

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1115485
Appellate Case No. 2018-001197

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SC Court of Appeals

Lamar Clark, ... Appellant,

v.

Philips Electronics/Shakespeare, Employer,
and Gallagher Bassett Services, Carrier, ... Respondents.

RECORD ON APPEAL - Volume 1

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INDEX

Volume 1

Orders

Single Commissioner Order December 28, 2017	1
Appellate Panel Order June 5, 2018	49

Pleadings and Motions

Claimant's Form 50 (Request for Hearing)	61
Defendant's Form 21 (Employer's Request for Hearing)	62
Defendants' Form 58 (Pre-Hearing Brief)	63
Defendants' Form 30 (Employer's Request for Panel Review) Addendum	64
Defendants' Brief to the Appellate Panel	66
Claimant's Brief to the Appellate Panel	96

Transcripts and Exhibits

Transcript of September 6, 2016 (Single Commissioner)	107
Transcript of March 20, 2018 (Appellate Panel)	255
Deposition Transcript of Steven Storick (Excerpts)	281
Deposition Transcript of Lamar Clark (Excerpts)	293

Volume 2

APA Submissions	305

Defendant's Exhibits

Exhibit A - Dr. Holbrook Form 14B	477
Exhibit B - Vocational Evaluation of Jan Westmoreland	478
Exhibit C - Social Security Administration Documents	506
Exhibit O - Philips Electronics Personnel Documents	653
Exhibit P - Gallman Personnel Services Personnel Documents	654
Exhibit Q - Prescription Medication History	672
Exhibit T - Letter and Questionnaire to Dr. Storick	673
Exhibit V - Staff Masters Subpoena Response	693
Exhibit W - Roper Personnel Subpoena Response	697
Exhibit X - Long's Drugs Subpoena Response	700
Exhibit Y - Auto Zone Subpoena Response	703
Certificate of Counsel	706

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1115485

Lamar Clark, CLAIMANT

v.

Philips Electronics/Shakespeare, EMPLOYER

and

Gallagher Bassett Services, CARRIER

HEARING: Held in Columbia, South Carolina on September 6, 2016.

APPEARANCES: Claimant was represented by William B. Salley, Jr., Esquire
and Jacob M. Smith, Esquire, Lexington, South Carolina.

Defendants represented by Brooke Payne, Esquire and Ryan
Oxford, Esquire, Mt. Pleasant, South Carolina.

PURPOSE OF HEARING: To determine issues as set forth on Form 50 and Form 21

DECISION AND ORDER: By The Honorable Aisha Taylor, Commissioner

FILED: December 28, 2017

STIPULATIONS

At the call of the case, the parties stipulated that the South Carolina Workers Compensation had jurisdiction in this case and that venue was proper in Richland County. The purpose of the hearing is to decide issues raised in Claimant's Form 50 and Defendants' Form 21. Notice was timely and properly served upon all parties of interest. Also, both parties stipulated that the Claimant's applicable average weekly wage is \$361.91, and the corresponding compensation rate is \$241.29. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an admitted accidental injury that occurred on or about July 20, 2011, while in the employment of the Employer/Defendants, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this case. Without objection, and with the exception of any self-serving statements or unstipulated medical reports, the Commission's file was made a part of the record.

MEDICAL EVIDENCE/RATINGS- APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, South Carolina Code §1-23-320 *et seq.* and Regulation 67-612, the parties submitted the following items without objection as evidence in support of their cases;

CLAIMANT'S APA SUBMISSIONS

APA #1	Report of Thomas Holbrook, Jr. consisting of 49 pages
APA #2	Report of Newberry Physical Therapy consisting of 29 pages
APA #3	Report of Jorge Garcia, M.D. consisting of 11 pages
APA #4	Report of John Hibbitts, M.D. consisting of 15 pages
APA #5	Report of Steven Storick, M.D. consisting of 20 pages, an additional 3 pages, & an additional 1 page

APA #6 Report of W. Daniel Westerkam, M.D. consisting of 6 pages

APA #7 Report of Tracy Hill, P.T. consisting of 48 pages

APA #8 Report of Donald Johnson, II, M.D. consisting of 3 pages

APA #9 Report of Palmetto Imaging consisting of 36 pages

APA #10 Report of Justin Hutcheson, M.D. consisting of 33 pages

APA #11 Report of Progressive Physical Therapy consisting of 116 pages

APA #12 Report of Nicholas Lind, PsyD consisting of 4 pages

APA #13 Report of Robert Brabham, Ph.D. consisting of 27 pages

APA #14 Report of Newberry County Memorial Hospital consisting of 41 pages & an additional 469 pages

APA #15 Report of David Holt, M.D. consisting of 16 pages

APA #16 Report of Usama Gabr, M.D. consisting of 14 pages

APA #17 Report of Gisele Girault, M.D. consisting of 3 pages

APA #18 Report of Florida Memorial Medical Center consisting of 250 pages

APA #19 Report of Halifax Medical Center consisting of 66 pages

APA #20 Report of Malcolm Gottlich, M.D. consisting of 8 pages

Exhibit C E-mail between parties re: Beckman case dated 12/17/15 consisting of 1 page

Exhibit D E-mail from Brooke Payne requesting SSA award dated 12/17/15 consisting of 1 page

Exhibit E E-mail to Jenna re all files forwarded in response to subpoena dated 01/04/16 consisting of 1 page

Exhibit F E-mail attaching SSA release requesting signature of claimant dated 02/18/16 consisting of 1 page

- Exhibit G E-mail from Brooke Payne requesting signed SSA release dated 02/24/16 consisting of 1 page
- Exhibit H E-mail from Ryan Oxford requesting executed SSA release and documents from SSA attorney dated 03/01/16 consisting of 1 page
- Exhibit I E-mail from Jenna requesting signed SSA release dated 03/02/16 consisting of 1 page
- Exhibit J E-mail from Ryan Oxford requesting signed SSA release and documents from SSA attorney dated 03/02/16 consisting of 1 page
- Exhibit K E-mail from Brooke Payne indicating Motion to be filed dated 03/02/16 consisting of 1 page
- Exhibit K Social Security Administration Decision dated 11/07/14 consisting of 7 pages
- Exhibit M Social Security Documents consisting of 384 pages
- Exhibit T Letter from Steven Storick, M.D. with accompanying medical questionnaires dated 09/06/16 consisting of 4 pages

DEFENDANT'S APA SUBMISSIONS

- APA #17 Report of Compass Family Medicine consisting of 15 pages
- APA #18 Report of Newberry PT consisting of 4 pages
- APA #19 Report of Dr. Steven Storick consisting of 1 page
- APA #21 Report of Ormond Medical Arts - Family Practice consisting of 6 pages
- APA #22 Report of Compass Family Medicine consisting of 15 pages
- APA #23 Report of Newberry PT consisting of 4 pages
- APA #24 Report of Dr. Steven Storick consisting of 4 pages
- APA #25 Report of Progressive PT consisting of 14 pages

APA #26 Report of Dr. Gisele Girault consisting of 6 pages

APA #27 Halifax Medical Center (7/28/06 and 8/14/06 o.v.), consisting of 9 pages

APA #28 Reports from Dr. Storick (9/14/16 narrative and 11/28/16 o.v.), consisting of 3 pages

APA #29 Report from Dr. Holbrook (9/14/16 o.v.), consisting of 4 pages

Exhibit A Dr. Thomas Holbrook Form 14 B (1/15/16) consisting of 1 page

Exhibit B Vocational Evaluation - Jan Westmoreland (4/6/16 & 7/18/16) consisting of 28 pages

Exhibit C Social Security Administration Documents consisting of 147 pages

Exhibit N Social Security Administration Documents consisting of 147 pages

Exhibit O Philips Electronics Personnel Documents consisting of 1 page

Exhibit P Gallman Personnel Services Personnel Documents consisting of 18 pages

Exhibit Q Prescription Medication History consisting of 1 page

Exhibit R Evidentiary Deposition of Dr. Steven Storick

Exhibit S Discovery Deposition of Claimant

Exhibit T Letter and Questionnaire to Dr. Storick dated 8/30/16 consisting of 26 pages

Exhibit V Staff Masters - subpoena response consisting of 4 pages

Exhibit W Roper Personnel - subpoena response consisting of 3 pages

Exhibit X Long's Drugs - subpoena response consisting of 3 pages

Exhibit Y Auto Zone - subpoena response consisting of 3 pages

STATEMENT OF THE CASE

This matter is properly before me to resolve issues raised in Claimant's Form 50 and in the Defendants' Form 21. This case was heard by the undersigned Commissioner on September 6, 2016, at which time the parties and/or their representatives appeared and evidence was received. Claimant suffered an admitted accident within the course and scope of his employment on or about July 20, 2011. Claimant alleges injuries to his back, left hip, left leg, left foot, nervous system, and resultant psychological. Defendants admitted injuries to the lumbar spine only. Defendants allege that Claimant has reached maximum medical improvement. Claimant seeks an award for permanent and total disability under either S.C. Code §42-9-10 or §42-9-30 if deemed to have reached maximum medical improvement. Defendants allege that the Claimant is at MMI and request a stop pay and recoupment of benefits since August of 2015. Defendants deny that Claimant is permanently and totally disabled, and assert that he has only sustained an injury to one body part, the lumbar spine. Defendants contend that Claimant is entitled to scheduled member disability under S.C. Code §42-9-30, and agree that his authorized treating physician has assigned an impairment rating of 10% to his spine. Medical records were submitted under the Administrative Procedures Act as evidence and made part of the Commission record.

At the conclusion of the hearing testimony on September 6, 2016, the hearing was adjourned to rule on Defendants' Motions to Compel discovery and hearing testimony from Joel Leonard, CRC, CVE. The parties briefed the issue and an Order on the Motions was served on December 5, 2016.

The September 6, 2016 hearing record was also held open to allow the submission of documents, and that would include a second deposition of Dr. Storick, if Defendants wished to pursue that route. The Commissioner also stated that the record would remain open for submission

of documents that are received pursuant to subpoenas that have already been sent, as well as any providers learned about at the hearing (Hearing Transcript page 24).

As of December 5, 2016 – 90 days after the hearing – no additional documents, APAs, or exhibits were filed with the Commission. Order Instructions were sent to the parties on that same day indicating the record was closed as of December 5, 2016 as no documents had been submitted. On December 14, 2016, Defendants submitted a Second Supplemental Notice of Submission of Written Experts' Reports and Exhibits, which included Defendants' APA Submissions numbers 27, 28, and 29 and Exhibits U, V, W, X, Y, and Z. The undersigned admitted the submissions into the record despite the December 5, 2016 closing date referenced in the Order Instructions because no deadline had been issued at the conclusion of the September 6, 2016 hearing when the record was originally held open.

EVIDENCE

Claimant's Testimony:

Claimant testified that he is forty-one years of age (Hearing Transcript page 25, line 10). He attended school through several years of junior college, but did not earn a degree (Hearing Transcript page 2, lines 11-22). Within his application for social security benefits, the Claimant indicated that the highest grade of school completed was 2 years of college. (Defendants Ex. N p. 1951, 2045).

Claimant testified that he worked for a temporary agency for a period of approximately six or seven months prior to being hired as an employee by Philips Electronics (Hearing Transcript page 26, lines 21-25, and Hearing Transcript page 27, lines 1-5). He testified that he was hired by Philips Electronics on Monday and injured on Wednesday (Hearing Transcript page 27, lines 6-

8). Claimant testified that the job he was performing for Philips Electronics was a physically-demanding job (Hearing Transcript page 27, lines 12-15). He described the physical requirements of the job as lifting materials, moving materials, packaging materials, painting materials and, in some instances, making materials (Hearing Transcript page 27, lines 18-22). Claimant also testified that the job entailed more than what was specified in the actual job description (Hearing Transcript page 27, lines 23-25, and Hearing Transcript page 28, line 1). He further testified that he had to lift heavy items in the regular course of his job duties (Hearing Transcript page 28, lines 2-7), as well as perform a lot of bending and standing (Hearing Transcript page 28, lines 8-13). Claimant testified that he is not computer proficient (Hearing Transcript page 28, lines 14-15). One of the years he completed of college was at Kaiser College, where the Claimant majored in computer programming (Hrg. Tr. p. 66).

Claimant testified that on the day of his work accident he was lifting a 24-foot cross arm made out of fiberglass with a co-worker to place onto the forks of a forklift (Hearing Transcript page 28, lines 19-25, and Hearing Transcript page 29, lines 1-4). He further testified that the end held by the co-worker slipped off prior to getting to the forklift and when it slipped, Claimant lost his grip as well. Claimant testified that rather than taking the chance of letting the cross arm land on his foot and having his foot get broken, he actually caught the cross arm on the way down (Hearing Transcript page 29, lines 6-12). He testified that when he caught the cross arm he experienced an agonizing pain in his back (Hearing Transcript page 29, lines 14-18).

Claimant testified that he eventually underwent treatment with Dr. Holbrook (Hearing Transcript page 29, lines 19-21). He also testified that he worked for approximately six months following the work injury, almost up and until the date of his initial surgery (Hearing Transcript page 29, lines 22-24 and Hearing Transcript page 30, lines 1-2). Claimant underwent back surgery

by Dr. Holbrook and did not return to work thereafter (Hearing Transcript page 30, lines 5-13). He testified that he also underwent an unrelated neck surgery in between his two work-related back surgeries (Hearing Transcript page 30, lines 14-16).

Claimant testified that he was released to return to work initially following back surgery; however, he continued to experience back pain and tingling in his toes, as well as pain down his left leg (Hearing Transcript page 30, lines 17-25, and Hearing Transcript page 31, line 3). Claimant testified that after his return to work, he ultimately underwent a second back surgery by Dr. Holbrook on September 25, 2013 (Hearing Transcript page 31, lines 24-25 and Hearing Transcript page 32, lines 1-2). Claimant described ongoing pain in his lower back and left hip, pain in the back of his left thigh (hamstring area), and down his left leg and left big toe (Hearing Transcript page 32, lines 14-25 and Hearing Transcript page 33, lines 1-6). He also testified that he continues to experience numbness in the left leg (Hearing Transcript page 33, lines 7-9). Claimant further testified that he experiences all of these ongoing symptoms on a daily basis (Hearing Transcript page 33, lines 10-12). He indicated that his symptoms are aggravated by bending, stooping, and sitting for long periods of time (Hearing Transcript page 33, lines 13-25 and Hearing Transcript page 34, lines 1-9).

Claimant testified that Neurontin helps with his ongoing symptoms, but does not take away the pain (Hearing Transcript page 36, lines 1-2). He further testified that he must alternate positions frequently and take showers often to alleviate his ongoing symptoms, albeit with short-lived benefit (Hearing Transcript page 36, lines 10-14). He also testified that he applies heat to his back three to four times a day (Hearing Transcript page 36, lines 18-25).

Claimant testified that he does not sleep well as a result of his injuries and resultant conditions (Hearing Transcript page 37, lines 5-7). He testified that he now gets maybe two to

three hours of interrupted sleep a day, with the use of pillows between his legs/knees to try to take the tension off of his back (Hearing Transcript page 37, lines 9-15 and 25, and Hearing Transcript page 38, line 1-8). He further testified that on a bad day his pain level is an 8-9 out of 10 (Hearing Transcript page 38, line 18), and a 7 out of 10 on a good day (Hearing Transcript page 38, line 21). Claimant testified that in a given week he has approximately three good days and four bad days (Hearing Transcript page 39, line 3).

Claimant testified that he is depressed due to the work-related physical injuries (Hearing Transcript page 41, lines 1-3). He testified that he is interested in receiving ongoing care with Dr. Lind for his psychological condition (Hearing Transcript page 41, lines 6-9). Claimant testified that he now feels useless, like he has no worth (Hearing Transcript page 41, lines 13-17).

Claimant testified that he does not feel like he could work at this time (Hearing Transcript page 41, lines 21-23). He further testified that he has never performed any jobs that were less physically demanding (Hearing Transcript page 41, lines 24-25 and Hearing Transcript page 42, lines 1-5).

Claimant testified that he is interested in the stimulator if deemed to be a candidate (Hearing Transcript page 43, lines 6-9). He testified that he would like to be reevaluated by Dr. Holbrook based on Dr. Storick's most recent opinion (Hearing Transcript page 43, lines 10-13). He further testified that he is interested in receiving treatment for his ongoing left toe symptoms through pain management, as indicated by Dr. Gabr and Dr. Hutcheson (Hearing Transcript page 44, lines 13-19 and Hearing Transcript page 45, lines 2-7).

When deposed back in 2013, the Claimant was asked to list all of his prior Employers, and he did not mention Tile Depot. (Hrg. Tr. pg. 46, lines 12 – 47; Ex. S at p. 21 line 15 – pg. 36 line 8). The Claimant had also testified under oath at his deposition in 2013 that he had never been

injured while working for a prior Employer, failing to disclose his prior injury at Tile Depot. (Hrg. Tr. p. 47 lines 16 – 21). In contrast, at the hearing, the Claimant testified that he previously injured his back while working for Tile Depot in 2007 (Hearing Transcript page 47, line 24). The Claimant testified that he did not file a workers' compensation claim against Tile Depot, yet he was impeached with the records from the Florida Workers' Compensation Commission showing otherwise (Hearing Transcript page 48, line 2; Hearing Transcript page 40, line 14). In his medical treatment related to his claim against Tile Depot, the Claimant reported a history of scoliosis and pain in his low back (Hearing Transcript page 50, line 15; Hearing Transcript page 51, line 13).

On cross examination, Claimant admitted that the alleged injury while at Tile Depot was caused by lifting some tiles resulting in pain in the low and mid back (Hearing Transcript page 52, lines 18-22). He further testified that the work-related injury at Tile Depot was significant enough for him to apply for SSDI benefits from the Social Security Administration (Hearing Transcript page 53, lines 3-7). Claimant testified that he informed the Social Security Administration in 2008 that he was not able to work after June 28, 2006 and was actually examined by a Social Security Disability Evaluator (Hearing Transcript page 53, lines 14-22). He further agreed that he had low back and left knee pain that was still present over two years after the 2007 work accident while employed by Tile Depot (Hearing Transcript page 54, lines 3-6).

Claimant admitted that he again applied for Social Security Disability Benefits in 2009 alleging an inability to work as of March 30, 2007, due to back problem, bilateral knee problems, and diabetes (Hearing Transcript page 56, lines 6-18). Although the Claimant testified at his 2013 deposition that he had never undergone any diagnostic studies related to his back, he indicated on his 2009 social security application that he had undergone X-rays of his back at Florida Hospital

Ormond Memorial and Halifax Medical Center (Defendants Exhibit N page 2071; Hearing Transcript page 57, lines 1-9).

He acknowledged that he was examined by a Disability Examiner in relation to the 2009 application in July of 2009 (Hearing Transcript page 65, lines 1-5). At that time, he reported being unable to work because of his left knee and left sided low back pain. (Defendants Ex. N at p. 1871). He further reported that X-rays showed decreased space between L5-S1. (Id.). He testified that it did not surprise him that two years prior to his work injury at Philips, that he was having low back pain into his left side (Hearing Transcript page 65, lines 16-20) and was reporting to the Social Security Administration that he was unable to work because of the left-sided low back pain and left knee pain (Hearing Transcript page 65, lines 21-24).

Claimant testified that he has always noted left leg pain, although it may not have been as bad at times, but his left leg pain did worsen following the second surgery (Hearing Transcript page 68, lines 13-15). He also testified that he would dispute the February 2014 note wherein it was indicated that he had no radicular leg pain (Hearing Transcript page 69, lines 15-20).

However, he admitted that he did begin complaining of right hip pain to his physical therapist at that time (Hearing Transcript page 69, lines 21-24). Claimant testified that throughout his physical therapy in 2014 his pain improved to a level seven (Hearing Transcript page 70, lines 4-8).

Claimant admitted that he did not report any prior physical limitations to the IME physicians or vocational evaluators in relation to his work injury at Philips even though he was asked about prior limitations (Hearing Transcript pages 88-89).

Claimant testified indicating to Dr. Lind thoughts of slicing his wrists and taking pills (Hearing Transcript page 91, lines 6-9). He testified that his suicidal thoughts come and go (Hearing Transcript page 91, lines 19-22).

Claimant testified that Jan Westmoreland said he could be a security guard, and Dr. Storick told him that if he released him, he would be able to do sedentary work only (Hearing Transcript page 96, lines 13-19; Hearing Transcript page 98, lines 5-18). He further testified if he was capable of working any job, he would, as he does not want to sit at home (Hearing Transcript page 97, lines 1-7). Claimant testified that he asked Dr. Storick if he would be able to perform a security guard position, and he was advised that he could not unless he was sitting down (Hearing Transcript pages 97-98, lines 24-25 and 1-3). He testified that he never attempted to find a security guard position following his discussion with Dr. Storick (Hearing Transcript page 98, lines 19-21).

Claimant testified he did apply to several other employers, including Autozone in Newberry regarding a cashier position (Hearing Transcript page 99, lines 5-6). Claimant testified that he completed an application with Autozone and attached the medical note/work restrictions (Hearing Transcript pages 99-100, lines 9-25 and 1-17). He testified that he never heard back from Autozone (Hearing Transcript page 100, lines 18-19). He further testified that he applied with a temp service on Wilson Road in Newberry and Love's Drugstore located next door (Hearing Transcript pages 100-101, lines 20-25 and 1-6). Claimant testified that he attached his work restrictions to the application with the temp service (Hearing Transcript page 101, lines 13-15 and 24-25). He further testified that he spoke with the Pharmacy Manager at Love's and was told they were not hiring at that time, but would keep his application on file (Hearing Transcript page 102,

lines 8-13). Claimant also testified that he completed an application at Love's (sic), but did not hear back from them. (Hrg. Tr. p. 102 lines 6 – 15).

Claimant testified that he did not have numbness in his big toe prior to this particular injury (Hearing Transcript page 115, lines 18-22). He further testified that he was never diagnosed with any kind of radiculopathy into the left toe previously (Hearing Transcript page 115, lines 23-25). He testified that no surgery had been recommended prior to this particular injury, and no MRI or CAT scan of his back had been recommended (Hearing Transcript page 116, lines 1-10).

Claimant testified that when he worked for the temp agency for approximately seven months prior to working for Defendants, he did not miss work due to any inability to physically perform the job (Hearing Transcript page 121, lines 2-8). He further testified that he had no problems associated with his back or left leg that prevented him from performing any work at the temporary agency (Hearing Transcript page 121, lines 14-17).

Medical Evidence:

Seven months before his date of accident with this Employer, the Claimant presented to Newberry Hospital, reporting back and left flank pain (Hearing Transcript page 127-128). Specifically, he reported that the left side of his back was sore and complained of muscle spasms. (Id.)

Medical evidence by John Hibbitts, M.D. indicated, "36-year-old gentleman who works at Shakespeare who injured his back on July 20 when he was carrying a cross arm with another employee and he lost his grip of it and bent forward to try to catch it. He felt sudden onset of low back pain. He has had pain there since that time. During his intervening time period, he has began to notice a very tender nodule along the superior posterior border of the iliac crest. Palpation of this area, he says, makes his left leg go "numb." He states he did not notice it prior to this injury.

He notes persistent low back pain with activity. Assessment: Likely painful neuroma of lumbar spine with associated post traumatic low back pain (Claimant's APA #4, page 90)."

On 10/19/11, John Hibbitts, M.D. noted, "MRI confirms L5-S1 left parasagittal disc herniation, as well as angular disc protrusion with associated facet arthrosis. Given his left sided pain and MRI findings combined with new onset radicular pain down tot he buttock where it was not there originally, I would advise getting him started with ESI at L5-S1, as well as get him on an organized rehab program. Start him on Neurontin, as well as Zipsor. Keep him on sedentary duty (Claimant's APA #4, page 91)."

An EMG performed by Dr. Daniel Sheehan on 01/25/12 concluded, "electrodiagnostic findings and clinical assessment are consistent with lumbar radiculopathy primarily affecting the left L5 nerve root distribution (Claimant's APA #4, page 98)." On 02/01/12, John Hibbitts, M.D. referred Lamar to Dr. Rambo for further treatment options (Claimant's APA #4, page 104).

On 02/22/12, Claimant presented to Thomas Holbrook, Jr., M.D., who noted, "Mr. Clark is referred by Workman's Comp for a low back injury which he sustained in July of 2011 when he was lifting a heavy object with his coworker. The coworker's end slipped from his hands and Mr. Clark also dropped his end but caught it to prevent it from striking his foot and further injury. At that time he experienced low back pain which within a few days went down the left leg. He is now complaining of significant low back pain in the left buttock and left lower back with some tingling in his left foot. He has had two lumbar epidural steroid injections without any significant lasting relief. He has had more than 20 sessions of physical therapy with no significant lasting benefit. He denies any weakness in the left, although occasionally "it will go out". Impression/Plan: Lamar Clark has a chief complaint of low back pain radiating down the left leg to the toes. This began in July 2011 when he was lifting at work. He denies any previous such problems with his low back

other than some occasional strain which resolved with time and symptomatic treatment. Overall he says his current problem and pain are no better. He has tried physical therapy and two epidural steroid injections. He has been taking Hydrocodone for the pain as well as Neurontin...This gentleman has lumbar radiculopathy on the left secondary to a herniated disc on the left at L5-S1. He has failed to respond satisfactorily to conservative measures (Claimant's APA #1, pages 1-2)."

On 04/04/12, Thomas Holbrook, M.D. performed a "left L5-S1 microdiscectomy" (Claimant's APA #1, page 3). Dr. Holbrook noted Claimant "was demonstrated to have herniated disc material compressing the S1 nerve root (Claimant's APA #1, page 5)." Following this procedure, the Claimant returned to Dr. Holbrook on May 2, 2012 and the record reflects he reported having complete relief from his left leg pain (Claimant's APA #1, page 6). At the hearing, Claimant disputed that he ever reported complete resolution of his radicular pain to Dr. Holbrook (Hearing Transcript page 69, lines 4-9).

On 01/02/13, Thomas Holbrook, Jr., M.D. indicated, "today in the office he continues to complain of left low back pain which overall he says is no better...On examination, there is some tenderness to palpation over the left lower lumbar paraspinous muscles with decreased ROM in the lumbar spine due to exacerbation of his back pain. His gait is a little guarded due to the back pain. At this time, Mr. Clark has generally reached MMI as far as his low back is concerned. I have renewed his prescription for Soma. He will also continue with the Neurontin at this time. He could do light duty work. He has 10% impairment to the whole person for his lumbar spine. We will also schedule him an appointment to have his medicine evaluated by pain management to recommend a regimen of medicine to best help him with his ongoing back pain (Claimant's APA #1, page 17)."

On 02/11/13, Steven Storick, M.D. noted, "today, Mr. Clark specifically complains of tingling in his left big toe. He will also have left-sided back pain that he describes as a constant spasm that may then radiate down to the back of his thigh just above the knee...Mild tenderness along the left sciatic notch compared to the right. Sensation is slightly decreased to light touch along the left great toe and the left thumb compared to the right. Assessment: Chronic left back and leg pain; left L5 radiculitis; status post left L5-S1 microdiscectomy; chronic postoperative pain syndrome. Plan: Mr. Clark describes a fairly accurate left L5 radiculopathy. This was documented preoperatively based on his MRI and nerve studies. Since his surgery, Dr. Holbrook does not feel any further surgical intervention would be beneficial. My suggestion is to continue titrating Neurontin which Mr. Clark finds beneficial to a degree now. He may gradually titrate the Neurontin up to 600-900 mg TID OJD, if tolerated. Sometimes the addition of Cymbalta may help potentiate the effects of the Neurontin. If he is unable to tolerate higher doses of Neurontin or they are not effective then switching that medication to Lyrica would be another option. Selective nerve blocks along the L5 or even possibly L4 or S1 would be reasonable. Should his leg pain improve but his back pain persist, diagnostic facet joint blocks may be helpful in determining further treatment options for the back pain. Lastly, if all reasonable conservative treatments fail and Mr. Clark continues to have persistent radicular pain, then a spinal cord stimulator trial would be a potential option. I have explained to Mr. Clark I have only been asked to make recommendations and not treat him at this point. If the decision is made for me to take over his care my treatment recommendations are as noted above (Claimant's APA #5, pages 106-107)."

On 05/15/13, Donald Johnson, II, M.D. indicated, "he has complaints of low back pain with radiation particularly through the left buttock and down the left leg. He relates that his pain is all left sided with no radiation to the right side. He relates his pain as in the left low back, buttock

and radiating into the left upper leg. The patient was "lifting a heavy cross arm, it slipped out of my hands and I caught it". The patient has been under the care of Dr. Holbrook. This has included both neck and back surgery. The patient feels that while his neck is somewhat better the back is not. His primary complaint is low back symptoms at this time. The patient relates that he has been released at this time. He is in severe pain and does not have any pain medication that he could rely on to help him. Currently his pain is 8/10. He finds that nothing really helps; it is made worse by bending and standing. Physical Exam: He is decompensated to the right approximately 2 cm from the midline. He has significant paralumbar spasm and increasing pain when I straighten his torso to the midline. He is tender in the left sciatic notch. Straight leg raising is provocative. His pain and symptoms are in an L-5 distribution. His range of motion is limited secondary to muscular spasm. His gait is antalgic today. Overall he looks quite symptomatic and painful. Impression: (1) S/p laminectomy L5-S1 April 2012 with no resolution of symptoms; (2) preoperative left L-5 acute radiculopathy; (3) rule out recurrent disc herniation L5-S1, possible L4-L5; (4) S/p anterior cervical discectomy and fusion C5-C6. Recommendations: I agree with the radiologist's report that this patient firstly needs a high quality MRI scan of the lumbar spine...I would not place the patient at maximum medical improvement until we get a good imaging study to outline the next steps in regards to treatment. I do not feel that the patient can return to the workplace. Most probably to a reasonable degree of medical certainty the patient's current symptoms are causally related to his work injury of 7/20/11 (Claimant's APA #8, pages 179-180)."

On 05/16/13, Nicholas Lind, PsyD indicated, "DSM-IV-TR Diagnoses: 293.83 Mood Disorder due to Chronic Pain; back pain. Does Mr. Clark have emotional impairment and, if so, is it within a degree of certainty related to his 20 July 2011 work-related injury? Yes. In my opinion his emotional symptoms are more likely than not, with as much certainty reasonable in the field of

psychology, caused by his 20 July 2011 physical work-related injuries. If so, has he met maximum medical improvement for these injuries? No. In my opinion, Mr. Clark has not yet met maximum medical improvement for the psychological consequences associated with his 20 July 2011 injury. What treatment and/or duty restrictions, if any, would be appropriate? I recommend that Mr. Clark receive psychological and psychiatric treatment. Individuals with similar injuries and resulting symptoms have benefitted from routine psychiatric visits for as long as the pain associated with the work-related injuries persists. This treatment plan is, in my opinion, reasonable, necessary and geared toward lessening the period of disability for his work-related injuries as stated most probably to a reasonable degree of certainty (Claimant's APA #12, pages 369-370)."

On 05/17/13, Justin Hutcheson, M.D. noted, "work injury to his cervical and lumbar spine...He was diagnosed with a left L5/S1 HNP on MRI, and a left L5 radiculopathy on EMG. This led to a left L5/S1 discectomy from Dr. Holbrook in 4/12. He developed neck and left arm pain from a C5/6 HNP that caused signal change in the spinal cord. He underwent a C5/6 ACDF in 9/12. He notes neck pain -worst in midline C5/6 with some left thumb numbness. He notes soreness with rotation and extension on the left side of neck from C3-6. His low back pain is left low back that radiates to his left big toe. He has numbness in left big toe. He has mild weakness in his left foot. Assessment: 38 year old male with work injury that led to cervical spine problems - notably cord compression at C5/6 that was addressed by C5/6 ACDF. He has mild residual symptoms from this with axial neck pain, left thumb weakness and some mild myelopathic reflexes. This should be treated with PT/tens unit. If that does not resolve neck pain - consideration should be given for cervical ESI and/or cervical facet injections, bilateral C3/4, 4/5, 5/6 if needed. His low back pain - it appears this is still being worked up to see if he has a recurrent HNP - patient mentioned he just had a recent MRI done for this that I do not have. The last notes I have say Dr.

Holbrook felt this patient would not benefit from further surgery. Either way-he will need ongoing pain management going forward, likely for life. Given his current back pain - I recommend epidural steroids targeted at the left L5/S1 epidural space. He has some facet and SI pain that may need to be injected in the future as well. Ultimately he might need spinal cord stimulation if these measures fail. He will need ongoing medications including NSAIDs, opioids, muscle relaxants, SNRI antidepressants to treat pain and seizure medications to treat pain. He will likely need ongoing PT, imaging and EMG testing over time (Claimant's APA #10, pages 218-221)."

On 05/24/13, Justin Hutcheson, M.D. noted, "I believe most probably to a reasonable degree of medical certainty that Mr. Lamar Clark's work-related back injury affects his left lower extremity in standing, walking, strength, balance, stamina, numbness, weakness, pain, coping with uneven surfaces, squatting, crawling, negotiating stairs, stooping, bending, kneeling, mobility, range of motion, flexibility, running, jogging and functionality (Claimant's APA #10, page 232)."

