other issues. There is substantial evidence in
8 the record indicating that if for some reason claimant had
9 preexisting arthritis which we deny, okay, that is was not
10 a hindrance or obstacle toward employment. And certainly
11 in the statute, presumptions in the statute are
12 rebuttable. If the evidence in the record already rebuts
13 the presumption the Fund doesn't have to produce duplicate
14 records saying something that is already in the record.
15 Okay. And so Carrier, APA pages 44 through 45. So
16 certainly we believe this comprehensive questionnaire is
17 probative on the issue of hindrance. Claimant indicated
18 that she had never been denied employment for health
19 reasons, did not have any condition that would require for
20 special work assignments, had not been hospitalized for
21 any serious illnesses, had never been out of work for more
22 than a week at a time, had never had problems with her
23 back. Certainly those are issues that the claimant can
24 attest to. The claimant goes to the same job every day,
25 treating physicians -- well let me just stay in order

1 because I want to make sure I say everything. I am going
2 to address that about the vocational versus medical issue.
3 Now, Carrier did cite Carolinas Recycling Group versus
4 Second Injury Fund, that was a case that I argued and much
5 to my chagrin it was reversed. But I think the opinion
6 clearly indicates why it was reversed. And one of the
7 things is a direct quote from that case, the Court of
8 Appeals held that the Appellate Panel relied exclusively
9 upon any evaluation by a non-treating physician who only
10 met with the claimant on one occasion. That is a direct
11 quote from the case. Okay. That is not the issue here.
12 Only treating physicians were relied upon in this case.
13 This Carrier, that is their evidence, they cited the
14 treating physicians. Also the issue of hindrance was not
15 an issue in Carolinas Recycling. It was already
16 determined that the preexisting condition actually was a
17 hindrance or obstacle. So that wasn't an issue in that
18 case, we didn't appeal that, that was already an issue.
19 The Commission had already found that the claimant's
20 preexisting condition was a hindrance or obstacle to
21 apply. That is not the case here. Both single and full
22 Commission found that the preexisting condition was not a
23 hindrance or obstacles to employer per 42-9-400(d). Also,
24 on the issue of medical, well let me talk about the
25 Burnette case also because I think Mr. Pretulak referenced

1 that. That case was reversed and remanded and that is
2 more recent case, December of 2012. That case was
3 reversed and remanded to the Commission, reversed and
4 remanded to the Commission with instructions to either
5 reconsider or enter findings of fact concerning the
6 injures because the Commissions' decision was based on
7 medical opinions, a medical opinion of a single
8 Commissioner rather than the medical provider. That is
9 also directly in that appeal. So that is not something
10 that Latonya Edwards is coming up with. That is in the
11 opinion. In that case, in this particular case that case
12 is distinguished from this as well and certainly we don't
13 think that that case applies because all of the evidence
14 in the case comes from the evidence that the Carrier
15 submitted. It is just Carrier disagrees with the
16 decision. So all of the evidence relied upon by the
17 Commission is from the evidence in the case, there are no
18 single Commissioner interpretations of CT scans or
19 diagnostic testing which was the case in Burnette. There
20 was a scan and I think the Commissioner determined that
21 there was only minimal clinical evidence of some
22 particular injury and assigned some link to that, that is
23 not the case here. Also on the issue of hindrance being a
24 medical versus vocational issue and let me just state very
25 clearly. The issue of hindrance is not solely a medical

1 issue. So let me put the word solely in there because I
2 don't want somebody to say a doctor cannot address that.
3 I am not saying a doctor cannot address it, but we are
4 saying a doctor is not the only person who is allowed to
5 address that because when you think about whether
6 something is a hindrance or an obstacle to employment the
7 doctor doesn't go to work with that claimant ever. The
8 claimant is the person who knows what they can do on their
9 job, who goes in every day. The Commission and the Courts
10 often consider the opinions of the claimant on hindrance,
11 they also consider the opinions of the employers,
12 witnesses, all of that. So that is not an issue that
13 requires any medical expert. So that is our position on
14 that, we are not saying a doctor can't address it in a
15 questionnaire because they do routinely do that. But we
16 are saying that a doctor is not the only person who can
17 address that issue. And in this particular case, once
18 again, the Commission gave greater weight to other
19 evidence on that issue which is clearly within the scope
20 of their authority. Okay. Also, substantial evidence in
21 the record supports the Commission's finding that the,
22 there are other preexisting conditions that are alleged,
23 anxiety is one and prior neck pain, neck or shoulder pain
24 is another. And so the substantial evidence on those
25 issues, on the anxiety and depression, Carrier APA pages 3

1 and 4. In 2002 claimant began taking the Zoloft after
2 complaining of anxiety and in May of 2002 her followup
3 exam indicated that she was much better and subsequent
4 followups also revealed no additional complaints regarding
5 anxiety. So the medical records predating this injury
6 clearly indicated that the claimant's preexisting anxiety
7 was controlled well with medication. Certainly that is
8 probative on whether a condition is a hindrance of
9 obstacle to employment. If it is controlled with
10 medication and not giving you any problems where is that
11 causing a hindrance to somebody's employment. It was not
12 in this case. Also as it relates to the prior neck pain,
13 Carrier APA page 1. Claimant did have a prior incident of
14 shoulder pain in 1991 and her physical examination
15 revealed full range of motion in the left arm, no neck
16 pain, Carrier APA pages 2 and 5. This is a 1998 report
17 where claimant indicated she was having chest pain
18 radiating into her back and shoulders. And then in 2005
19 she experienced aching and shoulder pain which was
20 associated with fever and nausea. So you are talking
21 about an instance in 1991, an instance in 1998 and an
22 instance in 2005. Certainly those isolated incidents are
23 not significant enough to find that that condition was a
24 preexisting condition that was a hindrance to somebody's
25 employment. And I think the Commission weighed that as a

1 factor as well. Carrier's acknowledged statement at
2 Carrier APA page 42 indicates that the claimant
3 periodically complained missed work due to pain. I think
4 that everybody in here can say that periodically
5 complained of something or periodically missed a day or
6 two from work. Certainly we don't think that that is
7 sufficient to make a preexisting condition a hindrance to
8 somebody's employment and I think that is also a factor
9 that the Commission weighed in its determination that this
10 case did not meet the requirements for reimbursement.
11 Back to what I was saying about the weight of the evidence
12 and because as my brief indicates that Carrier essentially
13 is saying and they have in the past that the Commission
14 has to give their medical evidence conclusive effect. And
15 we know that that is not the case. And I have cited
16 various cases in my brief to that effect, Wynn versus
17 Peoples Natural Gas. The South Carolina Supreme Court
18 held that the findings of fact by the Commission are
19 conclusive. It doesn't say anything about finding any
20 medical experts. That citation is 238, SC 1 at page 12,
21 118 SE 2nd, 812. That is a 1961 decision. There is also
22 another decision, Glover versus Columbia Hospital,
23 Richland County. Citations in the brief as well, 236, SC
24 410 and 114 SE 2nd, 565. Now Carrier did present a
25 questionnaire supporting reimbursement, we don't dispute

1 that. But once again the Commission is not required to
2 give conclusive effect to a questionnaire or any other
3 evidence to the exclusion of other evidence. And in this
4 case, again, and that also is a case, another case
5 addresses that as well, Ballenger versus Southern Worsted
6 Corporation, 209 SC 463 at 467; 40 SE 2nd, 681 at 682
7 through 83. Now, there is also on the weight of the
8 evidence because it appears that that is what the Carrier
9 is taking issue with, the weight of the evidence. In
10 Anderson versus Campbell Tile Company, the South Carolina
11 Supreme Court also addressed this issue and it said that
12 the opinion of medical experts may constitute substantial
13 evidence to support a judgment but Anderson does not
14 include and it does not say medical expert testimony must
15 constitute substantial evidence nor does it exclude other
16 sufficiently compelling evidence that would support a
17 judgment. Anderson also held that the Commission
18 determines the weight of the evidence that they give to
19 medical experts. And here, once again, the Commission
20 gave much greater weight to the totality of the evidence
21 on various issues including a hindrance, not just the
22 medical questionnaire. Claimant's comprehensive health
23 survey in conjunction with the remaining evidence are all
24 substantial evidence on all of the issues upon which
25 Carrier's case was denied. And so I would respectfully

1 say that the evidence in this case supports, substantial
2 evidence in this case supports the Commission's decision
3 and certainly we would request that that decision be
4 affirmed. And I would be happy to answer any questions
5 Your Honor may have.

6 THE COURT: All right, your argument is there is
7 evidence supporting the Commission's decision and their
8 argument is there is substantial evidence otherwise. That
9 is what they are saying in your opinion.

10 MS. EDWARDS: Well, that is what they are saying to
11 me in my opinion and that doesn't mean that the case is
12 not supported by substantial evidence just because someone
13 else might have decided something differently. That is
14 what I am saying, Your Honor.

15 THE COURT: What you are saying is the weight given
16 to whatever else is before the Commission is the purview
17 of the Commission.

18 MS. EDWARDS: That's correct.

19 THE COURT: Answer that question.

20 MR. PRETULAK: I can do that for you. Actually to
21 talk about, is there other competent evidence, that is the
22 question. And those cases that she cited, McLeod,
23 Ballenger and Poston, they deal with that. And they are
24 also from the 1940's and the 1960's which they are
25 perfectly good case law. There is nothing wrong with

1 them. But recently the Court's have been addressing,
2 readdressing the substantial evidence standard. They
3 started off in the Potter case and then that moved on to
4 Carolinas Recycling and then the Burnette. So we are not
5 saying that the cases cited are bad case law, they are
6 perfectly good case law but you have got to provide other
7 competent evidence. One of the examples that is used of
8 other competent evidence in those cases is testimony from
9 the claimant. Where in the record can we point to
10 testimony from the claimant saying, you know, I had these
11 problems but I had no problem working. Look at both
12 cases, we have done essentially the same thing up to a
13 certain point. We each pointed to isolated medical
14 records, right. She pointed to a laundry list of them. I
15 pointed to a laundry list of them. Let's assume for a
16 moment that that was all that was in front of the Court.
17 That is all we had, a bunch of isolated medical records.
18 Then I could see how the Commission can weigh the evidence
19 one way or the other. But in this particular case only
20 one side tied up all of the lose ends and that was our
21 side. Because the specific issues regarding Second Injury
22 Fund reimbursement were addressed. I think this sums this
23 up perfectly. At the very beginning of the argument by
24 the Second Injury Fund it was said, it is reasonable to
25 infer that she didn't have prior arthritis. That is the

1 exact problem here. It is not a reasonable inference. I
2 mean we have got definitive evidence saying, yes, those
3 prior neck problems that she had, that was arthritis. And
4 on top of all of that, arthritis was just one of the
5 theories. She had a prior neck condition. The medical
6 records are clear as day on that. And it all, without
7 tieing up the lose ends and connecting all of the dots
8 nothing makes sense. But when you come after the fact and
9 say, all right, what did this mean and what did this mean
10 and what did this mean. And you have a doctor say, this
11 is what it all meant. It was a preexisting impairment.
12 And it was a hindrance or obstacle. I mean we are talking
13 about missing time from work or taking medication as
14 Zoloft. It is reasonable to infer that because she was
15 taking medication, the Zoloft medication that that was not
16 a hindrance or obstacle to employment or reemployment
17 because essentially this problem was under control. Well
18 who says it was under control. I guess there was a note
19 in there that says, yes, she was doing better but she was
20 still getting prescriptions for Zoloft. And when you ask
21 the expert the expert says well, yeah, that is still a
22 hindrance or obstacle. Missing days from work is
23 something, it is a piece of evidence that you can use to
24 try to connect all of the dots. But see there is no
25 evidence in the record saying that she missed days from

1 work or not. Actually there is, there is a record that
2 says she missed days from work because of her neck pain,
3 we submitted that. But beyond that there is no record
4 whether she missed ten days or fifteen days or anything
5 like that. So you have got to have someone come in and
6 tie up the loose ends and that is what was done. Do I
7 completely agree that the Commission has the opportunity,
8 it is in their discretion to weigh the evidence,
9 absolutely I do. But the Courts are pointing to, these
10 are cases that have come out, you know, one right after
11 the other recently and to me that shows that the Court of
12 Appeals is concerned with the way that the evidence is
13 being viewed. If you look at that Burnette case, okay,
14 that Burnette case is very interesting to me and it is
15 going to change the way that I handle claims. A claimant
16 submitted a questionnaire much like the questionnaire that
17 we have submitted saying from a Doctor's saying, a
18 person's preexisting lumbar condition was aggravated by
19 the accident. Now instead of the defendants going out and
20 obtaining a deposition or maybe an expert medical opinion
21 of their own they said, well, Commissioner, if you see
22 right here, she wasn't having any problems with back pain
23 back, three months prior. And by the way here is an MRI
24 and the MRI shows that everything is degenerative in
25 nature and well, you know, the Commissioner really didn't

1 like the testimony of the claimant, it seemed a little
2 wishy-washy so she decided that wasn't, there wasn't an
3 aggravation.

4 THE COURT: Isn't that the credibility?

5 MR. PRETULAK: That is a credibility but the Court's
6 are saying, you are right, but the Court was saying, hey
7 listen, that is a problem. There is a medical note right
8 here that says there was an aggravation of this
9 preexisting condition, sends it back to the Commission and
10 I think it was they wanted it for remand and basically
11 taking a second look at the evidence that was submitted.
12 And so, yes, other competent evidence will work. We agree
13 with that but these new cases elaborate and build off the
14 old cases. And so if they had had expert medical opinion,
15 okay, I can see how the evidence can be waived in their
16 favor. If they had a deposition from maybe the doctors
17 that we submitted the evidence on, I can see that, that
18 would make sense. And according to the old cases, maybe
19 even testimony from the claimant herself would be enough
20 but none of that exist, it just doesn't exist in this
21 particular case. So, yes, these medical records should be
22 given conclusive effect. I have argued that in the past
23 but that was before these cases even came out. I think
24 these cases make it crystal clear. And from a substantial
25 evidence perspective it just doesn't exist. I mean if you

1 look at these two cases, at least in the Carolinas case.
2 In that particular case at least there was an IME from a
3 doctor that essentially said exactly what it was that they
4 wanted him to say. I don't know that they actually got
5 that doctor's opinion but at least there was something.
6 They had an expert speaking on issues that were relevant
7 to their position, that supported their position. That
8 just doesn't exist in this case.

9 THE COURT: I understand y'all's argument.

10 MS. EDWARDS: Your Honor, can I make three more and I
11 promise Mr. Pretulak can have the last word but I want
12 just to say a couple of things. You know, claimant's
13 deposition, claimant's is not even a party to this case.
14 They are not even a party to the reimbursement action so
15 we don't go out and get, the medical evidence is what it
16 is. The claimant is not a party to this case. We don't
17 go out and just start taking claimant's depositions when
18 all of the evidence is here already, we don't do that.
19 Second, Burnette, while it has been reversed and remanded
20 we, there is not a final decision on what that is. The
21 instruction was to either reconsider or do findings of
22 fact on the issue. So I agree that Burnette is out there
23 but that case is not in its final stage yet. But even if
24 it is, like I said, I fall back on my prior arguments, it
25 is not applicable for the reasons that I previously

1 stated. And also, Mr. Pretulak states that we both have
2 laundry lists and the fact is he wants you to agree with
3 his laundry list instead of mine. And that is a different
4 standard, that is not what having the case reversed is
5 about. And so that is all I will say, Your Honor, thank
6 you.

7 THE COURT: Okay, I understand. Y'all did good and I
8 will let y'all know.

9 MR. PRETULAK: And I will leave it at that. Thank
10 you, Your Honor.

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

File # 0511737
Carrier File # WC2005070921
Carrier Code # S-867
Employer FEIN 57-6000003

Billie New 247-11-4666
Claimant's Name SSN
3741 Cedar Springs Road, Abbeville, SC 29620-0000
Address City State Zip
(864) 446-2931
Home Phone # Work Phone #
Lynfield Tolar
Preparer's Name

Abbeville County Memorial Hospital
Employer's Name
Post Office Box 887 Abbeville SC 29620-
Address City State Zip
Palmetto Hospital Trust
Insurance Carrier
803-731-5300
Phone #

Compensation Paid:	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	69	07/14/05	11/09/06	15,942.96
2. Number of weeks T.P.				0.00
3. Number of weeks P.P.				0.00
4. Disfigurement				0.00
5. Agreement and Final Release				100,000.00
Total Compensation Paid				115,942.96
6. Total Medical Benefits Paid				56,827.72
7. Funeral Benefits				0.00
☐ Case Denied.				
Date of Injury: 7/12/2005				
By signing this receipt, I acknowledge that I have received the compensation shown above.				