On 06/17/13, Thomas Holbrook, Jr., M.D. indicated, "he had previously undergone a lumbar microdiscectomy on the left at L5-S1. His pain was improved postoperatively but not completely relieved. He says that his pain has gotten much worse in the past 3-4 months without any additional trauma. He states the pain is now back as bad as it ever was preoperatively. He has had some intermittent tingling in the left leg but denies any weakness. Physical Therapy has not helped. Medications, including Neurontin, have not helped as well. There is now an evidence far lateral disc herniation on the left at L4-5 with nerve root compression. I believe that this is the cause of his current symptoms. On examination, there is tenderness to palpation over the lower lumbar paraspinous muscles with a decreased range of motion of the lumbar spine due to exacerbation of his back pain. His gait is slow and antalgic favoring the left leg due to pain. On motor testing he tends to give some decreased effort diffusely on testing muscle groups in the left

leg due to exacerbation of his pain with some focal weakness of the left extensor hallucis longus. There is some decrease in sensation to pinprick over the left medial foot and medial lower calf, and to a lesser degree over the left lateral ankle area. DTRs are hypoactive at the knees and ankles. This gentleman has far lateral disc herniation on the left at L4-5 which is symptomatic. He has failed to respond satisfactorily to conservative measures and I believe would be a good candidate for surgery (Claimant's APA #1, page 27)."

On 09/25/13, Thomas Holbrook, M.D. performed a "left L4-5 microdiscectomy" (Claimant's APA #1, page 28). On 10/23/13, Thomas Holbrook, Jr., M.D. noted, "he is continuing to have some low back pain radiating down the left leg to the knee. He is continuing to use Lortab and Neurontin. There is some tenderness to palpation over the left lower lumbar paraspinous muscles with a decrease range of motion of the lumbar spine due to exacerbation of his back pain. His gait is still a little guarded due to the back pain. On motor testing there is some mild weakness of left extensor hallucis longus. Deep tendon reflexes are hypoactive at the knees and ankles (Claimant's APA #1, page 30)." As of 12/18/13, records reflect, "the weakness in left ankle dorsiflexion remains about the same. He is continuing to use Norco, Neurontin, and Soma. He is doing outpatient physical therapy. There is some tenderness over the left lumbar paraspinous muscle with a decreased range of motion of the lumbar spine due to exacerbation of his back pain. He still has about 4/5 strength in the left extensor hallucis longus and ankle dorsiflexion. DTRs are hypoactive at the knees and ankles...increase Neurontin...continue Norco and Soma (Claimant's APA #1, page 31)."

The Claimant treated with Dr. Holbrook on February 24, 2014, and indicated that he has no radicular leg pain. (Claimant APA 1 p. 36). The Claimant disputes this. (Hrg. Tr. p. 69 lines 15 – 20). Similarly, the PT notes from Progressive PT in 2014 showed increased improvement, as

he reported feeling “practically no pain” at his May 21, 2014 visit. The Claimant disputes ever reporting this. (Hrg Tr. p. 70 lines 14 – 18).

On 05/28/14, Thomas Holbrook, Jr., M.D. noted, “there is still tenderness over the lower lumbar paraspinous muscles bilaterally. He has some mild to moderate decrease in range of motion of the lumbar spine with some pulling sensation and discomfort in the low back. His gait is still a little guarded due to his back pain. He still has about 4/5 strength in left ankle dorsiflexion (Claimant’s APA #1, page 42).” The record indicates Claimant reported his pain at 40% better. (Id.) However, Claimant disputes ever having reporting this progress (Hearing Transcript page 70, lines 9-13). The Claimant made no mention of pain in his left hip or leg at this visit with Dr. Holbrook; however, the Claimant also disputes this. (Hrg Tr. p. 71 lines 20 – 24).

As of 07/23/14, Thomas Holbrook, Jr., M.D. referred Claimant back to Dr. Storick for pain management and for consideration of spinal cord stimulator (Claimant’s APA #1, page 49).

On 07/10/14, Tracy Hill, P.T. noted, “Mr. Clark qualifies for a whole person impairment rating of 25% which converts to a lumbar spine impairment rating of 28%. The patient’s lumbar range of motion is limited. Mr. Clark put forth a consistent effort during the evaluation. He qualifies for limited sedentary to limited light work. He does not tolerate occasional bending, squatting, kneeling, or reaching. He does not meet the full physical requirements necessary for sedentary or light work (Claimant’s APA #7, pages 156-158).”

On 07/21/14, W. Daniel Westerkam indicated, “the patient was still having difficulty with pain radiating down the left leg and weakness in the ankle...microdiskectomy September 25, 2013...The patient states that this second surgery was not effect, and in fact his back pain is the same as it always has been, if not worse. The leg pain is slightly better. He still has numbness in the leg and still has weakness in the foot. He does appear to be at maximum medical improvement

as defined by the American Medical Association's Guide to the Evaluation of Permanent Impairment, 5th Edition. Using this guide, I think he qualifies for the diagnostic related estimate category V found on page 384. This would give him a 25% spine impairment, which is equivalent to a 28% lumbar spine impairment. I agree with the most recent functional capacity evaluation done on July 10, 2014 by Tracy Hill. The patient appear to be able to work in the limited sedentary to limited light work category. He can occasionally walk, stair climb and twist, but he cannot kneel, squat, bend or reach. He can carry up to 15 pounds. Maximum standing or walking is 38 minutes. The patient has not received treatment for the psychological issues that have resulted from his pain. I therefore do not think he qualifies for an impairment rating. I would recommend to lessen his period of disability that he receive 6 cognitive behavioral training sessions and start on an antidepressant such as Cymbalta, which has some pain relieving qualities as well (Claimant's APA #6, pages 128-130)."

On 07/23/14, Justin Hutcherson, M.D. indicated, "patient underwent left L4/5 microdiscectomy from Dr. Holbrook on 9/25/13 for a left lateral L4/5 HNP. Since this surgery patient notes back and left hip/leg pain to posterolateral knee with numbness in left medial big toe and foot. He notes occasional weakness in left foot. He was seen today to assess his condition following his second lumbar surgery. He notes temporary relief from an SI injection from Dr. Storick after surgery, then pain returned. This helped his left hip pain. The patient notes back pain in L3-S1 region of his back. It is worse with standing, lifting, twisting, bending. Pain radiates to left knee. He feels pain is the same or worse since his second surgery. He notes ongoing depression from being in pain and decreased physical abilities. Assessment: lumbar radiculopathy; lumbosacral spondylosis; degenerative disc disease-lumbar spine; low back pain; left lower extremity pain; sacroiliitis. Comments: 39 year old male with back pain on both sides of his back from L3/S1

that radiates to his left S1 joint and posterolateral knee with numbness in his left foot and big toe with occasional weakness in his left foot and loss of reflex bilaterally at L4 and diminished reflex bilaterally at L5/S1. He underwent left L4/5 microdiscectomy since my last time. Dr. Johnson does not feel further surgery would help and recommended a spinal cord stimulator trial. In general this patient will have ongoing back pain into his left hp and leg most likely for the rest of his life. He needs pain management care that includes medications, injections targeting his pain and a spinal cord stimulator trial. He will likely need further back surgery in the future given his retrolisthesis at L5/S1 with ongoing pain. He will need DME to help his back pain and left leg weakness. He is at MMI from his lumbar spine from a pain management perspective given the above plan. I recommend a repeat lumbar MRI to guide further treatment as he has not had a postop MRI to evaluate for scar tissue, stenosis, etc. Given his ongoing depression, he will need psychological care. This can be provided by Dr. Tollison. I agree with FCE demonstrating limited sedentary restrictions. Impairment - 25% WPI or 28% lumbar spine. Body parts affected include psychological, lumbar spine sacroiliac joint/hip, left leg, left foot, right leg (loss of reflex from stenosis/surgery at L4/5, 5/S1). He can pursue pain management at this office in the future (Claimant's APA #10, pages 234-237)."

On 08/20/14, Steven Storick, M.D. noted, "Mr. Clark has had a complicated history over the last few years with persistent left back pain extending down his left leg...Unfortunately, the patient has continued to remain symptomatic with fairly constant left-sided back pain that extends down his buttocks to the back of his thigh. Infrequently, the pain may extend below the knee. He has numbness in the inner aspect of his left foot and great toe. There is some subjective weakness, but no frank motor loss or sphincter dysfunction. Occasionally, he will have some right-sided back pain. Mr. Clark's symptoms seem to be present the majority of the time, although they can vary in

intensity from activity and rest. He has attended physical therapy for a few months with some mild improvement. He has an active home exercise program on a daily basis again, with mild benefit. A left sacroiliac joint injection by me earlier this year offered some temporary benefit for maybe two weeks. He saw similar results from a preoperative epidural steroid injection. Assessment: Chronic left back and leg pain; left L5 radiculitis; chronic postoperative pain syndrome. Plan: Mr. Clark continues to remain symptomatic after a second lumbar discectomy. The pain is mostly confined to the left back in a continuous fashion down his left leg to the back of the thigh and, to a lesser degree, the lower leg. There is persistent numbness in the left foot and great toe consistent with an L5 dermatome. The Neurontin may be further titrated up to 600 mg t.i.d. and possibly even 900-200 mg if necessary. The Flexeril is not providing a substantial amount of benefit and he can just use it if he finds it helpful on a p.r.n. basis. It would be reasonable to repeat an epidural, but more from a left L5 approach since he has not had any of these type injection since his first surgery. The epidurals may be repeated if beneficial. If he fails to improve, it would be reasonable to repeat his MRI since he has not had an updated scan since his surgery. He previously had seen Dr. Hutcheson about a spinal cord stimulator trial after being referred by his attorney. Initially, Mr. Clark has been apprehensive about a device. He has talked to several people with good and bad results reported. I have reviewed this type of treatment in detail with him. Mr. Clark should only pursue this type of therapy if he is motivated to do so. Another treatment option would be a full pain program at Palmetto Health. This would be a more conservative approach, but trying to help him get back on his feet, resume normal activities and lessen his pain. At this point, Mr. Clark is agreeable to increase the Neurontin, continue the low dose of hydrocodone and try the nerve block (Claimant's APA #5, pages 108-109).

On 10/16/14, Steven Storick noted, "the majority of Mr. Clark's pain seems to be along his back about the waist level equally to both sides. He will note some pain will extend down the left leg to the back of the thigh, but not below. The left L5 epidural steroid injection seemed to help the leg pain about 25% although he really saw no improvement in the back pain. The patient is tolerating the Neurontin 600mg t.i.d. which he believes helps to some degree. Previous physical therapy thought there may be some issues with his low back pain and joints. Mr. Clark describes the back pain as typically worse if he is standing compared to sitting...hyperextension increases back pain. Physical Examination: He has mild tenderness to deep palpation over the lumbosacral juncture. Assessment: Chronic low back and left leg pain; left lumbosacral radiculitis; status post left L4-5 and L5-S1 discectomy; chronic postoperative pain syndrome. Plan: Mr. Clark's primary complaint continues to be his low back pain along with waist. His leg pain seems to bother him at this time to a lesser degree. A spinal cord stimulator is unlikely to provide substantial benefit when the patients have primarily back pain compared to the leg. His symptoms seem to be more mechanical. Possibly diagnostic facet joint blocks may help determine if the joints are the source of his pain. He potentially may be a candidate for radiofrequency rhizotomy to those joints with the hope of cutting his pain in half for 6-12 months if successful. For now, I want him to continue on Neurontin (Claimant's APA #5, page 113).

On 01/08/15, Steven Storick, M.D. indicated, "he reported at least a 50-60% temporary benefit from the injections. He reports after the injections, both the back and left leg pain seemed to be about equal in intensity for a day or two. Occasionally he will have some tinging in the foot. Assessment: Chronic left back and leg pain; left lumbosacral radiculitis; status post left L4-5 and L5-S1 discectomy; chronic postoperative pain syndrome. Plan: Mr. Clark's leg pain seems to be controlled with the current dose of Neurontin 600 mg b.i.d.-t.i.d. His major complaints continues

to be back pain more on the left than the right. I tend to believe some of his pain is probably discogenic in origin. The facet blocks seemed to help lessen his back pain at least 50% temporarily. The injections need to be repeated to see if he similar results. Should both injections be positive, then potentially he is a candidate for radiofrequency rhizotomy with the goal of cutting his back in half for six months to a year (Claimant's APA #5, page 117)."

On 04/16/15, Steven Storick, M.D. noted, "Mr. Clark is seen due to his chronic back pain, which typically extends across his waist. His leg pain bothers him to some degree but seems to be reasonably controlled with the Neurontin 600 mg t.i.d He has tried a couple difference muscle relaxants for the back and found that Flexeril seemed to work the best. Assessment: Chronic low back and leg pain; lumbosacral radiculitis; lumbar spondylosis/DDD; chronic postoperative pain syndrome. Plan: Given Mr. Clark's age and symptoms, I imagine he has some discogenic pain as well. At this point, I believe it would be reasonable to try the radiofrequency rhizotomy unilaterally and repeat the procedure on the opposite side in a few weeks if the initial RF is beneficial (Claimant's APA #5, page 12)."

On 07/23/15, Steven Storick, M.D. indicated, "he is complaining mostly of right-sided back pain although the left bothers him minimally. He reports significant improvement over the last few days in the left back. He still has some intermittent leg pain for which he takes the neurontin 600 mg twice a day and sometimes three times a day. Assessment: Chronic back and leg pain; lumbar spondylosis/radiculitis; chronic postoperative pain syndrome. Plan: Mr. Clark is reporting a fair amount of improvement in his left back pain. In fact, he is mostly complaining of his right-sided back pain today. Discussed repeating the radiofrequency on the right side although he is a little apprehensive. He is to continue Neurontin and Flexeril (Claimant's APA #5, page 123)." The

Claimant disputes that this office note indicates improvement in his back pain following the recent injection. (Hrg. Tr. p. 77 lines 1-7).

On 08/27/15, Steven Storick, M.D. noted, "Mr. Clark continues to have issues with his right more than his left back bothering him. He has had prior work-related injuries including a left L5-S1 discectomy and subsequent L4-5 discectomy. His left leg pain seems to be controlled with Neurontin 600 mg t.i.d. He had radiofrequency rhizotomy to the left lower lumbar facet joints several months ago. Overall, his left side of his back pain seems to be okay compared to what it was before the treatment. In fact, he primarily complains of more of the right back pain. Assessment: Chronic back and leg pain; chronic postoperative pain syndrome. Plan: Mr. Clark has reached maximum medical improvement from a pain management perspective. He finds the Neurontin helpful and he can continue that medication indefinitely. I have suggested he cut back on the Flexeril just to use periodically at night since he finds the Flexeril is not consistently beneficial. Repeating the radiofrequency rhizotomy would be reasonable if he obtained at least a 50% improvement for 6 months or longer (Claimant's APA #5, page 124)." The Claimant disputes this record, as he claims to have never reported having more issues with his right side of his back as compared to the left. (Hrg Tr. p. 78 lines 12-21).

On 12/04/15, Justin Hutcheson, M.D. indicated, "he has been released from Dr. Holbrook and been under the care of Dr. Storick. Dr. Storick's injections have helped to some degree - including a facet radiofrequency. The patient notes back pain in L3/S1 region of his back. It is worse with standing, lifting, twisting, bending. Pain radiates to left>right knee. He notes 60% of his pain is back and 40% is leg pain. Pain limits his ADL's and HEP. Pain medications have helped in the past but recently he was only on Neurontin and Flexeril with minimal relief. He is still at MMI. Impairment, body parts and treatment plan are unchanged from my last IME 7/23/14. Given

failed back surgery with ongoing back and leg pain, spinal cord stimulation is the standard of care. If the trial is successful, he should be implanted. Even if the patient reaches a point where he just has axial back pain, the recent Senza study on spinal cord stimulation clearly shows significant pain reduction, functional improvement and improved quality of life at 12 and 18 months for patients with just back pain who receive spinal cord stimulation. Therefore it would be reasonable and medically necessary to consider spinal cord stimulation even if he just noted axial back pain. All of this case will be needed for his lifetime (Claimant's APA #10, pages 238-240)."

Also on 12/04/15, Usama Gabr, M.D. noted, "It is my opinion to reasonable degree of medical certainty that claimant, Mr. Lamar Clark has directly suffered a work related injury to the lumbar spine and associated radiculopathy neurologically affecting claimant's left lower extremity function, as well as having sustained a related psychological injury. It is my opinion to a reasonable degree of medical certainty that claimant, Mr. Lamar Clark, has reached maximum medical improvement for his work injuries. Pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Edition 6th, the claimant Lumbar Spine: documented chronic radiculopathy following lumbar surgery at clinically appropriate level L4-5 and L5-S1, following work related injury class II impairment using table on page 570, WPI percentage 23%. It is my opinion to a reasonable degree of medical certainty that claimant has suffered permanent injury and requires permanent restrictions as follows: Functional capabilities of the claimant is impaired for his age. It is my assessment that his abilities to sit continuously are limited to 15 minutes at a time and no longer than four hours per day with allowance for frequent change of position for comfort. His ability to stand limited to 10 minutes of the time, no longer than two hours per day. Ability to walk less than one block at a time and no longer than one hour per day. He has difficulties reaching at the disk level secondary to cervical radiculopathy and shoulder symptoms, especially above shoulder

activities following cervical fusion surgery. Secondary to difficulties with lifting consistently over 10 lbs, inability to sit or stand continuously more than 10 minutes and required frequent change of position. Inability to consistently kneel, crawl or bend secondary to limited spine range of motion. It is my opinion to a reasonable degree of medical certainty that claimant would require future medical care tending to lessen the period of disability as relates to work related injury including but not limited to medication management, periodic spinal interventions such as epidural steroid injections, lumbar orthosis, spinal cord stimulator trial, and psychological and psychiatric care (Claimant's APA #16, pages 455-459)."

On 12/04/15, Usama Gabr, M.D. indicated, "I believe most probably to a reasonable degree of medical certainty that Mr. Lamar Clark's back, left hip, left leg, left foot, nervous system, and resultant psychological injuries most probably result from his performance of his job activities and/r work-related aggravation of a pre-existing condition.(Claimant's APA #16, pages 460)."

On 12/15/15, Justin Hutcheson, M.D. noted, "I believe most probably to a reasonable degree of medical certainty that Mr. Lamar Clark's back, left hip, left leg, left foot, nervous system, and resultant psychological injuries most probably result from his performance of his job activities and/or work-related aggravation of a pre-existing condition. (Claimant's APA #10, pages 241)."

Also on 12/15/15, Justin Hutcheson, M.D. indicated, "the whole person impairment rating rendered for Mr. Lamar Clark's work-related back injury includes within that impairment rating a portion of impairment to his affected left leg due to lumbar radiculopathy as a result of loss of L4/5 and L5/S1 reflex demonstrating neurologic deficits affecting the leg (Claimant's APA #10, page 244). I concur with all the medical care and medical treatment recommendations of Dr. Nicholas Lind as stated in his independent medical evaluation report concerning Mr. Lamar Clark dated May 16, 2013. I find most probably to a reasonable degree of medical certainty that those medical

care and treatment recommendations are reasonable, necessary and geared toward tending to lessen the period of disability for Mr. Lamar Clark's psychological injury emanating from his physical work-related injuries (Claimant's APA #10, page 245). I recommend that Mr. Lamar Clark receives ongoing comprehensive pain management care and treatment for his work-related injuries by and under my direction as stated in my independent medical evaluation reports dated May 17, 2013, July 23, 2014, and December 4, 2015. I find most probably to a reasonable degree of medical certainty the above recommended comprehensive pain management care and treatment by and under my direction is reasonable, necessary and geared toward tending to lessen the period of disability for Mr. Lamar Clark's work-related injuries (Claimant's APA #10, page 247). Mr. Lamar Clark should receive ongoing back/spine treatment under the direction of Dr. Thomas Holbrook, a neurosurgeon, with frequency and duration as defined by him. It would be appropriate to include a trial dorsal column stimulator in the life care plan analysis. If the trial is successful and there is permanent implant performed, the usual protocols regarding generator replacement, interrogation and re-programming apply and should be included in Mr. Clark's future plan of care (Claimant's APA #10, page 249)."

Also on 12/15/15, Dr. Hutcheson completed a Physician's Statement (14B) wherein he noted, "Diagnosis or nature of injury or illness: lumbar; Body part(s) injured: lumbar spine; Body part(s) affected: back, left hip, left leg, left foot, nervous system; psychological. Date of Maximum Medical Improvement: 12/4/15. Based on the AMA Guidelines, the claimant has sustained a 25% WPI=28% lumbar spine. The claimant is able to return to work with the following restrictions: per FCE 7/10/14. The claimant is unable to return to work at his current employment. As of the date I last saw this patient, it is my professional medical opinion the claimant will need future medical care and treatment related to his work related injury or illness based on a reasonable degree of

medical certainty (more likely than not) and that medical care and treatment including medication is as follows: meds, injections, imaging, PT, DME< spinal cord stimulation, urine drug testing, 12-18 visit/year for pain control, psych per Dr. Lind, neurosurgery per Dr. Holbrook. All care needed for lifetime (Claimant's APA #10, page 250)."

On 12/22/15, Robert Brabham, Ph.D. indicated, "his responses to the items on the Beck Depression Inventory-II confirm that he is still experiencing a severe level of depression. As noted previously, I continue to recommend that he be considered for treatment for his depression related to his on-the-job injuries. Diagnoses: After observing him during this evaluation, and from careful review of records of past behavior and levels of functioning, he is clearly manifesting signs and symptoms consistent with the requirements to establish and/or maintain several diagnoses. He is continuing to experience major pain episodes and references to pain exist in several medical records over an extended period of time. He is also anxious about his future, especially since he realizes that his past work is no longer an option for him an anxiety-provoking thought for someone at the age of 41. Finally, his multiple losses, personal, financial, social and leisure, all have led to a level of depression. Therefore the following diagnoses still apply, in keeping with all diagnostic requirements for each: 307.89 Pain Disorder; 311 Depressive Disorder NOS; 300.02 Generalized Anxiety Disorder. These medical/mental conditions are in addition to his other physical medical problems that are well documented in his files. Vocational Opinion and Rationale: Several factors must be considered in reaching a vocational opinion. They include his age of 41, still defined as a "younger worker", a positive factor; his high school graduate educational background is positive but is offset by his inability to remain in an upright position to use his academic skills; his stable work history would be positive but is offset by his inability to perform any work on a sustained basis; due consideration must also be afforded to the pain that he experiences on a daily basis

which requires that he spend six hours per day “resting or reclining”; and his depression and anxiety also interfere with his ability to maintain sufficient attention and concentration, which becomes a negative factor. Taking all of these factors into consideration, it is my opinion, to a high degree of professional certainty, based on more than fifty years of vocational rehabilitation and psychology experience, that he must be expected to permanently remain, unable to engage in full-time gainful, competitive employment as a result of his medical conditions resulting from his on-the-job injuries in July 2011. The permanency of his inability to return to work is unfortunately further strengthened by the fact that there has been a continued deterioration of his levels of functioning over the last 2 ½ years.” (Claimant’s APA #13, pages 394-395).

The Claimant was evaluated by Jan Westmoreland, M.Ed., CRC, of the Directions Group. (Defendants’ Ex. B, pgs. 1918 – 1945). After review of medical reports and conducting a clinical interview with the Claimant, she found that the Claimant’s physical capacity range “appears to fall within the sedentary to light physical demand work capacity.” (Id. at 1935). She additionally found that given the Claimant’s work history, aptitudes, and transferable skills; he could be able to return to several jobs, which accommodate his limitations. Specifically, the following jobs were found to be available to the Claimant within his restrictions: Ticket Taker, Box Office Cashier, Garage Cashier and Attendance Monitor. (Id. at 1936 - 37). The Claimant could anticipate earnings ranging from \$7.25/hour up to \$8.50 an hour for Columbia, SC and surround areas. (Id. at 1938).

On 06/13/16, Steven Storick, M.D. noted, “Chief Complaint: Lower back/L-spine problem. HPI: Mr. Clark is in for a follow-up due to his chronic back pain which was work-related. He has had prior left L5-S1 discectomy. The patient has had persistent low back pain which typically extends to the left leg. He does have occasional numbness in his right leg. His back pain seems to

be greater on the left than the right and sometimes associated with activities as well as rest. Mr. Clark underwent conservative treatments postoperatively including physical therapy and numerous injections. He subsequently had radiofrequency rhizotomy on the left without any sustained benefit other than a few weeks, according to the patient. He has also been on Neurontin 600 mg t.i.d. for his leg pain which in the past had been helpful. He ran out of that medicine the other week. Infrequently he was taking Flexeril. It has been well over a year since Mr. Clark has been back to physical therapy. Assessment/Plan: (1) Chronic postoperative pain; (2) Chronic back pain - manual therapy referral, evaluate and treat with core strengthening, therapeutic exercise, functional activities/body mechanics for education; (3) Lumbosacral radiculitis. Discussion Notes: Mr. Clark presents with chronic low back pain which is most likely due to degenerative changes of the lumbar spine. He has distal left leg symptoms that may be radicular in origin. Typically the leg pain has been managed with the Neurontin which I have restarted at 600 mg t.i.d. I would also like to get him back into physical therapy for his back pain. I have provided him a prescription for Zanaflex that he can take periodically if needed. I have left him at light duty. If he fails to improve, then Mr. Clark may be a candidate for high-frequency spinal cord stimulator trial provided he has failed all conservative treatments and is interested in this device (Claimant's APA #5, pages 659-661)."

On 06/28/16, Steven Storick, M.D. indicated, "I believe most probably to a reasonable degree of medical certainty (greater than 50% likelihood) that Mr. Lamar Clark needs to have the medical care and medical treatment recommended in my June 13, 2016 note prior to reaching maximum medical improvement for his work-related injuries. I find that Mr. Lamar Clark may need a spinal cord stimulator trial utilizing the HF10 to cover his back pain prior to reaching maximum medical improvement as recommended by me in my June 13, 2016 note. Only if he

achieves 60-70% relief would a permanent implant be considered. All of the above recommended care is most probably to a reasonable degree of medical certainty reasonable, necessary, and geared toward tending to lessen Mr. Lamar Clark's period of disability for his work-related injuries (Claimant's APA #5, page 669)."

On 06/14/16, the Claimant reported at his visit at Progressive PT that "he felt the best he has felt since the start of therapy." (Defendants APA #25, page 1901). On 07/19/16, the therapy record indicates that he was able to complete all activities in therapy (*Id.* at page 1900). The Claimant disputes that he was ever able to complete all activities in therapy (Hearing Transcript page 85, lines 4-15).

A subsequent vocational evaluation was performed by Jan Westmoreland on July 18, 2016. (*Id.* at 1940). Ms. Westmoreland noted that contrary to the April 12, 2016 report, the Claimant reported that he actually attended 2 years of college instead of only 1 year. (*Id.* at 1040). The Claimant relayed that he spent an additional year at Kaiser College, majoring in computer programing. (*Id.* at 1045). Based on her review of updated medical records and the Claimant's newly disclosed educational background, Ms. Westmoreland found that the job positions of Technical Support Service, Implementation Coordinator, Customer Service Representative, Security Guard, Tax Support Specialist, Guest Service Representative, and Computer Operator were available to the Claimant. (*Id.* at 1943 – 1944). Based on these available positions, the Claimant could anticipate earnings ranging from \$8,320.00 to \$40,000.00 per year for Columbia, South Carolina and the surrounding areas. (*Id.* at 1944).

Following his questionnaire response, Defendants deposed Dr. Steven Storick on 07/25/16 (Defendants Exhibit R). Dr. Storick testified that in February of 2015, following a conference call with the attorneys, it was his opinion that the Claimant's future medical care consisted of Neurontin

and pain management visits twice a year. (Id. at page 40). Dr. Storick testified that in April of 2015 he opted to proceed with a Rhizotomy because the Claimant had reported relief from the injections. (Id. at page 41-42). In contrast to the Claimant's testimony at the hearing, based on the Claimant's complaints following the Rhizotomy, Dr. Storick saw it is a "pretty good sign" that the Rhizotomy was beneficial (Hearing Transcript page 76, lines 14-25; Id. at 46). Dr. Storick testified that he placed the Claimant at MMI on August 27, 2015. (Id. at 48). At that time, the Claimant had reported six weeks of benefit from the procedure. (Id. at 57-58). Dr. Storick unequivocally testified that the Claimant remains at MMI as of August of 2015, further stating, "Well, he's been declared at maximum medical improvement. That doesn't change." (Id. at 60). Dr. Storick explained that on the most recent questionnaire response, he indicated that the Claimant needed additional treatment prior to reaching MMI because he "didn't have the medical records to look at then, and I apologize, but he is at MMI. It doesn't mean he doesn't get further treatment. It just means that, you know, things change. Usually most patients in Mr. Clark's situation are – have lifetime medicals." (Id.) He further testified that the Claimant "has plateaued...Does his impairment change as a result of that? No, it doesn't. Not unless something new or, you know, significant happens, but it doesn't mean that his treatments can't change, that his condition may or his pain may increase or his condition may change such that I may need to offer other options." (Id. at page 61-62).

On 07/13/16, Gisele Girault, M.D. noted, "Discussion: (1) Has Mr. Lamar Clark suffered work-related injury directly or as an aggravation of a pre-existing condition? Yes, Mr. Lamar Clark suffered a work-related injury directly related to the performance of his job duties on July 20, 2011. (2) What is your opinion to a reasonable degree of medical certainty as to whether or not Mr. Lamar Clark has reached maximum medical improvement as to his work related injuries? Mr.

Clark has reached maximum medical improvement for his work-related injury. (3) Mr. Clark is at maximum medical improvement. (4) Please opine as to his work status/restrictions. Mr. Clark is at maximum medical improvement. I would agree with previous assessments that he is capable of doing sedentary to limited light duty work, but he does have restrictions of no standing for longer than 30 minutes, if he does sit, he must have frequent breaks to stand, he should not be doing any heavy lifting greater than 5lbs, no pushing or pulling greater than 20lbs, no repetitive lifting, no squatting, kneeling, or crawling, no climbing up and down stairs. (5) What degree of permanent impairment(s) pursuant to the AMA Guide to the Evaluation of Permanent Impairment 5th Edition will Mr. Clark have, if any? The claimant is at maximum medical improvement and I am assigning him an impairment rating for the lumbar spine of 28% of the whole person, this is based on the AMA Guides 5th Edition page number 384, table number #15.3 claimant falls into category #5. He has radiculopathy and alteration of motion segment integrity, significant and lower extremity impairment as indicated by pain and sensory changes in an anatomic distribution, he also has loss of motion segment integrity due to successful surgical arthrodesis. (6) Will he have permanent restrictions. Yes. His permanent restrictions include, limited lifting to 5lbs, no pushing or pulling greater than 10-15lbs, no repetitive overhead lifting above 5lbs, no standing or longer than 30 minutes, he can walk on uneven surfaces, he can sit for 30 minutes at a time but needs to stand for frequent breaks, no repetitive climbing of stairs, no crawling, stooping, squatting, kneeling, bending, and twisting of any kind. (7) What recommendations do you have for future medication, pain management, and future treatment all of which are geared toward tending to lessen his period of disability for his work-related injury? The claimant states that the medication he is currently taking, the Neurontin 600mg TID, and Flexeril 10mg TID, along with an anti-inflammatory, are of benefit to him and that the previous injections he had in the past have not been of any long term

benefit to him. My recommendations would be: (1) Continuation of Neurontin 600mg TID or like medications such as Lyrica or Topamax; (2) Continuation of muscle relaxer such as Flexeril 10mg TID on a PRN basis; (3) Continuation of an anti-inflammatory PRN such as Ibuprofen 800mg TID (Diclofenac or Mobic); (4) I would not recommend any further injection therapy as the claimant states they were of any long term benefit; (5) At this point, I would not recommend consideration of a spinal cord stimulator trial. (9) Please kindly also state whether your future medical care recommendations, if any, will most probably to a reasonable degree of medical certainty tend to lessen the period of disability for Mr. Lamar Clark's work related injuries? My future medical care recommendations will most probably to a reasonable degree of medical certainty tend to lessen the period of disability for Mr. Lamar Clark's work-related injury in accordance with the worker's compensation medical statutes. All of my findings and opinions regarding Mr. Lamar Clark are stated most probably to a reasonable degree of medical certainty. All restrictions place on Mr. Lamar Clark will be permanent restrictions (Claimant's APA #17, pages 1157-1159; Defendants APA #26, pages 1911-1916)."

On 09/14/16, Dr. Storick prepared a narrative in response to a letter and questionnaire prepared by Defense Counsel (Defendants APA #28, page 2148). In his narrative, Dr. Storick refused to answer any questions related to his symptoms and recent MRI scan, and deferred any treatment of same to Dr. Holbrook, should he deem appropriate. (Id.). Dr. Storick further opined "Should Mr. Clark not require any further surgical intervention by Dr. Holbrook, I believe he potentially would be a more appropriate candidate for a comprehensive pain program. Based on the recent psychological evaluation provided by Dr. Lind, Mr. Clark is not a candidate at this time for a spinal cord stimulator trial due to severe anxiety and depression as noted in the testing. The comprehensive pain program may incorporate some psychological counseling, pain coping skills,

relaxation techniques, OT/PT and vocational training. I believe this type of treatment will be in the best interest of Mr. Clark versus more aggressive treatments.” (Id.). This opinion was mirrored in the office note from the Claimant’s November 28, 2016 visit with Dr. Storick. (Id. at 2149-2150).

On 09/15/16, the Claimant returned to Dr. Holbrook, continuing to complain of low back pain radiating down the left leg to the foot (APA #29). Dr. Holbrook opined that he did “not believe that he would benefit from any further surgery on his lumbar spine” and he “would agree with a trial of a spinal cord stimulator once his depressive issues have been addressed.” (Id. at 2152).

Based upon the evidence received are the following:

FINDINGS OF FACT

1. That all parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers’ Compensation Act, as amended, with Lamar Clark, as Employee and Philips Electronics/Shakespeare, as Employer, and Gallagher Basset Services, as Carrier.
2. That this matter was heard before the undersigned on September 6, 2016, pursuant to Claimant’s Form 50 Request for Hearing and Defendants’ Form 21 Request for Hearing.
3. That at the conclusion of the hearing testimony on September 6, 2016, the hearing was adjourned to rule on Defendants’ Motions to Compel discovery and hearing testimony from Joel Leonard, CRC, CVE. The parties briefed the issue and an Order on the Motions was served on December 5, 2016.
4. The September 6, 2016 hearing record was also held open to allow the submission of documents, and that would include a second deposition of Dr. Storick, if Defendants wished to pursue that route. The record was also held open for submission of documents that were received

pursuant to subpoenas that had already been sent, as well as any providers learned about at the hearing (Hearing Transcript page 24).

5. As of December 5, 2016 – 90 days after the hearing – no additional documents, APAs, or exhibits were filed with the Commission. Order Instructions were sent to the parties on that same day indicating the record was closed as of December 5, 2016 as no documents had been submitted.

6. On December 14, 2016, Defendants submitted a Second Supplemental Notice of Submission of Written Experts' Reports and Exhibits, which included Defendants' APA Submissions numbers 27, 28, and 29 and Exhibits U, V, W, X, Y, and Z.

7. That the Defendants' December 14, 2016 submissions were admitted into the record despite the December 5, 2016 closing date referenced in the Order Instructions because no deadline had been issued at the conclusion of the September 6, 2016 hearing when the record was originally held open.

8. That Claimant's average weekly wage at the time of his injury by accident July 20, 2011, was \$361.91 resulting in an applicable weekly compensation rate of \$241.29.

9. That I did not find Claimant's testimony regarding his pre-injury conditions and multiple disability filings credible at all. Nevertheless, I find Claimant was successfully employed with Philips Electronics, initially through a temporary agency, for seven months prior to his injury. Claimant also continued to work for Philips Electronics, as an employee, for an additional six months post injury.

10. That Dr. Holbrook performed a left L5-S1 microdiscectomy on April 4, 2012, and a second, subsequent L4-5 microdiscectomy on September 25, 2013, nearly a year and a half after the first surgery, due to Claimant's ongoing symptomology and radiographic findings.

11. That Claimant underwent a functional capacity evaluation with Tracy Hill, P.T., who noted that Claimant qualified for limited sedentary to limited light work.

12. That Dr. Hutcheson opined Claimant sustained 25% whole person impairment, which converted to 28% to the lumbar spine. Dr. Hutcheson opined Claimant could return to work with limited sedentary to limited light work restrictions.

13. That Dr. Westerkam opined Claimant sustained 25% whole person impairment, which converted to 28% to the lumbar spine. Dr. Westerkam opined Claimant could return to work with limited sedentary to limited light work restrictions.

14. That Dr. Gabr opined Claimant sustained 23% whole person impairment for the lumbar spine. Dr. Gabr opined Claimant had work restrictions of abilities to sit continuously are limited to 15 minutes at a time and no longer than four hours per day with allowance for frequent change of position for comfort, ability to stand limited to 10 minutes of the time, no longer than two hours per day, ability to walk less than one block at a time and no longer than one hour per day, difficulties reaching at the disk level secondary to cervical radiculopathy and shoulder symptoms, especially above shoulder activities following cervical fusion surgery, secondary to difficulties with lifting consistently over 10 lbs, inability to sit or stand continuously more than 10 minutes and required frequent change of position, and inability to consistently kneel, crawl or bend secondary to limited spine range of motion.

15. That Claimant's most recent MRI, as interpreted by Dr. Storick, shows a possible recurrent disc herniation at L4/L5 and post-surgical changes at L4/L5 to the left.

16. That Claimant's testimony regarding his prior medical treatment in Florida does not undermine the seriousness of Claimant's medical condition and treatment to date resulting from this admitted workers' compensation claim.

17. That this is an admitted back claim. The Claimant had two surgeries to his back as a result of this admitted workers' compensation claim.

18. That Claimant's admitted back injury affects the use of his left and right leg, with the left being the more affected side.

19. That Claimant sustained a psychological injury as a result of his July 20, 2011 work injury. This finding is based on the opinions of Dr. Lind, Dr. Hutcheson, Dr. Westerkam, and Dr. Brabham.

20. That Claimant is permanently and totally disabled under either S.C. Code Ann. §42-9-10 with a combination of work-related injuries affecting more than one body part resulting in complete destruction of earning capacity, as well as §42-9-30(21) for having suffered 50% or more loss of use to the back. However, I specifically find that Claimant receives the total and permanent disability award under §42-9-10 for having a combination of work-related injuries affecting more than one body part resulting in complete destruction of earning capacity. I base this finding on both of the vocational evaluations of Dr. Brabham and Ms. Westmoreland; however, greater weight was given to the opinion of Dr. Brabham in this instance, as I find it was more in line with the opinions of the treating physicians.

21. That alternatively, Claimant is totally and permanently disabled pursuant to §42-9-30(21) in that he has sustained a 50% or greater loss of use to his back and Defendants have failed to rebut the presumption. Claimant's permanent impairment ratings ranging from 20-25%, limited sedentary to limited light FCE restrictions as well as Claimant's highest level of education completed, 12th grade education, weighed heavily into this decision. Although evidence shows Claimant attempted college courses twice, I find they were not completed. Claimant's onerous limitations for his work-related back injury are more restrictive than those

found in *Linen v. Ruscon Const.*, 286 S.C. 67, 332 S.E.2d 211 (1985), which also resulted in total and permanent disability because of 50% or more loss of use to the back under §42-9-30(21) even though the claimant in *Linen* had no surgery.

19. That Claimant is entitled to lifetime reasonable and necessary causally related medical care, including, but not limited to, the care of authorized treating physicians Dr. Holbrook and Dr. Storick, and any and all necessary prescription drugs, procedures, and referrals as the aforementioned authorized treating physicians may recommend. Claimant is also entitled to lifetime reasonable and necessary causally related care for his psychological overlay.

20. That pursuant to *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999), Defendants shall remain financially responsible for lifetime reasonable and necessary nursing services, medicines, sick travel, medical, psychological, hospital and other treatment or care, which shall be paid by Defendants during the lifetime of the injured employee, without regard to any limitation in the Act including the maximum compensation limit.

21. That Claimant is entitled to a lump sum award pursuant to *James v. Anne's and Utica-Mohawk*. Claimant is capable of managing a lump sum award, a lump sum award is in the best interest of Claimant, and Defendants have shown no prejudice from payment of the award in lump sum.

22. That Claimant is entitled to 500 weeks of benefits less any amount previously received as temporary total disability paid since July 20, 2011.

23. That these above findings are based on the medical evidence, the record as a whole, and the observation of Claimant by the undersigned.

CONCLUSIONS OF LAW

Accordingly, it is the determination and finding of this Commissioner that:

1. I find and conclude that this matter is governed by the South Carolina Workers' Compensation Act, §42-1-10 *et seq.* of the South Carolina Code (1976, as amended).
2. I find and conclude that under §42-1-160 and §42-15-20, Claimant sustained an injury by accident within the course and scope of his employment and that Defendants were given proper notice of Claimant's injury. Specifically, under §42-1-160, I find and conclude that Claimant sustained injuries to his back, back affecting right leg, back affecting left leg, and resultant psychological overlay on July 20, 2011, within the course and scope of his employment.
3. I find and conclude that under §42-1-40, Claimant's average weekly wage was \$361.91, and the corresponding weekly compensation rate was \$241.29.
4. I find and conclude that Claimant's work related injury affects multiple body parts, therefore, he is not limited to partial disability under §42-9-30.
5. I find and conclude that under §42-9-10, Claimant is totally and permanently disabled due to his back injury affecting his right and left legs and psychological overlay, which combine to completely destroy his earning capacity under §42-9-10, and, therefore, he is entitled to 500 weeks compensation.
6. I find and conclude that under §42-9-30(21), Claimant is totally and permanently disabled, as he has 50% or more loss of use to his back from his causally related work injury and Defendants have failed to rebut the presumption.
7. I find and conclude that under §42-15-60, since Claimant is totally and permanently disabled as a result of his work related injuries, Claimant is entitled to receive causally related reasonable and necessary nursing services, medicines, sick travel, medical,

hospital and other treatment or care, which shall be paid by Defendants during the life of the Claimant, without regard to any limitation in the Act, including the maximum compensation limit. Also under this section, I find and conclude that Defendants shall remain financially responsible for Claimant's ongoing need for psychological treatment and care.

8. I find and conclude that under §42-15-60 and *Dodge v. Brucoli, Clark, Laymen Inc.*, 334 S.C. 575, 514 S.E.2d 593 (S.C. App. 1999), Defendants shall remain financially responsible for lifetime *Dodge* medical care, including, but not limited to, the recommendations of the authorized treating physicians, Dr. Holbrook and Dr. Storick, and any and all necessary prescription drugs, procedures, and referrals as the aforementioned authorized treating physicians may recommend, including, but not limited to, reimbursement for mileage and medications. Also under this section, I find and conclude that Defendants shall remain financially responsible for Claimant's ongoing need for psychological treatment and care.

9. I find and conclude that under §42-9-10 and §42-1-120, Claimant has reached maximum medical improvement as of May 25, 2016, for the physical and psychological work related injuries.

10. I find and conclude that under §42-9-10 and §42-1-120, Claimant is entitled to receive compensation at the rate of Two Hundred Forty-one and 29/100 Dollars (\$241.29) for 500 weeks with Defendants getting credit for temporary total disability paid since July 20, 2011.

11. I find and conclude under §42-15-60, Dr. Holbrook and Dr. Storick are Claimant's authorized treating medical providers.

12. I find and conclude that *Utica-Mohawk* and *James v. Anne*'s language is ordered. I find and conclude that Claimant's total lump sum award, which amounts to Forty-four Thousand Three Hundred Ninety-eight and 68/100 Dollars (\$44,398.68) as of November 8,

2017, shall be allocated as follows: That the aggregate of the proposed settlement is the sum of Forty Four Thousand Three Hundred Ninety Eight and 68/100 (\$44,398.68) Dollars that Employee requests this Commission to approve the allocation of the aforementioned proposed settlement as follows: Eleven Thousand One Hundred Eighty and 71/100 (\$11,180.71) Dollars to the Salley Law Firm, P.A. as attorneys' fees; Twenty Two Thousand Thirty Seven and 26/100 (\$22,037.26) Dollars to Salley Law Firm, P.A. as reimbursement of costs and expenses; Eleven Thousand One Hundred Eighty and 71/100 (\$11,180.71) Dollars to the employee as compromise settlement of future disability benefits commencing as of November 6, 2017 for a period of 35.53 years or 1,847.56 weeks, the life expectancy of the employee, at the rate of \$6.05 Dollars per week pursuant to the South Carolina Life Expectancy Table in §19-1-150, 1976 Code of Laws of South Carolina, as amended, and as interpreted by the South Carolina Supreme Court in the decisions of Utica Mohawk Mills v. Orr, 227 S.C. 226; 87 S.E.2d 589 (1955), James v. Anne's Inc., 390 S.C. 188; 701 S.E.2d 730 (2010), and the case of Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1989). A final determination of the actual amount to be paid to Claimant, as well as the actual attorney's fees and costs will be determined upon approval of the Form 61 and accompanying Order.

ORDER

IT IS THEREFORE ORDERED:

ORDERED, ADJUDGED AND DECREED that Claimant, Lamar Clark, shall receive the remainder of his permanent and total disability award, which amounts to Forty-four thousand three hundred ninety-eight and 68/100 Dollars (\$44,398.68), as of November 8, 2017, in a lump sum which shall be allocated in the fashion previously specified herein for his total and permanent disability under §42-9-10, as Claimant has suffered a combination of work-related injuries

affecting more than one body part resulting in a complete destruction of earning capacity with Defendants receiving credit for temporary disability benefits paid as described herein. It would also be appropriate to pay the total and permanent disability lump sum award in the fashion previously specified herein under §42-9-30(21), as Claimant sustained 50% more loss of use to the back resulting in total and permanent disability.

ORDERED, ADJUDGED AND DECREED that Claimant, Lamar Clark, shall receive and Defendants shall provide lifetime ongoing causally related reasonable and necessary medical care tending to lessen his period of disability through maintaining his level of function as a result of his work related injuries, including, but not limited to, medications, medical maintenance, pain management, counseling, diagnostic procedures, surgical procedures, and therapy, all of which shall be the responsibility of the Defendants, including reimbursement for mileage and medications until further order of this court.

ORDERED, ADJUDGED AND DECREED that Claimant, Lamar Clark, is entitled to receive and Defendants shall provide reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital and other treatment and care shall be paid by Defendants during the lifetime of the injured employee, without regard to any limitation under the Act, including the maximum compensation limit.

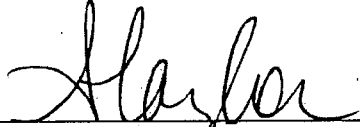
ORDERED, ADJUDGED AND DECREED that Defendants may stop payment of temporary benefits.

ORDERED, ADJUDGED AND DECREED that Defendants are entitled to a credit for all payments of temporary total benefits paid since May 25, 2016, as described herein.

ORDERED, ADJUDGED AND DECREED that Defendants shall pay to Claimant a lump sum representing the commuted value of 500 weeks of compensation less credit for

compensation already paid, allocated pursuant to *Utica-Mohawk* and *James v. Anne*'s cases, as described herein.

AND SO IT IS ORDERED.



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
December 29, 2017

By: Renee Smith, Administrative Assistant to Commissioner Taylor

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1115485**

Lamar Clark,

CLAIMANT/RESPONDENT,

v.

Philips Electronics/Shakespeare,

Employer,

and

Gallagher Bassett Services,

Carrier,

DEFENDANTS/APPELLANTS.

Appellate Panel Review held in Columbia,
South Carolina on March 20, 2018

Appellate Panel Decision and Order filed: June 5, 2018

Appearances: Claimant/Respondent represented by William B. Salley and Jake Smith of
 Salley Law Firm, P.A., Lexington, South Carolina

 Defendants/Appellants represented by Brooke Payne of Lueder, Larkin &
 Hunter, LLC, Mt. Pleasant, South Carolina

STATEMENT OF THE CASE

This case came before the Single Commissioner to resolve the issues raised in Claimant's Form 50 and in the Defendants' Form 21. This case was heard Commissioner on September 6, 2016, at which time the parties and their representatives appeared and evidence was received. The parties stipulated that the Claimant suffered an admitted accident within the course and scope of his employment on or about July 20, 2011. The Claimant alleged injuries to his back, left hip, left leg, left foot, nervous system, and resultant psychological. The Claimant sought an award for permanent and total disability under either S.C. Code § 42-9-10 or § 42-9-30, if deemed to have reached maximum medical improvement.

Defendants alleged that the Claimant had reached MMI as a result of his work injury and requested a stop pay and recoupment of temporary benefits paid since the date of that designation. Defendants contended that the Claimant only sustained an injury to one body part, the lumbar spine. Defendants argued that the Claimant is not permanently disabled under either S.C. Code § 42-9-10 or § 42-9-30 and he is limited to scheduled member disability under S.C. Code § 42-9-30. Defendants agree that his authorized treating physicians have assigned a PPD rating of 20% to his spine, and maintained that he is not entitled to future medical care for his work-related back injury.

The hearing was held pursuant to timely and proper notice served on all parties, and the record was held open for submission of documents as well as expert depositions. No objection was raised by either party regarding jurisdiction or venue.

On December 28, 2017, the Single Commissioner issued her Decision and Order, making the following FINDINGS OF FACT:

1. That all parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Lamar Clark, as

Employee and Philips Electronics/Shakespeare, as Employer, and Gallagher Basset Services, as Carrier.

2. That this matter was heard before the undersigned on September 6, 2016, pursuant to Claimant's Form 50 Request for Hearing and Defendants' Form 21 Request for Hearing.
3. That at the conclusion of the testimony on September 6, 2016, the hearing was adjourned to rule on Defendants' Motions to Compel discovery and hearing testimony from Joel Leonard, CRC, CVE. The parties briefed the issue and an Order on the Motions was served on December 5, 2016.
4. The September 6, 2016 hearing record was also held open to allow the submission of documents, and that would include a second deposition of Dr. Storick, if Defendants wished to pursue that route. The record was also held open for submission of documents that were received pursuant to subpoenas that had already been sent, as well as any providers learned about at the hearing (Hearing Transcript p. 24).
5. As of December 5, 2016 – 90 days after the hearing—no additional documents, APA's or exhibits were filed with the Commission. Order Instructions were sent to the parties on that same day indicating that the record was closed as of December 5, 2016, as no documents had been submitted.
6. On December 14, 2016, Defendants submitted a Second Supplemental Notice of Submission of Written Experts' Reports and Exhibits, which included Defendants APA Submissions numbers 27, 28 and 29 and Exhibits U, V, W, X, Y and Z.
7. That the Defendants' December 14, 2016 submissions were admitted into the record despite the December 5, 2016 closing date referenced in the Order Instructions because no deadline had been issues at the conclusion of the September 6, 2016 hearing when the record was originally held open.
8. That Claimant's average weekly wage at the time of his injury by accident July 20, 2011, was \$361.91 resulting in an applicable weekly compensation rate of \$241.29.
9. That I did not find Claimant's testimony regarding his pre-injury conditions and multiple disability filings credible at all. Nevertheless, I find Claimant was successfully employed with Philips Electronics, initially through a temporary agency, for seven months prior to his injury. Claimant also continued to work for Philips Electronics, as an employee, for an additional six months post injury.
10. That Dr. Holbrook performed a left L5-S1 microdiscectomy on April 4, 2012, and a second, subsequent L4-5 microdiscectomy on September 25, 2013, nearly a year and a half after the first surgery, due to Claimant's ongoing symptomology and radiographic findings.
11. That Claimant underwent a functional capacity evaluation with Tracy Hill, P.T., who

noted that Claimant qualified for limited sedentary to limited light work.

12. That Dr. Hutcheson opined Claimant sustained 25% whole person impairment, which converted to 28% to the lumbar spine. Dr. Hutcheson opined Claimant could return to work with limited sedentary to limited light work restrictions.
13. That Dr. Westerkam opined Claimant sustained 25% whole person impairment, which converted to 28% to the lumbar spine. Dr. Westerkam opined Claimant could return to work with limited sedentary to limited light work restrictions.
14. That Dr. Gabr opined Claimant sustained 23% whole person impairment for the lumbar spine. Dr. Gabr opined Claimant had work restrictions of abilities to sit continuously are limited to 15 minutes at a time and no longer than four hours per day with allowance for frequent change of position for comfort, ability to stand limited to 10 minutes of the time, no longer than two hours per day, ability to walk less than one block at a time and no longer than one hour per day, difficulties reaching at the disk level secondary to cervical radiculopathy and shoulder symptoms, especially above shoulder activities following cervical fusion surgery, secondary to difficulties with lifting consistently over 10 lbs, inability to sit or stand continuously more than 10 minutes and required frequent change of position, and inability to consistently kneel, crawl or bend secondary to limited spine range of motion.
15. That Claimant's most recent MRI, as interpreted by Dr. Storick, shows a possible recurrent disc herniation at L4/L5 and post-surgical changes at L4/L5 to the left.
16. That Claimant's testimony regarding his prior medical treatment in Florida does not undermine the seriousness of Claimant's medical condition and treatment to date resulting from this admitted workers' compensation claim.
17. That this is an admitted back claim. The Claimant had two surgeries to his back as a result of this admitted workers' compensation claim.
18. That Claimant's admitted back injury affects the use of his left and right leg, with the left being the more affected side.
19. That Claimant sustained a psychological injury as a result of his July 20, 2011 work injury. This finding is based on the opinions of Dr. Lind, Dr. Hutcheson, Dr. Westerkam, and Dr. Brabham.
20. That Claimant is permanently and totally disabled under either S.C. Code Ann. §42-9-10 with a combination of work-related injuries affecting more than one body part resulting in complete destruction of earning capacity, as well as §42-9-30(21) for having suffered 50% or more loss of use to the back. However, I specifically find that Claimant receives the total and permanent disability award under §42-9-10 for having a combination of work-related injuries affecting more than one body part resulting in complete destruction of earning capacity. I base this finding on both of the vocational evaluations of Dr.

Brabham and Ms. Westmoreland; however, greater weight was given to the opinion of Dr. Brabham in this instance, as I find it was more in line with the opinions of the treating physicians.

21. That alternatively, Claimant is totally and permanently disabled pursuant to §42-9-30(21) in that he has sustained a 50% or greater loss of use to his back and Defendants have failed to rebut the presumption. Claimant's permanent impairment ratings ranging from 20 – 25%, limited sedentary to limited light FCE restrictions as well as Claimant's highest level of education completed, 12th grade education, weighed heavily into this decision. Although evidence shows that the Claimant attempted college courses twice, I find they were not completed. Claimant's onerous limitations for his work-related back injury are more restrictive than those found in *Linen v. Ruscon Const.*, 286 S.C. 67, 332 S.E.2d 211 (1985), which also resulted in total and permanent disability because of 50% or more loss of use to the back under §42-9-30(21) even though the Claimant in *Linen* had no surgery.
19. That Claimant is entitled to lifetime reasonable and necessary causally related medical care, including, but not limited to, the care of authorized treating physicians Dr. Holbrook and Dr. Storick, and any and all necessary prescription drugs, procedures, and referrals as the aforementioned authorized treating physicians may recommend. Claimant is also entitled to lifetime reasonable and necessary causally related care for his psychological overlay.¹
20. That pursuant to *Dodge v. Brucoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999), Defendants shall remain financially responsible for lifetime reasonable and necessary nursing services, medicines, sick travel, medical, psychological, hospital and other treatment or care, which shall be paid by Defendants during the lifetime of the injured employee, without regard to any limitation in the Act including the maximum compensation limit.
21. That Claimant is entitled to a lump sum award pursuant to *James v. Anne's and Utica-Mohawk*. Claimant is capable of managing a lump sum award, a lump sum award is in the best interest of Claimant, and Defendants have shown no prejudice from payment of the award in lump sum.
22. That Claimant is entitled to 500 weeks of benefits less any amount previously received as temporary total disability paid since July 20, 2011.
23. That these above findings are based on the medical evidence, the record as a whole, and the observation of Claimant by the undersigned.

The Single Commissioner made the following CONCLUSIONS OF LAW:

1. I find and conclude that this matter is governed by the South Carolina Workers' Compensation Act, §42-1-10 *et seq.* of the South Carolina Code (1976, as amended).

¹ The Finding of Facts in the Order were improperly numbered, as numbers 19, 20, and 21 were repeated.

2. I find and conclude that under §42-1-160 and §42-15-20, Claimant sustained an injury by accident within the course and scope of his employment and that Defendants were given proper notice of Claimant's injury. Specifically, under §42-1-160, I find and conclude that Claimant sustained injuries to his back, back affecting right leg, back affecting left leg, and resultant psychological overlay on July 20, 2011, within the course and scope of his employment.
3. I find and conclude that under §42-1-40, Claimant's average weekly wage was \$361.91, and the corresponding weekly compensation rate was \$241.29.
4. I find and conclude that Claimant's work related injury affects multiple body parts, therefore, he is not limited to partial disability under §42-9-30.
5. I find and conclude that under §42-9-10, Claimant is totally and permanently disabled due to his back injury affecting his right and left legs and psychological overlay, which combine to completely destroy his earning capacity under §42-9-10, and, therefore, he is entitled to 500 weeks compensation.
6. I find and conclude that under §42-9-30(21), Claimant is totally and permanently disabled, as he has 50% or more loss of use to his back from his causally related work injury and Defendants have failed to rebut the presumption.
7. I find and conclude that under §42-15-60, since Claimant is totally and permanently disabled as a result of his work related injuries, Claimant is entitled to receive causally related reasonable and necessary nursing services, medicines, sick travel, medical, hospital and other treatment or care, which shall be paid by Defendants during the life of the Claimant, without regard to any limitation in the Act, including the maximum compensation limit. Also under this section, I find and conclude that Defendants shall remain financially responsible for Claimant's ongoing need for psychological treatment and care.
8. I find and conclude that under §42-15-60 and *Dodge v. Brucoli, Clark, Laymen Inc.*, 334 S.C. 575, 514 S.E.2d 593 (S.C. App. 1999), Defendants shall remain financially responsible for lifetime *Dodge* medical care, including, but not limited to, the recommendations of the authorized treating physicians, Dr. Holbrook and Dr. Storick, and any and all necessary prescription drugs, procedures, and referrals as the aforementioned authorized treating physicians may recommend, including, but not limited to, reimbursement for mileage and medications. Also under this section, I find and conclude that Defendants shall remain financially responsible for Claimant's ongoing need for psychological treatment and care.
9. I find and conclude that under §42-9-10 and §42-1-120, Claimant has reached maximum medical improvement as of May 25, 2016, for the physical and psychological work related injuries.

10. I find and conclude that under §42-9-10 and §42-1-120, Claimant is entitled to receive compensation at the rate of Two Hundred Forty-one and 29/100 Dollars (\$241.29) for 500 weeks with Defendants getting credit for temporary total disability paid since July 20, 2011.
11. I find and conclude under §42-15-60, Dr. Holbrook and Dr. Storick are Claimant's authorized treating medical providers.
12. I find and conclude that *Utica-Mohawk* and *James v. Anne's* language is ordered. I find and conclude that Claimant's total lump sum award, which amounts to Forty-four Thousand Three Hundred Ninety-eight and 68/100 Dollars (\$44,398.68) as of November 8, 2017, shall be allocated as follows: That the aggregate of the proposed settlement is the sum of Forty Four Thousand Three Hundred Ninety Eight and 68/100 (\$44,398.68) Dollars that Employee requests this Commission to approve the allocation of the aforementioned proposed settlement as follows: Eleven Thousand One Hundred Eighty and 71/100 (\$11,180.71) Dollars to the Salley Law Firm, P.A. as attorneys' fees; Twenty Two Thousand Thirty Seven and 26/100 (\$22,037.26) Dollars to Salley Law Firm, P.A. as reimbursement of costs and expenses; Eleven Thousand One Hundred Eighty and 71/100 (\$11,180.71) Dollars to the employee as compromise settlement of future disability benefits commencing as of November 6, 2017 for a period of 35.53 years or 1,847.56 weeks, the life expectancy of the employee, at the rate of \$6.05 Dollars per week pursuant to the South Carolina Life Expectancy Table in §19-1-150, 1976 Code of Laws of South Carolina, as amended, and as interpreted by the South Carolina Supreme Court in the decisions of *Utica Mohawk Mills v. Orr*, 227 S.C. 226; 87 S.E.2d 589 (1955), *James v. Anne's Inc.*, 390 S.C. 188; 701 S.E.2d 730 (2010), and the case of *Sciarotta v. Bowen*, 837 F.2d 135 (3rd Cir. 1989). A final determination of the actual amount to be paid to Claimant, as well as the actual attorney's fees and costs will be determined upon approval of the Form 61 and accompanying Order.

ISSUES ON APPEAL

Within the statutory period, Defendants timely filed an application for review and Form 30 setting forth their numerous grounds for review, copies of which were provided to all interested parties. Defendants' Form 30 and Addendum filed on January 12, 2018 raised the following issues on appeal:

1. Whether the Single Commissioner erred in finding (**Finding of Fact No. 20, 21, 19a, 20a, 21a, 22; Conclusion of Law No. 5, 6, 7, 8 10, 12**) that the Claimant is permanently and totally disabled and entitled to benefits.
2. Whether the Single Commissioner erred in finding (**Finding of Fact No. 19, 19a; Conclusion of Law No. 2, 4, 5, 7**) that the Claimant suffered an injury by accident

resulting in a psychological overlay on July 20, 2011, within the course and scope of his employment.

3. Whether the Single Commissioner erred in finding (**Finding of Fact No. 12, 13, 14, 18, 19, 20, 21; Conclusion of Law No. 2, 4, 5, 6, 7, 9, 10, 12**) the Claimant's injury to his back affected more than one body part and that the Claimant lost more than 50% use of the back.
4. Provided it is found that the Claimant did in fact sustain an injury to more than one body part and/or more than 50% use of the back, whether the Single Commissioner erred in finding (**Finding of Fact No. 11, 12, 13, 14, 20, 21; Conclusion of Law No. 6**) that the Employer/Carrier failed to rebut the presumption that the Claimant is totally and permanently disabled.
5. Whether the Single Commissioner failed to properly apply Linen v. Ruscon Const., 286 S.C. 67, 332 S.E. 2d 211 (1985). (**Finding of Fact No. 21**).
6. Whether the Single Commissioner erred in failing to evaluate, based on all evidence submitted by the parties and the Claimant's own testimony, whether the Claimant's prior emotional/mental problems limited the Claimant's ability to work *prior* to the Claimant's work accident. (**Finding of Fact No. 9, 16, 19, 23; Conclusion of Law No. 5, 7**).
7. Whether the Single Commissioner erred in failing to evaluate, based on all evidence submitted by the parties and the Claimant's own testimony, whether the Claimant's prior back injury and radicular issues limited the Claimant's ability to work *prior* to the Claimant's work accident. (**Finding of Fact No. 9, 16, 23; Conclusion of Law No. 5, 6**).
8. Whether the Single Commissioner erred in failing to evaluate all relevant evidence submitted by the parties prior to making her conclusion as to the Claimant's permanency.
9. Whether the Single Commissioner erred by placing greater weight on the opinion of the Claimant's vocational expert, Dr. Brabham, failing to substantiate why said opinion was more probative than the medical opinions proffered by the Employer/Carrier. (**Finding of Fact No. 20; Conclusion of Law No. 5, 7**).
10. Whether the Single Commissioner erred in finding (**Finding of Fact No. 19a, 20a, 21a, 22; Conclusion of Law No. 7, 8**) that the Employer/Carrier is responsible for lifetime reasonable and necessary causally related medical care pursuant to the opinions of Dr. Holbrook and Dr. Storick.
11. Whether the Single Commissioner erred in finding (**Finding of Fact No. 19, 19a; Conclusion of Law No. 2, 5, 9**) that the Claimant is entitled to lifetime reasonable and necessary causally related care for his alleged psychological overlay.
12. Whether the Single Commissioner erred in finding (**Finding of Fact. No. 21**) that the Claimant highest education level was a 12th grade education, as he had not "completed"

his college degrees and only took some college courses.

13. Whether the Single Commissioner erred by failing to find that the Claimant has been physically and psychologically disabled from work since 2006 based on the SSA records proffered by the Employer/Carrier.

Both parties submitted briefs outlining their positions prior to the oral arguments which took place before the Appellate Panel on March 20, 2018. After careful consideration of the arguments of the parties and the Record in this case, the Appellate Panel hereby **REVERSES** the Single Commissioner's December 28, 2017 Decision and Order. The Appellate Panel, therefore, enters its own Findings and Conclusions consistent with S.C. Code Ann. § 42-17-50, as follows:

FINDINGS OF FACT OF THE APPELLATE PANEL

After careful review of the evidence of the record, the Single Commissioner's Order and the briefs and oral arguments of the parties, WE FIND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Lamar Clark, as Employee and Philips Electronics/Shakespeare, as Employer, and Gallagher Bassett Services, as Carrier.
2. We find that the Claimant suffered an injury by accident to his back within the course and scope of his employment on July 20, 2011.
3. We find that the Claimant's alleged psychological issues are not supported by the greater weight of the evidence and thus are not causally related to the accident of July 20, 2011. The greater weight of the evidence supports that the Claimant had pre-existing psychological issues which were not relayed to any of his treating physicians. This finding is based on the 2008 and 2009 SSDI documents wherein Claimant alleged that he was suffering from mental or emotional issues at that time which limited his ability to work. Ex. C. Moreover, the Claimant indicated on these documents that he had been seen by a provider for emotional or mental problems in the past. *Id.* The Claimant maintained his denial of any prior psychological issues at the hearing, and his medical records are void of any mention to his treating physicians of his prior psychological issues and/or treatment. Hrg. Tr. p. 54 – 55; See medical records.
4. We find the Claimant to be wholly lacking in credibility. We find that the Claimant's lack of credibility has undermined the medical opinions and treatment received in relation to his admitted workers' compensation claim, as the opinions and conclusions of his

providers were based upon self-serving assertions of the Claimant. This finding is supported by the Deposition and Hearing testimony of the Claimant, his prior medical and Social Security records and the records from all physicians and vocational evaluators involved in this claim. The Claimant sustained a work injury in 2006 while working for Tile Depot, leaving him with residual low back pain and complaints of radiculopathy; however, when deposed in 2013, the Claimant denied ever working for Tile Depot, denied having any prior workers' compensation claims and denied any prior back injuries. Hrg. Tr. p. 46 - 47; Ex. C p. 626; Ex. S, p. 11, 21, 36. The Claimant maintained this denial of his prior workers' compensation claim at the Hearing, even when presented with his signature on Florida Workers' Compensation documents indicating otherwise. Hrg. Tr. p. 40, 48. The Claimant's 2006 work injury at Tile Depot was significant enough for him to apply for SSDI benefits in 2007 and 2009 as a result of same, wherein he indicated that his 2006 back injury prevented him from being able to work. Ex. N p. 2040, 1871. Just seven months before his date of accident with this Employer, the Claimant presented to Newberry Hospital, reporting back and left flank pain. Hrg Tr. p. 127 - 128. Even so, the Claimant unequivocally admitted that he did not report any prior physical limitations to the IME physicians or vocational evaluators in relation to his work injury at Philips, even though he was asked about same. Hrg. Tr. p. 88 - 89; See medical records.