By: Billie New
Claimant

By: Lynfield Tolar
Employer's Representative

Date: 11-15-06

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party _____

B. Attorney's Fee Paid by Employer _____

C. Attorney's Fee Paid by Claimant _____
(Non contingent fees, only)

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.



Claimant's Name: Billie New SSN: 247-11-4666 Employer's Name: Abbeville County Memorial Hospital
Address: 3741 Cedar Springs Road Address: P. O. Box 887
City: Abbeville State: SC Zip: 29620 City: Abbeville State: SC Zip: 29620
Home Phone: (864) 446-2931 Work Phone: () - Insurance Carrier: PHTS Risk Management Services
Preparer's Name: T. J. Hadley Law Firm: Gallivan, White, & Boyd, P.A. Preparer's Phone #: (864) 271-5382

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ claimant ☒ carrier (check one) Date of injury: 7/12/2005

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

SEE ATTACHED EXCEPTIONS.

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

Latonya Edwards, Attorney for S.C. Second Injury Fund, c/o Boykin & Davis, LLC, P. O. Box 11844, Columbia, SC 29611

on the 11th day of November, 2011 by ☐ first class mail ☐ personal service ☒ certified mail.

Preparer's Signature: T. J. Hadley Attorney at Law Title: November 11, 2011 Date

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

the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 10 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

EXCEPTIONS

1. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 3) that Claimant also had a prior incident of shoulder pain in 1991 where her physical examination revealed full range of motion in the left arm, no neck pain and no paresthesias in her cervical spine. The Hearing Commissioner also found that in 1998, Claimant also reported chest pain that radiated into her back and shoulders, and a 2005 medical narrative indicates that she experienced aching in her shoulder, neck and legs associated with fever and nausea. These findings are in error, the error being that the reliable, probative, and substantial evidence of the case does not support such a finding.
2. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 3) that Claimant also had a prior incident of shoulder pain in 1991 where her physical examination revealed full range of motion in the left arm, no neck pain and no paresthesias in her cervical spine. The Hearing Commissioner also found that in 1998, Claimant also reported chest pain that radiated into her back and shoulders, and a 2005 medical narrative indicates that she experienced aching in her shoulder, neck and legs associated with fever and nausea. These findings are in error, the error being that the findings were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such findings.
3. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 3) that Claimant also had a prior incident of shoulder pain in 1991 where her physical examination revealed full range of motion in the left arm, no neck pain and no paresthesias in her cervical spine. The Hearing Commissioner also found that in 1998, Claimant also reported chest pain that radiated into her back and shoulders, and a 2005 medical narrative indicates that she experienced aching in her shoulder, neck and legs associated with fever and nausea. These findings are in error, the error being that the findings were affected by other error of law given that the expert medical evidence did not support such findings.
4. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 4) that Carrier alleges that Claimant had preexisting arthritis but the prior medical records do not reveal preexisting arthritis and Claimant did not indicate arthritis on her health survey. The Hearing Commissioner found that the greater weight of the medical evidence supports a finding that Claimant did not have preexisting arthritis and that even if Claimant had preexisting arthritis the medical evidence in the record indicates that it was not serious enough to constitute a hindrance or obstacle to her employment because she is noted to have missed work only periodically. These findings are in error, the error being that the reliable, probative, and substantial evidence of the case does not support such a finding..

5. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 4) that Carrier alleges that Claimant had preexisting arthritis but the prior medical records do not reveal preexisting arthritis and Claimant did not indicate arthritis on her health survey. The Hearing Commissioner found that the greater weight of the medical evidence supports a finding that Claimant did not have preexisting arthritis and that even if Claimant had preexisting arthritis the medical evidence in the record indicates that it was not serious enough to constitute a hindrance or obstacle to her employment because she is noted to have missed work only periodically. These findings are in error, the error being that the findings were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such findings.
6. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 4) that Carrier alleges that Claimant had preexisting arthritis but the prior medical records do not reveal preexisting arthritis and Claimant did not indicate arthritis on her health survey. The Hearing Commissioner found that the greater weight of the medical evidence supports a finding that Claimant did not have preexisting arthritis and that even if Claimant had preexisting arthritis the medical evidence in the record indicates that it was not serious enough to constitute a hindrance or obstacle to her employment because she is noted to have missed work only periodically. These findings are in error, the error being that the findings were affected by other error of law given that the expert medical evidence did not support such findings.
7. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 5) that Claimant's preexisting anxiety was not permanent and serious enough to constitute a hindrance or obstacle to her employment. The Commissioner bases this finding on the prior medical reports, which the Hearing Commissioner interpreted to indicate that Claimant's anxiety was treated with medication and Claimant noted that the medication had improved her symptoms of anxiety and the Commissioner finds based on the greater weight of the medical evidence that Claimant's anxiety and depression were well controlled with medication prior to the work injury. These findings are in error, the error being that the reliable, probative, and substantial evidence of the case does not support such a finding.
8. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 5) that Claimant's preexisting anxiety was not permanent and serious enough to constitute a hindrance or obstacle to her employment. The Commissioner bases this finding on the prior medical reports, which the Hearing Commissioner interpreted to indicate that Claimant's anxiety was treated with medication and Claimant noted that the medication had improved her symptoms of anxiety and the Commissioner finds based on the greater weight of the medical evidence that Claimant's anxiety and depression were well controlled with medication prior to the work injury. These findings are in error, the error being that the findings were arbitrary or capricious or characterized by abuse of discretion or a clearly

unwarranted exercise of discretion given that the expert medical evidence did not support such findings.

9. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 5) that Claimant's preexisting anxiety was not permanent and serious enough to constitute a hindrance or obstacle to her employment. The Commissioner bases this finding on the prior medical reports, which the Hearing Commissioner interpreted to indicate that Claimant's anxiety was treated with medication and Claimant noted that the medication had improved her symptoms of anxiety and the Commissioner finds based on the greater weight of the medical evidence that Claimant's anxiety and depression were well controlled with medication prior to the work injury. These findings are in error, the error being that the findings were affected by other error of law given that the expert medical evidence did not support such findings.
10. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 6) that Claimant's preexisting neck and shoulder problems were not permanent and serious enough to constitute a hindrance or obstacle to her employment. The Hearing Commissioner found that when Claimant presented for treatment of neck pain in 1991, her physical examination revealed full range of motion in the left arm, no neck pain, and no increased paresthesias in the cervical spine. The Hearing Commissioner also found that Claimant's subsequent visit for treatment of shoulder and neck pain was in conjunction with aching flu like symptoms. These findings are in error, the error being that the reliable, probative, and substantial evidence of the case does not support such a finding.
11. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 6) that Claimant's preexisting neck and shoulder problems were not permanent and serious enough to constitute a hindrance or obstacle to her employment. The Hearing Commissioner found that when Claimant presented for treatment of neck pain in 1991, her physical examination revealed full range of motion in the left arm, no neck pain, and no increased paresthesias in the cervical spine. The Hearing Commissioner also found that Claimant's subsequent visit for treatment of shoulder and neck pain was in conjunction with aching flu like symptoms. These findings are in error, the error being that the findings were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such findings.
12. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 6) that Claimant's preexisting neck and shoulder problems were not permanent and serious enough to constitute a hindrance or obstacle to her employment. The Hearing Commissioner found that when Claimant presented for treatment of neck pain in 1991, her physical examination revealed full range of motion in the left arm, no neck pain, and no increased paresthesias in the cervical spine. The Hearing Commissioner also found that Claimant's subsequent visit for treatment

of shoulder and neck pain was in conjunction with aching flu like symptoms. These findings are in error, the error being that the findings were affected by other error of law given that the expert medical evidence did not support such findings.

13. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 7) that Claimant also noted on her medical health survey that she had never been refused employment for health reasons, did not have any handicap or disability, did not have any condition that required a special work assignment, was not under a doctor's care, had never been out of work for more than one (1) week at a time and had never had back problems, the error being that the reliable, probative, and substantial evidence of the case does not support such a finding.
14. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 7) that Claimant also noted on her medical health survey that she had never been refused employment for health reasons, did not have any handicap or disability, did not have any condition that required a special work assignment, was not under a doctor's care, had never been out of work for more than one (1) week at a time and had never had back problems, the error being that the findings were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such findings.
15. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 7) that Claimant also noted on her medical health survey that she had never been refused employment for health reasons, did not have any handicap or disability, did not have any condition that required a special work assignment, was not under a doctor's care, had never been out of work for more than one (1) week at a time and had never had back problems, the error being that the findings were affected by other error of law given that the expert medical evidence did not support such findings.
16. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 8) that the knowledge statement also indicates that Claimant "periodically" complained and missed work due to pain. The Commissioner finds that Claimant's periodic complaints of pain and missed work does not rise to the level being a hindrance or obstacle to her employment, the error being that the reliable, probative, and substantial evidence of the case does not support such a finding.
17. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 8) that the knowledge statement also indicates that Claimant "periodically" complained and missed work due to pain. The Commissioner finds that Claimant's periodic complaints of pain and missed work does not rise to the level being a hindrance or obstacle to her employment, the error being that the findings were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such findings.

18. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 8) that the knowledge statement also indicates that Claimant "periodically" complained and missed work due to pain. The Commissioner finds that Claimant's periodic complaints of pain and missed work does not rise to the level being a hindrance or obstacle to her employment, the error being that the findings were affected by other error of law given that the expert medical evidence did not support such findings.
19. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 9) that Carrier did not establish all elements of reimbursement pursuant to S.C. Code Ann. § 42-9-400. Accordingly, the Commissioner found that Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund. These findings are in error, the error being that the reliable, probative, and substantial evidence of the case does not support such a finding.
20. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 9) that Carrier did not establish all elements of reimbursement pursuant to S.C. Code Ann. § 42-9-400. Accordingly, the Commissioner found that Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund. These findings are in error, the error being that the findings were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such findings.
21. The Hearing Commissioner erred in finding as a fact (Finding of Fact No. 9) that Carrier did not establish all elements of reimbursement pursuant to S.C. Code Ann. § 42-9-400. Accordingly, the Commissioner found that Carrier is not entitled to reimbursement from the South Carolina Second Injury Fund. These findings are in error, the error being that the findings were affected by other error of law given that the expert medical evidence did not support such findings.
22. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann. § 42-9-400 that to qualify for reimbursement, Carrier had the burden to prove that Claimant's preexisting anxiety, depression, and neck problems were permanent and serious enough to be hindrances or obstacles to Claimant's employment. The Hearing Commissioner concluded that Carrier failed to meet its burden of proof on this issue; and, therefore, failed to meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400. These conclusions are in error, the error being that the reliable, probative, and substantial evidence of the case does not support such a conclusion.
23. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann. § 42-9-400 that to qualify for reimbursement, Carrier had the burden to prove that Claimant's preexisting anxiety, depression, and neck problems were permanent and serious enough to be hindrances or obstacles to Claimant's employment. The Hearing Commissioner concluded that Carrier failed to meet its

burden of proof on this issue; and, therefore, failed to meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400. These conclusions are in error, the error being that the conclusions were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such conclusions.

24. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann. § 42-9-400 that to qualify for reimbursement, Carrier had the burden to prove that Claimant's preexisting anxiety, depression, and neck problems were permanent and serious enough to be hindrances or obstacles to Claimant's employment. The Hearing Commissioner concluded that Carrier failed to meet its burden of proof on this issue; and, therefore, failed to meet all requirements for reimbursement pursuant to S.C. Code Ann. § 42-9-400. These conclusions are in error, the error being that the conclusions were affected by other error of law given that the expert medical evidence did not support such findings.
25. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann. § 42-9-400 that to qualify for reimbursement, Carrier had the burden to prove that Claimant had preexisting arthritis. The Hearing Commissioner concluded that Carrier did not prove that Claimant had preexisting arthritis and therefore, failed to prove its entitlement to reimbursement based on preexisting arthritis. These conclusions were in error, the error being that the reliable, probative, and substantial evidence of the case does not support such a conclusion.
26. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann. § 42-9-400 that to qualify for reimbursement, Carrier had the burden to prove that Claimant had preexisting arthritis. The Hearing Commissioner concluded that Carrier did not prove that Claimant had preexisting arthritis and therefore, failed to prove its entitlement to reimbursement based on preexisting arthritis. These conclusions were in error, the error being that the conclusions were arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence did not support such conclusions.
27. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code Ann. § 42-9-400 that to qualify for reimbursement, Carrier had the burden to prove that Claimant had preexisting arthritis. The Hearing Commissioner concluded that Carrier did not prove that Claimant had preexisting arthritis and therefore, failed to prove its entitlement to reimbursement based on preexisting arthritis. These conclusions were in error, the error being that the conclusions were affected by other error of law given that the expert medical evidence did not support such findings.

28. The Hearing Commissioner erred in failing to find as a fact that the instant action was a medically complex case, the error being that the evidence as a whole, including reliable, probative, and substantial evidence of the case supports a finding that this is a medically complex case.
29. The Hearing Commissioner erred in failing to find as a fact that the instant action was a medically complex case, the error being that the failure to find this as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the evidence as a whole supports a finding that this is a medically complex case.
30. The Hearing Commissioner erred in failing to find as a fact that the instant action was a medically complex case, the error being that the failure to find this as fact was affected by other error of law given that the evidence as a whole supports a finding that this is a medically complex case.
31. The Hearing Commissioner erred in failing to find as fact that Carrier's medical evidence should be given conclusive effect under McLeod v. Piggly Wiggly Co., 280 S.C. 466, 313 S.E.2d 38 (Ct. App. 1984); Wynn v. People's Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961); Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946); Poston v. Southeastern Construction Co., 208 S.C. 35, 36 S.E.2d 858 (1946); and Baker v. Graniteville Co., 197 S.C. 21, 14 S.E.2d 367 (1941), the error being that reliable, probative, and substantial evidence of the case, including medical questionnaires from Dr. Michael P. Kilburn and Dr. Nicholas A. Lind, other compelling evidence submitted in the case, and Claimant's medical records, support such a conclusion. This Exception also applies to Exceptions 1-21, 28-30, & 34-72 as well.
32. The Hearing Commissioner erred in failing to find as fact that Carrier's medical evidence should be given conclusive effect under McLeod v. Piggly Wiggly Co., 280 S.C. 466, 313 S.E.2d 38 (Ct. App. 1984); Wynn v. People's Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961); Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946); Poston v. Southeastern Construction Co., 208 S.C. 35, 36 S.E.2d 858 (1946); and Baker v. Graniteville Co., 197 S.C. 21, 14 S.E.2d 367 (1941), the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion. This Exception also applies to Exceptions 1-21, 28-30, & 34-72 as well.
33. The Hearing Commissioner erred in failing to find as fact that Carrier's medical evidence should be given conclusive effect under McLeod v. Piggly Wiggly Co., 280 S.C. 466, 313 S.E.2d 38 (Ct. App. 1984); Wynn v. People's Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961); Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946); Poston v. Southeastern Construction Co., 208 S.C. 35, 36 S.E.2d 858 (1946); and Baker v. Graniteville Co., 197 S.C. 21, 14 S.E.2d 367 (1941), the error being that the failure to find as fact was affected by

other error of law. This Exception also applies to Exceptions 1-21, 28-30, & 34-72 as well.

34. The Hearing Commissioner erred in failing to find as a fact that this is a medically complex case, and as such, the medical evidence should be given conclusive effect, the error being that the evidence as a whole, including reliable, probative, and substantial evidence of the case supports such a finding.
35. The Hearing Commissioner erred in failing to find as a fact that this is a medically complex case, and as such, the medical evidence should be given conclusive effect, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the evidence as a whole supported such a finding.
36. The Hearing Commissioner erred in failing to find as a fact that this is a medically complex case, and as such, the medical evidence should be given conclusive effect, the error being that the failure to find as fact was affected by other error of law given that the evidence as a whole supported such a finding.
37. The Hearing Commissioner erred in failing to find as a fact that the arthritis and anxiety preexisted the July 12, 2005 injury when the reliable, probative and substantial evidence would support such a finding.
38. The Hearing Commissioner erred in failing to find as a fact that the arthritis and anxiety preexisted the July 12, 2005 injury, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence supported such a finding.
39. The Hearing Commissioner erred in failing to find as a fact that the arthritis and anxiety preexisted the July 12, 2005 injury, the error being that the failure to find as fact was affected by other error of law given that the expert medical evidence supported such a finding.
40. The Hearing Commissioner erred in failing to find as a fact that the Claimant had a back injury with arthritis prior to her July 12, 2005 work accident when the reliable, probative and substantial evidence of the case supports such a finding.
41. The Hearing Commissioner erred in failing to find as a fact that the Claimant had a back injury with arthritis prior to her July 12, 2005 work accident, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.
42. The Hearing Commissioner erred in failing to find as a fact that the Claimant had a back injury with arthritis prior to her July 12, 2005 work accident, the error

being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.