5. We find that the Claimant's authorized treating physicians are Dr. Thomas Holbrook and Dr. Steven Storick, so we give the greatest weight to the opinions of these physicians.
6. We find that the Claimant has reached MMI as of July 23, 2014. This finding is based on the 14B completed by Dr. Thomas Holbrook, wherein he placed the Claimant at MMI as of July 23, 2014 and indicated that the Claimant would be evaluated by Dr. Storick to optimize his medicines and for consideration of a spinal cord stimulator. Ex. A.
7. We find that the evidence in the record does not support that the Claimant is permanently and totally disabled. We find that the Claimant's lack of truthfulness throughout the pendency of this matter to be an impediment to supporting the Single Commissioner's decision. In further support of this finding is the Claimant's admission that he did not report any prior physical limitations to the IME physicians or vocational evaluators in this claim. Hrg. Tr. p. 88 - 89; See medical and vocational reports. Moreover, at the Hearing, the Claimant disputed all of the medical records which evidenced improvement in his condition following his work injury at Philips. Hrg Tr. p. 69-71, 77, 85. Further, the Claimant reported to the vocational evaluators that he had only completed a 12th grade education, when in fact he had completed one year of college at Kaiser College, where the Claimant majored in computer programming, and one year at the Georgia Military College. Hrg. Tr. p. 66.
8. We find that the Claimant has sustained a 20% permanent impairment to his back, taking into account any affects to his legs. Both Drs. Holbrook and Storick have opined that the Claimant has sustained a medical impairment rating of 20%, and we assign greater weight to the opinions of these treating physicians. Ex. A, R.
9. We find that the Claimant is no longer entitled to further medical treatment pursuant to

S.C. Code Ann. § 42-9-60.

APPELLATE PANEL CONCLUSIONS OF LAW

1. Under S.C. Code Ann. § 42-1-130 and § 42-1-140, at the time of the accident, the Claimant and Defendant Employer were covered parties under the Act.
2. Under S.C. Code Ann. § 42-1-160, the Claimant sustained an injury by accident to his back within the course and scope of his employment.
3. Under S.C. Code Ann. § 42-9-35, the Claimant bears the burden of proving an aggravation of a pre-existing condition. We conclude that there is not substantial evidence in the record to support a conclusion that the Claimant's pre-existing psychological condition was aggravated by the compensable work injury.
4. Under S.C. Code Ann. § 42-9-10, the Claimant only sustained an injury to one body part and has no loss of wage earning capacity as a result of his June 20, 2011 work injury, so he is therefore not entitled to permanent and total benefits under this statute.
5. Under S.C. Code Ann. § 42-9-30(21), the Claimant did not sustain 50% or more loss of use of his back and is therefore not entitled to permanent and total benefits under this statute.
6. Under S.C. Code Ann. § 42-9-30(21), the Claimant sustained a 49% or less loss of use of his back. Specifically, the Claimant is awarded a medical impairment rating of twenty percent (20%) to his back, taking into account any affects to his legs.
7. Under .C. Code Ann. § 42-9-210, Defendants are entitled to a deduction from the amount of compensation to be paid since disability payments were made when they were not due and payable.
8. Under § 42-15-60, the Claimant is no longer entitled to further medical treatment for his back.

ORDER

IT IS THEREFORE ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on December 28, 2017 is hereby REVERSED.

IT IS FURTHER ORDERED that Claimant sustained a compensable injury to his back. The Claimant's current psychological condition, if any, is unrelated to his work injury at Philips.

IT IS FURTHER ORDERED that Claimant is not Permanently and Totally Disabled.

IT IS FURTHER ORDERED that Claimant reached MMI on July 23, 2014 and sustained a permanent partial disability of 20% to his back, which takes into account any affects to his legs. This rating entitles the Claimant to 60 weeks of permanent partial disability compensation benefits, which amounts to Fourteen Thousand Four Hundred Seventy Seven Dollars and 40/100 (\$14,477.40).

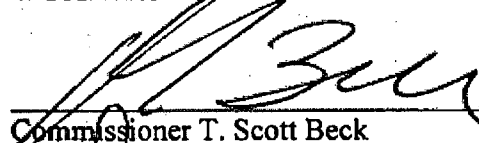
IT IS FURTHER ORDERED that Defendants may stop payment of temporary benefits as of July 23, 2014 and are entitled to a credit and reimbursement for all payments of temporary total benefits paid since that date. As of the date of this Order, Defendants have paid the Claimant 199 weeks of weekly post-MMI benefits, amounting to \$48,016.71. After Claimant's permanent partial disability award is applied to the aforementioned credit, Defendants have a resulting net credit and are entitled to reimbursement in the amount of Thirty-Three Thousand Five Hundred Thirty-Nine Dollars and 31/100 (\$33,539.31).

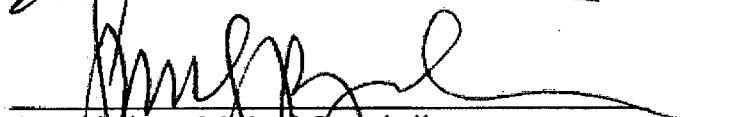
IT IS FURTHER ORDERED that Defendants credit is in excess of Claimant's permanent partial disability award; thus, no payment is due to the Claimant.

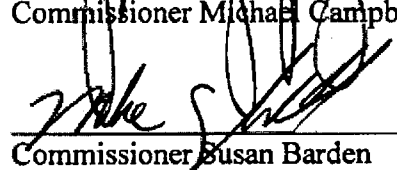
IT IS FURTHER ORDERED that the Claimant is not entitled to any further medical treatment for his back.

AND IT IS SO ORDERED.

APPELLATE PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION:



Commissioner T. Scott Beck

Commissioner Michael Campbell

Commissioner Susan Barden

6-5-, 2018
Columbia, South Carolina

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500, Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5723



WCC File #: 1115485

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Lamar Clark

SSN: [REDACTED]

Employer's Name: Phillips Electronics/Shakespeare

Address: [REDACTED]

Address: 19845 US Highway 76

City: Newberry

State: SC

Zip: 29108

City: Newberry

State: SC

Zip: 29108

Home Phone: [REDACTED]

Work Phone: [REDACTED]

Insurance Carrier: Fidelity & Guarantee Insurance

Preparer's Name: William B. Salley, Jr.

Law Firm: Salley Law Firm, P.A.

Preparer's Phone #: (803) 356-5000

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

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

Date of Injury or Illness: July 20, 2011

- ☒ Injury ☐ Illness ☐ Repetitive Trauma
- 1a. The claimant sustained an injury to back, left hip, left leg, left foot, neck and resultant psychological (Part(s) of Body Injured) on July 20, 2011 (Month/Day/Year) in Newberry County, State of South Carolina
 - 1b. Body part(s) affected are: back, left hip, left leg, left foot, neck and resultant psychological
Briefly describe how the accident occurred Claimant while in the furtherance of his work duties was lifting an approximately 27 foot cross arm with a co-worker when it slipped out of their hands and he caught it around his knee level wrenching his spine area with radicular type symptoms
 2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 3. The relationship of the employer and employee existed at the time of injury.
 4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
 5. Notice of the accidental injury was given to the Employer on (Month/Day/Year) in the following manner:
Claimant notified the safety supervisor, Mr. Mike Senn, in person
 6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for back, left hip, left leg, left foot, neck and resultant psychological
☐ (b) additional medical examination and treatment for back, left hip, left leg, left foot, neck and resultant psychological
 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: To be determined
 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total ☐ Partial
☐ (3) Wage Loss
 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of _____
 - 10a. At the time of the injury, the claimant was paid weekly wages of \$FORM 20 REQUESTED, and demands accounting of days worked and wages earned as provide by law.
 - 10b. Give names and addresses of all employers from whom the claimant has worked since the date of the accident.
Phillips Electronics.
 - 11a. Further grounds or unusual aspects of claim: Any and all benefits Claimant may be entitled to under the Act. Also, Claimant requests lump sum with James v. Anne's language to be made part of any settlement or award
 - 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Thomas Holbrook, Jr., Columbia Neurosurgical Associates, 720 Rabon Road, Columbia, SC 29203; Dr. Jorge Garcia, Emmanuel Family Clinic, 2531 Evans Street, Newberry, SC 29108; Dr. John Hibbits, Palmetto Bone & Joint, 2605 Kinard Street, Newberry, SC 29108; Lexington Medical Center, 2720 Sunset Boulevard, West Columbia, SC 29169; Newberry County Memorial Hospital, 2669 Kinard Street, Newberry, SC 29108 and Newberry Physical Therapy and Sports Medicine Clinic, Inc., 2515 Evans Street, Newberry, SC 29108
 - 11c. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: _____
 12. Appropriate benefits as provided in the ACT for the above grounds and other relief as the Worker' Compensation Commission may direct as just and proper.
 - 13a. I am filing a claim. I am not requesting a hearing at this time.
 - 13b. I am requesting a hearing. A \$25 fee is required.
 14. Estimated time needed for hearing: _____

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

William B. Salley, Jr.
Preparer's Signature

Claimant's Attorney
Title

bsalley@salleylawfirm.com
Email

January 24, 2013
Date

Division of Claims
Claims Admin.
S.C. Workers' Comp. Comm.

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

SC Workers' Compensation Commission

1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715

WCC File #: 1115485Carrier File #: 002380-009431-WC-01

Carrier Code #: _____

Employer FEIN #: _____

Lamar Clark

Claimant's Name SSN

Newberry, South Carolina 29108

Address City State Zip

Home Phone #

M. Chad Abramson

Preparer's Name

Work Phone #

McAngus Goudelock & Courie

Law Firm

Philips Electronics

Employer's Name

19845 US Highway 76
Newberry, South Carolina 29108

Address City State Zip

Fidelity & Guaranty Insurance Company c/o Gallagher
Bassett Services, Inc.

Insurance Carrier

(803) 227-2239

Phone Number

The date of injury reported on the Form 12A is: 7/20/2011

Check applicable section(s). The employer's representative requests a hearing to:

- I. ☒ **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 1/2/2013 (m/d/yyyy) (copy of medical report must be attached).Compensation payments are current as of 4/15/2013 and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.A Form 17 was offered and refused on 4/15/2013.

- II. ☐ **Address suspension, termination, or reduction of temporary disability payment for any cause.**

☐ a. At any time pursuant to § 42-9-260(E).☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

- III. ☒ **Determine if compensation is due pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:**

Claimant reached maximum medical improvement as of 01/02/13 for the admitted injury to his lumbar spine stemming from his 07/20/11 work accident and sustained 10% permanent partial impairment to the lumbar spine per the authorized treating physician, Dr. Holbrook.

Claimant reached maximum medical improvement on 1/2/2013 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

- V. ☐ **Determine amount of compensation for claims involving a fatality.** (Dependency Investigation must be attached).

☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

A hearing requested pursuant to this section will be set on an expedited basis.

- A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.
- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

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

William B. "Bret" Salley, Jr., Esquire
Salley Law Firm, PA
Post Office Box 925
Lexington, South Carolina 29071-0925

on the 15th day of April, 2013 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Preparer's Signature

Attorney for Employer/Carrier
TitleApril 15, 2013
DateQuestions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.

WCC Form # 21

21

062

Revised 04/18/2011

Employer's Request for Hearing



Claimant's Name: Lamar Clark Employer's Name: Philips Electronics/Shakespeare Composite Structures
Address: [REDACTED] Address: 19845 US Highway 76
City: Newberry State: SC Zip: 29108 City: Newberry State: SC Zip: 29108
Home Phone: [REDACTED] Work Phone: () Carrier: Gallagher Bassett Services
Preparer's Name: Brooke A. Payne Preparer's Phone #: (843) 353-0796

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$241.29 2. AWW: \$361.91 Date of Injury: 7/20/2011
3. Type of injury and body part(s): Accepted for lumbar spine only. All other alleged body parts are denied.
4. Facts in controversy: Whether the Claimant is entitled to permanent partial disability benefits for his accepted injuries after being released at MMI by Dr. Holbrook on July 23, 2014 (surgical) and by Dr. Storick on August 27, 2015 (pain management) with a corresponding impairment rating of 20% in relation to his lumbar spine as assigned by Dr. Holbrook on January 15, 2016 and concurred by Dr. Storick in his July 25, 2016 deposition.
5. Legal issues involved: Section 42-9-30 of the South Carolina Code of Laws. The Claimant has reached a point of MMI for all of his affected body parts and is entitled to a permanency determination address his permanent partial disability benefits; Beckman v. Sysco Columbia, 414 SC 538, 779 S.E.2d 554 (SC 2015)
6. Unusual aspects: Defendants are awaiting identification of the Claimant's medical providers in Florida and for the Claimant to execute release of information forms in relation to same, as well as the receipt and review of corresponding medical records. Issues related to the Claimant's MMI determination are ready to be tried at upcoming hearing.
7. Witnesses (designate if expert):* See attached Notice of Submission of Written Expert Reports and Exhibits. Defendants intend to call Joel Leonard, vocational expert.
8. Exhibits: See attached Notice of Submissions of Written Expert Reports and Exhibits. Defendants reserve the right to submit any additional documents responsive to timely served subpoenas, which are received prior to the hearing.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Submissions of Written Expert Reports and Exhibits. Defendants reserve the right to submit any additional documents responsive to timely served subpoenas, which are received prior to the hearing.
10. Name, address, and specialty, if any, of the treating physician: Dr. Thomas Holbrook; Dr. Steven Storick
11. Impairment rating(s); body part(s); physician and date of opinion: 20% in relation to lumbar spine by Dr. Holbrook (1/15/16)
12. I am amending my Form 50/51 in the following manner: N/A

☒ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to William B. Salley

Address PO Box 925, Lexington, SC 29071 on the 29th day of August, 2016, by:

☒ first class postage ☐ certified mail ☐ personal service ☐ electronic service

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

Signature: Brooke A. Payne
Date of hearing: September 6, 2016

Email: bpayne@luederlaw.com
Time needed for hearing: 2 hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. *

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1115485

LAMAR CLARK,

Respondent,

vs.

PHILIPS ELECTRONICS and FIDELITY
& GUARANTY INS. CO. C/O
GALLAGHER BASSETT
SERVICES, INC.,

Appellants.

**FORM 30 ADDENDUM:
QUESTIONS PRESENTED**

The Employer, **Philips Electronics**, and its respective carrier for WCC File No. 1115485 (DOI: July 20, 2011), **Fidelity & Guaranty Ins. Co. c/o Gallagher Bassett Services, Inc.**, request review based on the following grounds:¹

- (1) Whether the Single Commissioner erred in finding (**Finding of Fact No. 20, 21, 19a, 20a, 21a, 22; Conclusion of Law No. 5, 6, 7, 8 10, 12**) that the Claimant is permanently and totally disabled and entitled to benefits.
- (2) Whether the Single Commissioner erred in finding (**Finding of Fact No. 19, 19a; Conclusion of Law No. 2, 4, 5, 7**) that the Claimant suffered an injury by accident resulting in a psychological overlay on July 20, 2011, within the course and scope of his employment.
- (3) Whether the Single Commissioner erred in finding (**Finding of Fact No. 12, 13, 14, 18, 19, 20, 21; Conclusion of Law No. 2, 4, 5, 6, 7, 9, 10, 12**) the Claimant's injury to his back affected more than one body part and that the Claimant lost more than 50% use of the back.
- (4) Provided it is found that the Claimant did in fact sustain an injury to more than one body part and/or more than 50% use of the back, whether the Single Commissioner erred in finding (**Finding of Fact No. 11, 12, 13, 14, 20, 21; Conclusion of Law No. 6**) that the Employer/Carrier failed to rebut the presumption that the Claimant is totally and permanently disabled.

¹ Please take note that the Finding of Facts in the Order were improperly numbered, repeating numbers 19, 20, and 21 on page 43. For the Full Commission's convenience and ease of reference, the Employer/Carrier (Appellant) has referenced repeated numbers on pg. 43 of the Order as 19a, 20a, and 21a so as to provide clarity as to which Finding of Fact is being referenced in the Employer/Carrier's Appeal.

- (5) Whether the Single Commissioner failed to properly apply Linen v. Ruscon Const., 286 S.C. 67, 332 S.E. 2d 211 (1985). (**Finding of Fact No. 21**).
- (6) Whether the Single Commissioner erred in failing to evaluate, based on all evidence submitted by the parties and the Claimant's own testimony, whether the Claimant's prior emotional/mental problems limited the Claimant's ability to work *prior* to the Claimant's work accident. (**Finding of Fact No. 9, 16, 19, 23; Conclusion of Law No. 5, 7**).
- (7) Whether the Single Commissioner erred in failing to evaluate, based on all evidence submitted by the parties and the Claimant's own testimony, whether the Claimant's prior back injury and radicular issues limited the Claimant's ability to work *prior* to the Claimant's work accident. (**Finding of Fact No. 9, 16, 23; Conclusion of Law No. 5, 6**).
- (8) Whether the Single Commissioner erred in failing to evaluate all relevant evidence submitted by the parties prior to making her conclusion as to the Claimant's permanency.²
- (9) Whether the Single Commissioner erred by placing greater weight on the opinion of the Claimant's vocational expert, Dr. Brabham, failing to substantiate why said opinion was more probative than the medical opinions proffered by the Employer/Carrier. (**Finding of Fact No. 20; Conclusion of Law No. 5, 7**).
- (10) Whether the Single Commissioner erred in finding (**Finding of Fact No. 19a, 20a, 21a, 22; Conclusion of Law No. 7, 8**) that the Employer/Carrier is responsible for lifetime reasonable and necessary causally related medical care pursuant to the opinions of Dr. Holbrook and Dr. Storick.
- (11) Whether the Single Commissioner erred in finding (**Finding of Fact No. 19, 19a; Conclusion of Law No. 2, 5, 9**) that the Claimant is entitled to lifetime reasonable and necessary causally related care for his alleged psychological overlay.
- (12) Whether the Single Commissioner erred in finding (**Finding of Fact. No. 21**) that the Claimant highest education level was a 12th grade education, as he had not "completed" his college degrees and only took some college courses.
- (13) Whether the Single Commissioner erred by failing to find that the Claimant has been physically and psychologically disabled from work since 2006 based on the SSA records proffered by the Employer/Carrier.

² The Single Commissioner failed to include Defendants' Exhibit U: Updated Labor Market Survey by Jan Westmoreland consisting of 3 pages. Review and/or consideration of this Survey was excluded from the December 28, 2017 Decision and Order.

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1115485**

LAMAR CLARK,	)	
	)	
Claimant,	)	
	)	
Respondent,	)	APPELLANTS' BRIEF TO
	)	THE FULL COMMISSION
vs.	)	
	)	
PHILIPS ELECTRONICS and FIDELITY,	)	
AND GUARANTEE INSURANCE CO.,	)	
	)	
	)	
Defendants,	)	
	)	
Appellants.	)	

STATEMENT OF THE CASE

A Hearing on the parties' Form 50/51 and the Employer/Carrier's Form 21 was held before Commissioner Aisha Taylor ("the Single Commissioner") of the South Carolina Workers' Compensation Commission ("the Commission") on September 6, 2016, in Columbia, South Carolina. The parties and/or their representatives appeared at the Hearing and presented evidence in the case. The parties stipulated that the Claimant's applicable average weekly wage was \$361.91, yielding the corresponding compensation rate of \$241.29.

The Claimant ("the Respondent") alleged that as a result of his work injury, he sustained injuries to his lumbar spine, left hip, left leg, right leg, left foot, nervous system, and psychological overlay. The parties stipulated to the injury to his lumbar spine, but Defendants ("Appellants") denied all other body parts. Respondent sought an award of permanent and total disability under

either § 42-9-30 or § 42-9-10. Respondent requested causally related future medical treatment for his lumbar spine and the other alleged body parts.

Appellants' position was that the Respondent had reached Maximum Medical Improvement status as to his lumbar spine in August 2015. In light of this, Appellants requested a stop pay and recoupment of benefits from August 2015 to present. Appellants contended that the Respondent only sustained an injury to one body part, the lumbar spine, and therefore was limited to recovery of permanent benefits under S.C. Code § 42-9-30. Provided the Commission found that the Respondent sustained an injury to more than one body part, the Appellants asserted that the Respondent was unable to meet his burden of proving permanent and total disability under § 42-9-10 or § 42-9-30.

At the September 6, 2016 Hearing, Respondent presented new evidence to Appellants, in the form of a note from Dr. Steven Storick which had been completed that morning. A discussion about discovery was held off the record and the Commissioner ruled that the record would be held open for additional discovery responses to be tendered. Specifically, the Commissioner noted that this could potentially include a second deposition of Dr. Storick, responses to outstanding subpoenas, and requests to new providers the Respondent first disclosed at the hearing. On December 14, 2016, Defendants submitted their Second Supplemental Submissions which included APA's 27, 28, and 29, along with Exhibits U, V, W, X, Y, and Z. The Single Commissioner's Decision and Order (hereinafter "Order") was later filed on December 28, 2017, in which the Single Commissioner found as fact and concluded as matters of law (in part pertaining to the request for review):

FINDINGS OF FACT

11. That Respondent underwent a functional capacity evaluation with Tracy Hill, P.T., who noted that Respondent qualified for limited sedentary to limited light work.

12. That Dr. Hutcheson opined Respondent sustained 25% whole person impairment, which converted to 28% to the lumbar spine. Dr. Hutcheson opined Respondent could return to work with limited sedentary to limited light work restrictions.
13. That Dr. Westerkam opined Respondent sustained 25% whole person impairment, which converted to 28% to the lumbar spine. Dr. Westerkam opined Respondent could return to work with limited sedentary to limited light work restrictions.
14. That Dr. Gabr opined Respondent sustained 23% whole person impairment for the lumbar spine. Dr. Gabr opined Respondent had work restrictions of abilities to sit continuously are limited to 15 minutes at a time and longer than four hours per day with allowance for frequent change of position for comfort, ability to stand limited to 10 minutes of the time, no longer than two hours per day, ability to walk less than one block at a time and no longer than one hour per day, difficulties reaching at the disk level secondary to cervical radiculopathy and shoulder symptoms, especially above shoulder activities following cervical fusion surgery, secondary to difficulties with lifting consistently over 10 lbs, inability to sit or stand continuously more than 10 minute and required frequent change of position, and inability to consistently kneel, crawl, or bend secondary to limited spine range of motion.
18. That Respondent's admitted back injury affects the use of his left and right leg, with the left being the more affected side.
19. That Respondent sustained a psychological injury as a result of his July 20, 2011 work injury. This finding is based on the opinions of Dr. Lind, Dr. Hutcheson, Dr. Westerkam, and Dr. Brabham.
20. That Respondent is permanently and totally disabled under either S.C. Code Ann. §42-9-10 with a combination of work-related injuries affecting more than one body part resulting in complete destruction of earning capacity, as well as §42-9-30(21) for having suffered 50% or more loss of use to the back. However, I specifically find that Respondent receives the total and permanent disability award under §42-9-10 for having a combination of work-related injuries affecting more than one body part resulting in complete destruction of earning capacity. I base this finding on both of the vocational evaluations of Dr. Brabham and Ms. Westmoreland; however, greater weight was given to the opinion of Dr. Brabham in this instance, as I find it was more in line with the opinions of the treating physicians.
21. That alternatively, Respondent is totally and permanently disabled pursuant to §42-9-30(21) in that he has sustained a 50% or greater loss of use to her back and Defendants have failed to rebut the presumption. Respondent's permanent impairment ratings, limited sedentary to limited light FCE restrictions as well as Respondent's education weighed heavily into this decision. Respondent's onerous limitations for his work-related back injury are more restrictive than those found in *Linen v. Ruscon Const.*, 286 S.C. 67, 332 S.E.2d 211 (1985), which also resulted in total and permanent disability because of 50%

or more loss of use to the back under §42-9- 30(21) even though the Respondent in *Linen* had no surgery.

... (Page 43 of Order)¹

- 19(a). That Respondent is entitled to lifetime reasonable and necessary causally related medical care, including, but not limited to, the care of authorized treating physicians Dr. Holbrook and Dr. Storick, and any and all necessary prescription drugs, procedures, and referrals as the aforementioned authorized treating physicians may recommend. Respondent is also entitled to lifetime reasonable and necessary causally related care for his psychological overlay.
- 20(a). That pursuant to *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999), Defendants shall remain financially responsible for lifetime reasonable and necessary nursing services, medicines, sick travel, medical, psychological, hospital and other treatment or care, which shall be paid by Defendants during the lifetime of the injured employee, without regard to any limitation in the Act including the maximum compensation limit.
- 21(a). That Respondent is entitled to a lump sum award pursuant to *James v. Anne's and Utica-Mohawk*. Respondent is capable of managing a lump sum award, a lump sum award is in the best interest of Respondent, and Defendants have shown no prejudice from payment of the award in lump sum.
22. That Respondent is entitled to 500 weeks of benefits less any amount previously received as temporary total disability paid since July 20, 2011.
23. That these above findings are based on the medical evidence, the record as a whole, and the observation of Respondent by the undersigned.

CONCLUSIONS OF LAW

Accordingly, it is the determination and finding of this Commissioner that:

2. I find and conclude that under §42-1-160 and §42-15-20, Respondent sustained an injury by accident within the course and scope of his employment and that Defendants were given proper notice of Respondent's injury. Specifically, under §42-1- 160, I find and conclude that Respondent sustained injuries to his back, back affecting right leg, back affecting left leg, and resultant psychological overlay on July 20, 2011, within the course and scope of his employment.
4. I find and conclude that Respondent's work related injury affects multiple body parts, therefore, he is not limited to partial disability under §42-9-30.

¹ Please take note that the Finding of Facts in the Order were improperly numbered, repeating numbers 19, 20, and 21 on page 43. For the Full Commission's convenience and ease of reference, the Employer/Carrier (Appellant) has referenced repeated numbers on p. 43 of the Order as 19a, 20a, and 21a so as to provide clarity as to which Finding of Fact is being referenced in the Employer/Carrier's Appeal.

5. I find and conclude that under §42-9-10, Respondent is totally and permanently disabled due to his back injury affecting his right and left legs and psychological overlay, which combine to completely destroy his earning capacity under §42-9-10, and, therefore, he is entitled to 500 weeks compensation.
6. I find and conclude that under §42-9-30(21), Respondent is totally and permanently disabled, as he has 50% or more loss of use to his back from his causally related work injury and Defendants have failed to rebut the presumption.
7. I find and conclude that under §42-15-60, since Respondent is totally and permanently disabled as a result of his work related injuries, Respondent is entitled to receive causally related reasonable and necessary nursing services, medicines, sick travel, medical, hospital and other treatment or care, which shall be paid by Defendants during the life of the Respondent, without regard to any limitation in the Act, including the maximum compensation limit. Also under this section, I find and conclude that Defendants shall remain financially responsible for Respondent's ongoing need for psychological treatment and care.
8. I find and conclude that under §42-15-60 and *Dodge v. Brucoli, Clark, Laymen Inc.*, 334 S.C. 575, 514 S.E.2d 593 (S.C. App. 1999), Defendants shall remain financially responsible for lifetime *Dodge* medical care, including, but not limited to, the recommendations of the authorized treating physicians, Dr. Holbrook and Dr. Storick, and any and all necessary prescription drugs, procedures, and referrals as the aforementioned authorized treating physicians may recommend, including, but not limited to, reimbursement for mileage and medications. Also under this section, I find and conclude that Defendants shall remain financially responsible for Respondent's ongoing need for psychological treatment and care.
9. I find and conclude that under §42-9-10 and §42-1-120, Respondent has reached maximum medical improvement as of May 25, 2016, for the physical and psychological work related injuries.
10. I find and conclude that under §42-9-10 and §42-1-120, Respondent is entitled to receive compensation at the rate of Two Hundred Forty-one and 29/100 Dollars (\$241.29) for 500 weeks with Defendants getting credit for temporary total disability paid since July 20, 2011.
11.
12. I find and conclude that *Utica-Mohawk* and *James v. Anne*'s language is ordered. I find and conclude that Respondent's total lump sum award, which amounts to Forty-four Thousand Three Hundred Ninety-eight and 68/100 Dollars (\$44,398.68) as of November 8, 2017, shall be allocated as follows: That the aggregate of the proposed settlement is the sum of Forty Four Thousand Three Hundred Ninety Eight and 68/100 (\$44,398.68) Dollars that Employee requests this Commission to approve the allocation of the aforementioned proposed settlement as follows: Eleven Thousand One Hundred Eighty and 71/100 (\$11,180.71) Dollars to the Salley Law Firm, P.A. as attorneys' fees; Twenty Two

Thousand Thirty Seven and 26/100 (\$22,037.26) Dollars to Salley Law Firm, P.A. as reimbursement of costs and expenses; Eleven Thousand One Hundred Eighty and 71/100 (\$11,180.71) Dollars to the employee as compromise settlement of future disability benefits commencing as of November 6, 2017 for a period of 35.53 years or 1,847.56 weeks, the life expectancy of the employee, at the rate of \$6.05 Dollars per week pursuant to the South Carolina Life Expectancy Table in §19-1-150, 1976 Code of Laws of South Carolina, as amended, and as interpreted by the South Carolina Supreme Court in the decisions of Utica Mohawk Mills v. Orr, 227 S.C. 226; 87 S.E.2d 589 (1955), James v. Anne's Inc., 390 S.C. 188; 701 S.E.2d 730 (2010), and the case of Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1989). A final determination of the actual amount to be paid to Respondent, as well as the actual attorney's fees and costs will be determined upon approval of the Form 61 and accompanying Order.

This claim now comes before the Full Commission of the South Carolina Workers' Compensation Commission on Appellants' Form 30, Request for Review of the Decision and Order issued by the Single Commissioner on December 28, 2017. Appellants assign errors in the Commissioner's Decision and Order in the Findings of Fact and Conclusions of Law, asserting that the Respondent did not sustain an injury to more than one body part. Additionally, the Single Commissioner erred in finding that the Respondent's date of Maximum Medical Improvement ("MMI") was May 25, 2016, as the substantial evidence in the record supports the finding that the Respondent was placed at MMI on August 27, 2015. Additionally, the Single Commissioner erred in finding that the Respondent was permanently and totally disabled under § 42-9-30 and § 42-9-10, as the Appellants rebutted any presumption of permanent and total disability. In light of the errors outlined above, the Appellants assert that the substantial evidence in the record does not support the Single Commissioner's Findings of Fact and Conclusions of Law and the Order should be reversed.

STANDARD OF REVIEW

S.C. Code Ann. § 42-17-50 governs appeals from the Single Commissioner to the Full Commission. S.C. Code Ann. § 42-17-50 statutorily empowers the Full Commission to review the Decisions and Orders of the Single Commissioner, and when appropriate; to make its own Findings of Fact and Rulings of Law. Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E.2d 767 (1991). The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. Ross v. American Red Cross, 298 S.C. 490, 381 S.E.2d 728 (1989). *See also* Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) (finding that the Full Commission is fact finder and it is not within Supreme Court's province to reverse Commission's findings if they are supported by substantial evidence). Although it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992).

SUMMARY OF EVIDENCE

Respondent is forty-one years old. (Hrg. Tr. p. 25, line 10). The Respondent was deposed on May 22, 2013. (Ex. S). At his deposition, the Respondent was asked about his college education, and he testified that he attended one year at Georgia Military College, but that was the extent of his college courses. (*Id.* at p. 18). In contrast, on the Respondent's 2008 and 2012 SSDI applications, Respondent indicated that he attended 2 years of college. (Ex. N, p. 1951). It also came out at the hearing that Respondent had attended a year at Kaiser College, majoring in computer programming. (Hrg. Tr. p. 66, lines 3 – 25). Not only did he fail to inform Defense

counsel of this additional schooling in his deposition, he did not provide this information to any of the vocational evaluators. (Id.).

PRIOR BACK INJURIES

The Respondent sustained a work injury in 2006 while working for Tile Depot, leaving him with residual low back pain and complaints of radiculopathy. (Ex. C, p. 626).

On July 28, 2006, the Respondent reported to Halifax Medical Center complaining of back pain. (APA 27, p. 2141). Specifically, he reported some radiation in the legs, more on the left than the right, which he attributed to lifting. (Id.). He further reported a history of scoliosis and some back problems in the past. (Id.). Respondent was diagnosed with a muscular back strain. Subsequently, on August 14, 2006, the Respondent was diagnosed with low back pain and given a prescription for Naprosyn. (Id. at 2146). He was kept out of work until an orthopedic evaluation. (Id.).

The above-mentioned injury was significant enough for the Respondent to apply for Social Security Disability benefits. (Hrg. Tr. P. 53, lines 3 – 7). In support of his request for social security benefits, Respondent completed a Disability Report wherein he indicated that the conditions limiting his ability to work at that time were: “back problems, diabetic,” and he described the limitations on his ability to work as such: “a lot of times I am unable to lift my arms above my head. I have a hard time walking.” (Ex. N p. 2040). The Respondent was evaluated by Dr. David Carpenter at Ormond Medical Arts on October 10, 2008. (Ex. N, p. 2060). He reported a 2-year history of worsening mid back and low back pain that he attributes to a lifting injury in 2006. (Id.). He reported intermittent pain in his low back and left knee, and intermittent numbness and tingling affecting his left lower extremity. (Id.).

Respondent had low back and left knee pain that was still present over two years after the 2007 work accident while employed by Tile Depot, causing him to apply for SSDI again in 2009 (Hrg. Tr. P. 54, lines 3 – 6; Hrg. Tr. P. 56, lines 6 – 18). On this application, the Respondent alleged that he was physically unable to lift anything, his back hurt from his neck all the way down to his tailbone, and some days he was unable to walk due to the severity of his knees. (Ex. N, p. 2066). Respondent denies reporting any of those issues. (Hrg. Tr. p. 56 lines 19 – 25). Although the Respondent testified at his 2013 deposition that he had never undergone any diagnostic studies related to his back, he indicated on his 2009 social security application that he had undergone X-rays of his back at Florida Hospital, Ormond Memorial, and Halifax Medical Center. (Ex. N p. 2071; Hrg. Tr. p. 57 lines 1 – 9). On May 5, 2009, the Respondent completed a pain questionnaire wherein he indicated that he suffered from “very sharp pain from my middle of my spine down to [his] hips,” and the factors that caused him to experience pain were sitting, standing, and bending. (Id. at p. 2077). He further described that his pain lasted “some days 5 – 6 hours, and sometimes weeks.” (Id.). When questioned on this form about the activities of daily living, the Respondent reported that his injuries in 2009 affected being able to move items around in the house to clean, sleeping in certain positions, inability to rake the yard and walking.” (Id. at p. 2078).

The Respondent was questioned by a disability examiner in July of 2009 in relation to his 2009 application for SSDI benefits. (Hrg. Tr. P. 65, lines 1 – 5). At that time, he reported being unable to work because of his left knee and left sided low back pain. (Ex. N, p. 1871). He further reported that X-rays showed decreased space between L5-S1. (Id.).

When deposed back in 2013, Respondent was asked to list all of his prior Employers, and he did not mention Tile Depot. (Hrg. Tr. pg. 46, lines 12 – 47; Ex. S, p. 21 line 15 and p. 36 line 8). Further, Respondent testified under oath at his deposition that he had never been injured while

working for a prior Employer, failing to disclose his prior injury at Tile Depot. (Hrg. Tr. p. 47 lines 16 – 21).

At the Hearing, Respondent testified that he did not file a workers' compensation claim against Tile Depot, yet he was impeached with the records from the Florida Workers' Compensation Commission showing otherwise. (Hrg. Tr. p. 48, line 2 and p. 40 line 14). In his medical treatment related to his claim against Tile Depot, the Respondent reported a history of scoliosis and pain in his low back. (Hrg. Tr. p. 50 line 15 – p. 51 line 13). Although the Respondent denies reporting pain radiating into his left leg back in 2006, the medical records from Halifax Memorial indicate otherwise. (APA 27).

Further, the Respondent indicated in his 2008 Application that he had been seen by a doctor/hospital/clinic for emotional or mental problems that limited his ability to work. (Id. at p. 2042). Respondent denies not only that he alleged suffering from emotional or mental issues back in 2008, but that he ever saw a doctor as a result of same. (Hrg. Tr. p. 54 line 7 – p. 55 line 21). He testified that he had no psychological conditions prior to this injury. (Hrg. Tr. p. 41, lines 18 – 20).

Just seven months before his date of accident with this Employer, the Respondent presented to Newberry Hospital, reporting back and left flank pain. (Hrg Tr. p. 127 – 128). Specifically, he reported that the left side of his back was sore and complained of muscle spasms. (Id.).

WORK INJURY

Respondent was hired by Philips Electronics and sustained his work injury on his third day of employment, July 20, 2011. (Hrg. Tr. p. 27, lines 6 – 8). Respondent was lifting a 24-foot cross arm made out of fiberglass with a co-worker and he felt pain in his lower back. (Hrg. Tr. p. 28, lines 19 – 25; Hrg. Tr. p. 29, lines 1 – 4, 14 – 18).

Respondent's medical records are voluminous, as he has received medical treatment from Dr. John Hibbitts, Dr. Daniel Sheehan, Dr. Thomas Holbrook, Jr., Dr. Steven Storick, Dr. Donald Johnson, II, Dr. Nicholas Lind, Dr. Justin Hutcheson, Dr. Daniel Westerkam, Dr. Robert Brabham, Dr. Gisele Girault, and Dr. Usama Gabr.

Respondent initially treated with Dr. John Hibbitts. (APA 4, p. 90). An MRI of his lumbar spine was performed, which revealed L5-S1 left parasagittal disc herniation. (Id. At p. 91). An EMG performed by Dr. Daniel Sheehan on January 25, 2012 revealed lumbar radiculopathy primarily affecting the left L5 nerve root distribution. (APA 4, p. 98). On February 1, 2012, John Hibbitts, M.D., referred the Respondent out for further treatment. (APA 4, p. 104). Respondent began treating with Dr. Thomas Holbrook in February of 2012. (APA 1, p. 1 – 2). When asked about any prior back problem at his initial visit, Respondent denied any previous problems with his low back and informed Dr. Holbrook that he had only had "some occasional strain which resolved with time." (Id.).

On April 4, 2012, Thomas Holbrook, M.D. performed a "left L5-S1 microdisectomy" (APA 1, p. 3). Following this procedure, the Respondent returned to Dr. Holbrook on May 2, 2012 and reported having complete relief from his left leg pain. (Respondent's APA 1, p. 6. At the hearing, Respondent disputed that he ever reported complete resolution of his radicular pain to Dr. Holbrook (Hrg Tr. p. 69 lines 4 – 9). Dr. Holbrook assigned a 10% impairment rating to his whole person for his lumbar spine on January 2, 2013 and referred him to pain management with Dr. Steven Storick. (Id. at p. 17).

On September 25, 2013, Thomas Holbrook, M.D. performed a left L4-5 microdisectomy. (APA 1, p. 28). The Respondent subsequently treated with Dr. Holbrook on February 24, 2014, and indicated that he had no radicular leg pain. (APA 1, p. 36). Respondent disputes this. (Hrg.

Tr. p. 69 lines 15 – 20). Similarly, the PT notes from Progressive PT in 2014 showed increased improvement, as the Respondent reported feeling “practically no pain” at his May 21, 2014 visit. (Hrg Tr. p. 70 lines 14 – 18). The Respondent disputes ever reporting this. (Id.).

At his May 28, 2014 visit with Dr. Holbrook, the Respondent reported his pain at 40% better. (Id.) The Respondent disputes ever having reporting this progress. (Hrg. Tr. p. 70 lines 9 – 13). The Respondent made no mention of pain in his left hip or leg at this visit with Dr. Holbrook; however, the Respondent also disputes this. (Hrg Tr. p. 71 lines 20 – 24).

The Respondent reported at least 50 – 60% temporary benefits from the injections to Dr. Storick on January 8, 2015. (APA 5 p. 117). Similarly, in July of 2015, the Respondent reported improvement in his back pain following the recent injection, although the Respondent disputes this note. (Hr. Tr. p. 77, lines 1 – 7). On August 27, 2015, the Respondent reported having more issues with his right side of his back than his left. (APA 5, p. 124). The Respondent disputes this record, as he claims to have never reported having more issues with his right side of his back as compared to the left. (Hrg Tr. p. 78 lines 12 – 21).

On July 14, 2016, the Respondent reported at his visit at Progressive PT that “he felt the best he has felt since the start of therapy.” (APA 25 p. 1901). On July 19, 2016, the therapist noted that he was able to complete all activities in therapy (Id. at p. 1900). The Respondent disputes that he was ever able to complete all activities of therapy. (Hrg. Tr. p. 85 lines 4 – 15).

Following his questionnaire response, Appellants deposed Dr. Steven Storick on July 25, 2016. (Ex. R). Dr. Storick testified that in February of 2015, following a conference call with the attorneys, it was his opinion that the Respondent’s future medical care consisted of Neurontin and pain management visits twice a year. (Id. at p. 40). Dr. Storick testified that in April of 2015 he opted to proceed with a Rhizotomy because the Respondent had reported relief from the injections.

(Id. at p. 41 – 42). In contrast to the Respondent's testimony at the hearing, based on the Respondent's complaints following the Rhizotomy, Dr. Storick saw it is a "pretty good sign" that the Rhizotomy was beneficial. (Hrg Tr. p. 76 lines 14 – 25; Id. at 46). Dr. Storick testified that he placed the Respondent at MMI on August 27, 2015. (Id. at 48). At that time, the Respondent had reported six weeks of benefit from the procedure. (Id. at 57 – 58). Dr. Storick unequivocally testified that the Respondent remains at MMI as of August of 2015, further stating, "Well, he's been declared at maximum medical improvement. That doesn't change." (Id. at 60). Dr. Storick explained that on the most recent questionnaire response, he indicated that the Respondent needed additional treatment prior to reaching MMI because he "didn't have the medical records to look at then, and I apologize, but he is at MMI. It doesn't mean he doesn't get further treatment. It just means that, you know, things change." (Id.). He further testified that the Respondent "has plateaued . . . Does his impairment change as a result of that? No, it doesn't." (Id. at p. 61).

On September 14, 2016, Dr. Storick prepared a narrative in response to a letter and questionnaire prepared by Defense Counsel. (APA 28, p. 2148). In his narrative, Dr. Storick refused to answer any questions related to his symptoms and recent MRI scan, and deferred any treatment of same to Dr. Holbrook, should he deem appropriate. (Id.). Dr. Storick further opined, "Should Mr. Clark not require any further surgical intervention by Dr. Holbrook, I believe he potentially would be a more appropriate candidate for a comprehensive pain program. Based on the recent psychological evaluation provided by Dr. Lind, Mr. Clark is not a candidate at this time for a spinal cord stimulator trial due to severe anxiety and depression as noted in the testing. The comprehensive pain program may incorporate some psychological counseling, pain coping skills, relaxation techniques, OT/PT and vocational training. I believe this type of treatment will be in the best interest of Mr. Clark versus more aggressive treatments." (Id.). This opinion was mirrored

in the office note from the Respondent's November 28, 2016 visit with Dr. Storick. (Id. at 2149 – 2150).

On September 15, 2016, the Respondent returned to Dr. Holbrook, continuing to complain of low back pain radiating down the left leg to the foot (APA 29). Dr. Holbrook opined that he did “not believe that he would benefit from any further surgery on his lumbar spine” and he “would agree with a trial of a spinal cord stimulator once his depressive issues have been addressed.” (Id. at 2152).

The Respondent was additionally found by his treating physicians to be able to perform work ranging from sedentary to light duty. On July 10, 2014, Tracy Hill, P.T. noted that the Respondent “qualified for limited sedentary to limited light work. He does not tolerate occasional bending, squatting, kneeling, or reaching. He does not meet the full physical requirements necessary for sedentary or light work.” (APA 7, p. 156 – 58). On July 21, 2014, Dr. Daniel Westerkam agreed with this assessment, finding that the Respondent to be “able to work in the limited sedentary to limited light work category. He can occasionally walk, stair climb and twist, but he cannot kneel, squat, bend or reach.” (APA 6, p. 128 – 30). Dr. Hutcheson, additionally noted that the Respondent could perform work ranging from sedentary to light duty. (APA 10, p. 234 – 37). Dr. Girault opined that he too, was in agreement with the previous assessments and found that the Respondent was capable of doing sedentary to limited light duty work. (APA 17, p. 1157 – 59; APA 26, p. 1911 – 16).

The Respondent's vocational aptitude was evaluated by Ms. Jan Westmoreland, and in part, by Dr. Brabham (Ex. B; APA 13). The Respondent was evaluated by Jan Westmoreland, M.Ed., CRC, of the Directions Group. (Ex. B, p. 1918 – 1945). The Respondent was first evaluated by Ms. Westmoreland on April 12, 2016. (Id. at 1918). After review of medical reports and

conducting a clinical interview with the Respondent, she found that the Respondent's physical capacity range "appears to fall within the sedentary to light physical demand work capacity." (Id. at 1935). She additionally found that given the Respondent's work history, aptitudes, and transferable skills; he could be able to return to several jobs, which accommodate his limitations. Specifically, the following jobs were found to be available to the Respondent within his restrictions: Ticket Taker, Box Office Cashier, Garage Cashier and Attendance Monitor. (Id. at 1936 – 37). The Respondent could anticipate earnings ranging from \$7.25/hour up to \$8.50 an hour for Columbia, South Carolina and surrounding areas. (Id. at 1938).

A subsequent evaluation was performed on July 18, 2016. (Id. at 1940). Ms. Westmoreland noted that contrary to the April 12, 2016 report, the Respondent reported that he actually attended 2 years of college instead of only 1 year. (Id. at 1940). The Respondent relayed that he spent an additional year at Kaiser College, majoring in computer programing. (Id. at 1945). Based on her review of updated medical records and the Respondent's newly disclosed educational background, Ms. Westmoreland found that the job positions of Technical Support Service, Implementation Coordinator, Customer Service Representative, Security Guard, Tax Support Specialist, Guest Service Representative, and Computer Operator were available to the Respondent. (Id. at 1943 – 1944). Based on these available positions, the Respondent could anticipate earnings ranging from \$8,320.00 to \$40,000.00 per year for Columbia, South Carolina and the surrounding areas. (Id. at 1944).

An additional vocational report from Ms. Westmoreland, dated September 6, 2016, was submitted to the Commission for review, but was excluded from the Order in error. (Ex. U; See infra Section III (b)).

The Respondent never informed Dr. Girault, Dr. Storick, or the vocational evaluators about his prior back injury. (Hrg. Tr. p. 86, line 24; Hrg. Tr. p. 87, line 9).

WORK SEARCH

At the Hearing, the Respondent testified that he was unable to find a job given his physical restrictions, stating that he applied for jobs at Autozone, a Temp Service in Newberry, and Long's Drug Store. (Hrg. Tr. p. 99 – 102). The Respondent stated that he provided these entities with a copy of his medical restrictions. (Id.). The Respondent asserted that he never heard back from these potential employers. (Id.). On September 8, 2016, Defense counsel served subpoenas on employers that the Respondent testified as to having applied for employment. (Ex. V, W, X, Y). Said subpoenas requested any and all files related to the Respondent including but not limited to, (1) Applications for employment, (2) correspondences, (3) offer letters, (4) termination letters, (5) wage documents (i.e. pay stubs, pay checks, W-4 forms, W-2 forms, etc), (6) schedules, (7) any other documents related to the Respondent's employment or inquiry for employment. (Id.).

A subpoena seeking employment records was served on StaffMasters located at 2857 Main St., Newberry, SC. (Ex. V p. 2159), Roper Personnel Services located at 1223 Wilson Rd., Newberry, SC (Ex. W p. 2162), Long's Drugs located at 1729 Main St., Newberry, SC (Ex. X p. 2165) and AutoZone c/o their registered agent (Ex. Y, p. 2168).

Corporate Counsel for StaffMasters responded to said subpoena on September 9, 2017, stating "StaffMasters has no employment records for Lamar Clark, SS# xxx-xx-7828." (Ex. V, p. 2160). The Corporate Human Resources Manager for Roper Staffing responded to said subpoena on September 19, 2016, stating that they could not find any records for the Respondent, after conducting a search by both his social security number and name. (Ex. W, p. 2164). Corporate Counsel for Long's Drugs responded to the subpoena for employment records on September 20,

2016, responding that they “have no record that Lamar Clark has ever worked for Long’s Drugs or applied for work at Long’s Drugs.” (Ex. X, p. 2167). Similarly, the Senior Employee Relations Specialist for AutoZone responded to the subpoena on September 28, 2016, indicating that they were unable to locate any information regarding the Respondent. (Ex. Y, p. 2170).

QUESTIONS PRESENTED

1. Whether the Single Commissioner erred in finding that the Respondent sustained more than one injury?
2. Whether the Single Commissioner erred in determining that the Respondent reached MMI on May 26, 2016?
3. Whether the Single Commissioner erred in finding that the Respondent was permanently and totally disabled?

ARGUMENT

I. THE SINGLE COMMISSIONER ERRED IN FINDING THAT THE RESPONDENT SUSTAINED MORE THAN ONE INJURY.

The Single Commissioner found that in addition to the Respondent’s low back injury, the Respondent additionally sustained an injury to his right and left lower extremities and psychological overlay. As the Respondent’s radicular complaints do not constitute a separate injury under the Act and the Respondent suffered from a pre-existing psychological issue that prevented him from working prior to the work injury, the Single Commissioner erred in finding that the Respondent sustained more than one compensable injury.

Under § 42-9-10, in order to find a Respondent permanently and totally disabled, a Respondent must sustain a loss of use to 2 or more body parts as a result of his work injury. In 2014, pursuant to Beckman v. Sysco Columbia, LLC, the South Carolina Court of Appeals determined that radicular symptoms could be considered a causally related injury for the purposes

of obtaining benefits under Sections 42-9-10 and 42-9-20. 408 S.C. 501 (Ct. App. 2014). This opinion was short lived. On November 18, 2015, the South Carolina Supreme Court depublished that opinion. 414 S.C. 538, 779 S.E.2d 554 (2015) (finding that Court of Appeals opinion would no longer have effect). Consequently, radiculopathy is not to be used to cross the threshold between economic disability and scheduled member disability, and the reversal of the Court of Appeal's decision supports this inference. See also Fishburne v. ATI Systems International, 384 S.C. 76, 681 S.E.2d 595 (Ct. App. 2009) (holding that while the Respondent had radicular complaints extending into her lower extremity, the Court affirmed the Commission's decision to only award Ms. Fishburne compensation for the disability to her back). Additionally, claims for psychological injury are compensable only if the Respondent proves by a *preponderance of evidence* they are caused by a physical injury or by extraordinary and unusual conditions of employment. Frame v. Resort Servs. Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004).

Here, the Respondent's radicular complaints, including his pre-existing radicular complaints pursuant to his 2008 SSDI application and evaluations, were tied to the Respondent's prior injury to his low back. (Ex. C, p. 626; APA 5, p. 105, APA 15, p. 455). Specifically, the Respondent was evaluated by Dr. David Carpenter at Ormond Medical Arts on October 10, 2008. (Ex. N, p. 2060). Dr. Carpenter reported a 2-year history of worsening mid back and low back pain that the Respondent attributed to a lifting injury in 2006. (*Id.*). The Respondent reported to Dr. Carpenter intermittent pain in his low back and left knee, and intermittent numbness and tingling affecting his left lower extremity. (*Id.*). Even if the Respondent's radicular complaints were aggravated and/or exacerbated by his July 20, 2011 work injury, these complaints resolved and/or returned to base line. Specifically, on September 25, 2013, Thomas Holbrook, M.D. performed a left L4-5 microdiscectomy. (APA 1, p. 28). The Respondent subsequently treated

with Dr. Holbrook on February 24, 2014, and indicated that he had no radicular leg pain. (APA 1 p. 36). Respondent disputes this. (Hrg. Tr. p. 69 lines 15 – 20). Similarly, the PT notes from Progressive PT in 2014 showed increased improvement, as the Respondent reported feeling “practically no pain” at his May 21, 2014 visit. (Hrg Tr. p. 70 lines 14 – 18). The Respondent disputes ever reporting this. (Id.). At his May 28, 2014 visit with Dr. Holbrook, the Respondent reported his pain was 40% better. (Id.). The Respondent made no mention of pain in his left hip or leg at this visit with Dr. Holbrook; however, the Respondent also disputes this. (Hrg Tr. p. 71 lines 20 – 24). Therefore, the Respondent’s radicular pain was attributable to his low back and any radiculopathy had effectively resolved. Consequently, the Single Commissioner’s finding that radicular complaints constituted a separate injury under the Act was in error. A finding that the Respondent sustained an additional injury to his lower extremities is a misapplication of the law and is not supported by the substantial evidence in the record.

With regard to the Respondent’s alleged psychological overlay, the substantial evidence in the record does not support a finding of psychological issues as a result of the work accident. Instead, the record reveals numerous inconsistencies regarding the Respondent’s psychological complaints and calls into question whether the Respondent has any current psychological issues, and if so, whether they are related to his work injury with the Employer.

With regard to the Respondent’s current psychological issues, his complaints have been inconsistent. On May 16, 2013, he relayed to Dr. Lind that he had suicidal ideations, but did not act on them. (APA 12, p. 368). He was also seen by Dr. Westerkam, where he denied having any suicidal ideations. (Hrg. Tr. p. 91). Just days later, at the Respondent’s May 22, 2013 deposition, he relayed that he was “a little depressed,” and failed to mention any other psychological issues. (Ex S, p. 9, lines 24 – 25).

The Respondent's 2008 SSDI application documents that the Respondent had been seen by a provider for emotional or mental problems *that limited his ability to work*. (Def. Ex. C, p. 608). At the Hearing, the Respondent denied any prior psychological issues. (Hrg. Tr. 54, lines 7 – 9). When asked if he would be surprised to find in his 2008 SSDI application that he was suffering from emotional and mental problems that limited his ability to work, the Respondent responded, "I'd be surprised to see that I s[aw] the doctor . . . yes." (Hrg. Tr. p. 55, lines 6 – 12).

While the Respondent's psychological and radicular complaints appear to go back and forth, the Respondent's prior inconsistent testimony regarding his other alleged injuries calls into question the veracity of the same. The Respondent denied ever injuring his back prior to the 2011 work accident and also expressly denied ever having a workers' compensation claim. (Ex. S, p. 11). When asked "prior to this work accident, Mr. Clark, have you ever had any injuries to your low back," the Respondent confidently answered "No, Sir." (Id.). This is directly contradicted by the October 10, 2008 report from Dr. David Carpenter, who completed an Office of Disability Determination. (Ex. C, p. 626). Specifically, Dr. Carpenter notes, "Mr. Clark presents with low back pain . . . reports intermittent numbness and tingling in left lower extremity . . . he attributes [the injury] to a lifting injury in 2006. (Id.). The Respondent filed and settled a workers' compensation claim involving his low back in 2006 with Tile Depot. (Hrg. Tr. p. 56, lines 3 – 5). In light of these inconsistencies, the Respondent's testimony regarding his alleged psychological issues, in addition to his other alleged injuries, should be disregarded in their entirety, as the Respondent lacks veracity. Therefore, given the Respondent's pre-existing psychological injury, which Respondent himself had previously attested had kept him from working, and the Respondent's wavering complaints, the preponderance of the evidence does not support a finding of a psychological overlay that is causally related to his work injury.

Consequently, the Single Commissioner erred in finding that the Respondent sustained more than a single injury to the back, as the Respondent's radicular complaints do not constitute a separate injury and the preponderance of evidence does not support a finding that the Respondent's psychological issues were a result of his work injury.

II. THE SINGLE COMMISSIONER ERRED IN HER DETERMINATION OF THE RESPONDENT'S DATE OF MAXIMUM MEDICAL IMPROVEMENT, AS THE DETERMINATION IS NOT SUPPORTED BY THE SUBSTANTIAL EVIDENCE IN THE RECORD.

The Single Commissioner's determination that the Respondent reached MMI on May 26, 2016 is not supported by the substantial evidence in the record. (Conclusion of Law No. 9). Specifically, the Commissioner's Order fails to note any medical treatment occurring on May 26, 2016 and fails identify why this date was used to determine MMI. MMI is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical care or treatment which *will tend to lessen the degree of impairment*. O'Banner v. Westinghouse Elect. Co., 319 S.C. 24, 28, 459 S.E.2d 324, 327 (1995) (emphasis added). However, it is well established that the fact that a Respondent has reached MMI does not preclude a finding that the Respondent may still require additional medical care or treatment. Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). In making the determination as to whether additional medical treatment is supplemental to a determination of MMI or whether it prevents MMI, the Court must consider whether, "additional medical treatment may improve [a Respondent's] overall quality of life and ability to cope, but not otherwise impact the finding of maximum medical improvement." Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 397, 489 S.E.2d 219, 221 (Ct. App. 1997).

Here, the record clearly supports a finding that the Respondent reached MMI on August 27, 2015, pursuant to Dr. Steven Storick's testimony. (Ex. R). On July 25, 2016, Dr. Storick

testified that the Respondent remained at MMI as of August 27, 2015, stating "he's been declared at maximum medial improvement. That doesn't change." (*Id.* at. 60). While the Respondent continued to need additional treatment, Dr. Storick noted that "he is at MMI. It doesn't mean he doesn't get further treatment. . . . [he] has plateaued." (*Id.*). Therefore, the Employer/Carrier asserts that the substantial evidence in the record supports a finding that the Respondent was placed at MMI on August 27, 2015.

III. THE SINGLE COMMISSIONER ERRED IN FINDING THAT THE RESPONDENT IS PERMANENTLY AND TOTALLY DISABLED.

The Single Commissioner erred in finding that the Respondent is permanently and totally disabled under § 42-9-30 and § 42-9-10, as this finding is not reflected by the substantial evidence in the record. Here, the Commissioner failed to consider that the Respondent's impairment rating ranged from 20 to 25% to the back. Even if the Respondent was found to have sustained greater than 50% disability to his back, the Appellants rebutted any presumption of permanent and total disability. Additionally, the Single Commissioner erred in finding the Respondent permanently and totally disabled under § 42-9-10, as the Respondent only sustained an injury to the back and the Single Commissioner failed to consider all of the evidence presented.

a) The Single Commissioner erred in finding that the Respondent was permanently and totally disabled under § 42-9-30.

Under § 42-9-30, provided a Respondent is found to sustain 50% or more loss of use to the back, the injured employee shall be presumed to be permanently and totally disabled. The extent of loss of use "need not be shown with mathematical precision." Bundrick v. Powell's Garage, 248 S.C. 496, 151 S.E.2d 437 (1966). Nevertheless, the award may not "rest on surmise, conjecture, or speculation; it must be founded on evidence of sufficient substance to afford it a reasonable basis." (*Id.*).

Here, the Commissioner failed to consider the substantial evidence in the record in determining the extent of the Respondent's loss of use to his back. The Commissioner notes that the Respondent's impairment rating to the back ranged from 20 to 25% and that the Respondent had restrictions ranging from sedentary to light duty. (Order, Finding of Fact No. 21). The Commissioner additionally noted that the Respondent's 12th grade education weighed heavily in finding the Respondent permanently and totally disabled under § 42-9-30. (*Id.*). She specifically found that the highest level of education *completed* was the 12th grade. (*Id.*). She went on to state, "Although evidence shows Respondent attempted college courses twice, I find they were not completed. Respondent's onerous limitations for his work-related back injury are more restrictive than those found in *Linen v. Ruscon Const. Co.* . . . which also resulted in total and permanent disability." (*Id.*).

The issue with the Commissioner's above-referenced finding is twofold. First, the Single Commissioner fails to acknowledge the substantial evidence in the record showing that the Respondent did more than merely "attempt" college courses. Specifically, the Respondent noted on his 2008 and 2012 SSDI applications that he had *completed* 2 years of college. (Ex. N, p. 1951). At the Hearing, the Respondent testified that he attended GA Military College for 1 year and took some courses at Kaiser College, majoring in computer programming. (Hrg. Tr. p. 66).

Even if a Respondent never obtains a degree, it does not mean that the courses that they have taken hold no probative value in determining the Respondent's education and its effect on evaluating disability. See Watson v. Xtra Mile Driver Training, 399 S.C. 455, 463, 732 S.E.2d 190 (S.C. Ct. App. 2012) (reviewing not only the Respondent's high school degree, but also college/vocational courses, medical records, and her work experience in determining the extent of

her disability) (overruled on other grounds pursuant to *Clemmons v. Lowe's Home Centers, Inc.*, 420 S.C. 282, 803 S.E.2d 268 (June 28, 2017)).

The vocational reports from Ms. Jan Westmoreland illustrate the probative value of the Respondent's additional year at Kaiser College. On the basis that the Respondent only had a high school education and 1 year at GA Military College, Ms. Westmoreland found that the Respondent could work as a Ticket Taker, Box Office Cashier, Garage Cahier, and Attendance Monitor. (Ex. B, p. 1918 – 45). However, a subsequent evaluation was performed by Ms. Westmoreland on July 18, 2016 after discovering that the Respondent spent an additional year at Kaiser College, majoring in computer programing. (Hrg. Trans. p. 1040 – 45). Based on her review of updated medical records and the Respondent's newly disclosed educational background, she found additional jobs with higher rates of pay, specifically: Technical Support Servicer, Implementation Coordinator, Service Representative, Security Guard, Tax Support Specialist, Guest Service Representative, and Computer Operator; earning up to \$40,000.00 a year in the Columbia, South Carolina area. (*Id.* at 1943 – 44).

Second, the Single Commissioner failed to properly apply Linen v. Ruscon Construction Company. 286 S.C. 67, 322 S.E.2d 211 (1985). The Single Commissioner asserted that because the physical limitations of the Respondent in this case were “more restrictive” than those seen in Linen, the Respondent in this claim should also be found permanently and totally disabled. This is a misapplication of the law. The determination of disability in Linen was based on substantial evidence, specifically, “testimony by a neurologist, an orthopaedic surgeon, the Respondent, and a vocational counselor.” Linen, 332 S.E.2d at 212. The mere similarity of physical limitations does not establish precedence for the determination of disability. Rather, the law requires that the Respondent's disability is based on the substantial evidence of the claim. See Id. Therefore, had

the Single Commissioner considered the substantial evidence in the record, including the Respondents impairment ratings, additional education, and vocational reports, the Respondent would not be found to have sustained 50% or greater loss of use to his back under § 42-9-30.

i. The Single Commissioner erred in finding that the Employer/Carrier failed to rebut the presumption that the Respondent was permanently and totally disabled.

Even if the Respondent was found to have sustained greater than a 50% disability to the back, the Respondent would not be permanently and totally disabled, as the Employer/Carrier rebutted the presumption. Pursuant to § 42-9-30 (21), where there is fifty percent or more loss of use of the back, the injured employee shall be “presumed to have suffered total and permanent disability; however, this presumption is rebuttable.” The Court in Clemmons v. Lowe’s Home Improvement, noted that a Respondent’s return to work alone, does not qualify as substantial evidence to rebut the presumption. 420 S.C. 282, 803 S.E.2d 268, 289 (June 28, 2017). However, medical evidence specifically relating to the Respondent’s scheduled injury under § 42-9-30, may serve to rebut the presumption. Id.

The Respondent was found by his treating physicians to be able to perform work ranging from sedentary to light duty. (Order, Finding of Fact Nos. 12, 13, 14; Ex. A). In support of the finding that the Respondent could perform work within his restrictions, the Employer/Carrier produced 3 vocational reports reflecting jobs available to the Respondent (of which, one report was excluded in error, *Infra* Paragraph b). (Ex. B). The Respondent additionally testified that he was unable to find a job given his physical restrictions, stating that he applied for jobs at Autozone, a Temp Service in Newberry, and Long’s Drug Store. (Hrg. Tr. p. 99 – 102). The Respondent stated that he provided these entities with a copy of his medical restrictions. Id. The Respondent asserted that he never heard back from these potential employers. Id. Given the Respondent’s

history and wavering veracity, to confirm whether or not these statements were true, on September 8, 2016, Defense counsel served subpoenas on these potential employers. (Ex. V, W, X, Y). Each of these potential employers responded, indicating that there was no evidence that the Respondent ever applied for work. (Ex. V, p. 2160; Ex. W, p. 2164; Ex. X, p. 2167; Ex. Y, p. 2170). These responses clearly illustrate the Respondent's lack of candor with the court and his blatant unwillingness to perform a diligent job search.

b) THE SINGLE COMMISSIONER ERRED IN FINDING THAT THE RESPONDENT WAS PERMANENTLY AND TOTALLY DISABLED UNDER § 42-9-10.

The Employer/Carrier asserts that the Respondent sustained a single injury to his lumbar spine as a result of his work accident and that the substantial evidence in the record does not support a finding of total incapacity. Under § 42-9-10, when the incapacity for work resulting from an injury is total, the Respondent may be found permanently and totally disabled. South Carolina Courts treat total disability as an "inability to perform services other than those that are 'so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.'" Coleman v. Quality Concrete Products, 245 S.C. 625, 142 S.E.2d 43, 44 (1965). Koon v. Spartan Mills, 286 S.C. 190, 332 S.E.2d 544 (Ct. App. 1985).

Additionally, in evaluating the compensability of a claim and a Respondent's resulting disability, the Commission is required to evaluate all the substantial evidence submitted to the record. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843, 845 (1999). A court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. A reviewing court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings,

inferences, conclusions or decisions are made upon unlawful procedure or affected by other error of law. S.C. Code Ann. § 1-23-380(A)(6)(c) and (d) (2005).