43. The Hearing Commissioner erred in failing to find as a fact that Carrier established employer knowledge under S.C. Code § 42-9-400(c) based upon the employer knowledge statement and the Claimant's completion of the Annual Health Screening, when the reliable, probative and substantial evidence of the case supports such a finding.
44. The Hearing Commissioner erred in failing to find as a fact that Carrier established employer knowledge under S.C. Code § 42-9-400(c) based upon the employer knowledge statement and the Claimant's completion of the Annual Health Screening, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the evidence as a whole submitted in the case supports such a finding.
45. The Hearing Commissioner erred in failing to find as a fact that Carrier established employer knowledge under S.C. Code § 42-9-400(c) based upon the employer knowledge statement and the Claimant's completion of the Annual Health Screening, the error being that the failure to find as fact was affected by other error of law given that the evidence as a whole submitted in the case supports such a finding.
46. The Hearing Commissioner erred in failing to find as a fact that Carrier was entitled to a statutory presumption under S.C. Code § 42-9-400(d)(4) that the Claimant's preexisting arthritis was permanent and a hindrance or obstacle to her employment or reemployment, when the reliable, probative and substantial evidence of the case supports such a finding.
47. The Hearing Commissioner erred in failing to find as a fact that Carrier was entitled to a statutory presumption under S.C. Code § 42-9-400(d)(4) that the Claimant's preexisting arthritis was permanent and a hindrance or obstacle to her employment or reemployment, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.
48. The Hearing Commissioner erred in failing to find as a fact that Carrier was entitled to a statutory presumption under S.C. Code § 42-9-400(d)(4) that the Claimant's preexisting arthritis was permanent and a hindrance or obstacle to her employment or reemployment, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.

49. The Hearing Commissioner erred in failing to find as a fact that Carrier established employer knowledge under S.C. Code § 42-9-400(c) based upon the employer knowledge statement and the Claimant's completion of the Annual Health Screening, when the reliable, probative and substantial evidence of the case supports such a finding.
50. The Hearing Commissioner erred in failing to find as a fact that Carrier established employer knowledge under S.C. Code § 42-9-400(c) based upon the employer knowledge statement and the Claimant's completion of the Annual Health Screening, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the evidence as a whole submitted in the case supports such a finding.
51. The Hearing Commissioner erred in failing to find as a fact that Carrier established employer knowledge under S.C. Code § 42-9-400(c) based upon the employer knowledge statement and the Claimant's completion of the Annual Health Screening, the error being that the failure to find as fact was affected by other error of law given that the evidence as a whole submitted in the case supports such a finding.
52. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis was a permanent physical impairment, when the reliable, probative and substantial evidence of the case supports such a finding.
53. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis was a permanent physical impairment, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.
54. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis was a permanent physical impairment, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.
55. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, when the reliable, probative and substantial evidence of the case supports such a finding.
56. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of

discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.

57. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.
58. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis combined with or was aggravated by her July 12, 2005 work accident to substantially increase the overall liability of Carrier and Employer, when the reliable, probative and substantial evidence of the case supports such a finding.
59. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis combined with or was aggravated by her July 12, 2005 work accident to substantially increase the overall liability of Carrier and Employer, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.
60. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting arthritis combined with or was aggravated by her July 12, 2005 work accident to substantially increase the overall liability of Carrier and Employer, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.
61. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety was a permanent physical impairment, when the reliable, probative and substantial evidence of the case supports such a finding.
62. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety was a permanent physical impairment, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.
63. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety was a permanent physical impairment, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.
64. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety was of such seriousness so as to constitute a hindrance or

obstacle to Claimant's employment or reemployment, when the reliable, probative and substantial evidence of the case supports such a finding.

65. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.
66. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.
67. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety combined with or was aggravated by her July 12, 2005 work accident to substantially increase the overall liability of Carrier and Employer, when the reliable, probative and substantial evidence of the case supports such a finding.
68. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety combined with or was aggravated by her July 12, 2005 work accident to substantially increase the overall liability of Carrier and Employer, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.
69. The Hearing Commissioner erred in failing to find as a fact that the Claimant's preexisting anxiety combined with or was aggravated by her July 12, 2005 work accident to substantially increase the overall liability of Carrier and Employer, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.
70. The Hearing Commissioner erred in failing to find as a fact that Carrier was entitled to a statutory presumption under S.C. Code § 42-9-400(d)(34)(b) that the Claimant's preexisting impairments which combined with her July 12, 2005 work accident to result in permanent impairment equal to or greater than seventy-eight (78) weeks were permanent and hindrances or obstacles to her employment or reemployment, when the reliable, probative and substantial evidence of the case supports such a finding.
71. The Hearing Commissioner erred in failing to find as a fact that Carrier was entitled to a statutory presumption under S.C. Code § 42-9-400(d)(34)(b) that the

Claimant's preexisting impairments which combined with her July 12, 2005 work accident to result in permanent impairment equal to or greater than seventy-eight (78) weeks were permanent and hindrances or obstacles to her employment or reemployment, the error being that the failure to find as fact was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a finding.

72. The Hearing Commissioner erred in failing to find as a fact that Carrier was entitled to a statutory presumption under S.C. Code § 42-9-400(d)(34)(b) that the Claimant's preexisting impairments which combined with her July 12, 2005 work accident to result in permanent impairment equal to or greater than seventy-eight (78) weeks were permanent and hindrances or obstacles to her employment or reemployment, the error being that the failure to find as fact was affected by other error of law given that expert medical evidence submitted in the case supports such a finding.
73. The Hearing Commissioner erred in failing to conclude as a matter of law that the instant action was a medically complex case, the error being that the evidence as a whole, including reliable, probative, and substantial evidence of the case supports the conclusion.
74. The Hearing Commissioner erred in failing to conclude as a matter of law that the instant action was a medically complex case, the error being that the failure to conclude as a matter of law was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the evidence as a whole supports the conclusion.
75. The Hearing Commissioner erred in failing to conclude as a matter of law that the instant action was a medically complex case, the error being that the failure to find as fact was affected by other error of law given that the evidence as a whole supports the conclusion.
76. The Hearing Commissioner erred in failing to conclude as a matter of law that Carrier's medical evidence should be given conclusive effect under McLeod v. Piggly Wiggly Co., 280 S.C. 466, 313 S.E.2d 38 (Ct. App. 1984); Wynn v. People's Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961); Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946); Poston v. Southeastern Construction Co., 208 S.C. 35, 36 S.E.2d 858 (1946); and Baker v. Graniteville Co., 197 S.C. 21, 14 S.E.2d 367 (1941), the error being that the evidence as a whole submitted in the case supports such a conclusion. This Exception applies to Exceptions 22-27, 73-75, & 79-102 as well.
77. The Hearing Commissioner erred in failing to conclude as a matter of law that Carrier's medical evidence should be given conclusive effect under McLeod v. Piggly Wiggly Co., 280 S.C. 466, 313 S.E.2d 38 (Ct. App. 1984); Wynn v.

People's Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961); Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946); Poston v. Southeastern Construction Co., 208 S.C. 35, 36 S.E.2d 858 (1946); and Baker v. Graniteville Co., 197 S.C. 21, 14 S.E.2d 367 (1941), the error being that the failure to conclude as a matter of law was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the evidence as a whole submitted in the case supports such a conclusion. This Exception applies to Exceptions 22-27, 73-75, & 79-102 as well.

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79. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant had arthritis prior to her July 12, 2005 work accident, when the reliable, probative and substantial evidence of the case does not support such a conclusion.
80. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant had arthritis prior to her July 12, 2005 work accident, when such a finding would be arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case does not support such a conclusion.
81. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant had arthritis prior to her July 12, 2005 work accident, when such a finding would be affected by other error of law given that expert medical evidence submitted in the case does not support such a conclusion.
82. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant had anxiety prior to her July 12, 2005 work accident, when the reliable, probative and substantial evidence of the case does not support such a conclusion.
83. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant had anxiety prior to her July 12, 2005 work accident, when such a finding would

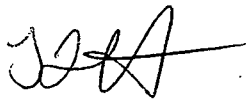
be arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case does not support such a conclusion.

84. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant had anxiety prior to her July 12, 2005 work accident, when such a finding would be affected by other error of law given that expert medical evidence submitted in the case does not support such a conclusion.
85. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier failed to prove the requisite elements of reimbursement pursuant to S.C. Code § 42-9-400, when the reliable, probative and substantial evidence of the case does not support such a conclusion
86. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier failed to prove the requisite elements of reimbursement pursuant to S.C. Code § 42-9-400, when such a finding would be arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case does not support such a conclusion.
87. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier failed to prove the requisite elements of reimbursement pursuant to S.C. Code § 42-9-400, when such a finding would be affected by other error of law given that expert medical evidence submitted in the case does not support such a conclusion.
88. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant's preexisting anxiety was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, when the reliable, probative and substantial evidence of the case does not support such a conclusion.
89. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant's preexisting anxiety was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, when such a finding would be arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case does not support such a conclusion.
90. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet its burden to prove that the Claimant's preexisting anxiety was of such seriousness so as to constitute a hindrance or obstacle to Claimant's employment or reemployment, when such a finding would

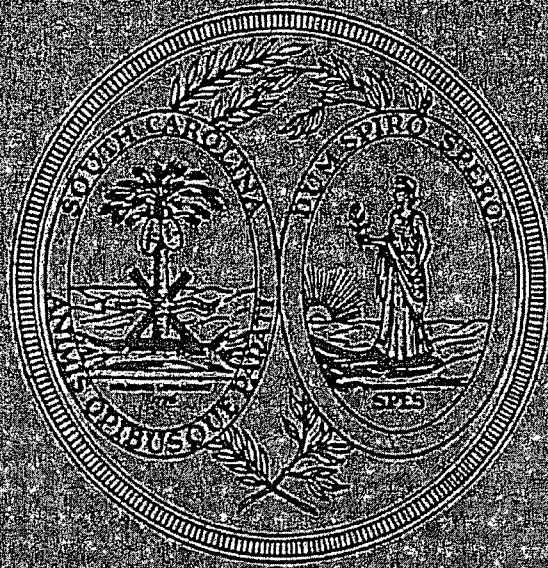
be affected by other error of law given that expert medical evidence submitted in the case does not support such a conclusion.

91. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet all requirements of S.C. Code § 42-9-400 and therefore was not entitled to reimbursement from the South Carolina Second Injury Fund, when the reliable, probative and substantial evidence of the case does not support such a conclusion.
92. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet all requirements of S.C. Code § 42-9-400 and therefore was not entitled to reimbursement from the South Carolina Second Injury Fund, when such a finding would be arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case does not support such a conclusion.
93. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier did not meet all requirements of S.C. Code § 42-9-400 and therefore was not entitled to reimbursement from the South Carolina Second Injury Fund, when such a finding would be affected by other error of law given that expert medical evidence submitted in the case does not support such a conclusion.
94. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier's claim for reimbursement is denied, when the reliable, probative and substantial evidence of the case does not support such a conclusion.
95. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier's claim for reimbursement is denied, when such a finding would be arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion when the expert medical evidence submitted in the case does not support such a conclusion.
96. The Hearing Commissioner erred in concluding as a matter of law under S.C. Code § 42-9-400 that Carrier's claim for reimbursement is denied, when such a finding would be affected by other error of law when the expert medical evidence submitted in the case does not support such a conclusion.
97. The Hearing Commissioner erred in ordering that Carrier's claim for reimbursement pursuant to S.C. Code § 42-9-400 is denied and dismissed with prejudice subject to its statutory right to appeal, when the reliable, probative, and substantial evidence of the case supports an order that Carrier is entitled to reimbursement from the South Carolina Second Injury Fund.

98. The Hearing Commissioner erred in ordering that Carrier's claim for reimbursement pursuant to S.C. Code § 42-9-400 is denied and dismissed with prejudice subject to its statutory right to appeal, when such a finding would be arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that the expert medical evidence submitted in the case does not support such an order.
99. The Hearing Commissioner erred in ordering that Carrier's claim for reimbursement pursuant to S.C. Code § 42-9-400 is denied and dismissed with prejudice subject to its statutory right to appeal, when such a finding would be affected by other error of law given that the expert medical evidence submitted in the case does not support such an order.
100. The Hearing Commissioner erred in not concluding as a matter of law under S.C. Code § 42-9-400 that Carrier was entitled to reimbursement from the South Carolina Second Injury Fund under S.C. Code. § 42-9-400, when the reliable, probative and substantial evidence of the case supports such a finding.
101. The Hearing Commissioner erred in not concluding as a matter of law under S.C. Code § 42-9-400 that Carrier was entitled to reimbursement from the South Carolina Second Injury Fund under S.C. Code. § 42-9-400, the error being that the failure to conclude as a matter of law was arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion given that expert medical evidence submitted in the case supports such a conclusion.
102. The Hearing Commissioner erred in not concluding as a matter of law under S.C. Code § 42-9-400 that Carrier was entitled to reimbursement from the South Carolina Second Injury Fund under S.C. Code. § 42-9-400, the error being that the failure to conclude as a matter of law was affected by other error of law given that expert medical evidence submitted in the case supports such a conclusion.



**SOUTH CAROLINA
SECOND INJURY FUND**



**A STEP-BY-STEP APPROACH
FOR HANDLING
SECOND INJURY FUND CLAIMS**

INTRODUCTION

The mission of the South Carolina Second Injury Fund is to protect employers by limiting the cost of a workers' compensation claim when a disabled employee is injured on the job and encourage employment of the disabled. The degree of the Fund's utilization attests to its success.

While there has always been a great deal of interest in the perfection of Second Injury Fund claims by carriers and self-insured employers, the passage of Americans With Disabilities Act in 1990 has placed renewed emphasis on Second Injury Fund claims. We are providing this manual to people who are responsible for the administration of Second Injury Fund files. This is a "how to" manual. It attempts to break down the basic elements of the claims handling process and outline the major factors to consider as you go from first notice of a claim to final reimbursement, but we must emphasize there are no shortcuts. Each claim stands on its own merits.

This written material and oral presentation are intended to provide those involved in administering workers' compensation general information regarding the South Carolina Second Injury Fund. They are provided with the understanding that the presenters are not engaged in rendering legal, accounting, or other professional services. The material, written and oral, should not be used as a substitute for professional service in specific circumstances dealing with a specific claim, client or legal matter. Users should research original sources of authority and/or obtain the services of a professional.

CONTENTS

SECTION I -- CLAIM PROCEDURES

SECTION II -- ASSESSMENT AND REIMBURSEMENT PROCEDURES

SECTION III -- LEGAL PROCEDURES

CLAIM PROCEDURES

This section contains procedures and examples of the requirements needed in the processing of your Second Injury Fund claims.

Notice to the Second Injury Fund and a sample letter.

Explanation of the notice of possible Second Injury Fund claim and sample of form.

How to meet the knowledge requirement and examples.

Medical questionnaire and examples.

Acceptance package with examples.

Examples of denials.

Second Injury Fund adjuster and county information list.

RE:

1. Did the patient have _____ prior to _____?
YES _____ NO _____

COMMENT:

2. Is the _____ permanent?
YES _____ NO _____

3. Was the _____ serious enough to constitute a hindrance or obstacle to employment before the injury of _____?
YES _____ NO _____

If yes, please explain!

4. Did the injury of _____ aggravate or combine with the pre-existing _____?
YES _____ NO _____
COMMENT:

5. Did the fact that the patient had _____ cause him/her to lose substantially more time from work than he/she would have had from the _____ injury alone?
YES _____ NO _____
COMMENT:

6. Did the fact that the patient had _____ cause him/her to have a substantially higher percentage of permanent disability than he/she would have had from the _____ injury alone?
YES _____ NO _____
COMMENT:

7. Have the medical costs in this case been substantially increased due to the existence of _____?
YES _____ NO _____
COMMENT:

Physician Signature

Date

FAMILY MEDICINE ASSOCIATES

NAME

Billy New

nka

DATE

Holmes Billy S New 5/20/91 130

☐ CALLED

☐ WANTS TO SEE YOU

☐ URGENT

☐ STOPPED TO SEE YOU

☐ PLEASE CALL

☐ RETURNED YOUR CALL

☐ WILL CALL AGAIN

☐ WILL RETURN LATER

MESSAGE:

Got sick @ work
Friday + had to leave.
Can you give ex-
cuse?

DISPOSITION:

ok.

BY

UG/BS

BY

Date 5/28/91

☒ No Show

☒ Cancellation

7-2-91

WT- 171

BP 128/80

P- 100

T- 98°

① RF

Pepcid qhs

Reglan ac+hs

② ER 6/16 continues numbness tips of index ring
fe

New, Billie

7/2/91

S: History as above.