Here, Single Commissioner erred in finding that the Respondent was permanently and totally disabled as a result of his 2011 work injury, as the vocational report from Ms. Jan Westmoreland, Tracy Hill, and the Respondent's treating physicians, Dr. Westerkam, Dr. Hutcheson, and Dr. Girault, all found that the Respondent was capable of returning to work in the sedentary to light duty capacity. (APA 7, p. 156 – 58; APA 6, P. 128 – 30; APA 10, p. 234 – 37; APA 17, p. 115 – 59) (*respectively*). Dr. Holbrook also noted in his January 15, 2016 Form 14B, that the Respondent could return to light-duty work. (Ex. A). These medical opinions, in combination with the numerous jobs identified in reports from Ms. Jan Westmoreland, illustrate that there are jobs in the market that will accommodate the Respondent's physical restrictions. (Ex. B, Ex. U). There is also the issue as to whether the Respondent's disability is truly causally related to his work injury, as the Respondent has been arguing that he is unable to work due to psychological and back issues since 2008. (Ex. N, p. 2040); (Def. Ex. C, p. 608). In support of his request for social security benefits, Respondent noted in his application a psychological condition prevented him from working and also indicated that his back issues limited him from working. (Id.).

While the Respondent's vocational report from Dr. Brabham indicates that the Respondent is permanently and totally disabled, the report is unpersuasive. (APA 13). Dr. Brabham issued a report on May 23, 2013 and an updated report on December 22, 2015. (Id.). Both of these reports found the Respondent permanently and totally disabled. (Id.). However, it should be noted that in both reports that Dr. Brabham was unaware of the Respondent's additional schooling, noting that beyond the year at GA Military College, "he has received no further training." (APA 13, p. 390).

Dr. Brabham also had no knowledge of the Respondent's prior SSDI application and work history. (Id.). Specifically he noted that Mr. Clark had a "stable" work history. (Id.). This conclusion does not coincide with the Respondent's multiple applications to SSDI, where he alleges he was not able to work, nor with the fact that he injured his back in a prior workers' compensation claim with Tile Depot. (Hrg. Tr. p. 56, lines 3 – 5); (Ex. N, p. 1951). Instead, when asked about any prior work injuries or pre-existing conditions, the Respondent admitted to a "prior left knee injury while attending college" but nothing else. (APA 13, p. 390). Dr. Brabham went on to note that the Respondent went on to work "on a full-time basis without undue difficulty. . . . Clearly, it is the on-the-job injury in 2011, which began his medical problems which have been the primary basis for his inability to maintain gainful employment." (Id.). As Dr. Brabham's medical opinion is based on false statements by the Respondent and additionally fails to take into consideration the Respondent's education and his prior work injuries, the opinion should be disregarded. Consequently, the Single Commissioner erred in finding that the Respondent was completely and totally disabled.

When taking a closer look at the Single Commissioner's Order, it appears that this error was also due the Commissioner's failure to properly evaluate all of the substantial evidence submitted to the record. Specifically, the Commissioner afforded additional weight to the opinion of Dr. Brabham, failing to substantiate why his opinion was more probative. (Order, Finding of Fact No. 20). The Single Commissioner's assignment of greater weight to Dr. Brabham's opinion was clearly erroneous as the Commissioner failed to substantiate why she afforded a higher probative value to his decision over Ms. Westmoreland's vocational evaluation. (Id.). The Single Commissioner simply noted that it was "more in line" with other opinions. (Id.). This shows clear error, as a cursory review of the record would show the inconsistencies that are outlined above.

Vague impressions are not a substantial basis for assigning more weight to a specific piece of evidence. Bundrick, 151 S.E.2d at 503. Instead, additional weight may be afforded when it is more reliable, probative, and/or, more sufficiently addresses the Respondent's vocational abilities. Id. There is no evidence or finding that Dr. Brabham's opinion was more reliable, probative, or more sufficient than the opinion of Ms. Westmoreland. If anything, Dr. Brabham's report was at best, based on speculation in light the Respondent's untruthfulness about his prior injuries, SSDI application, and work history. (APA 13, p. 390). Consequently, the Single Commissioner's determination of weight was clearly erroneous in view of the more reliable, probative, and substantial evidence presented by the Appellants regarding the Respondent's vocational abilities.

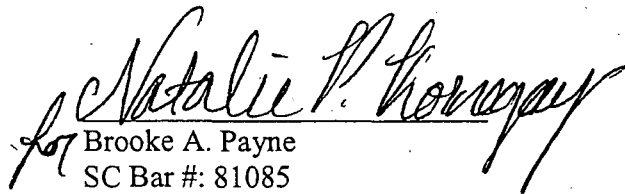
Additionally, the Single Commissioner failed to include Respondent's "Exhibit U" in her Order. Exhibit U provided the court with an updated labor market survey from Ms. Westmoreland dated September 6, 2016, which reported additional jobs and an updated evaluation of the Respondent's ability to return to work. While the Order mentions that Exhibit U was submitted to the Court, it was not discussed or listed in the Exhibits in the Order. (Order, p. 7). This evidence specifically goes to whether the Respondent is permanently and totally disabled under § 42-9-10, as it speaks directly to the Respondent's earning capacity, and yet, it not considered by the Single Commissioner.

While the Commissioner did provide the Appellants with the opportunity to supplement the record at a later date, it is unclear whether this evidence was properly evaluated by the Single Commissioner. As such, the Appellants assert that they have been unduly prejudiced, as the Single Commissioner's Order failed to properly consider all substantial evidence submitted for review.

CONCLUSION

For the foregoing reasons, and in light of the accepted and established standard for review for review of the Single Commissioner's Decision and Order by the Full Commission, the Appellants respectfully request the Full Commission reverse and vacate the Single Commissioner's December 28, 2017 Decision and Order.

Respectfully submitted,


for Brooke A. Payne
SC Bar #: 81085

Natalie P. Kornegay
SC Bar # 101835

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503 Wando Park Blvd, Suite 205
Mt. Pleasant, South Carolina 29464
Attorneys for Appellants

February 19, 2018

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1115485

Lamar Clark,

Claimant,

v.

Phillips Electronics/Shakespeare,

Employer, and

Gallagher Bassett Services,

Carrier,

Appellants.

RESPONDENT'S BRIEF

TO: THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
BROOKE A. PAYNE, ESQUIRE

STATEMENT OF THE CASE

Respondent (Claimant) filed a Form 50 hearing request on December 30, 2015, and Appellants (Defendants) filed a Form 21 on June 1, 2016. This case was heard by Commissioner Aisha Taylor on September 6, 2016, at which time the parties and/or their representatives appeared and evidence was received.

The Respondent sought benefits under the South Carolina Workers' Compensation Act based upon an admitted accidental injury occurring on July 20, 2011, while in the employment of the Appellants. The Respondent alleged injuries to his back, left hip, left leg, left foot, right leg, nervous system, and resultant psychological. Appellants admitted injuries to the lumbar spine only, but denied all other body parts. Respondent was treated and/or evaluated by Dr. Thomas Holbrook, Jr., Dr. Jorge Garcia, Dr. John Hibbitts, Dr. Steven Storick, Dr. W. Daniel Westerkam, Dr. Donald Johnson, II, Dr. Justin Hutcheson, Dr. Nicholas Lind, Dr. Robert Brabham, Dr. David Holt, Dr.

Usama Gabr, Dr. Gisele Girault, and Jan Westmoreland, M.Ed., CRC. He underwent a left L5-S1 microdiskectomy on April 4, 2012, and a subsequent left L4-5 microdiskectomy on September 25, 2013, both procedures by Dr. Thomas Holbrook, Jr. The issues in this case at the hearing were whether Respondent was totally and permanently disabled pursuant to §49-9-10 or §42-9-30; what degree of disability did the Respondent have as a result of his work-related injury; whether Respondent had sustained 50% or more loss of use of his back resulting in total and permanent disability; whether Respondent was entitled to future *Dodge* medical care as recommended by the authorized treating physician; and whether Respondent had multiple body parts affected. Medical records were submitted under the Administrative Procedures Act as evidence and made part of the Commission record.

By Order filed December 29, 2017, Commissioner Taylor found that Respondent sustained injuries to his back, back affecting right leg and left leg, and psychological overlay. Commissioner Taylor further found that Respondent was totally and permanently disabled under §42-9-10, and awarded benefits as such. Commissioner Taylor also found that Respondent was alternatively permanently and totally disabled under §42-9-30(21), in that he sustained 50% or more loss of use to his back resulting in permanent and total disability, and an award for benefits would be appropriate under that statute. Commissioner Taylor awarded lifetime future medical treatment.

STATEMENT OF FACTS

The Respondent testified that he worked for a temporary agency for a period of approximately six or seven months prior to being hired as an employee by Philips Electronics (Employer) (Hearing Transcript page 26, lines 21-25, and Hearing Transcript page 27, lines 1-5). He testified that he was hired by Philips Electronics on Monday and injured on Wednesday (Hearing

Transcript page 27, lines 6-8). Respondent testified that the job he was performing for Philips Electronics was a physically demanding job (Hearing Transcript page 27, lines 12-15). He described the physical requirements of the job as lifting materials, moving materials, packaging materials, painting materials and, in some instances, making materials (Hearing Transcript page 27, lines 18-22). Respondent also testified that the job entailed more than what was specified in the actual job description (Hearing Transcript page 27, lines 23-25, and Hearing Transcript page 28, line 1). He further testified that he had to lift heavy items in the regular course of his job duties (Hearing Transcript page 28, lines 2-7), as well as perform a lot of bending and standing (Hearing Transcript page 28, lines 8-13).

Respondent testified that on the day of his work accident he was lifting a 24-foot cross arm made out of fiberglass with a co-worker to place onto the forks of a forklift (Hearing Transcript page 28, lines 19-25, and Hearing Transcript page 29, lines 1-4). He further testified that the end held by the co-worker slipped off prior to getting to the forklift and when it slipped, Respondent lost his grip as well. Respondent testified that rather than taking the chance of letting the cross arm land on his foot and having his foot get broken, he actually caught the cross arm on the way down (Hearing Transcript page 29, lines 6-12). He testified that when he caught the cross arm he experienced an agonizing pain in his back (Hearing Transcript page 29, lines 14-18).

Respondent testified that he eventually underwent treatment with Dr. Holbrook (Hearing Transcript page 29, lines 19-21). He also testified that he worked for approximately six months following the work injury, almost up and until the date of his initial surgery (Hearing Transcript page 29, lines 22-24, and Hearing Transcript page 30, lines 1-2). Respondent underwent back surgery by Dr. Holbrook and did not return to work thereafter (Hearing Transcript page 30, lines 5-13).

Respondent testified that he was released to return to work initially following back surgery; however, he continued to experience back pain and tingling in his toes, as well as pain down his left leg (Hearing Transcript page 30, lines 17-25, and Hearing Transcript page 31, line 3). Respondent testified that after his return to work, he ultimately underwent a second back surgery by Dr. Holbrook on September 25, 2013 (Hearing Transcript page 31, lines 24-25, and Hearing Transcript page 32, lines 1-2). Respondent described ongoing pain in his lower back and left hip, pain in the back of his left thigh (hamstring area), and down his left leg and left big toe (Hearing Transcript page 32, lines 14-25, and Hearing Transcript page 33, lines 1-6). He also testified that he continues to experience numbness in his left leg (Hearing Transcript page 33, lines 7-9). Respondent further testified that he experiences all of these ongoing symptoms on a daily basis (Hearing Transcript page 33, lines 10-12). He indicated that his symptoms are aggravated by bending, stooping, and sitting for long periods of time (Hearing Transcript page 33, lines 13-25, and Hearing Transcript page 34, lines 1-9).

Respondent testified that Neurontin helps with his ongoing symptoms, but does not take away the pain (Hearing Transcript page 36, lines 1-2). He further testified that he must alternate positions frequently and take showers often to alleviate his ongoing symptoms, albeit with short-lived benefit (Hearing Transcript page 36, lines 10-14). He also testified that he applies heat to his back three to four times a day (Hearing Transcript page 36, lines 18-25).

Respondent testified that he does not sleep well as a result of his injuries and resultant conditions (Hearing Transcript page 37, lines 5-7). He testified that he now gets maybe two to three hours of interrupted sleep a day, with the use of pillows between his legs/knees to try to take the tension off of his back (Hearing Transcript page 37, lines 9-15 and 25, and Hearing Transcript page 38, lines 1-8). He further testified that on a bad day his pain level is an 8-9 out of 10 (Hearing

Transcript page 38, line 18), and a 7 out of 10 on a good day (Hearing Transcript page 38, line 21). Respondent testified that he is depressed due to the work-related physical injuries (Hearing Transcript page 41, lines 1-3).

LEGAL ARGUMENT

1. The Hearing Commissioner properly determined that Respondent was permanently and totally disabled under §42-9-10

The Single Commissioner correctly found that Respondent sustained an admitted low back injury and further correctly found that the low back injury affected his left and right leg. The Single Commissioner also correctly found that the Claimant sustained a compensable psychological injury as a result of his work accident.

To sustain a permanent and total disability award under S.C. Code §42-9-10, a claimant must show that an injury impairs or affects two or more body parts. The policy behind allowing a claimant to proceed under the general disability provision of §42-9-10 allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section. See Brown v. Owen Steel Co. Inc., 316 S.C. 278, 450 S.E.2d 57 (S.C. App. 1994); See also Simmons v. City of Charleston, 349 S.C. 64, 562 S.E.2d 476 (S.C. App. 2002). In *Simmons*, the South Carolina Court of Appeals found that substantial evidence supported the Commission's finding that the claimant's amputated left leg affected his right leg causing it to be swollen in painful. Additionally, S.C. Code Ann. §42-9-35(B), the aggravation of a preexisting condition statute, now codifies that to obtain general disability benefits a claimant must show that the injury "impairs or affects" a second body part or system. The

S.C. Supreme Court in *Hutson v. South Carolina Ports Authority*, 399 S.C. 381, 732 S.E.2d 500 (2012), similarly found that *Hutson* was able to proceed under the general disability statute because he sustained a back injury and “radicular symptoms into his right leg that affected the functioning of the limb.”

The preponderance of the medical evidence in this case supports a finding that Respondent’s admitted back injury affects his lower extremities. Respondent underwent two surgeries on his lower back due to ongoing pain and symptoms. On September 25, 2013, Dr. Thomas Holbrook, Jr. noted, “he is continuing to have some low back pain radiating down the left leg to the knee. On motor testing there is some mild weakness of left extensor hallucis longus. DTRs are hypoactive at the knees and ankles (Claimant’s APA #1, page 30).” On July 21, 2014, Dr. W. Daniel Westerkam indicated, “the patient was still having difficulty with pain radiating down the left leg and weakness in the ankle. He still has numbness in the left and still has weakness in the foot.” (Claimant’s APA #6, pages 128-130).” On July 23, 2014, Dr. Justin Hutcheson noted “back pain on both sides of his back from L3/S1 that radiates to his left S1 joint and posterolateral knee with numbness in his left foot and big toe with occasional weakness in his left foot and loss of reflex bilaterally at L4 and diminished reflex bilaterally at L5/S1.” (Claimant’s APA #10, pages 234-237). On June 13, 2016, Dr. Steven Storick indicated, “Mr. Clark is in for a follow-up due to his chronic back pain which was work-related. The patient has had persistent low back pain which typically extends to the left leg. He does have occasional numbness in his right leg. (Claimant’s APA #5, pages 659-661).” Respondent continued to complain of back pain affecting his left and right leg at the time of the hearing, as well. He specifically described ongoing pain in his lower back and left hip, pain in the back of his left thigh (hamstring area), and down his left leg and left big toe (Hearing Transcript page

32, lines 14-25, and Hearing Transcript page 33, lines 1-6). He also testified that he continues to experience numbness in his left leg (Hearing Transcript page 33, lines 7-9). Respondent further testified that he experiences all of these ongoing symptoms on a daily basis (Hearing Transcript page 33, lines 10-12).

Furthermore, Respondent's admitted back injury caused him to have psychological overlay. Dr. Lind noted that his psychological symptoms were more likely than not caused by his July 20, 2011 work injury. (Claimant's APA #12, pages 369-370). Furthermore, Dr. Westerkam noted that the psychological injury resulted from his low back pain (Claimant's APA #6, pages 128-130). Dr. Hutcheson and Dr. Brabham also causally related Respondent's psychological injury to Respondent's work related injury. (Claimant's APA #10, pages 234-237) and (Claimant's APA #13, pages 394-395), respectively.

Based on the preponderance of the evidence, the hearing Commissioner correctly found that Respondent's injury to his back affected more than one body part and that he was able to proceed under the general disability statutes. In doing so, the hearing Commissioner properly found that Respondent was permanently and totally disabled under §42-9-10 based on the preponderance of the evidence. The generally accepted test for total disability is inability to perform services other than those that are so limited in quantity, dependability or quality that a reasonably stable market for them does not exist. *Coleman v. Quality Concrete Products, Inc.*, 245 S.C. 625, 142 S.E.2d 43 (1965). Total disability does not require complete, abject helplessness. *Id.*

Respondent is clearly entitled to total and permanent disability under §42-9-10, as the combination of two or more affected body parts totally destroyed his earning capacity. Respondent underwent two surgeries on his lumbar spine that resulted in significant impairment to his lumbar

spine as outlined by the Commissioner's Order, documenting impairment ranging between 20-25% whole person impairment. Claimant's admitted back injury also affects his right leg, left leg and resultant psychological. Claimant also had significant permanent work restrictions that restrict him to limited sedentary to limited light work. Due to his significant work restrictions, Dr. Brabham ultimately found that Claimant suffered a complete loss of earning capacity. Further, Dr. Brabham specifically indicated that Claimant's psychological condition would interfere with his ability to maintain sufficient attention and concentration for employment. Dr. Brabham further opined that Claimant's inability to remain in an upright position for a full day would take him out of the majority of employment. (Claimant's APA #13)

Therefore, based on the preponderance of the evidence, the Single Commissioner correctly opined that Claimant was permanently and totally disabled under §42-9-10.

2. The Hearing Commissioner properly determined that Respondent is alternatively totally and permanently disabled under §42-9-30.

The hearing Commissioner correctly found that Respondent was alternatively permanently and totally disabled under §42-9-30(21), in that he sustained greater than 50% loss of use to his back from his causally related work-related back injury.

Respondent underwent two surgeries on his lumbar spine that resulted in significant impairment to his lumbar spine as outlined by the Commissioner's Order, documenting impairment ratings ranging between 20-25%. Claimant had substantial permanent work restrictions as a result of his work-related back injury. On July 10, 2014, Tracy Hill, P.T. indicated, "he qualifies for limited sedentary to limited light work. He does not tolerate occasional bending, squatting, kneeling, or reaching. He does not meet the full requirements necessary for sedentary or light work (Claimant's

APA #7, pages 156-158).” On July 21, 2014, Dr. W. Daniel Westerkam noted, “the patient appears to be able to work in the limited sedentary to limited light work category. He can occasionally walk, stair climb and twist, but he cannot kneel, squat, bend or reach. He can carry up to 15 pounds. Maximum standing or walking is 38 minutes (Claimant’s APA #6, pages 128-130).” On December 4, 2015, Dr. Usama Gabr indicated, “it is my assessment that his abilities to sit continuously are limited to 15 minutes at a time and no longer than four hours per day with allowance for frequent change of position for comfort. His ability to stand limited to 10 minutes of the time, no longer than two hours per day. Ability to walk less than one block at a time and no longer than one hour per day. He has difficulties reaching at the disk level secondary to cervical radiculopathy and shoulder symptoms, especially above shoulder activities following cervical fusion surgery. Secondary to difficulties with lifting consistently over 10lbs, inability to sit or stand continuously more than 10 minutes and required frequent change of position. Inability to consistently kneel, crawl or bend secondary to limited spine range of motion (Claimant’s APA #16, pages 455-459).” On December 15, 2015, Dr. Justin Hutcheson noted, “the claimant is able to return to work with the following restrictions: per FCE 7/10/14. The claimant is unable to return to work at his current employment (Claimant’s APA #10, page 250).” On July 13, 2016, Dr. Gisele Girault noted, “his permanent work restrictions include, limited lifting to 5lbs, no pushing or pulling greater than 10-15lbs, no repetitive overhead lifting above 5lbs, no standing for longer than 30 minutes, he can walk on uneven surfaces, he can sit for 30 minutes at a time but needs to stand for frequent breaks, no repetitive climbing of stairs, no crawling, stooping, squatting, kneeling, bending, and twisting of any kind...all restrictions placed on Mr. Lamar Clark will be permanent restrictions (Claimant’s APA #17, pages 1157-1159; Defendants APA #26, pages 1911-1916).”

Respondent testified extensively about how his current symptoms affect him in his day to day life. Respondent described ongoing pain in his lower back and left hip, pain in the back of his left thigh (hamstring area), and down his left leg and left big toe (Hearing Transcript page 32, lines 14-25, and Hearing Transcript page 33, lines 1-6). He also testified that he continues to experience numbness in his left leg (Hearing Transcript page 33, lines 7-9). Respondent further testified that he experiences all of these ongoing symptoms on a daily basis (Hearing Transcript page 33, lines 10-12). He indicated that his symptoms are aggravated by bending, stooping, and sitting for long periods of time (Hearing Transcript page 33, lines 13-25, and Hearing Transcript page 34, lines 1-9).

Respondent testified that Neurontin helps with his ongoing symptoms, but does not take away the pain (Hearing Transcript page 36, lines 1-2). He further testified that he must alternate positions frequently and take showers often to alleviate his ongoing symptoms, albeit with short-lived benefit (Hearing Transcript page 36, lines 10-14). He also testified that he applies heat to his back three to four times a day (Hearing Transcript page 36, lines 18-25).

Respondent testified that he does not sleep well as a result of his injuries and resultant conditions (Hearing Transcript page 37, lines 5-7). He testified that he now gets maybe two to three hours of interrupted sleep a day, with the use of pillows between his legs/knees to try to take the tension off of his back (Hearing Transcript page 37, lines 9-15 and 25, and Hearing Transcript page 38, lines 1-8). He further testified that on a bad day his pain level is an 8-9 out of 10 (Hearing Transcript page 38, line 18), and a 7 out of 10 on a good day (Hearing Transcript page 38, line 21). Respondent testified that he is depressed due to the work-related physical injuries (Hearing Transcript page 41, lines 1-3).

Furthermore, Dr. Robert Brabham indicated, "taking all of these factors into consideration,

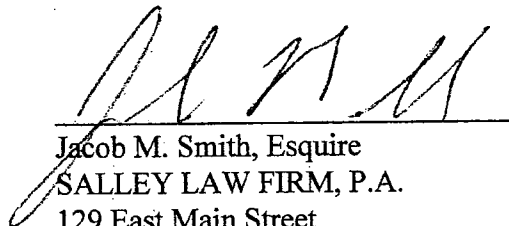
it is my opinion, to a high degree of professional certainty, based on more than fifty years of vocational rehabilitation and psychology experience, that he must be expected to permanently remain, unable to engage in full-time gainful, competitive employment as a result of his medical conditions resulting from his on-the-job injuries in July 2011. The permanency of his inability to return to work is unfortunately further strengthened by the fact that there has been a continued deterioration of his levels of functioning over the last 2 ½ years (Claimant's APA #13, pages 394-395)."

Based on the foregoing, the Single Commissioner correctly determined that the Respondent was alternatively totally and permanently disabled under 42-9-30(21), in that he sustained 50% more loss of use of his back as a result of his work-related injuries.

CONCLUSION

For the reasons set forth above, Respondent requests that the Appellate Panel affirm the decision of the Hearing Commissioner in its entirety.

Respectfully submitted,



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March 5th, 2018
Lexington, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1115485

EMPLOYEE/CLAIMANT: LAMAR CLARK
EMPLOYER: PHILIPS ELECTRONICS
INSURER: FIDELITY & GUARANTY INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION HEARING, THE
WITHIN HEARING WAS TAKEN ON THE 6TH DAY OF SEPTEMBER, 2016,
COMMENCING AT THE HOUR OF 1:25 P.M., IN COLUMBIA, SOUTH CAROLINA,
BEFORE THE HONORABLE AISHA TAYLOR, ATTENDED BY COUNSEL AS
FOLLOWS:

 COPY

SALLYE DEANNE NELSON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

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ATTENDING:

LAMAR CLARK
ANDREW N. SAFRAN, ESQUIRE

I N D E X

PAGE

LAMAR CLARK:

DIRECT EXAMINATION BY MR. SALLEY.....	25
CROSS-EXAMINATION BY MS. PAYNE.....	45
REDIRECT EXAMINATION BY MR. SALLEY.....	115
RECROSS-EXAMINATION BY MS. PAYNE.....	126

JOEL LEONARD:

DIRECT EXAMINATION BY MS. PAYNE.....	133
CERTIFICATE OF NOTARY PUBLIC.....	149

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

5 * * * * *

6 (PRIOR TO GOING ON THE RECORD, COURT REPORTER MARKS DR.
7 STORICK LETTER 09/06/2016, CLAIMANT'S EXHIBIT "T,"
8 RETAINED IN THE COMMISSION FILE)
9 BY COMMISSIONER TAYLOR:

10 TODAY IS TUESDAY, SEPTEMBER 6TH, 2016. WE ARE
11 HERE IN WORKERS' COMPENSATION FILE NUMBER 1115485.
12 THIS IS THE CLAIM OF MR. LAMAR CLARK WHO IS PRESENT
13 HERE TODAY AND REPRESENTED BY MR. WILLIAM B. SALLEY,
14 JUNIOR, AND MR. JACOB SMITH. THE EMPLOYER IS
15 PHILIPS ELECTRONICS, AND THE CARRIER IS FIDELITY &
16 GUARANTY INSURANCE COMPANY. BOTH THE EMPLOYER AND
17 CARRIER ARE REPRESENTED TODAY BY MS. BROOKE PAYNE
18 AND MR. RYAN OXFORD. WE HAVE AN ORIGINAL DATE OF
19 INJURY OF JULY 20TH, 2011. THE CLAIMANT HAS AN
20 AVERAGE WEEKLY WAGE OF \$361.91, WHICH YIELDS A
21 COMPENSATION RATE OF \$241.29. WE ARE HERE TODAY ON
22 BOTH THE CLAIMANT'S FORM 50 REQUEST FOR HEARING, AS
23 WELL AS THE EMPLOYER AND CARRIER'S FORM 21 REQUEST
24 FOR HEARING. THIS MATTER HAS BEEN PREVIOUSLY SET ON
25 VARIOUS PLEADINGS BY THE PARTIES; HOWEVER, THE

1 PARTIES DO AGREE TODAY THAT THIS HEARING WILL
2 RESOLVE ALL PENDING PLEADINGS IN THE WORKERS'
3 COMPENSATION FILE. IT IS THE COMMISSION'S
4 UNDERSTANDING PER THE REQUEST OF THE DEFENDANTS AND
5 THE CLAIMANT THAT THE RECORD WILL BE HELD OPEN FOR
6 RECEIPT OF ADDITIONAL DOCUMENTATION IN THE FORM OF
7 MEDICAL RECORDS AS THERE ARE OPEN SUBPOENAS PENDING
8 WHICH HAVE NOT BEEN REPLIED TO. IN ADDITION, THE
9 CLAIMANT HAS PRODUCED CLAIMANT'S EXHIBIT "T," WHICH
10 IS A LETTER FROM DR. STORICK DATED TODAY'S DATE,
11 SEPTEMBER 6TH, 2016, AS WELL AS ACCOMPANYING
12 QUESTIONNAIRES THAT SINCE THEY HAVE BEEN RECENTLY
13 BEEN SUBMITTED INTO THE RECORD AND THERE APPEARS TO
14 BE ADDITIONAL MEDICAL TREATMENT, OR AT LEAST AN
15 ADDITIONAL MEDICAL EVALUATION REQUESTED AS A RESULT
16 OF THIS MEDICAL RECORD, I WILL HOLD THE RECORD OPEN
17 FOR RECEIPT OF THAT INFORMATION IF IT'S TO BE
18 SCHEDULED OR IF I DETERMINE THAT I'LL -- I'LL NEED
19 IT AT A LATER DATE. THAT WILL BE INCLUDED IN ANY
20 WRITTEN ORDER INSTRUCTIONS OR INTERNAL ORDER.

21 NOW, I WILL ALLOW THE PARTIES TO PUT DETAILED
22 POSITION STATEMENTS ON THE RECORD; HOWEVER, PRIOR TO
23 DOING SO, ARE THERE ANY OBJECTIONS TO APAs,
24 JURISDICTION, VENUE, OR ANY OTHER ITEMS? MR.
25 SALLEY?

1 BY MR. SALLEY:

2 NOTHING FROM THE CLAIMANT, YOUR HONOR.

3 BY COMMISSIONER TAYLOR:

4 OKAY. THANK YOU. MS. PAYNE?

5 BY MS. PAYNE:

6 WHEN YOU'RE REFERRING TO DETAILED POSITION
7 STATEMENTS, DO YOU JUST MEAN THIS TIMELINE THAT HE
8 HANDED UP?

9 BY COMMISSIONER TAYLOR:

10 OH, NO. NO, MA'AM. WELL, FIRST, I'M JUST
11 ASKING DO YOU HAVE ANY OBJECTIONS TO ANYTHING THAT'S
12 BEEN SUBMITTED TO DATE?

13 BY MS. PAYNE:

14 I -- I JUST WANT TO MAKE SURE. DENISE, I THINK
15 MISTAKENLY INCLUDED A LOT OF EXHIBITS THAT WE HAD
16 ATTACHED TO A MOTION AND THEN REALIZED THAT THEY
17 WEREN'T ACTUALLY SUPPOSED TO BE YOUR EXHIBITS,
18 EXHIBIT "C" THROUGH "K," WHICH JUST AREN'T RELEVANT.

19 BY MR. SALLEY:

20 I THINK THERE WAS SOME NUMBERING ISSUES, BUT I
21 -- MY UNDERSTANDING IS THEY SUBMITTED EVERYTHING.
22 THERE WAS SOME QUESTION ABOUT WHETHER ALL THE
23 EXHIBITS WERE PROVIDED OR NOT. I -- MY
24 UNDERSTANDING WAS SHE JUST RENUMBERED THINGS, AND
25 THEY HAD -- HAD MADE SURE THEY WERE NUMBERED AND

1 ORDERED CORRECTLY, SO THAT EVERYTHING WAS GIVEN TO
2 THEM. SO THERE WAS SOME QUESTION ABOUT WHETHER
3 THEY, THE NUMBERS WERE WRONG AND WHETHER THE
4 EXHIBITS -- MY UNDERSTANDING IS WE'D GIVEN THEM,
5 THAT'S -- AND WE JUST WANT TO MAKE SURE EVERYTHING
6 WAS INCLUDED.

7 BY COMMISSIONER TAYLOR:

8 OKAY.

9 BY MR. SALLEY:

10 SO I'M NOT SURE WHAT SHE'S SAYING, BUT.

11 BY COMMISSIONER TAYLOR:

12 SO WITH RESPECT TO THE APA SUBMISSIONS THAT YOU
13 HAVE, IS IT YOUR CONTENTION THAT YOU'RE OBJECTING TO
14 EXHIBIT "C" THROUGH ---

15 BY MS. PAYNE:

16 WELL, AND ARE WE JUST LOOKING AT APAs OR ALSO
17 EXHIBITS?

18 BY COMMISSIONER TAYLOR:

19 EXHIBITS AS WELL.

20 BY MS. PAYNE:

21 YEAH. I'VE -- I'VE GOT EMAILS WITH DENISE, YOU
22 GUYS WERE C.C.'D ON THEM, WHERE SHE MISTAKENLY
23 INCLUDED ALL KINDS OF EXHIBITS THAT WERE ACTUALLY
24 OUR EXHIBITS TO A PRIOR MOTION THAT ARE IRRELEVANT
25 TO THIS HEARING. I'M JUST TRYING TO KNOCK DOWN THE

1 VOLUMINOUS EXHIBITS THAT YOU'RE GOING TO -- IF I
2 NEED TO READ IT INTO THE RECORD, SHE ADMITTED THAT
3 SHE HAD -- OUR MOTION WAS IN A BOX WITH THE OTHER
4 STUFF, AND SO SHE WENT AHEAD AND NUMBERED IT, AND
5 THEN SHE ACKNOWLEDGED THAT THAT WAS HER MISTAKE, AND
6 THAT THOSE WOULDN'T BE INCLUDED.

7 BY COMMISSIONER TAYLOR:

8 OKAY. ALL RIGHT. SO, MR. SALLEY, WITH REGARD
9 TO -- AND WE'LL JUST TAKE IT ONE BY ONE FOR THE
10 RECORD, BUT EXHIBIT "C," AND I DON'T HAVE A COPY.
11 SO I'M GOING TO JUST KIND OF -- Y'ALL CAN TELL ME
12 WHAT IT IS. BUT IS EXHIBIT "C" INTENDED TO BE
13 ENTERED INTO THE RECORD ---

14 BY MR. SALLEY:

15 YES.

16 BY COMMISSIONER TAYLOR:

17 --- FOR TODAY'S HEARING? OKAY.

18 BY MR. SALLEY:

19 WELL, I THINK THERE WAS SOME QUESTION INITIALLY
20 ABOUT, YOU KNOW, WHETHER WE HAD ALLEGED, YOU KNOW,
21 TOTAL AND PERMANENT DISABILITY UNDER 42-9-30, AND
22 THEN ALSO UNDER, YOU KNOW, 42-9-10, AND SO THIS WAS
23 PART OF THE TO SHOW WHERE THIS WAS. YOU KNOW, WE
24 WERE -- THIS IS WHAT WE WERE INTENDING AND THAT
25 EVERYBODY WAS AWARE OF THIS. WE WERE SEEKING TOTAL

1 AND PERMANENT DISABILITY, 'CAUSE SHE -- THERE WAS
2 SOME ISSUE AT THE THING WITH THE PLEADINGS, AND WE
3 HAD TO AMEND THOSE AT THE LAST. SO IT'S -- I THINK
4 WE'RE OKAY WITH ALL THAT, BUT I JUST DON'T KNOW.
5 THAT ALL IS IN THE RESPONSE TO THIS, WHERE I'M
6 SAYING, YEAH, WE'RE SEEKING IT UNDER THESE TWO
7 DIFFERENT WAYS. AND ---

8 BY COMMISSIONER TAYLOR:

9 OKAY. AND I -- I THINK ---

10 BY MR. SALLEY:

11 YOU KNOW, ' CAUSE SHE WAS SAYING I DON'T KNOW
12 WHERE THIS IS COMING FROM, AND I WAS LIKE, I -- I
13 WAS KIND OF MYSTIFIED.