O: She has full range of motion in the left arm, and normal function in the left hand. No neck pain, no increased paresthesias with loading of the cervical spine.

A/P: (1) Sliding hiatal hernia and peptic ulcer disease. Will refill her Pepcid and Reglan for one month with 2 refills. She is to take it for a full month and try to be off for a week. If the symptoms she is to take it for another month.

(2) Paresthesias left fingers, this may be a temporary paresthesia from her shoulder injury. I told her to watch it for 2 more weeks, if not improved bring her back LH/jcc

10-3-91

WT- 168

BP- 140/70

P- 96

T- 98°

hasn't been feeling good, felt dizzy @work today.
vaginal disch. -

FAMILY MEDICINE ASSOCIATES

Post Office Box 968, Abbeville, SC 29620

NAME

Billie New

NKA

DATE

Nurses notes prev. page

NEW, BILLIE

11/13/97

- S: C/O ears hurting, achy all over, chills, diarrhea, nausea, and some dizziness. Also had some sinus drainage. On no medications at present, except for Prevacid. IMP 11/03/97.
- O: NAD. Afebrile. Oral pharynx erythematous. Tonsils slightly enlarged. Neck supple with shotty lymphadenopathy. TMs clear. Heart RRR. Lungs clear. Extremities with no CCE. Rapid Strep negative.
- A/P: Sinusitis. She is somewhat tender over the maxillary sinuses and she has a somewhat productive cough at night. Start Augmentin 875 po bid x2wks and also Entex-LA 1 bid as needed for congestion. RJT:lar *(signature)*

3-11-98

Wt 183 BP 110/70 P 80 T 98.3
C/O Gall bladder symptoms Abd / side pain
Nausea & vomiting & Diarrhea. Occasionally
when checked several times & X-ray always neg
Muscle & swelling in RUQ pain - into shoulders
pain in chest & (L) & (R) side
Worse eating foods - fried
Stress Thallium @ Dr Rodillo 3-18-98 8PM

NEW, BILLIE

03/11/98

- S: C/O abd pain and nausea off and on for the last several months with a lot of RUQ pain and pain going up into her shoulders. She has had a couple of episodes recently where she had chest pain that went to her back and went up into her shoulders, and up into the L side of her neck. Did not get diaphoretic or nauseated with this. FH very remarkable for CAD.
- O: Afebrile. V/S stable. Heart RRR. Lungs clear. Abd soft, NT, ND, no organomegaly. No RUQ tenderness.
- A/P: 1. Abd pain. Likely GB etiology. She has had negative HIDA Scan and U/S done in the past, but this will need to be worked up in the future.
2. Chest pain. She has had GERD. Started on Pepcid 20mg po bid, however, with her FH of CAD I am scheduling a Stress Thallium with Dr. Rodillo on 03/18/98. Once she is cleared from cardiac standpoint, will refer to surgery. RJT:lar *(signature)*

3-19-98

Stress Thallium - Tues. 3/31/98 @ 9:00am - HIDA Scan @ (cancelled)

3/20/98

Dr. Rapp - Wed. Apr. 8 @ 4:00 (LW)

3/24/98

v lipid profile next mth. fasting. LW/RPT

FAMILY MEDICINE ASSOCIATES

Post Office Box 968, Abbeville, SC 29620

NAME

Billie New

NKa

DATE

4-16-02

Wt - 177 BP 130/88 P - 100 T - 98°

States was told heart cath "Normal"

Still O/C P. ↑ HR sweating - Wants to try Zoloft for "anxiety attacks"

BILLIE NEW 4/16/02

S Was seen in the ER with chest pain. She subsequently had a stress test which was suggestive of ischemia and this led to a cath which is reported as normal. She feels that most of her symptoms are probably related to anxiety.

O Chest and CV exam unremarkable. She has continued to smoke, but is trying to quit.

A Anxiety.

P I have asked her to start Zoloft 25 mg x 1 wk and then 50 mg daily. I will see her back in about 4 wks. She has some Ativan that she will use p.r.n. also.

Robert W. Todd, M.D./wt

5-14-02

Wt - 178 BP 120/70 P - 88 T - 98°

Rev on Zoloft - feels better.

BILLY NEW 5/14/02

S Rk on depression and anxiety. She feels much better on the Zoloft 50 mg daily. She is not taking Ativan at this time.

O Vitals as above. Chest and CV exam unremarkable.

A Depression with anxiety.

P Continue Zoloft 50 mg daily. Refills given x 6 mths. I will see her at that time if she wishes to continue the med.

Robert W. Todd, M.D./wt

8/27/02

Wt - 182 BP 130/80 P - 88 T - 97.2

✓ mole @ lower leg -; Wart mid back @ C6 pi. fix

BILLIE NEW 8/27/02

S Would like us to check on some skin lesions.

O We froze two warty lesions, one on her finger and one in the mid back area. Excised two skin tags from her neck. The bases were hypercat and I did a shave biopsy of a dark lesion on her R lower leg. That specimen was sent for pathology.

A Excision and cryosurgery of multiple skin lesions.

P I will give her a call when we get the pathology report back. Wound precautions were given.

Robert W. Todd, M.D./wt

FAMILY MEDICINE ASSOCIATES

Post Office Box 968, Abbeville, SC 29620

NAME Billie New

nka

DATE	Wt	BP	P	T
3/8/01	182	150/74	P	98°
	dysuria, nausea, side pain			
	1 UA			
	applicator @ 15 x 5 days Metro Gel - CVS			
	Diffucan 150 #2			
	now + repeat in 3 days			
	12 th Called to CVS machine			
	Cipro 500 BID x 14 days, Flagyl 500 BID x 14 days			
	called to CVS machine per Dr. Hershberger			

BILLY NEW

03-08-04

S: Dysuria, nausea and side pain. She was seen and sent to Dr. Helmuth in November. States she still has discomfort. Apparently has had colonoscopy in the past. Showed she had some diverticulitis.

O: Vitals stable. Lungs clear. Heart regular. Abdomen with generalized tenderness. She knows she has vaginitis, but does not want pelvic exam. UA clear. White count 124. No significant shift. Hgb 14.4.

A: 1. Abdominal pain. 2. Vaginitis.

P: MetroGel vaginal, 1 applicatorful qhs x 5. Diffucan 150 #2. 1 now and repeat in 3 days. After reviewing her colonoscopy and what she tells me about her diverticulitis. Treat persistent abdominal pain with Cipro 500 b.i.d. x 14 days, Flagyl 500 b.i.d. x 14 days. If she is not cleared with this treatment she may need CT of abdomen.

Dawne F. Hershberger, CFNP/C. Allen Kolb, M.D. /rmb

Hershberger Billie New		CVS	6/18/04 3:36
TO	FROM	PHONE NO.	DATE
☐ PLEASE CALL 1 2 3		☐ RETURNED YOUR CALL	
☐ WILL CALL AGAIN			
MESSAGE: RA, 20147 + 50 #30 Tpd		REPLY: ok x 3	
BY: DMCLAS		BY: 455 unom	
CONDITION:		AGE:	
TEMP:		CURRENT MEDICATION:	
CHART NO:			

FAMILY MEDICINE ASSOCIATES

Post Office Box 968, Abbeville, SC 29520

NAME

Billie New (2-19-61)

GKA

DATE

2-9-05 WT 184 1/2 T 98 B/P 110/60
Fever, cough, abd pain, nausea, dizziness,
achy, diarrhea Sick x 3-4d.
cough 2 MAX Z-PAK
PANCOF PD

Billie J. New

02/09/05

S: Fever, cough, abd pain, nausea, and dizziness. Also achy. No diarrhea. Sick x3-4d.
O: Afebrile. No apparent distress. TMs clear. Nares with mild congestion. Oropharynx moist and clear. Neck supple with no adenopathy. Lungs clear to auscultation. Heart regular rate and rhythm without murmur, brisk refill.
A/P: Cough that sounds somewhat bronchitic, although is probably a viral illness. Zithromax Z-Pak and PanCof-PD 1 tsp q6-8h
prn cough and congestion #240mL. Juan Bonetti, M.D./lar

Hershberger Billie New CUS Billie New
TO FROM TELEPHONE NO. DATE TIME

☐ PLEASE CALL 1 2 3

☐ RETURNED YOUR CALL

☐ WILL CALL AGAIN

MESSAGE:

RF. 2010f + 50
#30
T PD

REPLY:

OK
X 4 voice mail @
12:30/8

CONDITION:

AGE

TEMP

CURRENT MEDICATION:

CHART NO.

BY

DMCLAS

BY

4/4/05

WT - 188 1/2 BP 110/68 P 80 T - 98.8
Neck, shoulders & legs achy, fever, nausea
sneezing, cough & congestion

meds
relief
extracted

BILLIE NEW

04/04/05

S: Achy all over, fever, nausea, cough, and congestion. She and her husband both have similar sx. She does work for Home Health.
O: Temperature 98.8. TMs clear. She does have a little sinus pressure and congestion. Pharynx is slightly red. Neck is supple. Lungs clear. She has a congested cough. Abdomen is benign.
A/P: 1. Flu like illness. Symmetrel 100mg bid #10.
2. URI. Zithromax Z-Pak, PanCof-HC 8oz 1-2 tsp q4h prn. Dawne F. Hershberger, CFNP/C. Allen Kolb, M.D./lar

SELF REGIONAL HEALTHCARE
GREENWOOD SC 29646

MEDICAL RECORD

NAME: New, Billie
HOSPITAL #: 052228-00390

OPERATIVE REPORT

DATE OF SURGERY: 08-17-05

SURGEON: Michael Kilburn, M.D.

ASSISTANT: None

General anesthetic was given.

PREOPERATIVE DIAGNOSIS:

1. C6/7 stenosis, spondylosis
2. C6/7 myeloradiculopathy
3. Left C6/7 herniated disc

POSTOPERATIVE DIAGNOSIS:

1. Same

NAME OF PROCEDURE:

1. C6/7 Anterior Cervical Discectomy
2. C6/7 Anterior Cervical Partial Vertebrectomy
3. C6/7 Anterior Cervical Arthrodesis with Tricortical Structural Allograft
4. C6/7 Anterior Cervical Instrumentation with Sulzer Plating System
5. Microsurgically Assisted Dissection with the Zeiss Operating Microscope
6. Intraoperative Interpretation of X-rays

23A.05264.0FK3.173

INDICATIONS FOR SURGERY:

Ms. New has cervical myeloradiculopathy with weakness of the left arm. She has failed conservative management. Given the excellent correlation between radiographic images and clinical signs and symptoms, surgical intervention is indicated and recommended. The rationale, risks, and benefits of surgery have been discussed with the patient, who understands and wishes to proceed.

DETAILS OF PROCEDURE:

General endotracheal anesthesia was induced. The patient was positioned supine on the operating room table. The surgical field was shaved, prepped and draped in sterile fashion. Prophylactic intravenous antibiotics were administered. Intraoperative localizing x-rays were performed and interpreted throughout the procedure.

A transverse skin incision was made over the C6/7 level. Dissection was carried to the platysma muscle, which was opened sharply. The avascular plane medial to the sternocleidomastoid muscle and carotid sheath and lateral to the trachea and esophagus was developed. The anterior cervical spine was identified. Caspar distraction posts were inserted into the bodies of C6 and C7. Self-retaining Cloward retractor blades were placed under the lips of the colles longes muscle bilaterally and gentle retraction was applied.

Under microscopic vision using the Zeiss Operating Microscope, the C6/7 disc sharply incised. Using curettes and pituitary rongeurs a meticulous discectomy was performed. With a high-speed drill, a partial vertebrectomy of the inferior aspect of the C6 and superior aspect of C7 was performed. Generous bilateral proximal foraminotomies were performed. The posterior longitudinal ligament was carefully

NAME: New, Billie

HOSPITAL #: 052228-00390

Page 2

opened. Herniated disc material was extracted. The nerve roots were noted to exit from their respective foramina in an unobstructed fashion. The area was carefully inspected to assure that excellent decompression of the exiting nerve roots had been achieved.

Having achieved excellent decompression of neural elements, I proceeded with the arthrodesis. Tricortical structural patellar allograft was fashioned to fit into the C6/7 interspace. The bone graft was inserted and countersunk to a depth of approximately one millimeter. Distraction was released.

Anterior cervical instrumentation was then performed using the Sulzer Plating System. The cervical plate of the appropriate size was selected and secured into position with the bone screws followed by expansion head screws.

Meticulous hemostasis was achieved, the wound was copiously irrigated with antibiotic solution and the incision was closed in layers over a drain. Sponge, cottonoid, and needle counts were reported to be correct. A cervical collar was placed onto the patient's neck. The patient was transported to the recovery room in satisfactory condition.

Michael P. Kilburn, M.D.

MPK/rmb

23A.05264.0FK3. 174

SELF REGIONAL
HEALTHCARE
OPTIMUM LIFE CENTER

118 Academy Avenue
Greenwood, South Carolina 29646
Phone 864-330-7088 Fax 864-227-5757

Name Billie New Date 12/5/06

Diagnosis Quadrant 11 C6-7 ACDF

Next M.D. Appointment Dec. 22nd

☐ Occupational Therapy ☒ Physical Therapy ☐ Speech Therapy
☐ Aquatic Therapy ☐ Industrial Rehab ☐ PCR

☒ Evaluate and Treat

☐ Special Instructions:

Dec. ~~12th 9:00~~
20th 9:00

☐ As Needed ☐ Times Per Week ☐ Daily

M.D. Signature: [Signature]

This prescription also serves as a letter of medical necessity.

OPTIMUM-LIFE CENTER OF SELF REGIONAL HEALTHCARE
115 ACADEMY AVENUE
GREENWOOD, SC 29646
Phone: (864) 227-4183 Fax: (864) 227-5757

PHYSICAL THERAPY DEPARTMENT

PATIENT NAME:	NEW, BILLIE	LENGTH OF	AS
PHYSICIAN:	CLIFFORD MONDA, D.O.	REFERRAL:	NEEDED
MEDICAL	LEFT NECK PAIN STATUS POST	END DATE:	
DIAGNOSIS:	C6/7 ACDF	DICTATED:	12-20-05
TREATMENT		TRANSCRIBED:	12-20-05
DIAGNOSIS:			
MD APPT:	12-22-05		

INITIAL EVALUATION

DATE OF EVALUATION: 12-20-05

AGE: 44
SEX: Female
DOB: 02-19-61

SUBJECTIVE:

PATIENT COMMENTS: Patient reports that she was originally hurt on July 12, 2005. Patient reports that she was breaking a patient's fall. She was working as a CNA for a home health agency. Patient reports that she immediately felt pain, but went to the doctor on July the 14th. Patient reports that she eventually had an MRI done that showed a herniated disc at C6/7. Patient reports that she had surgery on August 15, 2005. Patient reports that she felt a little better right after the surgery when she was resting and not doing anything, but as soon as she began to do things around the house, her pain was right back to normal. Patient reports that she had had some therapy previous to her surgery, including traction, ultrasound/electrical stimulation and heat. Patient reports that at that time therapy made her worse. Patient reports that pain especially increases if she turns her head, if she is lifting something, or doing any activity with her left upper extremity. Patient reports she is going to have a nerve study done on December 22nd with Dr. Monda. Patient reports that her left arm basically feels like it was before the surgery, very tender to the touch in her ulnar border of the hand and forearm. Her upper trapezius swells and throbs on the left hand side and her left upper arm throbs. She has tingling in her fingers, especially the last 3 digits, and they sometimes throb as well. She has some sore spots in her scapula on the left. Patient reports that she is unable to sleep on her left side.

PAIN RATING: 6/10 at least; 10.5/10 today; 10/10 at worst.

New, Billie J

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PHYSICAL THERAPY DEPARTMENT

PATIENT NAME:	NEW, BILLIE	LENGTH OF	AS
PHYSICIAN:	CLIFFORD MONDA, D.O.	REFERRAL:	NEEDED
MEDICAL	LEFT NECK PAIN STATUS POST	END DATE:	
DIAGNOSIS:	C6/7 ACDF	DICTATED:	12-20-05
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DIAGNOSIS:			
MD APPT:	12-22-05		

Page 2

PAIN DESCRIPTION: See PATIENT COMMENTS. Primarily it is an aching pain in the left upper trapezius, scapula, upper arm and sometimes a throbbing and tingling in the lateral forearm and the medial forearm and ulnar border of the hand.

OBJECTIVE -- PHYSICAL FINDINGS:

GAIT: COMMENTS (assistive device): Patient ambulates independently in the clinic with no assistive device. No gait deviations noted.