14 BY COMMISSIONER TAYLOR:

15 ALL RIGHTY.

16 BY MR. SALLEY:

17 SO I COULDN'T -- COULDN'T UNDERSTAND THAT, BUT.

18 BY COMMISSIONER TAYLOR:

19 I THINK MS. PAYNE'S OBJECTION, AND CORRECT ME
20 IF I'M WRONG, IS THAT WE'VE ALREADY RESOLVED THAT
21 ISSUE. SO WE DON'T NEED IT FOR PURPOSES OF TODAY'S
22 HEARING, AND JUST WHAT'S YOUR POSITION WITH REGARD
23 TO THAT?

24 BY MR. SALLEY:

25 IS SHE NOT OBJECTING TO US ALLEGING T. AND P.

1 UNDER BOTH? YOU KNOW, I'M ASSUMING THEY'RE NOT,
2 BECAUSE IF WE -- WE OBVIOUSLY GOT THAT ON THE RECORD
3 AND TALKED ABOUT ALL THAT AND EVERYTHING ELSE.

4 BY COMMISSIONER TAYLOR:

5 WELL, I THINK IT WAS RESOLVED ---

6 BY MS. PAYNE:

7 I -- I MEAN ---

8 BY COMMISSIONER TAYLOR:

9 --- AT THE LAST ---

10 BY MR. SALLEY:

11 AND I THINK THERE WAS ISSUES ---

12 BY MS. PAYNE:

13 WELL, I ---

14 BY MR. SALLEY:

15 --- ABOUT THE SOCIAL SECURITY ---

16 BY MS. PAYNE:

17 BUT ---

18 BY MR. SALLEY:

19 --- ADMINISTRATION ABOUT THE RELEASE, AND
20 THAT'S -- OR THAT'S WHAT THESE ARE. IF YOU LOOK AT
21 WHAT THEY ARE, THE EXHIBITS ARE DEALING WITH SOCIAL
22 SECURITY, AND THOSE WERE, YOU KNOW, ISSUES WE HAD
23 SINCE THEN. I KNOW HE HAD SIGNED A RELEASE, AND
24 APPARENTLY SHE GOT ALL THE RECORDS, HAS DECIDED TO
25 SUBMIT THE '08, '09 AND '12 RECORDS FROM SOCIAL

1 SECURITY I BELIEVE, OR '13. I'M NOT SURE OF WHAT IT
2 WAS, BUT THOSE, ALL THE RECORDS FROM SOCIAL
3 SECURITY. SO MY -- YOU KNOW, THAT WAS SOME OF THE
4 ISSUES WITH THIS ABOUT WHETHER YOU WERE GOING TO --
5 THOSE WERE ALL.

6 BY COMMISSIONER TAYLOR:

7 BUT WE'VE RESOLVED THAT.

8 BY MR. SALLEY:

9 I'M ASSUMING WE'VE RESOLVED THAT.

10 BY COMMISSIONER TAYLOR:

11 OKAY.

12 BY MR. SALLEY:

13 I -- YOU KNOW, I DON'T KNOW.

14 BY COMMISSIONER TAYLOR:

15 OKAY.

16 BY MR. SALLEY:

17 I'M ASSUMING WE HAVE.

18 BY COMMISSIONER TAYLOR:

19 ALL RIGHT.

20 BY MS. PAYNE:

21 THAT'S -- ALL THESE EXHIBITS WERE PART OF OUR
22 MOTION TO COMPEL THE SOCIAL SECURITY FILE.

23 BY COMMISSIONER TAYLOR:

24 AND WE ---

25 BY MS. PAYNE:

1 THEY'RE NOT RELEVANT.

2 BY COMMISSIONER TAYLOR:

3 I RULED ON THAT. OKAY.

4 BY MR. SALLEY:

5 WELL, I THINK -- WELL ---

6 BY MS. PAYNE:

7 I'M NOT -- I -- I -- I -- I WON'T -- I MEAN THE
8 50 WAS NEVER AMENDED TO SEEK P.T.D., BUT APPARENTLY
9 WE'VE BEEN HERE BEFORE YOU FOUR TIMES. WE'RE NOT
10 GOING TO ARGUE THAT -- THAT YOU'RE NOT SEEKING
11 P.T.D.

12 BY MR. SALLEY:

13 WE AMENDED IT AT THE LAST HEARING.

14 BY COMMISSIONER TAYLOR:

15 OKAY.

16 BY MR. SALLEY:

17 WE -- WE DID ON THE RECORD. WE TALKED ABOUT
18 THAT AND HOW WE WERE DOING THAT.

19 BY COMMISSIONER TAYLOR:

20 THAT'S FINE. OKAY. WELL, FOR -- YOU KNOW, I
21 APPRECIATED THE MOTION AND AN ATTEMPT TO CUT DOWN ON
22 THE DOCUMENTS, BUT JUST OUT OF AN ABUNDANCE OF
23 CAUTION, I'LL JUST LET THEM REMAIN IN THE APAs,
24 UNLESS YOU -- UNLESS THERE IS A SUBSTANTIVE
25 OBJECTION TO SOMETHING.

1 BY MS. PAYNE:

2 SURE.

3 BY COMMISSIONER TAYLOR:

4 AND THEN I'LL LET YOU PUT THAT ON THE RECORD AT
5 THIS TIME.

6 BY MS. PAYNE:

7 I -- I HAVE A SUBSTANTIVE OBJECTION TO EXHIBIT
8 "L."

9 BY COMMISSIONER TAYLOR:

10 OKAY.

11 BY MS. PAYNE:

12 IT'S HEARSAY. IT'S AN EMAIL FROM SOMEONE AT
13 THE SOCIAL SECURITY ADMINISTRATION, THAT I -- I HAVE
14 NO IDEA WHO THAT PERSON IS OR WHAT SPARKED THE EMAIL
15 COMMUNICATIONS. IT'S A FOUNDATIONAL ISSUE.

16 BY COMMISSIONER TAYLOR:

17 OKAY. MR. SALLEY?

18 BY MR. SALLEY:

19 LET ME PULL OUT -- EXCUSE ME. THERE'S A CHANGE
20 FOR WHAT IS IT? NOW, LET ME SEE. "A," AND THAT'S
21 AN EMAIL. THE REASON THAT WAS PUT IN, SHE GOT SOME
22 LETTER FROM SOMEBODY WHO HAD COMMUNICATION WITH
23 PEOPLE AT THE SOCIAL SECURITY ADMINISTRATION AND PUT
24 IN SOME LETTER THAT SAID THAT HE WAS NEVER DECLARED
25 DISABLED OR ANYTHING ELSE, AND THAT WAS OUR RESPONSE

1 TO THAT, BECAUSE THAT WAS TOTALLY MISLEADING.
2 BECAUSE HE WAS FOUND DISABLED, HE HADN'T WORKED
3 ENOUGH QUARTERS TO GET SOCIAL SECURITY DISABILITY.

4 BY COMMISSIONER TAYLOR:

5 OKAY.

6 BY MR. SALLEY:

7 AND THAT WAS WHY SHE GOT SOME -- I DON'T KNOW
8 WHO SHE TALKED TO, BUT SHE CALLED SOMEBODY OVER
9 THERE AND GOT SOME LETTER OR FROM SOMEBODY OVER
10 THERE, AND SO THEREFORE, WE HAD TO RESPOND WITH THIS
11 TO CLARIFY THE RECORD TO SAY THAT THIS GUY IS
12 MEDICALLY DISABLED.

13 BY COMMISSIONER TAYLOR:

14 OKAY. WHAT IS ---

15 BY MR. SALLEY:

16 SO THEY ACTUALLY SAID HE WAS MEDICALLY
17 DISABLED.

18 BY COMMISSIONER TAYLOR:

19 OKAY.

20 BY MR. SALLEY:

21 AND UNFORTUNATELY, DUE TO HIS INCOME, HE HAS
22 RECEIVED WORKERS' COMPENSATION, HE'S NOT ENTITLED TO
23 HAVING EXCESS INCOME.

24 BY COMMISSIONER TAYLOR:

25 BUT THE OBJECTION IS DUE TO THAT PARTICULAR

1 STATEMENT BEING HEARSAY, WHICH IT IS, UNLESS IT
2 MEETS AN EXCEPTION, AND ---

3 BY MR. SALLEY:

4 WELL, I -- I WOULD SAY THAT IT'S A -- YOU KNOW,
5 IT'S SOMETHING THAT'S -- I UNDERSTAND YOUR POSITION
6 WITH THAT.

7 BY COMMISSIONER TAYLOR:

8 UH-HUH.

9 BY MR. SALLEY:

10 BUT IN THE SAME WAY IF WE'RE GOING TO ALLOW IN
11 THAT OTHER THING, THAT'S CLEARLY HEARSAY TOO.

12 BY COMMISSIONER TAYLOR:

13 OKAY.

14 BY MR. SALLEY:

15 I MEAN, THERE'S NO WAY THAT SHOULD COME IN AT
16 ALL. THAT'S CRAZY. I MEAN, IT'S TOTALLY -- IT'S
17 WRONG, BECAUSE HE'S BEEN DECLARED DISABLED. I
18 THOUGHT IT WAS JUST BIZARRE.

19 BY COMMISSIONER TAYLOR:

20 OKAY. SO AND Y'ALL HAVE TO REMEMBER, I HAVE
21 NOT SEEN A LOT OF THESE DOCUMENTS. SO THAT'S WHY I
22 SAID IF YOU HAVE AN OBJECTION TO THE ONE SHE'S
23 SUBMITTED, AND I'LL BE HAPPY TO HEAR THAT OBJECTION
24 AS WELL.

25 BY MR. SALLEY:

1 WELL, I THINK IT'S A BUSINESS RECORD, BUT TOO,
2 I WOULD SAY THAT THAT SHOULD COME IN UNDER THAT.

3 BY COMMISSIONER TAYLOR:

4 OKAY.

5 BY MS. PAYNE:

6 BUT IT DOESN'T MEET THE BUSINESS RECORD
7 REQUIREMENTS. MINE, ON THE OTHER HAND, IS ACTUALLY
8 ON A SOCIAL SECURITY ADMINISTRATION LETTERHEAD THAT
9 COMES IN. IT CAME IN WITH THE CERTIFIED RECORDS
10 THAT WE HAD. SO THAT WOULD QUALIFY UNDER BUSINESS
11 RECORDS.

12 BY COMMISSIONER TAYLOR:

13 OKAY.

14 BY MR. SALLEY:

15 SHE ACTUALLY CALLED ON THAT AND SPOKE TO THEM
16 ABOUT IT, THEN HAD THEM ISSUE SOME LETTER, WHICH IS
17 COMPLETELY A FALSE STATEMENT ABOUT WHETHER HE WAS
18 DECLARED DISABLED OR NOT. I MEAN, I THINK IT'S JUST
19 ABSOLUTELY ---

20 BY MS. PAYNE:

21 THEN YOU COULD HAVE DEPOSED THAT PERSON.

22 BY MR. SALLEY:

23 WELL, I MEAN, WHO THINKS SHE WOULD GET
24 SOMETHING? LIKE WE'VE GOT A SOCIAL SECURITY ---

25 BY COMMISSIONER TAYLOR:

1 ALL RIGHT.

2 BY MR. SALLEY:

3 I MEAN, I JUST THINK -- AND THIS IS WHY YOU
4 NEED TO INCLUDE THE WHOLE RECORD, SO YOU CAN MAKE A
5 DETERMINATION ABOUT THIS.

6 BY MS. PAYNE:

7 ALL RIGHT.

8 BY MR. SALLEY:

9 'CAUSE THIS IS -- IN MY MIND, I THINK IT'S
10 FALSE WHAT THEY GOT. I THINK IT'S JUST ---

11 BY COMMISSIONER TAYLOR:

12 OKAY.

13 BY MR. SALLEY:

14 --- OUT AND OUT FALSE.

15 BY COMMISSIONER TAYLOR:

16 AND I WILL ALLOW -- OBVIOUSLY, MR. CLARK WILL
17 BE ABLE TO TESTIFY AS TO EXACTLY WHAT HAPPENED WITH
18 THAT. SO I THINK THAT WILL PROBABLY CORRECT ITSELF.
19 BUT WITH REGARD TO THE ACTUAL EMAIL DOCUMENT, I
20 UNDERSTAND THE -- THE OUTSIDE ISSUES, BUT I DON'T
21 THINK THAT EMAIL IN AND OF ITSELF CAN BE
22 AUTHENTICATED. IT'S NOT A PARTY OPPONENT, AND IT
23 DIDN'T COME IN WITH CERTIFIED RECORDS IS MY
24 UNDERSTANDING. I HAVEN'T SEEN IT, SO.

25 BY MR. SALLEY:

1 I WOULD -- I WOULD HAVE THE OBJECTION TO THAT
2 COMING IN TOO.

3 BY COMMISSIONER TAYLOR:

4 OKAY.

5 BY MR. SALLEY:

6 BECAUSE I THINK THAT THAT'S THE OTHER THING I'D
7 HAVE AN OBJECTION TO AS WELL IS ---

8 BY COMMISSIONER TAYLOR:

9 WELL, WAIT A MINUTE. OKAY. OFF THE RECORD FOR
10 A SECOND.

11 (OFF THE RECORD)

12 BY COMMISSIONER TAYLOR:

13 WHILE WE WERE OFF THE RECORD, I HAD A LENGTHY
14 DISCUSSION WITH THE ATTORNEYS REGARDING ANY
15 REMAINING OBJECTIONS TO EITHER APAS OR EXHIBITS TO
16 BE SUBMITTED TO THE COMMISSION. AS A RESULT OF THE
17 DISCUSSIONS, THE PARTIES HAVE AGREED THAT THE COVER
18 LETTER IN THE DEFENDANT'S EXHIBIT, I BELIEVE IT'S
19 "N," WHICH IS CONTAINED WITH THE SOCIAL SECURITY
20 FILE WILL BE REMOVED. IN ADDITION, THE CLAIMANT HAS
21 AGREED THAT THE EMAIL CORRESPONDENCE, WHICH IS
22 DEFENDANT'S EXHIBIT "L," WILL BE REMOVED FROM THE
23 SUBMISSIONS, AND WE'LL JUST ASK THE PARTIES TO
24 ENSURE THAT THOSE TWO DOCUMENTS ARE REMOVED PRIOR TO
25 ANY UPLOAD ONTO THE E-CASE SYSTEM. FOR THE RECORD,

1 ARE THERE ANY REMAINING OBJECTIONS TO APAs,
2 JURISDICTION, VENUE, OR ANY OTHER ITEMS? MR.
3 SALLEY?

4 BY MR. SALLEY:

5 NO, YOUR HONOR.

6 BY COMMISSIONER TAYLOR:

7 OKAY. MS. PAYNE?

8 BY MS. PAYNE:

9 NO. NO. JUST TO CLARIFY, THE EMAIL THAT'S
10 BEING PULLED IS CLAIMANT'S EXHIBIT "L"?

11 BY COMMISSIONER TAYLOR:

12 CLAIMANT'S EXHIBIT "L."

13 BY MS. PAYNE:

14 NOT DEFENDANT'S.

15 BY COMMISSIONER TAYLOR:

16 OKAY. THANK YOU. ALL RIGHT. WITHOUT FURTHER
17 OBJECTION, THE COMMISSION FILE BECOMES A PART OF THE
18 RECORD WITH THE EXCEPTION OF SELF-SERVING
19 DECLARATIONS AND UNSTIPULATED MEDICAL REPORTS. MR.
20 SALLEY, YOUR POSITION STATEMENT, PLEASE, SIR?

21 BY MR. SALLEY:

22 THANK YOU, YOUR HONOR. THIS IS AN ADMITTED
23 CLAIM. HE'S HAD TWO BACK SURGERIES. WE WERE --
24 WE'RE ASKING FOR TOTAL AND PERMANENT DISABILITY
25 UNDER EITHER THEORY OF 42-9-30 SUBSECTION 21, WHICH

1 IS 50 PERCENT OR MORE LOST USE OF THE BACK. HE'S
2 HAD TWO ADMITTED SURGERIES. AFTER THOSE SURGERIES,
3 THE AUTHORIZED-TREATING SURGEON HAS GIVEN HIM 20
4 PERCENT WHOLE PERSON IMPAIRMENT FOR HIS SURGERIES.
5 ADDITIONALLY, I WOULD POINT OUT THAT WE ARE ALLEGING
6 THAT HE HAS MULTIPLE BODY PARTS AFFECTED, AND SO
7 THAT HE WOULD HAVE A COMPLETE DESTRUCTION OF EARNING
8 CAPACITY UNDER 42-9-10. SPECIFICALLY, WE'RE
9 ALLEGING INJURIES TO THE BACK, LEFT HIP, LEFT LEG,
10 LEFT FOOT, NERVOUS SYSTEM, AND RESULT IN
11 PSYCHOLOGICAL. THIS GENTLEMAN HAS BEEN OUT OF WORK
12 FOR SOME TIME ON T.T.D. HE DID ACTUALLY WORK FOR
13 ABOUT SIX MONTHS AFTER HIS INJURY. HE WAS INJURED
14 TWO DAYS INTO HIS EMPLOYMENT AT THIS NEW EMPLOYMENT
15 -- EMPLOYER. HE WORKED FOR APPROXIMATELY SEVEN
16 MONTHS FOR A TEMP AGENCY BEFORE GETTING HIRED. BOTH
17 SURGERIES, AS I'VE STATED, HAVE BEEN PERFORMED BY
18 DR. HOLBROOK. WE WOULD NOTE IN THIS CASE THAT WE
19 ARE SEEKING UTICA MOHAWK LANGUAGE AND A LUMP SUM.
20 IF YOU DETERMINE THIS CLIENT TO BE AT MAXIMUM
21 MEDICAL IMPROVEMENT, I -- I DO KNOW THERE IS THAT
22 ONE ISSUE WITH WHETHER OR NOT DR. HOLBROOK THINKS
23 THIS GENTLEMAN MAY BE SURGICAL BASED ON THE LATEST
24 SUBMISSIONS THAT WERE JUST RECEIVED BY US TODAY FROM
25 DR. STORICK. SO PROVIDED HE'S AT MAXIMUM MEDICAL

1 IMPROVEMENT, WE WOULD BE SEEKING A TOTAL AND
2 PERMANENT DISABILITY, A LUMP SUM WITH UTICA MOHAWK
3 LANGUAGE. WE'RE AGREEING ON THE COMP RATE AND
4 AGREEING ON THE AVERAGE WEEKLY WAGE. WE WOULD ASK
5 FOR FUTURE MEDICAL CARE, WHICH IS EITHER GOING TO BE
6 UNDER 42-15-60 AS CARE THAT YOU WOULD GET PRIOR
7 M.M.I., AND ALSO ASK FOR, IF HE'S DEEMED TO BE AT
8 M.M.I., JUST DODGE MEDICAL CARE UNDER THE SAME
9 STATUTE. PSYCH CARE IS PARTICULARLY CONTESTED IN
10 THIS CASE, AND IN THAT WAY WE WOULD BE ASKING A
11 FINDING OF COMPENSABILITY AS TO PSYCH CLAIM. I
12 WOULD POINT OUT THAT THERE WAS ONE RECORD, WHICH
13 SINCE EVERYTHING FROM SOCIAL SECURITY IS BASICALLY
14 IN NOW, WITH THE EXCEPTION OF THE TWO ITEMS WE
15 DISCUSSED EARLIER, THAT THERE WAS A -- A RECORD FROM
16 THE ONE OF THE DOCTORS THERE THAT THOUGHT HE HAD A
17 PSYCHOLOGICAL OVERLAY. WE'VE ALSO HAD A PSYCH EVAL
18 WITH SOME EVIDENCE THAT SUGGESTS THAT HE IS -- HAS A
19 PSYCHOLOGICAL OVERLAY, AND I THINK IT'S SIGNIFICANT
20 THAT EVEN DR. STORICK SUGGESTED THAT HE NEEDS TO
21 HAVE SOME TREATMENT FOR PSYCHOLOGICAL CONDITION.
22 SHOULD YOU FIND THAT TO BE COMPENSABLE, WE WANT TO
23 JUMP, PUT THE CART AHEAD OF THE HORSE HERE. SO I
24 WOULD POINT THAT OUT AS WELL. THIS GENTLEMAN HAS
25 HAD A SERIOUS INJURY. HE DOES HAVE PROBLEMS STILL

1 INTO HIS LEFT LEG AND LEFT FOOT. THE MOST RECENT
2 M.R.I. SEEMS TO SUGGEST HE HAS A RECURRENT L4/L5
3 DISC HERNIATION AND POST SURGICAL CHANGES TO THE
4 LEFT AT L5/S1, ACCORDING TO DR. STORICK FROM TODAY'S
5 DATE, HIS NOTE. THAT WOULD -- I THINK THAT'S WHERE
6 WE ARE WITH THIS CASE AND -- BUT RESPECTFULLY ASK
7 THAT YOU LISTEN TO THE DEFENSE'S POSITION AT THIS
8 POINT.

9 BY COMMISSIONER TAYLOR:

10 ALL RIGHT.

11 BY MS. PAYNE:

12 THANK YOU.

13 BY COMMISSIONER TAYLOR:

14 THANK YOU. MS. PAYNE.

15 BY MS. PAYNE:

16 IT'S THE DEFENSE'S POSITION THAT THE CLAIMANT
17 IS AT M.M.I., THAT HE'S BEEN PLACED AT M.M.I. FROM
18 AN ORTHOPEDIC STANDPOINT BY DR. HOLBROOK, AS WELL AS
19 PAIN MANAGEMENT STANDPOINT BY DR. STORICK, WHICH WAS
20 IN AUGUST OF 2015. SO WE'RE REQUESTING STOP PAY AND
21 RECOUPMENT OF BENEFITS SINCE THAT DATE. WE ARGUE
22 THAT HE'S NOT ENTITLED TO P. -- I'M -- EXCUSE ME --
23 P.T.D., MAINLY BECAUSE HE'S ONLY INJURED ONE BODY
24 PART, WHICH IS THE LUMBAR SPINE. SO THE ANALYSIS
25 SHOULD BE UNDER THE SCHEDULED MEMBER EVALUATION. WE

1 AGREE THAT HIS AUTHORIZED-TREATING PHYSICIANS HAVE
2 ASSIGNED A 20 PERCENT RATING IN RELATION TO HIS LOW
3 BACK. IF THE COMMISSION WERE TO FIND THAT HE HAS
4 INJURED MORE THAN ONE BODY PART, IT'S OUR CONTENTION
5 THAT HE'S NOT ENTITLED TO P.T.D., BECAUSE HE'S
6 UNABLE TO ESTABLISH THAT HE SUSTAINED A LOSS OF
7 EARNING CAPACITY RELATED TO HIS WORK INJURY, AND I -
8 - I'M NOT SURE IF WE NEED TO RESPOND TO THE SURGICAL
9 ISSUES IS A ---

10 BY COMMISSIONER TAYLOR:

11 JUST -- JUST ---

12 BY MS. PAYNE:

13 --- OR?

14 BY COMMISSIONER TAYLOR:

15 --- YOUR GENERAL POSITION ON THE ---

16 BY MS. PAYNE:

17 WE HAVEN'T EVEN BEEN OFFERED AN OPPORTUNITY TO
18 REALLY INVESTIGATE THAT. SO WE DON'T KNOW WHERE WE
19 STAND IN THAT REGARD.

20 BY COMMISSIONER TAYLOR:

21 OKAY. AND AS NOTED EARLIER, THE RECORD IS
22 GOING TO BE HELD OPEN TO ALLOW THE SUBMISSION OF
23 DOCUMENTS, AND THAT WOULD INCLUDE A SECOND
24 DEPOSITION OF DR. STORICK IF THE DEFENDANTS WISH
25 TO ---

1 BY MS. PAYNE:

2 OKAY.

3 BY COMMISSIONER TAYLOR:

4 --- PURSUE THAT. OKAY.

5 BY MS. PAYNE:

6 AND I BELIEVE YOU STATED THAT IT WOULD REMAIN
7 OPEN FOR SUBMISSION OF DOCUMENTS THAT ARE RECEIVED
8 BY SUBPOENAS WE'VE ALREADY SENT. DOES THAT INCLUDE
9 ANY PROVIDERS WE MIGHT LEARN ABOUT TODAY?

10 BY COMMISSIONER TAYLOR:

11 CORRECT.

12 BY MS. PAYNE:

13 OKAY.

14 BY COMMISSIONER TAYLOR:

15 YES. ALL RIGHT. THANK YOU. ALL RIGHT. MADAM
16 COURT REPORTER, WILL YOU PLEASE SWEAR MR. CLARK?

17 BY THE COURT REPORTER:

18 RAISE YOUR RIGHT HAND, PLEASE.

19 * * * * *

20 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
21 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
22 MATTER HEREIN:

23 LAMAR CLARK,

24 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
25 FOLLOWS:

1 BY COMMISSIONER TAYLOR:

2 ALL RIGHT. MR. SALLEY.

3 BY MR. SALLEY:

4 THANK YOU, YOUR HONOR.

5 DIRECT EXAMINATION BY MR. SALLEY:

6 Q. COULD YOU PLEASE STATE YOUR NAME FOR THE RECORD, MR.
7 CLARK.

8 A. LAMAR CLARK.

9 Q. AND YOUR AGE?

10 A. FORTY-ONE.

11 Q. OKAY. HOW FAR DID YOU GET IN SCHOOL EDUCATION WISE?

12 A. SOME COLLEGE.

13 Q. OKAY. OR YOU'RE A -- YOU'RE A HIGH SCHOOL GRADUATE
14 AND WENT TO SOME COLLEGE?

15 A. YES.

16 Q. OKAY. DID YOU GO TO A JUNIOR COLLEGE OR A MILITARY
17 SCHOOL?

18 A. A JUNIOR COLLEGE.

19 Q. OKAY. AND WHICH SCHOOL WAS THAT?

20 A. GEORGIA MILITARY COLLEGE.

21 Q. OKAY. DID YOU GET A DEGREE FROM THEM?

22 A. NO.

23 Q. ALL RIGHT. ARE YOU MARRIED OR SINGLE?

24 A. I'M SINGLE.

25 Q. OKAY. DO YOU HAVE ANY CHILDREN?

1 A. YES.

2 Q. OKAY. ARE YOU PAYING CHILD SUPPORT FOR YOUR
3 CHILDREN?

4 A. YES.

5 Q. OKAY.

6 A. I'M ORDERED TO.

7 Q. OKAY. HOW OLD ARE YOUR CHILDREN?

8 A. HE'S TWELVE.

9 Q. TWELVE. JUST ONE. THANK YOU. LET'S TALK A LITTLE
10 BIT ABOUT YOUR BACKGROUND. WERE YOU A COLLEGE
11 ATHLETE AT LEAST AT SOME POINT IN THE PAST?

12 A. YES.

13 Q. OKAY. WERE DID -- WHAT DID YOU -- WHAT SPORT DID
14 YOU PLAY?

15 A. FOOTBALL.

16 Q. AND WHERE WAS THAT?

17 A. GEORGIA MILITARY COLLEGE.

18 Q. ALL RIGHT. AND WOULD YOU CONSIDER YOURSELF PRETTY
19 PHYSICALLY FIT?

20 A. YES.

21 Q. OKAY. LET'S TALK ABOUT YOUR WORK HISTORY. DID YOU
22 -- I KNOW YOU WORKED FOR A TEMP AGENCY FOR SOME
23 PERIOD OF TIME JUST PRIOR TO WORKING FOR THE
24 DEFENDANTS IN THIS CASE. DID YOU WORK FOR THEM FOR
25 APPROXIMATELY SIX MONTHS OR SEVEN MONTHS FOR THE

1 TEMP AGENCY?

2 A. YES, SIR.

3 Q. AND THEN AFTER THAT, YOU WERE HIRED BY PHILIPS
4 ELECTRONICS?

5 A. YES, SIR.

6 Q. AND MY UNDERSTANDING, YOU WERE INJURED ON MAYBE
7 WEDNESDAY, YOU GOT HIRED ON MONDAY; IS THAT RIGHT?

8 A. YES, SIR.

9 Q. OKAY. SO YOU WERE ONLY BASICALLY THERE TWO DAYS
10 BEFORE YOU WERE INJURED?

11 A. YES, SIR.

12 Q. OKAY. ARE YOU -- WOULD YOU CONSIDER THE JOB YOU
13 WERE DOING AT PHILIPS ELECTRONICS, WAS THAT A
14 PHYSICALLY-DEMANDING JOB?

15 A. YES.

16 Q. WHAT DID YOU HAVE TO DO? I MEAN, TALK ABOUT YOUR
17 PHYSICAL REQUIREMENTS OF THAT JOB.

18 A. I HAD TO LIFT MATERIALS, MOVE MATERIALS, PACKAGE
19 MATERIALS, PAINT MATERIALS, IN SOME INSTANCES MAKE
20 THE MATERIALS. SO MY JOB WAS KIND OF -- IT, WHAT I
21 DID WAS A LITTLE BIT MORE THAN WHAT MY JOB TITLE
22 WAS.

23 Q. SO THE JOB OF PRACTICAL USE WAS MORE THAN JUST WHAT
24 WAS ON THE MAYBE THE JOB DESCRIPTION; IS THAT WHAT
25 YOU'RE SAYING?

1 A. YES, SIR.

2 Q. SO WERE ANY OF THESE THINGS HEAVY THAT YOU HAD TO
3 LIFT?

4 A. YES. SOME OF THEM WERE.

5 Q. OKAY. AND WOULD YOU HAVE TO LIFT FAIRLY HEAVY
6 THINGS ON A ROUTINE BASIS?

7 A. YES.

8 Q. OKAY. WOULD YOU HAVE TO DO A LOT OF BENDING WITH
9 YOUR JOB?

10 A. YES.

11 Q. OKAY. WOULD YOU HAVE TO DO A LOT OF STANDING ON
12 YOUR JOB?

13 A. YES.

14 Q. OKAY. ARE YOU COMPUTER PROFICIENT?

15 A. NO.

16 Q. OKAY. CAN YOU TELL US, IF YOU WOULD, HOW YOU GOT
17 HURT AT PHILIPS ELECTRONICS? TELL US HOW YOU GOT
18 HURT.

19 A. WELL, ME AND MY CO-WORKER WERE LIFTING A 24-FOOT
20 CROSS ARM, AND IT'S ---

21 Q. WHAT IS THAT MADE OF?

22 A. IT'S MADE OUT OF FIBERGLASS.

23 Q. OKAY.

24 A. BUT THEY'RE ---

25 Q. ALL RIGHT.

1 A. --- PRETTY HEAVY.

2 Q. ALL RIGHT.

3 A. HIS ENDS -- WE WERE TRYING TO PUT IT ONTO THE FORKS

4 OF THE FORKLIFT.

5 Q. OKAY.

6 A. HIS END SLIPPED OFF BEFORE WE GOT IT TOWARDS THE

7 FORKLIFT, AND WHEN HIS END SLIPPED JUST OUT OF HIS

8 HANDS, MINE SLIPPED OUT OF MINE ALSO. SO INSTEAD OF

9 TRYING TO MOVE OUT OF THE WAY, BECAUSE THERE WAS NO

10 TIME TO MOVE OUT OF THE WAY, I WAS TRYING TO SAVE MY

11 FOOT FROM BEING BROKEN. SO I ACTUALLY CAUGHT IT ON

12 THE WAY DOWN.

13 Q. HUH.

14 A. AND THAT'S WHEN I JUST FELT THIS AGONIZING PAIN.

15 Q. OKAY. AND AGONIZING PAIN, WHERE WERE YOU -- WERE

16 YOU HAVING? SO WOULD YOU DESCRIBE -- YOU WERE

17 HAVING BACK PAIN THEN; IS THAT RIGHT?

18 A. YES.

19 Q. ALL RIGHT. AND DID YOU RECEIVE MEDICAL TREATMENT

20 WITH A DR. HOLBROOK EVENTUALLY?

21 A. YES.

22 Q. OKAY. DID YOU WORK AFTER YOUR WORK INJURY FOR ABOUT

23 SIX MONTHS OR SO?

24 A. YES. YES.

25 Q. OKAY. SO YOU TRIED TO WORK UNTIL YOU HAD CLOSE TO

1 YOUR FIRST SURGERY? DID THEY TAKE YOU ---

2 A. YES.

3 Q. --- OUT JUST BEFORE THAT?

4 A. YEAH, RIGHT BEFORE.

5 Q. OKAY. SO -- SO YOU HAD YOUR INITIAL BACK SURGERY,
6 IT LOOKS LIKE, WITH DR. HOLBROOK, AND THAT'S FOUND,
7 IT LOOKS LIKE, ON APA ONE, PAGE 3. IS THAT RIGHT?
8 DID YOU HAVE -- DID YOU HAVE A BACK SURGERY WITH DR.
9 HOLBROOK INITIALLY?