POSTURE/GENERAL APPEARANCE: Well nourished, healthy appearing 44 year old female. Mild protracted scapula and rounded shoulders posture.

STRENGTH/MUSCLE TONE: 5/5 bilateral upper extremities, except 4/5 grip strength on the right compared to left and left shoulder abduction and flexion 4+/5, which increases pain.

Internal and external rotation on the left 4+/5, pain in the shoulder. Patient has 4/5 strength in the wrist, but with inconsistent resistance.

ROM: C/spine: Forward flexion 50%, hurts in the upper trapezius and shoulder region; extension 75%, no complaints; left rotation 80%, increases shoulder and upper trapezius pain on the left; right rotation 80%, no complaints.

UE: Active range of motion in sitting of left shoulder flexion 145; right 138. Shoulder passive range of motion measured in supine: Right shoulder flexion 170, left 175; right abduction 180, left 180; right external rotation 70, left 78; right internal rotation 82, left 90.

BALANCE: Sitting: Good.
Standing (Static): Good.
Dynamic: Good.

RADICULAR SYMPTOMS: See PATIENT COMMENTS.

SENSATION: Intact to light touch to upper extremities.

REFLEXES: Not tested.

ENDURANCE: Not tested.

New, Billie J

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115 ACADEMY AVENUE
GREENWOOD, SC 29646

Phone: (864) 227-4183 Fax: (864) 227-5757

PHYSICAL THERAPY DEPARTMENT

PATIENT NAME:	NEW, BILLIE	LENGTH OF	AS
PHYSICIAN:	CLIFFORD MONDA, D.O.	REFERRAL:	NEEDED
MEDICAL	LEFT NECK PAIN STATUS POST	END DATE:	
DIAGNOSIS:	C6/7 ACDF	DICTATED:	12-20-05
TREATMENT		TRANSCRIBED:	12-20-05
DIAGNOSIS:			
MD APPT:	12-22-05		

Page 3

EDEMA/WOUNDS: Patient has a well healed anterior cervical scar, pink and closed.
SPECIAL TESTS: Patient has tenderness of the lateral and posterior left shoulder joint at border of the scapula on the left, left upper trapezius and at the C6/7 and T1 region; positive impingement with internal rotation and horizontal adduction on the left but not on the right. No x-rays or MRIs of the shoulder available.

CONTRAINDICATIONS: No heavy lifting or lifting overhead due to recent spinal fusion. *Ø VS over lower C-spine. 7/8/12/20/RS* *Ø traction.*

ASSESSMENT: Patient is a 44 year old female who demonstrates decreased range of motion of the cervical spine, pain in the cervical and left upper extremity, radicular symptoms in the left upper extremity, and decreased strength in the left upper extremity consistent with diagnosis of neck pain following ACDF. Patient appears to have increased muscle tone and myofascial pain in the upper trapezius and scapular region, possibly with a strain of the shoulder musculature and may have neural tissue involvement due to possible (* stretch *7/8/12/20/RS* *) injury. Feel patient would benefit from physical therapy to decrease pain and radicular symptoms and improve patient's range of motion and strength so able to return to activities previous to injury. Feel like patient has fair to good potential to meet her goals.

SHORT TERM GOALS: To be met in 2-3 weeks.

1. Patient to have full pain free range of motion of cervical spine, 80% or greater, so able to turn head for driving.
2. Patient to report decreased intensity of neck and upper extremity pain to 4 or less/10 at least and no greater than 6/10.
3. Patient to be independent with home exercise program for cervical and scapular stretching and strengthening.

New, Billie J
05354-00061

OPTIMUM-LIFE CENTER OF SELF REGIONAL HEALTHCARE

115 ACADEMY AVENUE

GREENWOOD, SC 29646

Phone: (864) 227-4183 Fax: (864) 227-5757

PHYSICAL THERAPY DEPARTMENT

PATIENT NAME: NEW, BILLIE

LENGTH OF REFERRAL: AS
NEEDED

PHYSICIAN: CLIFFORD MONDA, D.O.

END DATE:
DICTATED: 12-20-05

MEDICAL: LEFT NECK PAIN STATUS POST
DIAGNOSIS: C6/7 ACDF

TREATMENT

TRANSCRIBED: 12-20-05

DIAGNOSIS:

MD APPT: 12-22-05

Page 4

LONG TERM GOALS: To be met in 6-8 weeks.

1. Patient to have full active range of motion of right shoulder compared to left so able to reach overhead.
2. Patient to have 5/5 strength left upper extremity so able to use upper extremity for lifting activities.
3. Patient to report pain no greater than 2/10 at rest in left cervical and upper trapezius region and no complaints of pain in left upper extremity.
4. Patient to report no radicular symptoms for 1 week period in left upper extremity.

PATIENT'S GOAL: Decrease pain and return to work.

PLAN:

TODAY'S TREATMENT: Evaluation.

TREATMENT PLAN: Iontophoresis with lidocaine to ulnar nerve at the shoulder or at the C6/7 region, iontophoresis with dexamethasone as needed, ultrasound electrical stimulation, interferential electrical stimulation, myofascial release, and gentle stretches. May progress to strengthening when patient's pain and radicular symptoms have decreased.

TREATMENT FREQUENCY: 3 times a week for 6-8 weeks. Will reevaluate patient in 2-3 weeks to determine if patient is progressing and if change in plan of care needed.

Heidi Blake PT
HEIDI BLAKE, P. T.

HB/khp
11087

OPTIMUM-LIFE CENTER OF SELF REGIONAL HEALTHCARE
115 ACADEMY AVENUE
GREENWOOD, SC 29646
Phone: (864) 227-4183 Fax: (864) 227-5757

PHYSICAL THERAPY DEPARTMENT

PATIENT NAME:	NEW, BILLIE	LENGTH OF	AS
PHYSICIAN:	CLIFFORD MONDA, D.O.	REFERRAL:	NEEDED
MEDICAL	LEFT NECK PAIN STATUS POST	END DATE:	
DIAGNOSIS:	C6/7 ACDF	DICTATED:	12-20-05
TREATMENT		TRANSCRIBED:	12-20-05
DIAGNOSIS:			
MD APPT:	12-22-05		

Page 5

PHYSICIAN SIGNATURE IS REQUIRED FOR ALL MEDICARE PATIENTS:

I certify that the above named patient is under my care and supervision and that the above described care is reasonable and necessary for this patient.
I certify that I have reviewed and/or developed the above plan of care and that this plan of care is appropriate for this patient and will be reviewed every 30 days or more often if the condition warrants.
I recommend that this patient receive treatment as described in the above plan of care and signature here will serve as written prescription for that care.

PHYSICIAN SIGNATURE: _____
DATE: _____

New, Billie J
05354-00061

Future Use Only

PROGRESS NOTES	
DATE	NOTES
12/27/05 (cont)	A: Pt. $\bar{c}$ 1'd edema p ^{tr} , 1'd redness today. P: CPOC ~~but~~ monitoring 4 Δ's $\bar{c}$ HEP, review HEP + posture. ——— SOurt PTA
12/28/05	Pt. cx'd appt. 2° sick. ——— SOurt PTA
12/30/05	S: Pt reports she was more swollen & pain ^{HB} full painful after last tx - the next day. Pt reports LFC & US have "felt good" but $\bar{\phi}$ long-term relief yet. O: Clinto $\bar{c}$ dex @ 6.6-7 & lat. @ shld. X 60 min X 16 min in sitting $\bar{c}$ MHP A: Pt showing little to $\bar{\phi}$ improvement so far. Very irritable symptoms. EM & came out normal per pt report. Pt may benefit from further evaluation of soft tissue esp in shld - pain of swelling could be explained by a shld injury. P: Cont POC ——— Keith Blalock
1/3/06 No change	Pt. reports nothing has helped so far. Pt reports 1'd $\bar{\phi}$ this weekend as she was ~~was~~ working on a puzzle. "It suddenly felt like a th toothache". Pt. reports 1'd swelling as day progresses. Pt. to go to Dr's appt. Thurs am and to let us know what the Dr. says. Cx'd appt. for tomorrow. Discussed POC $\bar{c}$ Sup P.T. who will write a letter to MD ——— F8 PTA
1/6/06 ⁽²⁾	Pt. did not show for appt. ——— SOurt PTA
1/9/06	Pt. did not show for appt. ——— SOurt PTA

Addressograph

New, Billie J
05354-00061

Progress Notes
Self Regional Healthcare



1PPN680

Tuesday, May 09, 2006.max

INDUSTRIAL REHABILITATION

Optimum Life Center of Self Regional Health Care

115 Academy Avenue, Greenwood, South Carolina 29646

PHONE: 864-227-5766

FAX: 864-227-5757

PATIENT NAME: New, Billie

REF PHYSICIAN: Dr. Monda

DIAGNOSIS: Neck Pain

DATE OF BIRTH: 02/19/1961

WORK CONDITIONING/INITIAL EVALUATION

DATE OF INITIAL EVALUATION: 2-13-06

INTRODUCTION:

A two hour evaluation was performed in order to gain baseline data for entry in to the work conditioning program, as well as establish the client's strengths and weaknesses as they relate to her job and present condition. The purpose was explained to the client, who was instructed to give a genuine effort.

JOB HISTORY: Ms. New was previously employed as a CNA.

IMPRESSIONS:

The client did give maximal, consistent effort during the evaluation. It has been determined that Ms. New is unable to tolerate Industrial Rehab. due to increased pain levels and muscle spasms in her neck and shoulders. This has been discussed with Dr. Monda. We have scheduled Ms. New for a Functional Capacity Evaluation to be performed on March 6th, 2006.

Thank you for this referral. If you should have any questions and/or suggestions, please feel free to contact me at (864) 227-5766 at your convenience.

Jenna Combs, P.T.

SELF REGIONAL HEALTHCARE

OPTIMUM LIFE CENTER

115 Academy Avenue
Greenwood, South Carolina 29646
Phone 864-227-4183 Fax 864-227-5757

Name Gilte New Date 2/6/06

Diagnosis Neck Pain

Surgery Procedure _____

- ☐ Aquatic Therapy ☐ Cardiac Rehab ☒ Industrial Rehab
☐ Occupational Therapy ☐ Physical Therapy ☐ Pulmonary Rehab
☐ Speech Therapy

☐ Evaluate and Treat

☒ Special Instructions:

PA x 3-4 wk if plateau-el.
or can't tolerate physio. or P.E.
Call with question

☐ As Needed ☐ Times Per Week _____ ☐ Daily

M.D. Signature: [Signature]

This prescription also serves as a letter of medical necessity.

WEEK#: 2

Billie

414

Abbeville County Memorial Hospital

P.O Box 887, Abbeville, SC 29620

DR'S BILLING
FINAL

Report of Findings

VERIFIED

Patient Name New, Billie J
Date Of Birth Feb 19, 1981
MRN 25,637
Ordering Physician Montgomery, Center
Reading Radiologist Charles Parke
Report Date & Time 1/11/2006 12:50:51PM
Requisition Number 414097
Requesting Location Outpatient

72141 722.4

Procedures Performed

11-Jan-2006 CERVICAL SPINE MRI

ICD9 Codes

723.1 CERVICALGIA

Dictated Report

MRI cervical spine was performed with sagittal T1 and T2 and axial T1 and gradient echo images. Comparison is made with prior scan July 27, 2005.

Field distortion artifact is now identified at the C6 and C7 vertebral bodies related to fixation screws and ventral fixation plate. The left central mass effect related to disk herniation previously has been reduced. There is some residual disc bulge and left central thecal sac effacement directly adjacent to the cord. Sagittal images show mild posterior cord deviation as before. There is still mild left foraminal encroachment. Disc degeneration and anterior disc protrusion at C5-6 is unchanged. There are overlying osteophytes at this level unchanged from prior scan. No new disc herniation at other cervical levels. No identified paraspinal mass or fluid collection. The cervical and upper thoracic spinal cord shows normal signal. Lower cerebellum is normal.

Impression: Since July 27, 2005 exam, C6-7 anterior cervical disk fusion and has been performed with volar fixation plate and screws in place. Partial resection of left central disc herniation is evident with reduction in mass effect. There is still mild left central thecal sac impression and left foraminal narrowing. No new disk herniations or postoperative fluid collections. No spinal cord abnormalities.

Stable mild C5-6 degenerative changes with anterior disc bulging.

Charles Parke

Thank you for sending this patient to our facility

The report has been accepted and electronically signed at the time of printing and transmission.

SHIPPED MAR 09 2007

SELF REGIONAL HEALTHCARE
GREENWOOD, SC 29646

MEDICAL RECORD

PATIENT NAME: NEW, BILLY ACCT NO: 9999999999
PHYSICIAN: CLIFFORD MONDA, DO ROOM NO:
ADMITTED: DICTATED: 2-6-06
DISCHARGED: TRANS DT: 2-7-06
cc: Worker's Compensation

CAROLINA REHABILITATION ASSOCIATES NOTE

DATE OF INJURY: 7-12-05.

CHIEF COMPLAINT: Neck and left sided trapezius pain

INTERVAL HISTORY: Since I saw patient last overall she is feeling no better. Did not develop any significant change over the last several months. She still has pain in her left greater line and cervical paraspinals down to her left shoulder between her shoulder blades. Occasionally it does also go down to her right deltoid region. She also describes pain as well as weakness going down her arm into her left hand. She we saw her last she started steroid taper. She reveals the Lyrio and Lidoderm did not provide any help. She still takes her Flexeril once a day and states this helps her more than anything. She has taken Lortab in the past but feels her pain is not to a point where she wants to do this. She has been fired from her job at this point.

PHYSICAL EXAMINATION: On exam today continues to be some slight weakness noted in her left grip strength. She continues to have tenderness of bilateral cervical paraspinals and trapezius, left greater than right. There is no acute spasm noted. There is no asymmetrical deficit noted from side to side.

ASSESSMENT:

1. This 46 year old female status post left anterior cervical disectomy and fusion at C6-C7 with continued left upper extremity pain and numbness.

PLAN:

1. Will discontinue patient's Lyrio and Lidoderm since it is not providing any relief. Will try some Neurontin 300 mg, increase as tolerated as directed. Will continue her Flexeril 10 mg one q. 8h. for pain. She seems to be fairly stable at this point will try to get her into a rehabilitation program for 3-4 weeks and then do a functional evaluation, if she does not tolerate this well will just get her to perform the FCE. If for some reason she does show some significant improvement we may hold off the FCE and adjust her rehabilitation course. We are going to see her back in one month. We will continue to follow her progress.

CM/al #02934

NO. 897

30.2006 10:42PM

**SELF REGIONAL HEALTHCARE
GREENWOOD, SC 29646**

MEDICAL RECORD

PATIENT: NEW, BILLIE
PHYSICIAN: Clifford Monda, DO
ADMITTED:
DISCHARGED:

ACCT: 9999999999
ROOM:
DICTATED: 3/21/2006
TRANS DT: 3/21/2006

cc: Worker's Compensation

CAROLINA REHABILITATION ASSOCIATES

DATE OF EXAM: 03/07/2006

DATE OF INJURY: 07/12/2005

CHIEF COMPLAINT: Back and left upper extremity pain.

INTERVAL HISTORY: Since I saw the patient last, overall she feels no significant difference. She continued to have pain in the left side of neck, trapezius, in her shoulder, and down her entire left arm into her hand. She also has some pain in her right shoulder region now. She occasionally has some tension headaches from her neck pain. She states when she was doing her introduction rehabilitation she was having some numbness, there was also some give away strength in her left hand. She rates her pain as a 7-8/10. She feels that Flexeril definitely helps her with her sleep and some of her pain through the day. She still occasionally takes some Ultram. She feels that Neurontin is no help to her.

PHYSICAL EXAMINATION: Her weight is 189. Blood pressure 136/80. Pulse 109. The patient appeared to be in some mild acute distress. Her surgical scar has healed well. With range of motion testing she does have some slightly decreased range of motion, worse with extension and side bending. With palpation, the majority of her tenderness is over her left cervical paraspinals and left trapezius region. She also describes a decreased sensation to her left upper extremity diffusely compared to the right. Also on manual muscle testing she has weaker grip on the left as well as slightly decreased strength of 4/5, this is through all muscle groups. This appears to be mostly secondary to pain.

ASSESSMENT: A 46-year-old female status post left anterior cervical discectomy and fusion at C6-C7 with some slightly decreased range of motion of her cervical spine, as well as some left upper extremity pain, numbness, and weakness.

PLAN: At this point, the patient to continue to take her Flexeril, Ultram. We refilled her Flexeril 10 mg one-half in the morning, one-half in the daytime, and one at nighttime, #60; and her Ultram 50 mg one p.o. every 8 hours p.r.n. pain, #60 with one refill. It does appear by her

PATIENT: NEW, BILLIE
PHYSICIAN: Clifford Monda, DO

ACCT: 9999999999
ROOM:

Page 2

symptoms that off these medications the symptoms are not well controlled, she may need these ongoing. We will continue to see her every 1 to 2 months and, hopefully, reduce these medications if possible.

The patient did have her FCE performed on 03/06/2006 which shows she was able to overall perform a light duty of work 8 hours per day. She did not show any inconsistencies during the test. Her maximum lift from floor to waist is 32 pounds, waist to eye level 12, and two-hand carry 22 pounds. We felt she should never work with her arms overhead while standing or do repetitive trunk rotation with seated or standing position. She can occasionally work bending over and stooping, stair climbing, repetitive squatting, walking, can frequently sit or stand. Next, based on the AMA guide to evaluation of permanent impairment, 5th edition, table 15-5, criteria for rating impairment due to cervical disorders, the patient fits in a DRE cervical category 4 with a 25% impairment to the whole person based on altered motion-segment integrity status post cervical fusion. We will see the patient back in 6 weeks and continue to adjust her medications.

CM/ks
Job# 23264



CAROLINA REHABILITATION ASSOCIATES

Self Regional Healthcare

115 Academy Avenue

Greenwood, S.C. 29646

Phone: 864-227-5754 Fax: 864-227-5764

Melissa Richardson, M.D.

Clifford A. Monda, D.O.

Employee: Billie New SS#: _____ Date of Exam: 3/7/06**Return To Work Instruction:**

√(all that apply)

_____ Unable to work until next visit or _____

_____ Light duty effective date _____

✓ Restrictions Permanent 1st July 7 2016No overhead = @ hand limited repetitive use
of @ hand.See FCE for details

Regular duty effective date _____

Follow-Up:

√(all that apply)

_____ Return Appointment scheduled for 4/18/06 @ 10:30 Am
Date

_____ Referred to _____

_____ Discharged _____

Melissa Richardson, M.D.
Clifford A. Monda, D.O.

SELF REGIONAL HEALTHCARE
GREENWOOD, SC 29646
MEDICAL RECORD

PATIENT: NEW, BILLIE
PHYSICIAN: Clifford Monda, DO
ADMITTED:
DISCHARGED:

ACCT: 999999999
ROOM:
DICTATED: 5/31/2006
TRANS DT: 5/31/2006

CAROLINA REHABILITATION

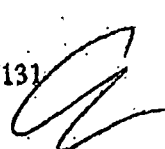
DATE OF EXAMINATION: 04/18/2006.

INTERVAL HISTORY: Since I saw the patient last she is still having cramping in her bilateral arms. This is worse in her left upper arm region. The pain goes down to her left third finger which she describes as numb all the time. She states that when she drives greater than 30 minutes leads to a lot of hand cramping. She feels the Flexeril is helping with her sleep. She states when she is walking is when her pain is the worst. She also feels the left hand is still weak. She rates her pain as a 7/10. She is not having problems with side-effects from her medications.

ASSESSMENT: A 46-year-old female, status post left anterior cervical discectomy and fusion at C6-C7 with continued decreased range of motion of the cervical spine as well as some left upper extremity pain and numbness.

PLAN: We refilled her Flexeril 10 mg ½ in the a.m. and noon and 1 at nighttime. Ultram 50 mg every 8 hours, #60, we gave her 3 refills. We will see her back in 3 months.

CM/tg
Job# 26131



NO. 937

JUN 5, 2006 5:05PM

Carolina Rehabilitation Associates
A physician practice of Self Regional Healthcare
115 Academy Avenue
Greenwood, SC 29646
Phone (864) 725-5754
Fax (864) 725-5764

NAME:	New, Billie J	ACCT NO:	0608000182
PHYSICIAN:	Clifford A. Monda, DO	ROOM#:	
ADMIT DATE:	03/21/2006	DICTATED:	07/11/2006 3:14 P
DISCH DATE:	04/20/2006	TRANS:	07/18/2006 2:01 P

CAROLINA REHABILITATION ASSOCIATES CLINIC NOTE

DOS 7/11/06

INTERVAL HISTORY: The patient overall feels about the same. She does have a headache which is worse here and there, mostly going from the trapezius to the suboccipital region. She is still taking Flexeril and Ultram and did well with this. Has taken her Lidoderm patches a little more to the left trapezius region. She has taken care of 13 □-year-old twins. She has not been sleeping well. She rates her pain as an 8/10. The majority of the pain is in the left shoulder, trapezius and cervical spine region.

On exam today she has some tenderness noted to the left trapezius and cervical spine region. There is no acute spasm noted. She continues to have some decreased range of motion in her cervical spine secondary to pain. She continues to describe decreased sensation to the left upper extremity compared to the right. There is some slight weakness noted in the left upper extremity compared to the right.

ASSESSMENT:

1. Status post left anterior cervical discectomy and fusion at C6-7 with continued pain.
2. Insomnia.
3. Depression.

PLAN:

1. We refilled her Flexeril 10 mg one half po q am one at night time #60 with 3 refills.
2. We also refilled Ultram 50 mg one po q 8 hours as needed pain.
3. Refilled her Zoloft 50 mg one po daily with 6 refills.
4. Restoril 15 mg one to two q bedtime #60.
5. We also refilled Lidoderm patch 12 hours per day.
6. We will see her back in 3 months for continued evaluation.

Office Copy

New, Billie J

CLINIC NOTE

0608000182

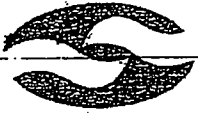
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Post Trauma Resources

Lawrence H. Bergmann, Ph.D., LPC, LPC/S, CTS
President
Roger W. Deal, M.D.
Medical Director

2 August 2006

Turner Padgett Graham & Laney PA
PO Box 1509
Greenville, SC 29602
Fax: 864-552-4620

Attention: O. Shayne Williams

Re: Billie Jean New, WC2005070921

Date of Injury: 12 July 2005

An independent medical examination was requested by O. Shayne Williams, counsel for the defendant. My responsibilities were to clinically interview Mrs. New and offer an opinion concerning the following referral questions:

Did Mrs. New develop psychological consequences subsequent to her work-related injury?

What ongoing treatment, if any, would be appropriate?

This evaluation included a 60-minute differential diagnostic interview with the undersigned and selected psychological testing. I met with Mrs. New on 20 July 2006 and informed her of the nature of the examination and that a report will be shared with the referral source. She articulated understanding. The American Board of Independent Medical Examination guidelines were followed.

Patient Demographics

Mrs. Billie Jean New is a 46-year-old Caucasian female who currently lives in Abbeville, SC.

1709 Laurel Street
Columbia SC 29201

phone 803.765.0700
toll free 800.459.6780
fax 803.765.1607

www.posttrauma.com

Written Documentation Reviewed

Records from the following sources were reviewed prior to the 20 July 2006 evaluation:

1. Family Medicine Associates
2. Abbeville County Memorial Hospital
3. Industrial Rehabilitation Optimum Life Center
4. Western Carolina Psychiatric Associates of Self Memorial Hospital
5. Intracorp Case Management Notes
6. Carolina Rehabilitation Specialists of Self Regional Healthcare
7. Carolina Neurosurgery and Spine Center
8. Worker's Compensation Deposition Transcript

History of Illness

Mrs. New reported that, on 12 July 2005, she was working as a CNA at a patient's home. She was reportedly transferring the patient from the shower chair to the walker when the patient slipped and, when Mrs. New caught her, she "heard something pop" in her neck/shoulder. She said that she thought she might have pulled something but managed to work the next day. On the 14th of July, she said, she could not move her neck or shoulder and felt "completely incapacitated." She went to the emergency room at this time.

An MRI determined the presence of a herniated disc and surgery was conducted in mid-August; she had a bone graph and a pin was put in her neck. She said that, while she was sore the days following the surgery, she thought she was just recovering from the procedure. "But the pain got progressively worse," she said.

Mrs. New reported that she experiences pain in her neck radiating down to her left shoulder, arm, hand and fingers. At the 20 July 2006 evaluation session, the pain was reportedly an "8"/10, which she said is the average intensity of the pain. The most intense the pain has gotten is a "10" and the least intense is "6." She said that she now has diminished grip strength. Physical therapy attempted since this time has reportedly made her pain worse.

Mrs. New said that she has experienced a decrease in sleep since her accident. While she used to sleep an average of eight hours per night, she said that she now sleeps five hours on the Restoril, three hours without. She said that she has less interest and ability to engage in previously enjoyed activities, such as doing cross-stitch and working in the yard. She reportedly feels guilty for not contributing to her family and has experienced a decrease in energy and ability to concentrate. She said that she has experienced a noticeable increase in her appetite and has gained approximately twenty pounds. She said that she often feels anxious, "revved up" and irritable. Her sex drive has also been diminished since the accident.

She denied previous attempts to commit suicide and insisted that she does not currently have suicidal thoughts. Current risk factors for suicide include symptoms of pain, anxiety and depression. Based on Rudd et al's 2001 criteria for determining suicide risk

assessment, Mrs. New is currently at minimal risk for self-harm. This is due to the impact family has on her, which she identified to be her greatest protective factor. "I'm too blessed to think about death," she said. The corresponding level of appropriate mental health care is outpatient therapy with recurrent risk assessment.

Quality of Historian. The quality of Mrs. New's self-reporting of symptoms appeared consistent with her affect, presentation, psychological testing and medical documentation.

Others Present/Collateral Information. There was no one else present for the clinical interview.

Work Status. Mrs. New reported that she has been out of work since mid-August of 2005, when she had her surgery.

Current Medical Treatment. Mrs. New reported that she is currently taking the following medications:

1. Flexeril
2. Ultram
3. Zoloft
4. Restoril

Activities of Daily Living. Mrs. New denied difficulties with self-care or personal hygiene. She said she rarely goes to social events and prefers to stay home. She reported that she can drive without impairment, but only for short distances before restricted by pain. No apparent psychological reasons for travel restrictions. While she appears to have lost contact with many friends, she said that she has a strong support system in her family. She noted minor difficulties concentrating. Her potential adaptation to a work environment appears to be restricted by her physical pain but not by her emotional functioning.

Results of Psychological Testing

The following assessment measures were used:

1. Minnesota Multiphasic Personality Inventory-Second Edition (MMPI-2)
2. Beck Depression Inventory-Second Edition (BDI-II)
3. Beck Anxiety Inventory (BAI)
4. Outcome Questionnaire 45-Second Edition (OQ45.2)

Mrs. New articulated understanding of each instrument and the results of each test were determined to be valid. Her responses appeared to be consistent both within and among tests. On the MMPI-2, Mrs. New responded in a manner that suggests that she has the propensity to experience a number of her emotional symptoms physically, thereby accentuating existing physical health problems. Sleep disturbance, perplexity and feelings of hopelessness can occur. Individuals with similar profiles are in conflict between dependency and self-assertion, and they often keep people at an emotional distance. They are unlikely to take a dominant role in their personal relationships and

may experience resentment and/or frustration because of their lack of assertiveness. These individuals report that they are currently experiencing a great deal of emotional turmoil.

Mrs. New was administered the Beck Depression Inventory-Second Edition, a 21-item self-report questionnaire assessing depressive symptoms in the time frame of the "past two weeks including today." Scores range from Minimal, Mild, Moderate to Severe levels of depressive symptoms. Compared to the normal population, she reported experiencing Moderate levels of depression (BDI-II=22).

The patient was administered the Beck Anxiety Inventory, a 21-item scale which measures the severity of anxiety in the time frame of the "past week including today." Scores range from Minimal, Mild, Moderate to Severe levels of anxiety symptoms. Compared to an outpatient psychiatric population, she reported experiencing Moderate levels of anxiety (BAI=26).

On the OQ45.2, Mrs. New reported experiencing clinical levels of distress (OQ45.2=68; clinical cutoff is 63). If enrolled in treatment, a goal will be for Her post-test OQ45.2 scores to be at or below 50; a 14-point reduction is considered to be clinically significant.

DSM-IV-TR Diagnoses

Axis I 309.28 Adjustment Disorder with Mixed Anxiety and Depressed Mood
Axis II V71.09 No Diagnosis or Condition on Axis II
Axis III Please see medical record
Axis IV: Denied
Axis V: GAF=65

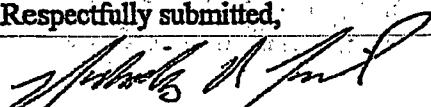
Responses to Specific Questions

Did Mrs. New develop psychological consequences subsequent to Her work-related injury? Yes. In my opinion Mrs. New's current symptoms of anxiety and depression are more likely than not, with as much medical certainty reasonable in the field of psychology, due to the physical limitations resulting from the fall 12 July 2005. These symptoms are expected to last until she adapts to Her physical limitations.

What treatment, if any, would be appropriate? I recommend that Mrs. New receive a brief trial of psychotherapy focused on her adapting to her current level of pain. I also recommend that she be evaluated and treated by a psychiatrist. I believe that a determination of fitness for duty and MMI status can be made after approximately three months of such treatment.

Thank you for allowing me to assess Mrs. New. Please don't hesitate to contact me if you have any questions or concerns.

Respectfully submitted,


Nicholas A. Lind, PsyD

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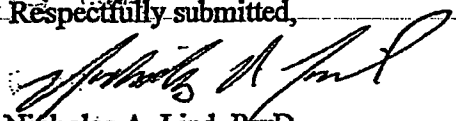
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Thank you for allowing me to assess Mrs. New. Please don't hesitate to contact me if you have any questions or concerns.

Respectfully submitted,


Nicholas A. Lind, PsyD

PAGE REHABILITATION SERVICES, INC.
Vocational Rehabilitation Specialists

P.O. Box 471052 Charlotte, NC 28247 (704) 543-0467 FAX (704) 543-0468

DATE: 08-15-06

YOUR FILE #: 1109.00651

INJURED WORKER: Billie Jean New

DATE OF INJURY: 07-12-05

CUSTOMER: Turner Padget

INSURED: Abbeville County Memorial
Hospital

VOCATIONAL EVALUATION

GENERAL INFORMATION

This file was referred to Page Rehabilitation Services, Inc. by Mr. Shayne Williams of Turner Padget for the completion of a vocational evaluation. I met with Ms. New on August 3, 2006 in the office of her attorney, Ms. Lena Meredith in Greenwood, South Carolina. Prior to beginning the interview, I explained who had hired me and the limits of confidentiality. I went on to explain that information provided in the interview would be included in my report which would be provided to Attorney Williams. I also obtained current demographic information from Ms. New including her current address and telephone number.

Ms. New states that she was employed by Abbeville County Memorial Hospital as a home health aide when she sustained a work-related injury on July 12, 2005. She explains that she was providing home health services at a patient's home and was assisting in the patient's transfer from a shower stool to a walker when the patient began to fall. Ms. New states that she tried to catch the patient with her left arm in order to break the patient's fall and immediately experienced a popping sensation in the left side of her neck. However, she finished this visit and visited some other patients before returning to her office later in the day. She also worked on the following day, but then presented to John Abernathy, M.D. who provided her with injections and medication. Ms. New states that the physician prescribed physical therapy, but her symptoms only worsened and an MRI was ordered/completed which revealed a herniated disc.

On August 17, 2006, surgery was performed by Michael Kilburn, M.D. Ms. New was then referred to Dr. Monda who prescribed physical therapy, but once again she experienced no relief from her symptoms. Another MRI was ordered/completed, but no further surgery was indicated and Ms. New was referred for the completion of a functional capacity evaluation (FCE). Ms. New states that she remains under the care of Dr. Monda for medication management and last saw him two weeks prior to the date of my personal interview with her. Ms. New states her impression that she has been assigned with physical restrictions including no lifting, no overhead work, and no gripping. Ms. New is right hand dominant.

Ms. New reports that she continues to experience pain in her neck and left shoulder. She states that the pain also radiates into her left arm down through her elbow and into her left

Ms. Billie Jean New
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hand causing numbness in her thumb and middle finger. She notes decreased grip strength in her left hand and says that she drops things as a result. She says that she now avoids picking up objects with her left hand. She says the pain also radiates into her right shoulder and into her right elbow. She also reports experiencing headaches two or three times per week and says she takes over-the-counter Extra Strength Tylenol which relieves the headaches.

When asked about her tolerances for the activities of sitting, standing, walking and driving, Ms. New provides the following estimates:

- Sitting - She states that she can sit for thirty minutes and then experiences pain in her left arm. She must then get up and walk for a couple minutes before resuming a seated position.
- Standing - She states that she can stand for fifteen to twenty minutes and then sits down for a few minutes before resuming this activity.
- Walking - She states that she can walk around her 21.5-acre property for approximately ten to fifteen minutes and then experiences pain in her neck and arm etc.
- Driving - She notes that she has no limitations in driving up to one hour, but after that she experiences problems with grip strength.

Ms. New notes that she "needed someone to talk to" and began treating with a psychologist whom she saw twice in July 2006. However, she notes that this has not been authorized by the carrier despite being referred by Dr. Monda.

Ms. New is reportedly prescribed with Restoril, Zoloft, Flexeril, Ultram, and a Lidoderm patch, by Dr. Monda. She also takes extra strength Tylenol for headaches. She denies taking any other prescription or over-the-counter medications. She also denies any other medical conditions resulting in further physical restrictions.

FAMILY/SOCIAL INFORMATION

Ms. New is a 45-year-old (DOB: 02-19-61) married white female. She lives in a single-family home, located in Abbeville, South Carolina, with her husband and twin 13-year-old daughters. She reportedly holds a valid South Carolina driver's license with a clean driving record. She owns a 2004 Chevy Malibu Max which provides her with reliable transportation.

She says that her husband works on a full-time basis as a used car salesman at a Chevrolet dealership in Greenwood, South Carolina.

Ms. Billie Jean New
08/15/06

In a normal day, Ms. New notes that she completes light household chores including dusting, sweeping, and cooking. However, she says that she completes these chores with her right arm/hand using the left arm/hand only as a helper. She spends the rest of her time each day watching television, accessing the internet, and completing crossword puzzles. She denies involvement in any religious, community or social organizations. She says that she is unable to complete yard work and go four-wheeling as she once did.

Ms. New denies any criminal history, history of bankruptcy or history of drug/alcohol abuse.

EDUCATIONAL BACKGROUND

Ms. New reports that she graduated from Ninety-Six High School in 1979. She went on to obtain her certification as a nurse aide (CNA) in 1992. She denies any further education other than that received on the job.

When asked about her level of computer literacy, Ms. New states that she possesses basic computer skills including the use of the internet, e-mail and word processing software such as Word Perfect. She was unable to estimate the number of correct words she is able to type per minute.

WORK HISTORY

Ms. New reports that she has maintained employment in the following capacities:

1995 - 2005

Home Health Aide/CNA

Health Related Home Care (Department of Abbeville County Memorial Hospital)

Abbeville, South Carolina

DOT Code: 355.674-014

Duties: She states that while employed in this position, she made an average of six or seven home visits per day. Once at a patient's home, her duties included turning the patients, changing their clothes/dressings, changing linens, assisting in transfers, bathing, and dressing. She also went to homes to install lifeline alert systems and was earning \$9.75 per hour when she was terminated. Ms. New is under the impression that she is eligible for re-hire with the employer/insured.

Ms. Billie Jean New
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1993 - 1995

CNA

Abbeville Nursing Home
Abbeville, South Carolina

DOT Code: 355.674-014

Duties: She states that her duties included assisting in patient transfers, bathing, changing clothes and linens, etc. She was working full-time, first shift, earning approximately \$7.25 per hour when she left this position for a better job.

1993 - 1995

Sitter/Companion

Private Residence
Abbeville, South Carolina

DOT Code: 309.677-010

Duties: She says that she worked with a disabled mother and son in a private home. Services for the mother included turning her every two or three hours, maintaining a feeding tube, changing her clothes and linens, etc. For the son, she was responsible for assisting in transfer and ambulation. She was earning \$6.00 per hour when she left for a better job after the death of one of her patients.

1992 - 1993

Hose Stripper

Flexible Technologies
Abbeville, South Carolina

DOT Code: 751.686-010

Duties: She says that she operated a machine that prepared hoses to be screwed into the machine. She was earning approximately \$7.00 per hour when she was laid off.

1989 - 1992

Vending Machine Attendant

Canteen Vending Services (at Milliken Mills)
Abbeville, South Carolina

DOT Code: 319.464-014

Duties: She notes that she was responsible for working on-site, tending to five machines, stocking drinks, snacks, and sandwiches. She was reportedly earning approximately \$6.10 per hour when she left this position for what she thought would be a better job.

1986 - 1989

Vending Machine Attendant

Piedmont Technical College
Greenwood, South Carolina

DOT Code: 319.464-014

Duties: She says that her duties in this position were essentially the same as the duties performed her Canteen Vending Services. She states that she was earning \$5.30 per hour when she left this job for a job closer to her home.

Ms. Billie Jean New
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1980 - 1986

Clerk, Meat Department

Piggly Wiggly

Ninety-Six, SC

DOT Code: 222.684-010.

Duties: She worked in this position on a part-time basis, wrapping meat, putting it on trays and in displaying it in cases. She was earning ~\$5.00 per hour.

Ms. New denies any other formal history.

VOCATIONAL TESTING

In order to assess Ms. New's level of academic achievement, I administered the Wide Range Achievement Test (WRAT-3). The results of this test are given as follows:

<u>TEST</u>	<u>RAW SCORE</u>	<u>STD. SCORE</u>	<u>GRADE SCORE</u>
Reading	46	95	HS
Spelling	46	108	PHS
Arithmetic	39	92	8

These scores indicate that Ms. New demonstrated reading skills which place her at the high school level. She demonstrated spelling skills which place her at the post-high school level and arithmetic skills which place her at the eighth grade level.

MEDICAL RECORD REVIEW

I have reviewed all medical documentation provided to me by Mr. Williams.

In a Medical Record dictated by Clifford Monda, D.O. on March 21, 2006, the physician states,

[Ms. New] did have her FCE performed on 03/06/2006 which shows she was able to overall perform a light duty of work 8 hours per day...Her maximum lift from floor to waist was 32 pounds, waist to eye level 12 and two-hand carry 22 pounds. We felt she should never work with her arms overhead while standing or do repetitive trunk rotation with seated or standing position. She can occasionally work bending over and stooping, stair climbing, repetitive squatting, walking, can frequently sit or stand.

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At the time of the personal interview, I reviewed, with Ms. New, the above-detailed medical restrictions assigned by Dr. Monda and she agreed with these restrictions.

A large volume of other medical documentation was reviewed, but revealed no further information with regard to Ms. New's permanent restrictions assigned as a result of her work-related injury of July 12, 2005.

LABOR MARKET RESEARCH

As previously noted, Ms. New lives in Abbeville, South Carolina. I have conducted research to ascertain the distance from Abbeville to the City of Greenwood, South Carolina. The distance is 12.27 miles according to www.mapquest.com.

I accessed economic labor market information through the South Carolina Employment Security Commission, Labor Market Information division in order to review labor force estimates for Abbeville and Greenwood Counties. Labor Force Estimates for June 2006 are given as follows:

County	Labor Force	Employed	Unemployed	Unemployment Rate
Abbeville (Abbeville)	13,020	[11,820]	1,200	9.20%
Greenwood (Greenwood)	34,400	[31,420]	2,980	8.70%

The unemployment rate for each of these counties exceeds the State of South Carolina unemployment rate for the same period, June 2006, which was 6.70%.

On August 3, 2006, I conducted personal labor market research efforts in the Greenwood, South Carolina area at which time I visited a number of local employers. As a result of this effort, I learned that Ms. New is currently employable in a variety of capacities including customer service representative, front desk, and receptionist. In this effort I was able to ascertain that Ms. New would have access to these occupations without need for additional training. Each of these positions was reported or observed to be within the limits of Ms. New's assigned physical restrictions. The starting pay for each occupation, as reported by the employers, was \$6.00 - \$10.00 per hour for employment as a customer service representative, \$6.00 - \$7.00 per hour for employment as a front desk clerk, and \$7.00-\$7.50 per hour for employment as a receptionist. Some of these employers

Ms. Billie Jean New
08/15/06

indicated that they had hired for these positions within the past six months and/or anticipated hiring for these positions within the next six months. Also, some of the employers contacted in this effort were noted to have openings for which employment applications were being accepted. It should be noted that these wage ranges account only for the starting wage and each position was noted to provide periodic raises and advancement opportunities.

I also accessed data available through the South Carolina Employment Security Commission which provided May 2004 Occupational Employment and Wage Estimates, the most current data available, for each of the identified occupations Statewide. Given the relatively small size of the labor market(s) accessible to Ms. New, no more specific current information was available. The available data is given as follows:

Occupational Title	Entry Hourly Wage	Average Hourly Wage	Experienced Hourly Wage
Customer Service Representative	\$9.89/hour	\$12.96/hour	\$15.05/hour
Front Desk Clerk	\$7.77/hour	\$8.89/hour	\$10.15/hour
Receptionist	\$8.10/hour	\$10.11/hour	\$11.53/hour

EMPLOYMENT CHARACTERISTICS

Ms. New possesses the following employment characteristics which may impact her return to employment:

Positive

- Varied work history
- Basic computer literacy/skills
- Experience working in the medical field
- High school graduate
- Owns reliable transportation
- Holds a valid South Carolina driver's license
- Access to the Greenwood labor market
- High school level reading skills, post-high school spelling skills and functional arithmetic skills
- Good overall presentation
- Friendly and cooperative
- No history of criminal convictions bankruptcy or drug/alcohol abuse

Negative

- Limitations from injury

Ms. Billie Jean New
08/15/06

IMPRESSIONS/OBSERVATIONS

Ms. New made a good overall presentation at the time of the personal interview. She was dressed casually and appropriately. She was friendly and cooperative, offering much of the information contained in this report.

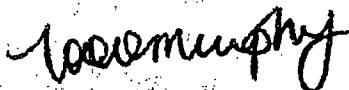
When asked about a return to work, Ms. New noted her concern about dealing with her pain on a daily basis while on the job. She stated that if possible she would like to return to work, but has few defined interests. Ms. New stated that the availability of benefits would be important to her as she provided her family's insurance prior to her work-related injury and eventual termination. She went on to state that she would be interested in returning to work in the medical field if possible and specified an interest working in physician office as a secretary. She noted that she would be willing to work in Greenwood, South Carolina.

It is my opinion that, given her educational background, work history, and assigned physical restrictions, Ms. New is presently employable in a variety of capacities including customer service representative, front desk clerk and receptionist. Based upon my personal visit to a number of Greenwood-area employers, discussion with staff and observance of the work station and duties when possible, each of these positions was noted to fall within the limits of Ms. New's assigned physical restrictions. As noted above, labor market research revealed that a return to work would result in a starting wage ranging from \$6.00 - \$10.00 per hour in the Greenwood, South Carolina area. However, it should be noted that this list of employment options is not intended to be exhaustive as additional options are likely available to Ms. New.

Please note that the opinions in this report were offered based upon the information available at the time of this report. If further documentation/information is made available in the future, the opinions may be subject to change.

If you have any questions or comments regarding this report, please feel free to contact me at 888-922-2991.

Sincerely,



Todd Murphy, MS, CRC

TM/vfm

RCI#: 31390

**NOTICE OF POSSIBLE
SECOND INJURY
FUND CLAIM**

W.C.C. Number: 0511737
Carrier Code: 867
Employer Code: 576000003
Carrier File Number: wc2005070921
S.I.F. Number: 120087

Employee: Billie Jean New
Address: 3741 Cedar Springs Rd
Abbeville, SC 29620

Social Security #: 247-11-4666
Date of Accident: 7/12/2005

Employer: Abbeville County Memorial Hospital
Location: PO Box 887 901 W. Greenwood St.
Abbeville, SC 29620

Carrier: Palmetto Hospital Trust
Address: P. O. Box 21099
Columbia, SC 292211099

Employee's Attorney:

Address:

Carrier's Attorney:

Address:

SUBSEQUENT INJURY:

Nature of Second Injury:

Neck injury

Current Status:

Treating Physicians:

Michael P. Kilburn

Average Weekly Wage: \$345.86

Compensation Rate: \$230.58

Date of First Temporary Total:

Date Returned to Work:

Weeks of All Benefits Paid: 0

Medical Costs to Date: \$0.00

NATURE OF PRIOR IMPAIRMENT: Refer to Section 42-9-400, Paragraph (d):

Listed Impairment (1-33):

X Other (34 a or b): prior neck condition, osteophytes of the cervical spine, cervical stenosis

KNOWLEDGE REQUIREMENT: X To be Determined

Employer knew about the pre-existing condition.

(Please attach affidavit, application, etc.)

Employee withheld existence of pre-existing condition from employer.

(Please attach application, pre-employment physical, etc.)

Employee was unaware of existence of pre-existing condition.

(Please attach affidavit)

**THESE FORMS MUST BE PROVIDED
BEFORE CLAIMS CAN BE PROCESSED:**

- (1) All narrative medical reports
- (2) Form 12-A
- (3) Form 15
- (4) Current Form 18
- (5) Any W.C.C. Order

Signature:

Date of Claim: 10/16/2006

Mailing Address: Reimbursement Consultants, Inc.
231 Columbia Avenue
Chapin, SC 29036

In support of such notice and without precluding the right to establish further facts as may be developed, the preceding allegations are set forth subject to proof at a Hearing.

PLEASE RETURN THIS FORM AND ATTACHMENTS WITHIN 14 DAYS OF RECEIPT. SEND A COPY TO THE

cc: WORKERS' COMPENSATION COMMISSION.

cc: Lynfield Tolar, Palmetto Hospital Trust

**UPDATED/AMENDED NOTICE OF POSSIBLE
SECOND INJURY FUND CLAIM**

W.C.C. No.	0511737
Carrier Code	S-867
NCCI Ins. Code	
Carrier File No.	WC2005070921
Carrier's Policy No.	XD070
Policy Eff. Date	01/01/2005 - 12/31/2005
SIF No.	120087

Employee: Billie New Social Security No.: 247-11-4666

Address: 3741 Cedar Springs Road, Abbeville, SC 29620 Date of Accident: July 12, 2005

Employer: Abbeville County Memorial Hospital Carrier: PHTS Risk Management Services

Location: P. O. Box 887, Abbeville, SC 29620 Address: P. O. Box 21099, Columbia, SC 29201-1099

Employee's Attorney: Lena Y. Meredith Carrier's Attorney: T. J. Hadley

Address: P. O. Box 457 Greenwood, SC 29648 Address: P.O. Box 10589, Greenville, SC 29603

SUBSEQUENT INJURY: Nature of Second Injury:
Neck injury

Current Status:
Settled November 15, 2006

Treating Physicians:
Dr. Nicholas A. Lind, Dr. Clifford Monda, Dr. Michael Kilburn

Average Weekly Wage:	\$345.86	Comp Rate:	\$230.58
Date of First Temporary Total:	5/14/2005	Date Returned to Work:	N/A
Weeks of All Benefits Paid:	502.689	Medical Cost to Date:	%46,827.72

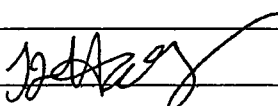
NATURE OF IMPAIRMENT: Refer to Section 42-9-400, Paragraph (d)

- ☒ Listed Impairment (1-33; #4 arthritis D/A prior to 7/1/07): #4, Arthritis (cervical)
- ☐ Other (34a or b; D/A prior to 7/1/07):
- ☒ Paragraph (a): Prior spine (cervical) arthritis; anxiety; depression

KNOWLEDGE REQUIREMENT:

- ☒ Employer knew about the pre-existing condition. (Please attach affidavit, application, etc.)
- ☐ Employee withheld existence of pre-existing condition from employer. (Please attach application, post-employment physical, etc.)
- ☐ Employee was unaware of existence of pre-existing condition. (Please attach affidavit) (D/A prior to 06/25/03)

<u>THESE FORMS MUST BE PROVIDED BEFORE CLAIMS CAN BE PROCESSED:</u>		
	(1)	All narrative medical reports
	(2)	Form 12-A
	(3)	Form 15
	(4)	Current Form 18
	(5)	Any W.C.C. Order

Signature: 

Date of Claim: June 20, 2011

Mailing address: P.O. Box 10589, Greenville, SC

Effective July 1, 2007, notice requirements were changed per Section 42-9-400 (f). Failure to comply with the provisions of this subsection shall bar an employer or his carrier from recovery from the Fund.

Revised November 2007

JUN 08 06 02:09p

Reimbursement Consultants 8033450876

EMPLOYER STATEMENT
FOR SC SECOND INJURY FUND

I am Janice Campbell of Abbeville County Memorial Hospital. I was Billie New's supervisor. Ms. New periodically complained and missed work due to pain in all parts of her body including her neck prior to her workers' compensation injury of July 12, 2005. She complained to several other staff members regarding her aches and pains.

Abbeville County Memorial Hospital

Janice Campbell

Janice Campbell

Title: Team Leader

Date: 06-08-06

ABBEVILLE COUNTY MEMORIAL HOSPITAL

EMPLOYEE HEALTH DEPARTMENT
COMPREHENSIVE HEALTH SURVEY

NAME: Billie Jean New SEX: M ☒ F SOCIAL 247-11-4666 MARITAL STATUS: M DATE TO WORK: _____

ADDRESS: 200 Hunter St. CITY Abb. STATE SC ZIP 29620 TELEPHONE 459-2087 DATE OF BIRTH: 2-19-61

PERSONAL PHYSICIAN: Bruce Johnston Abb. SC 459-9611
NAME ADDRESS PHONE

IN CASE OF EMERGENCY NOTIFY: Billy R. New 459-2087 POSITION APPLIED FOR: HHA
NAME ADDRESS PHONE

HAVE YOU HAD ANY OF THE FOLLOWING?

	YES	NO		YES	NO
1. AIDS	—	✓	22. DIABETES	—	✓
2. ALLERGIES	—	✓	23. EAR PROBLEMS	—	✓
3. ANEMIA	—	✓	24. EPILEPSY	—	✓
4. ANKYLOSIS OF JOINT (STIFFNESS OF JOINT)	—	✓	25. FAINTING OR DIZZY SPELLS	—	✓
5. ANY AMPUTATIONS (AMPUTATED FOOT, LEG, ARM OR HAND)	—	✓	26. FOOT PROBLEMS	—	✓
6. ARTERIOSCLEROSIS (HARDENING OF THE ARTERIES)	—	✓	27. HEADACHES (FREQUENT)	—	✓
7. ARTHRITIS	—	✓	28. HEARING LOSS	—	✓
8. ASTHMA	—	✓	29. HEAVY METAL POISONING	—	✓
9. BACK PROBLEMS	—	✓	30. HEMOPHILIA (FREE BLEEDER)	—	✓
10. BRAIN DAMAGE	—	✓	31. HEPATITIS	—	✓
11. BRONCHITIS	✓	—	32. HERNIA OR RUPTURE	—	✓
12. BURSITIS	—	✓	33. HIGH BLOOD PRESSURE	—	✓
13. CANCER	—	✓	34. HODGKINS DISEASE	—	✓
14. CARDIAC DISEASE	—	✓	35. HIV POSITIVE	—	✓
15. CEREBRAL PALSY	—	✓	36. HYPERINSULINISM (LOW BLOOD SUGAR)	—	✓
16. CEREBRAL VASCULAR ACCIDENT (STROKE)	—	✓	37. IONIZING RADIATION INJURY (RADIATION EXPOSURE)	—	✓
17. CHRONIC COUGH	—	✓	38. JAUNDICE	—	✓
18. COLDS (FREQUENT)	—	✓	39. KIDNEY CONDITIONS	—	✓
19. COLITIS	—	✓	40. LOSS OF SIGHT (LOSS OF SIGHT OF ONE OR BOTH EYES OR PARTIAL LOSS OF UNCORRECTED VISION OF MORE THAN 75% BILATERAL)	—	✓
20. COMPRESSED AIR SEQUELAE (BREATHING DIFFICULTY)	—	✓	41. MENTAL RETARDATION	—	✓
21. DEAFNESS	—	✓			

42. MULTIPLE SCLEROSIS (MS) — ☒ NO
43. MUSCULAR DYSTROPHY (MD) — ☒ NO
44. OSTEOMYELITIS — ☒ NO
(BONE DISEASE)
45. PARKINSON'S DISEASE — ☒ NO
46. PEPTIC ULCER — ☒ NO
47. PNEUMONIA — ☒ NO
48. RESIDUAL DISABILITY FROM — ☒ NO
POLIOMYELITIS
49. PSYCHOLOGICAL PROBLEMS — ☒ NO
(PSYCHONEUROTIC DISABILITY
FOLLOWING TREATMENT IN A
RECOGNIZED MEDICAL
OR MENTAL INSTITUTION)

50. RHEUMATIC FEVER — ☒ YES
51. PULMONARY DISEASE — ☒ YES
(LUNG DISEASE)
52. RUPTURED INTERVERTEBRAL DISC — ☒ YES
(SLIPPED DISC)
53. SHORTNESS OF BREATH — ☒ YES
54. SICKLE CELL ANEMIA — ☒ YES
55. SILICOSIS — ☒ YES
56. SINUS PROBLEMS — ☒ YES
57. SKIN RASH OR INFECTIONS — ☒ YES
58. SORE THROATS (FREQUENT) — ☒ YES
59. SWELLING OF LEGS AND ANKLES — ☒ YES
60. THROMBOPHLEBITIS — ☒ YES
(BLOOD CLOTS)
61. TUBERCULOSIS (TB) — ☒ YES
62. VARICOSE VEINS — ☒ YES

63. EXPLAIN OR COMMENT ON ANY "YES" ANSWERS GIVEN ABOVE.

Had Peptic Ulcer and nervous stomach about 8 yrs.
ago. - Had bronchitis as a result of a bad chest
cold one time.

64. LIST AND EXPLAIN ANY OTHER PRE-EXISTING DISEASE, CONDITION OR IMPAIRMENT NOT LISTED ABOVE.

65. HAVE YOU EVER BEEN REFUSED EMPLOYMENT FOR HEALTH REASONS? NO IF YES, PLEASE EXPLAIN:

66. HAVE YOU EVER HAD OR DO YOU NOW HAVE ANY DRUG OR NARCOTIC HABIT? NO

67. A. DO YOU HAVE ANY HANDICAPS OR DISABILITIES? NO (A "YES" ANSWER WILL NOT NECESSARILY BAR YOU FROM
EMPLOYMENT. THE NATURE AND SEVERITY OF THE DISABILITY IN RELATION TO THE POSITION APPLIED FOR ARE CONSIDERED.)

B. DO YOU HAVE ANY CONDITION WHICH MAY REQUIRE A SPECIAL WORK ASSIGNMENT? NO

68. ARE YOU CURRENTLY UNDER THE CARE OF A PHYSICIAN? NO IF YES, WHAT ARE YOU BEING TREATED FOR?

69. LIST ANY HOSPITALIZATIONS, OPERATIONS, SERIOUS ILLNESSES OR INJURIES THAT YOU HAVE HAD: pregnancy - tubal -
etc.

70. HAVE YOU EVER BEEN OUT OF WORK FOR MORE THAN ONE WEEK AT A TIME? NO IF YES, PLEASE DESCRIBE: _____

71. DO YOU HAVE ANY SCARS? _____ IF YES, PLEASE DESCRIBE: on stomach from C-section + tubal.

72. LIST ALL DRUGS OR SUBSTANCES TO WHICH YOU ARE ALLERGIC AND SPECIFY TYPE OF REACTION SUCH AS ITCHING, WHEEZING, SWELLING, ETC.

NKA

73. HAVE YOU EVER BEEN INJURED ON YOUR JOB? NO

WHO WAS YOUR EMPLOYER AND WHAT IS THE APPROXIMATE DATE OF THE INJURY? _____

NAME AND ADDRESS OF PHYSICIAN? _____

WHAT PART OF YOUR BODY WAS INJURED? _____

DID YOU RECEIVE WORKERS' COMPENSATION BENEFITS? _____

DID YOU RECEIVE ANY PERMANENT DISABILITY? _____

IS YOUR CLAIM OPEN OR CLOSED? _____

74. HAVE YOU EVER HAD PROBLEMS WITH YOUR BACK? NO IF SO, GIVE THE DATE AND DETAIL (INCLUDE NAMES OF TREATING PHYSICIANS)

75. DO YOU WEAR GLASSES? NO CONTACTS? NO APPROXIMATE DATE OF LAST EYE EXAM? _____

NAME OF PHYSICIAN? _____

76. ARE YOU COLOR BLIND? NO

77. DATE OF LAST PHYSICAL EXAMINATION? 8/1/96 WHERE? Dr. Bishop

DISEASE/IMMUNIZATION HISTORY

78. DATE OF LAST VACCINATION AGAINST TETANUS? 8/2/96 AGAINST POLIO? ?

79. HAVE YOU EVER BEEN TOLD THAT YOU HAD A POSITIVE TUBERCULIN (TB) SKIN TEST? YES IF YES, HAVE YOU BEEN TREATED? yes

80. HAVE YOU EVER BEEN TREATED FOR A _____ DISEASE (VO)? NO IF YES, PLEASE CIRCLE

GONORRHEA (G.C.) SYPHILIS NONSPECIFIC GENITAL INFECTION GENITAL HERPES OTHER _____

81. HAVE YOU HAD ANY OF THE FOLLOWING INFECTIOUS DISEASES? IF YES, PLEASE CIRCLE.

TUBERCULOSIS (TB) VARICELLA (CHICKENPOX) HERPES SIMPLEX STREP INFECTION MENINGITIS
 HEPATITIS A, NON A RUBELLA HERPES ZOSTER (SHINGLES) STAPH INFECTION
 HEPATITIS B, NON B INFLUENZA (FLU) MEASLES

82. LIST ANY ENVIRONMENTAL EXPOSURES THAT YOU HAVE HAD (i.e. ETHYLENE OXIDE, FORMALDEHYDE, ASBESTOS, RADIATION):

FAMILY HISTORY (at member's discretion)

83. AMONG YOUR BLOOD RELATIVES (CHILDREN, BROTHERS, SISTERS, PARENTS OR GRANDPARENTS) IS THERE ANY HISTORY OF OR PRESENT ILLNESS IN ANY OF THE FOLLOWING: CIRCLE EITHER "YES" OR "NO"

1. CANCER	<u>YES</u>	NO	<u>Father</u>
2. HEART TROUBLE	<u>YES</u>	NO	<u>Mother, Sister</u>
3. HIGH BLOOD PRESSURE	YES	<u>NO</u>	
4. STROKE	<u>YES</u>	NO	<u>Mother</u>
5. TUBERCULOSIS	YES	<u>NO</u>	
6. EPILEPSY	YES	<u>NO</u>	
7. ALCOHOLISM	YES	<u>NO</u>	
8. DIABETES	<u>YES</u>	NO	<u>Mother</u>
9. EMOTIONAL ILLNESS	YES	<u>NO</u>	
10. ASTHMA, HAY FEVER, ALLERGIES	<u>YES</u>	NO	<u>Daughter</u>
11. TENDENCY TO BLEED EASILY	YES	<u>NO</u>	
12. RHEUMATISM OR ARTHRITIS	YES	<u>NO</u>	
13. STOMACH TROUBLE	<u>YES</u>	NO	<u>Myself - Sister</u>
14. LOW BACK PAIN	YES	<u>NO</u>	

Michael P. Kilburn, M.D.

RE: Billie Jean New

Date: January 20, 2006

RCI File #: 31390

Page Two

Which of the following conditions most probably existed prior to the injury of July 12, 2005?

- A) prior neck condition Yes ☒ No ☐
B) cervical stenosis Yes ☐ No ☒
C) osteophytes of the cervical spine Yes ☒ No ☐
COMMENT:

Are these conditions considered to be arthritis in this case?

- A) prior neck condition Yes ☒ No ☐
B) cervical stenosis Yes ☐ No ☒
C) osteophytes of the cervical spine Yes ☒ No ☐

Did the injury of July 12, 2005, most probably aggravate or combine with the:

- A) prior neck condition Yes ☒ No ☐
B) cervical stenosis Yes ☒ No ☐
C) osteophytes of the cervical spine Yes ☒ No ☐
COMMENT:

Did the aggravation of or combination with the affirmatively indicated condition(s) most probably result in substantially greater:

- A) time lost from work Yes ☒ No ☐
B) permanent disability Yes ☒ No ☐
C) medical costs Yes ☒ No ☐; than would have occurred with the injury of July 12, 2005, alone.

Which conditions would you consider to be a hindrance to employment or reemployment?

- A) prior neck condition Yes ☒ No ☐
B) cervical stenosis Yes ☒ No ☒
C) osteophytes of the cervical spine Yes ☐ No ☐

Which conditions would you consider to be permanent?

- A) prior neck condition Yes ☒ No ☐
B) cervical stenosis Yes ☒ No ☐
C) osteophytes of the cervical spine Yes ☒ No ☐

I realize the degree of conjecture involved in these questions, but please be assured that your expert opinion is necessary to conclude the carrier's claim with the Fund. I have enclosed a self-addressed, stamped envelope for your convenience.


Michael P. Kilburn, M.D.

1/23/06
Date

Re: SIF - Billie New v. Abbeville County Memorial Hospital

W.C.C. No.: 0511737

SIF File No.: 120087

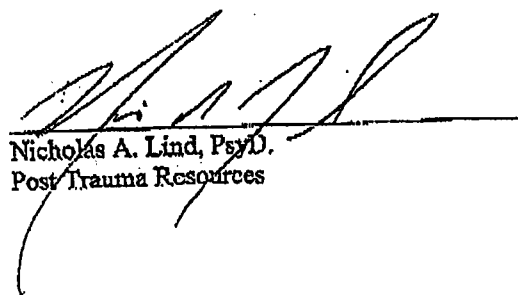
Soc. Sec. No.: 247-11-4666

Date of Injury: 7/12/2005

To the best of my knowledge and within a reasonable degree of medical certainty:

- A. The patient had depression with treatment prior to July 12, 2005.
Yes ☒ No ☐
- B. The pre-existing depression with treatment is permanent and serious enough to constitute a hindrance or obstacle to employment or re-employment.
Yes ☒ No ☐
- C. The injury of July 12, 2005 combined with or aggravated the pre-existing depression with treatment (i.e., had the patient had a previously healthy psyche, it is likely this accident would have resulted in a less severe overall condition?)
Yes ☒ No ☐
- D. The aggravation or combination of the pre-existing depression with treatment with the injury of July 12, 2005 resulted in:
1. Substantially greater lost time from work (i.e., had the patient not had pre-existing depression with treatment, is it likely she would have lost less time from work?)
Yes ☒ No ☐
 2. Substantially greater permanent disability (i.e., had the patient not had pre-existing depression with treatment, is it likely she would have suffered less permanent disability?)
Yes ☒ No ☐
 3. Substantially greater medical costs (i.e., had the patient not had pre-existing depression with treatment, is it likely she overall medical costs would have been reduced?)
Yes ☒ No ☐

6/13/2011
Date


Nicholas A. Lind, PsyD.
Post Trauma Resources

Re: SIF - Billie New v. Abbeville County Memorial Hospital

W.C.C. No.: 0511737

SIF File No.: 120087

Soc. Sec. No.: 247-11-4666

Date of Injury: 7/12/2005

To the best of my knowledge and within a reasonable degree of medical certainty:

A. The patient had anxiety with treatment prior to July 12, 2005.

Yes ☒ No ☐

B. The pre-existing anxiety with treatment is permanent and serious enough to constitute a hindrance or obstacle to employment or re-employment.

Yes ☐ No ☐

C. The injury of July 12, 2005 combined with or aggravated the pre-existing anxiety with treatment (i.e., had the patient had a previously healthy psyche, it is likely this accident would have resulted in a less severe overall condition?)

Yes ☒ No ☐

D. The aggravation or combination of the pre-existing anxiety with treatment with the injury of July 12, 2005 resulted in:

1. Substantially greater lost time from work (i.e., had the patient not had pre-existing anxiety with treatment, is it likely she would have lost less time from work?)

Yes ☐ No ☒

2. Substantially greater permanent disability (i.e., had the patient not had pre-existing anxiety with treatment, is it likely she would have suffered less permanent disability?)

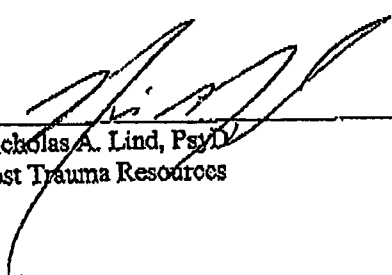
Yes ☐ No ☒

3. Substantially greater medical costs (i.e., had the patient not had pre-existing anxiety with treatment, is it likely she overall medical costs would have been reduced?)

Yes ☐ No ☒

Date

6/13/2011


Nicholas A. Lind, PsyD
Post Trauma Resources

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No.: 2013-001348

South Carolina Second Injury Fund,.....Appellant,

v.

Abbeville County Memorial Hospital, Employer, and
PHTS Risk Management Services, Carrier,..... Respondents,

In re:

Billie New, ... Employee/Claimant,

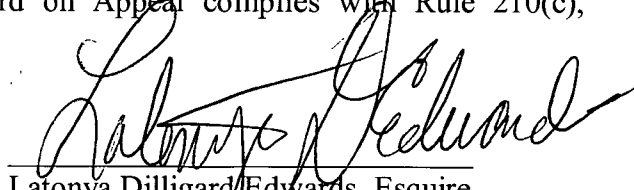
v.

Abbeville County Memorial Hospital,.....Employer.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal complies with Rule 210(c),
SCACR.

January 3, 2014



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ATTORNEY FOR APPELLANT

RECEIVED

JAN 03 2014

SC Court of Appeals