10 A. YES, SIR.

11 Q. ALL RIGHT. AND DID YOU EVER GO BACK TO WORK AFTER
12 YOUR INITIAL LOWER BACK SURGERY?

13 A. NO. I HAVEN'T BEEN BACK TO WORK SINCE.

14 Q. OKAY. DID YOU HAVE AN UNRELATED NECK SURGERY IN
15 BETWEEN THE TWO BACK SURGERIES THAT YOU'VE HAD?

16 A. YES.

17 Q. OKAY. WERE YOU RELEASED BY DR. HOLBROOK AT ONE
18 POINT AFTER YOUR BACK SURGERY TO GO -- TO GO BACK TO
19 WORK INITIALLY OR NOT?

20 A. YES.

21 Q. OKAY. DID YOU HAVE -- WHAT WERE YOUR SYMPTOMS THAT
22 YOU WERE STILL HAVING IN YOUR LOWER BACK, AND -- AND
23 WHAT OTHER SYMPTOMS WERE YOU HAVING AT THAT TIME, IF
24 ANY?

25 A. I WAS STILL HAVING BACK PAIN AND TINGLING IN MY TOES

1 AND PAIN DOWN MY LEG.

2 Q. OKAY. AND WHICH LEG IS THAT?

3 A. MY LEFT LEG.

4 Q. OKAY. IS THAT THE ONE THAT'S BEEN CONSISTENTLY
5 BOTHERING YOU THE WHOLE TIME?

6 A. YES.

7 Q. ALL RIGHT. AND DID YOU ACTUALLY GO SEE A DR.
8 JOHNSON FOR AN I.M.E. AFTER THAT I SENT YOU TO
9 FOLLOWING DR. HOLBROOK ---

10 A. YES.

11 Q. --- DOING YOUR FIRST BACK SURGERY?

12 A. YES.

13 Q. OKAY. AND DID DR. HOLBROOK -- OR EXCUSE ME. DID
14 DR. JOHNSON OR DID DOCTOR -- EXCUSE ME. DID DR.
15 HOLBROOK AFTER THAT, AFTER I'D SENT YOU TO DR.
16 JOHNSON, DID HE SEE YOU BACK AND DECIDE THAT HE
17 NEEDED TO DO ANOTHER BACK SURGERY FOR A RECURRENT
18 HERNIATED DISC IN YOUR BACK?

19 A. YES.

20 Q. OKAY. NOW, DR. HOLBROOK, DO YOU AGREE WITH HIM WHEN
21 HE SAID IN APA ONE, PAGE 23 THAT YOU HAD SUSTAINED
22 BACK AND LEFT LEG WORK-RELATED INJURIES?

23 A. YES.

24 Q. OKAY. DID YOU HAVE ANOTHER BACK SURGERY AS LISTED
25 WITH DR. HOLBROOK ON SEPTEMBER THE 25TH, 2013,

1 THAT'S FOUND IN APA ONE, PAGE 28?

2 A. YES.

3 Q. ALL RIGHT. AND YOU HAD DESCRIBED SOME NUMBNESS IN A
4 TOE. WHAT PARTICULAR TOE IS THAT NUMB -- OR THE
5 PROBLEM THAT YOU'RE HAVING WITH THE TOE?

6 A. MY BIG TOE.

7 Q. SO YOUR BIG TOE ON YOUR LEFT FOOT?

8 A. YES, SIR.

9 Q. IS THAT CORRECT?

10 A. YES, SIR.

11 Q. ALL RIGHT. CAN YOU PLEASE DESCRIBE YOUR WORK-
12 RELATED BACK SYMPTOMS TO THE -- TO THE COMMISSION?
13 WHAT KIND OF BACK SYMPTOMS ARE YOU HAVING?

14 A. I HAVE PAIN IN MY LOWER BACK, MY HIP.

15 Q. WHICH HIP?

16 A. THE LEFT HIP.

17 Q. ALL RIGHT.

18 A. PAIN DOWN MY THIGH (INDICATING), LIKE IN MY LEFT.

19 Q. WHEN YOU'RE SAYING YOUR THIGH, ARE YOU GRABBING THE
20 FRONT OF YOUR THIGH OR THE BACK OF YOUR THIGH?

21 A. THE -- THE BACK.

22 Q. OKAY. IS THAT MORE MAYBE WHERE YOUR HAMSTRING KIND
23 OF AREA?

24 A. YEAH.

25 Q. OKAY. ALL RIGHT. AND THEN WHERE ELSE?

1 A. DOWN -- DOWN MY LEFT LEG.

2 Q. OKAY.

3 A. AND THE S.I. JOINT IN MY -- IN MY LOW BACK.

4 Q. UH-HUH. HOW ABOUT YOUR TOE SYMPTOMS, ARE THOSE

5 STILL THERE?

6 A. YES.

7 Q. ALL RIGHT. SO DO YOU HAVE LIKE A NERVE LIKE

8 NUMBNESS KIND OF SITUATION TOO WITH YOUR LEG?

9 A. YES, SIR.

10 Q. ALL RIGHT. DOES ANYTHING -- HOW DO YOU -- DO THESE

11 SYMPTOMS OCCUR MOST ALL THE TIME FOR YOU?

12 A. EVERY DAY. YES, SIR.

13 Q. OKAY. DOES ANYTHING LIKE BENDING SEEM TO AGGRAVATE

14 YOUR SYMPTOMS?

15 A. YES. YEAH.

16 Q. HOW ABOUT STOOPING, HOW DOES THAT AFFECT YOUR

17 SYMPTOMS?

18 A. IT AGGRAVATES IT TOO. I CAN'T DO VERY MUCH OF THAT

19 SORT OF STUFF.

20 Q. HOW ABOUT IF YOU SIT, CAN YOU SIT FOR A LONG PERIOD

21 OF TIME?

22 A. NOT REALLY. MAYBE TEN, FIFTEEN MINUTES.

23 Q. NOW, IF SOMEBODY PUT A GUN TO YOUR HEAD, YOU COULD

24 SIT FOR LONGER FOR TEN ---

25 A. YEAH.

1 Q. --- TO FIFTEEN MINUTES, RIGHT? BUT YOU'RE JUST
2 TELLING ME THAT IT BOTHERS YOU, YOU'D LIKE TO MOVE
3 AFTER ---

4 A. IT BOTHERS ME AFTER THAT. YEAH, IT BOTHERS ME AFTER
5 THAT.

6 Q. WELL, DOES IT BOTHER YOU ALL THE TIME, YOUR BACK?

7 A. WELL, YES.

8 Q. BUT IT GETS WORSE, WHERE YOU NEED TO MOVE?

9 A. YES.

10 Q. OKAY. ALL RIGHT. SO LET'S TALK ABOUT LIFTING.

11 NOW, BEFORE YOU'D MENTIONED YOU WERE, YOU KNOW, WAY
12 BACK YOU WERE A COLLEGE FOOTBALL PLAYER, BUT YOU'D
13 HAD SOME -- SOME PROBLEMS WITH YOUR BACK, WITH THIS
14 INJURY. I THINK YOU'D, YOU KNOW, YOU HAD HAD SOME
15 PROBLEMS WITH -- WITH THIS. HOW HAS IT AFFECTED
16 YOUR ABILITY TO LIFT AND DO THINGS LIKE THAT?

17 A. I CAN'T EVEN DO A FRACTION OF WHAT I USED TO COULD
18 DO. THAT I CAN'T LIFT HARDLY ANYTHING. I, EVEN
19 FIVE, TEN POUNDS IT JUST HURTS. IT JUST HURTS.

20 Q. LET ME ASK YOU THIS. WERE YOU WORKING OUT WITH LIKE
21 THEN ANYBODY IN NEWBERRY PRIOR TO YOUR INJURY? LIKE
22 AT THE SCHOOL, WERE YOU DOING ANYTHING ---

23 A. YEAH.

24 Q. --- WITH THAT? WHAT WERE YOU DOING?

25 A. WITH THE MIDDLE SCHOOL BASKETBALL TEAM, I WAS

1 TRAINING THEM AND HELPING THEM WITH THEIR WEIGHT
2 REGIMEN.

3 Q. UH-HUH. ALL RIGHT. SO WERE YOU BEING PRETTY
4 PHYSICAL WITH THAT?

5 A. YES.

6 Q. OKAY. WERE YOU DEMONSTRATING HOW TO DO ALL THESE
7 THINGS?

8 A. YES.

9 Q. PROPER LIFTING TECHNIQUES?

10 A. YES.

11 Q. AND SO IS THAT SOMETHING YOU FEEL LIKE YOU COULD DO
12 TODAY?

13 A. THERE IS NO WAY I COULD DO THAT.

14 Q. ALL RIGHT. NOW, YOU DID HAVE SOME PRIOR PROBLEMS
15 WHERE YOU'D APPLIED FOR DISABILITY BACK IN LIKE '08
16 AND '09 AT ONE POINT; IS THAT RIGHT?

17 A. YES.

18 Q. AND THEN YOU ULTIMATELY WENT BACK TO WORK FOR I
19 GUESS THIS TEMP AGENCY, AND THEN YOU WERE AT PHILIPS
20 JUST PRIOR TO GETTING INJURED; IS THAT RIGHT?

21 A. YES.

22 Q. DOES ANYTHING SEEM TO ALLEVIATE YOUR SYMPTOMS, SUCH
23 AS MEDICATION OR HEAT OR ICE OR ANYTHING LIKE THAT,
24 ANYTHING HELP YOU WITH YOUR BACK PAIN AND YOUR LEG
25 PAIN?

1 A. THE -- THE NEURONTIN HELPS, BUT IT DOESN'T -- IT
2 DOESN'T TAKE THE PAIN AWAY. IT HELPS.

3 Q. WHEN YOU SAY "IT HELPS," IN WHAT WAY? I MEAN, DOES
4 -- YOU MEAN IT -- IT LESSENS IT SOME, OR IT ---

5 A. IT LESSENS IT SOME.

6 Q. OKAY. ALL RIGHT.

7 A. THEY TOOK ME OFF OF THE PAIN MEDICATION SO LONG AGO.
8 I MEAN, THAT I WOULDN'T -- I WOULDN'T KNOW WHAT THAT
9 RELIEF WAS, 'CAUSE I DON'T HAVE ANY RELIEF REALLY.

10 Q. NOW, LET ME ASK YOU THIS: DO YOU -- DO YOU HAVE TO
11 ALTERNATE POSITIONS FREQUENTLY?

12 A. YES.

13 Q. OKAY. DO YOU TAKE HOT SHOWERS A LOT NOW?

14 A. YES.

15 Q. HOW DO -- HOW DOES THAT HELP YOU?

16 A. IT -- IT HELPS A LITTLE BIT FOR A SHORT PERIOD OF
17 TIME.

18 Q. OKAY. ALL RIGHT. HOW ABOUT HEAT? DO YOU PUT HEAT
19 ON YOUR BACK?

20 A. YES, SIR.

21 Q. HOW OFTEN DO YOU DO THAT?

22 A. I DO IT MAYBE THREE, FOUR TIMES A DAY.

23 Q. OKAY. SO WHAT DO YOU USE, LIKE A HEATING PAD?

24 A. YEAH. A MOIST HEATING PAD, THE KIND THAT YOU PUT IN
25 THE MICROWAVE.

1 Q. OKAY. DO YOU EVER ICE IT?

2 A. RARELY. IF -- IT HAS TO BE EXTREMELY PAIN. I HAVE
3 TO BE IN EXTREME PAIN FOR ME TO PUT ICE ON IT
4 BECAUSE IT WILL NUMB IT.

5 Q. LET'S TALK ABOUT YOUR SLEEP. HOW DO YOU -- HOW
6 WOULD YOU DESCRIBE YOUR SLEEP SINCE THIS INJURY?

7 A. I DON'T GET MUCH SLEEP.

8 Q. ALL RIGHT. WHEN YOU SAY "MUCH SLEEP," ON AVERAGE,
9 LET'S SAY YOU -- WHAT'S YOUR AVERAGE AMOUNT, TOTAL
10 AMOUNT OF SLEEP AT NIGHT?

11 A. MAYBE TWO, THREE HOURS A DAY.

12 Q. ALL RIGHT.

13 A. MAYBE.

14 Q. IS THAT INTERRUPTED OR UNINTERRUPTED SLEEP?

15 A. I'D SAY INTERRUPTED.

16 Q. OKAY.

17 A. YES.

18 Q. OKAY. SO IF YOU SLEEP TWO OR THREE HOURS AT NIGHT,
19 DO YOU TRY TO -- TO NAP DURING THE DAY? WHAT DO YOU
20 DO DURING THE DAY?

21 A. I TRY TO NAP, BUT I MEAN, IT DOESN'T REALLY -- IT
22 DOESN'T REALLY WORK OUT WELL FOR ME.

23 Q. OKAY. HOW DO YOU USE PILLOWS? DO YOU HAVE TO USE
24 PILLOWS IN A CERTAIN WAY?

25 A. SOMETIMES I PUT PILLOWS BETWEEN MY LEGS TO TRY TO

1 TAKE THE TENSION OFF MY BACK. SOMETIMES I FLUFF
2 THEM UP BEHIND ME, JUST DO DIFFERENT, JUST TRY
3 DIFFERENT STUFF TO GET ANY KIND OF TEMPORARY RELIEF.

4 Q. DO YOU SLEEP IN ANY PARTICULAR POSITIONS, LIKE ON
5 YOUR BACK, ON YOUR SIDE, ON ONE SIDE OR ANOTHER? DO
6 YOU PUT PILLOWS BETWEEN YOUR KNEES? WHAT DO YOU DO?

7 A. I MAINLY PUT PILLOWS BETWEEN MY KNEES AND SLEEP ON
8 MY RIGHT SIDE.

9 Q. OKAY. AND IS THAT BECAUSE YOU HAVE MORE PAIN ON THE
10 LEFT SIDE?

11 A. YES, SIR.

12 Q. OKAY. SO LET ME ASK YOU THIS QUESTION: WHAT ARE
13 YOUR PAIN LEVELS, IF A ONE TO TEN ON A -- ON A -- ON
14 A BAD DAY? WHAT WOULD YOUR SYMPTOMS BE, ONE TO TEN?
15 SO ONE BEING THE MOST MINIMAL PAIN YOU COULD
16 IMAGINE, TEN BEING IT'S THE WORST PAIN YOU COULD
17 EVER IMAGINE, SO.

18 A. EIGHT AND NINE.

19 Q. OKAY. AND HOW ABOUT ON A GOOD DAY, WHAT WOULD YOUR
20 PAIN LEVEL BE?

21 A. SEVEN.

22 Q. SEVEN. OKAY. HOW MANY GOOD DAYS VERSUS BAD DAYS DO
23 YOU HAVE IN AN AVERAGE WEEK? IF THEY'RE SEVEN DAYS
24 A WEEK, WHEN, HOW MANY GOOD VERSUS BAD ARE YOU --
25 ARE YOU HAVING?

- 1 A. I'D SAY FOUR AND THREE..
- 2 Q. FOUR GOOD DAYS, THREE BAD DAYS, OR FOUR BAD DAYS?
- 3 A. YEAH, FOUR BAD DAYS, MAYBE THREE GOOD DAYS.
- 4 Q. OKAY. ALL RIGHT. SO ON A GOOD DAY, DO YOU FEEL
- 5 LIKE YOU CAN BE A LITTLE MORE ACTIVE?
- 6 A. NOT REALLY. NOT REALLY. I -- IT JUST FEELS A
- 7 LITTLE BIT BETTER. IT DOESN'T MAKE ME -- HOW COULD
- 8 I SAY IT? IT DOESN'T MAKE ME MORE MOBILE OR
- 9 ANYTHING. IT JUST ON THOSE GOOD DAYS IT SEEMS LIKE
- 10 I CAN TOLERATE IT A LITTLE BIT BETTER, IF THAT MAKES
- 11 ANY SENSE.
- 12 Q. OKAY. HOW DO YOU HANDLE LIKE STAIRS AND STEPS NOW?
- 13 A. THEY'RE -- THEY'RE -- THEY'RE TOUGH. IT -- IT'S
- 14 PAINFUL, BUT I JUST TRY TO POWER THROUGH, AND THEN
- 15 WHEN I GET UP THE STEPS, I -- I HAVE TO TAKE A
- 16 BREAK. I HAVE TO -- TO TRY TO ---
- 17 Q. ARE YOU USING ---
- 18 A. --- FOR IT -- FOR IT TO SUBSIDE A LITTLE BIT.
- 19 Q. I'M SORRY. SO BEFORE THIS INJURY, WOULD YOU HAVE
- 20 USED THE HANDRAILS REGULARLY?
- 21 A. BEFORE THE INJURY?
- 22 Q. YES.
- 23 A. NO.
- 24 Q. DO YOU USE THEM NOW?
- 25 A. YEAH.

1 Q. OKAY. DID YOU USED TO RUN A GOOD BIT PRIOR TO THIS
2 INJURY THAT WE'RE DESCRIBING THAT YOU SUFFERED AT
3 WORK? DID YOU USED TO RUN?

4 A. YES, SIR.

5 Q. DID YOU PLAY -- I KNOW YOU SAID YOU PLAYED COLLEGE
6 -- COLLEGE FOOTBALL. DID YOU PLAY ANY RECREATIONAL
7 SPORTS LIKE BASKETBALL WHERE YOU'RE JUMPING AROUND
8 AND RUNNING AND DOING STUFF LIKE THAT?

9 A. YEAH.

10 Q. OKAY.

11 A. I PLAYED BASKETBALL.

12 Q. DID YOU USED TO SQUAT BEFORE YOU WERE INJURED?

13 A. YES.

14 Q. HOW ABOUT YARD WORK, WOULD YOU DO YOUR OWN YARD WORK
15 PRIOR TO THIS INJURY?

16 A. YES.

17 Q. DO YOU HAVE TO PAY SOMEONE TO DO YOUR YARD WORK NOW?

18 A. YES.

19 Q. OKAY. AND IS THAT SINCE YOUR INJURY THAT YOU'VE HAD
20 TO DO THIS?

21 A. YES, SIR.

22 Q. IS IT BECAUSE OF YOUR INJURY THAT YOU'VE HAD TO DO
23 THIS?

24 A. YES, SIR.

25 Q. OKAY. NOW, LET'S TALK A LITTLE BIT ABOUT YOUR

1 PSYCHOLOGICAL. DO YOU FEEL AS IF YOU'RE DEPRESSED
2 DUE TO YOUR WORK-RELATED PHYSICAL INJURIES?

3 A. YEAH.

4 Q. OKAY. I KNOW YOU'D SEEN A DR. HOLT WITH SOCIAL
5 SECURITY -- SOCIAL SECURITY ADMINISTRATION, AND
6 YOU'D SEEN A DR. LIND, TOO. WOULD YOU LIKE TO GET
7 SOME MORE CARE WITH DR. LIND FOR YOUR PSYCH
8 CONDITION?

9 A. YES.

10 Q. OKAY. HOW ARE YOU DEPRESSED, AND HOW ARE YOU
11 DIFFERENT NOW THAN YOU WERE, LET'S SAY, PRIOR TO
12 THIS INJURY?

13 A. JUST DON'T FEEL LIKE I'M THE SAME PERSON, LIKE I
14 FEEL USELESS, JUST USELESS. AND I DON'T, A LOT OF
15 TIMES I DON'T EVEN LIKE TO EVEN TALK OR SPEAK OR SEE
16 ANYBODY, JUST BECAUSE IT'S JUST I DON'T KNOW, MAN,
17 IT'S -- IT'S -- IT'S LIKE I DON'T HAVE ANY WORTH.

18 Q. HUH. DID YOU EVER HAVE ANY KIND OF PSYCHOLOGIC
19 CONDITION BEFORE THIS INJURY THAT YOU KNOW OF?

20 A. NO.

21 Q. OKAY. DO YOU FEEL LIKE YOU'RE ABLE TO -- TO -- TO
22 WORK AT THIS TIME?

23 A. NO, SIR.

24 Q. HAVE YOU EVER DONE ANY JOBS THAT WEREN'T PHYSICAL IN
25 NATURE, REAL -- REAL JOBS THAT WERE LESS PHYSICALLY

1 DEMANDING?

2 A. NO, SIR.

3 Q. OKAY. SO YOU HAD TO EITHER BE UP AND AROUND OR
4 DOING SOMETHING PHYSICAL?

5 A. YES, SIR.

6 Q. ALL RIGHT. AND IT SOUNDS LIKE YOU DID WORK OR YOU
7 TRIED TO KEEP WORKING FOR ABOUT SIX MONTHS AFTER
8 THIS INJURY?

9 A. YEAH. THEY -- THEY TOOK ME OUT OF WORK ON ---

10 Q. JANUARY?

11 A. YEAH.

12 Q. AFTER YOUR INJURY?

13 A. YES.

14 Q. I THINK YOU WERE INJURED IN SEP -- LET ME SEE.

15 A. IT'S JULY.

16 Q. JULY 2012?

17 A. UH-HUH.

18 Q. AND SO YOU WORKED UNTIL JANUARY; THEN THEY TOOK YOU
19 OUT, I GUESS DID SURGERY IN JANUARY?

20 A. YES.

21 Q. OKAY.

22 **BY MS. PAYNE:**

23 IT'S 2011 TO 2012.

24 **BY MR. SALLEY:**

25 2011 TO 2012. EXCUSE ME. THIS THING'S BEEN

1 GOING ON A LONG TIME, EVEN SO. THANK YOU VERY MUCH.
2 I APPRECIATE THAT.

3 DIRECT EXAMINATION RESUMED BY MR. SALLEY:

4 Q. AND I KNOW THERE HAVE BEEN -- I KNOW THAT THERE HAVE
5 BEEN SOME INDICATION THAT YOU MAY POTENTIALLY BE
6 ELIGIBLE FOR A STIMULATOR SOMEWHERE. WOULD YOU LIKE
7 TO HAVE THE STIMULATOR DONE, IF -- IF THEY DEEM YOU
8 TO BE A CANDIDATE FOR THAT?

9 A. YES.

10 Q. OKAY. AND WOULD YOU LIKE TO GET REEVALUATED FOR A
11 -- BY DR. HOLBROOK FOR A SURGICAL OPINION BASED ON
12 WHAT DR. STORICK IS RECOMMENDING NOW?

13 A. YES.

14 Q. OKAY. DO YOU FEEL LIKE WHEN YOU'VE SEEN DR. LIND --
15 WELL, HOW WOULD -- WHAT DOES HE DO FOR YOU NOW?
16 WHAT DO -- WHAT DO YOU DO WHEN YOU SEE DR. LIND?

17 A. HE'LL TAKE EVAL, THEN HE ASKED ME A -- A COUPLE OF
18 EMOTIONAL QUESTIONS AND LIKE KIND OF TALK TO HIM,
19 YOU KNOW, SO.

20 Q. DO YOU FEEL LIKE HE COULD BE SOMEBODY THAT COULD
21 HELP YOU?

22 A. YEAH.

23 Q. OKAY. WOULD YOU WANT TO TREAT WITH HIM?

24 A. YES.

25 Q. OKAY. I KNOW YOU'D ALSO SEEN A DR. GABR AND DR.

1 HUTCHINSON; DO YOU REMEMBER THEM?

2 A. YES.

3 Q. AND THEY LOOKED AT YOU, AND IT SOUNDS LIKE DR.
4 HUTCHINSON SAYS THAT YOU HAVE SOME IMPAIRMENT TO
5 YOUR LEFT LEG ON APA TEN, PAGE 244; WOULD YOU AGREE
6 WITH THAT?

7 A. YES.

8 Q. AND THEN DR. GABR SAYS THE SAME THING ON APA 16,
9 PAGE 463, THAT YOU HAVE SOME IMPAIRMENT TO YOUR LEFT
10 LEG DUE TO YOUR LUMBAR RADICULOPATHY; WOULD YOU
11 AGREE WITH THAT?

12 A. YES.

13 Q. OKAY. DID THIS LEFT TOE THAT YOU HAVE, THAT'S
14 APPARENTLY THEY WERE SAYING THAT'S AN L4/L5 DISC
15 THAT'S INDICATING THAT YOU HAVE SYMPTOMS INTO YOUR
16 LEFT TOE?

17 A. UH-HUH.

18 Q. AND THAT'S BEEN THERE SINCE YOU'VE BEEN INJURED?

19 A. YES.

20 BY MS. PAYNE:

21 OBJECTION. LEADING.

22 BY COMMISSIONER TAYLOR:

23 SUSTAINED.

24 DIRECT EXAMINATION RESUMED BY MR. SALLEY:

25 Q. HOW LONG HAS IT BEEN THERE?

1 A. IT'S BEEN THERE SINCE I HURT -- HURT MY BACK.

2 Q. OKAY. WOULD YOU LIKE TO TRY TO SEE IF THEY COULD
3 MAYBE DO SOMETHING EITHER WITH A STIMULATOR OR WITH
4 THE ADDITIONAL PAIN MANAGEMENT OR WITH THE SURGICAL
5 EVAL TO SEE IF THEY CAN HELP MAYBE WITH SOME OF
6 THOSE RADICULAR SYMPTOMS?

7 A. YES.

8 Q. OKAY.

9 **BY MR. SALLEY:**

10 PLEASE, ANSWER ANY QUESTIONS DEFENSE COUNSEL
11 MAY HAVE. THANK YOU.

12 **BY COMMISSIONER TAYLOR:**

13 OKAY. MS. PAYNE.

14 **CROSS-EXAMINATION BY MS. PAYNE:**

15 Q. HI, MR. CLARK.

16 A. HELLO.

17 Q. OKAY. I'M BROOKE PAYNE. I THINK WE MET AT ONE OF
18 THE VOC EVALUATOR EVALUATIONS. JUST TO BRIEFLY
19 SUMMARIZE, YOU'RE HERE TODAY BECAUSE YOU'RE ALLEGING
20 A LOW BACK INJURY THAT RADIATES INTO YOUR LEFT LOWER
21 EXTREMITY, WHICH ---

22 A. YES, MA'AM.

23 Q. --- YOU CONTEND IS A RESULT OF YOUR WORK INJURY AT
24 PHILIPS?

25 A. YES, MA'AM.

1 Q. AND YOU'LL AGREE THAT YOU HAD A PRIOR WORK-RELATED
2 INJURY WHEREIN YOU INJURED YOUR BACK, AND THAT PAIN
3 RADIATED INTO YOUR LEFT LOWER EXTREMITY, CORRECT?

4 A. REPEAT THE QUESTION.

5 Q. YOU'LL AGREE THAT PRIOR TO WORKING AT PHILIPS, YOU
6 HAD A WORK INJURY IN FLORIDA, WHERE YOU INJURED YOUR
7 BACK, AND THE PAIN RADIATED INTO YOUR LEFT LEG?

8 A. NO.

9 Q. YOU'LL AGREE THAT YOU HAD A PRIOR WORK INJURY IN
10 FLORIDA, CORRECT?

11 A. YES.

12 Q. OKAY. AND DO YOU REMEMBER WHEN YOU WERE DEPOSED IN
13 MAY OF 2013?

14 A. MA'AM?

15 Q. DO YOU REMEMBER WHEN YOU UNDERWENT A DEPOSITION IN
16 MAY OF 2013?

17 A. YES.

18 Q. AND IN THAT DEPOSITION, YOU WERE UNDER OATH?

19 A. YES.

20 Q. AND YOU LISTED YOUR PRIOR EMPLOYERS?

21 A. YES.

22 Q. BUT YOU FAILED TO MENTION EVER WORKING FOR TILE DEPO
23 IN FLORIDA?

24 A. NO. I DID MENTION TILE DEPOT.

25 Q. OKAY. I'M LOOKING AT YOUR DEPOSITION. I -- YOU

1 WERE ASKED TO LIST YOUR PRIOR EMPLOYERS, AND YOU
2 LISTED THAT YOU WORKED FOR ANGELICA TEXTILES, FOR
3 PARROT DISTRIBUTION, YOU WORKED AS A BOUNCER AT MS.
4 G'S LOUNGE, KEY SECURITY, AND THEN HARDEE'S IN 2010.
5 AND THEN ON PAGE 37 YOU WERE ASKED, HAVE YOU TEST --
6 TESTIFIED ABOUT ALL THE PLACES THAT YOU WORKED
7 BEFORE COMING TO WORK FOR SHAKESPEARE AT PHILIPS;
8 HAVE YOU MENTIONED ALL THE PLACES THAT YOU'VE
9 WORKED? AND DO YOU RECALL YOUR RESPONSE?

10 A. I SAID, YES. AND THEN AT THE END, I SAID I LEFT ONE
11 OUT.

12 Q. OH. WOULD YOU BE SURPRISED IF THE DEPOSITION
13 TRANSCRIPT ACTUALLY MAKES NO MENTION OF EVER WORKING
14 AT TILE DEPOT?

15 A. YES, I WOULD BE SURPRISED.

16 Q. OKAY. AND DO YOU RECALL THAT YOU WERE ASKED IF YOU
17 HAD EVER INJURED YOUR BACK WHILE WORKING FOR A PRIOR
18 EMPLOYER? DO YOU RECALL WHAT YOUR RESPONSE WAS?

19 A. YES.

20 Q. WHAT WAS YOUR RESPONSE?

21 A. IT WAS A NO.

22 Q. OKAY. THE TRUTH IS YOU ACTUALLY DID INJURE YOUR
23 BACK WHILE WORKING FOR TILE DEPOT BACK IN 2007?

24 A. YES.

25 Q. AND YOU JUST FAILED TO DISCLOSE THAT?

1 A. I DIDN'T REALLY THINK IT WAS AN INJURY. BUT, YES.

2 Q. YOU DIDN'T THINK IT WAS AN INJURY, BUT YOU FILED A
3 WORKERS' COMPENSATION CLAIM IN RELATION TO IT?

4 A. I DIDN'T FILE A WORKERS' COMPENTATE (PHONETIC) --
5 COMPENSATION. IT WAS A FALSE TERMINATION CASE.

6 BY MS. PAYNE:

7 MAY I APPROACH, YOUR HONOR?

8 BY COMMISSIONER TAYLOR:

9 SURE.

10 BY MS. PAYNE:

11 I'M SHOWING YOU -- WE SENT YOU GUYS THESE.

12 IT'S HIS FLORIDA WORKERS' COMPENSATION CLAIMS.

13 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

14 Q. I'M SHOWING YOU SOME DOCUMENTS, WHICH STATE AT THE
15 TOP, STATE OF FLORIDA, DIVISION OF ADMINISTRATIVE
16 HEARING OFFICE OF THE JUDGES OF COMPETITION
17 (PHONETIC) -- EXCUSE ME -- COMPENSATION CLAIMS. DO
18 YOU RECOGNIZE THE DOCUMENT?

19 A. NO. NOT -- NOT ---

20 Q. NO?

21 A. I DON'T RECALL IT RIGHT NOW. NO.

22 Q. IS THAT YOUR -- IS THIS YOUR HANDWRITING RIGHT HERE?

23 A. I DID FILE A CLAIM, BUT I JUST DON'T RECOGNIZE
24 THE ---

25 Q. SO YOU DID FILE A WORKERS' COMPENSATION CLAIM?

1 A. IT WAS A FALSE -- IT WAS SUPPOSED TO BE A FALSE
2 TERMINATION.

3 Q. OKAY.

4 A. 'CAUSE THEY FIRED ME BEFORE I EVEN GOT A LAWYER.

5 Q. IS THIS YOUR ---

6 A. THAT'S MINE.

7 Q. --- SIGNATURE?

8 A. MY SIGNATURE, YES.

9 Q. OKAY. AND DID YOU SAY YOU DIDN'T HAVE A LAWYER?

10 A. I NEVER SAID I DIDN'T. I SAID I GOT A LAWYER AFTER
11 THEY FIRED ME.

12 Q. OKAY. AND THEN YOU PURSUED WHAT KIND OF CLAIM?

13 A. I WAS LOOKING FOR A FALSE TERMINATION CLAIM.

14 Q. SO YOU'D BE SURPRISED IF THESE DOCUMENTS INDICATED
15 THAT YOU FILED A WORKERS' COMPENSATION CLAIM?

16 A. YES.

17 Q. CAN YOU READ THIS AFFIDAVIT HERE, PARAGRAPH NUMBER
18 ONE? WHAT DOES IT STATE?

19 A. IT SAYS MY -- MY NAME IS LAMAR CLARK. I AM A
20 CLAIMANT AND AN EMPLOYEE -- AN EMPLOYEE IN A
21 WORKERS' COMPENSATION CLAIM WHERE THE O.J.C.C.
22 NUMBER IS ---

23 Q. AND YOU DON'T HAVE TO STATE THAT NUMBER. AND NOW
24 CAN YOU READ THE ---

25 A. NOW APPEARING ---

1 Q. --- REST OF THE SENTENCE?

2 A. NOW APPEARING BEFORE THE JUDGE OF COMPENSATION
3 CLAIMS.

4 Q. AND IS THAT YOUR SIGNATURE?

5 A. YES.

6 Q. SO WOULD YOU AGREE THAT YOU DID IN FACT FILE A
7 WORKERS' COMPENSATION CLAIM?

8 A. BY THAT DOCUMENT, YES.

9 Q. DO YOU GENERALLY SIGN AFFIDAVITS WITHOUT HAVING AN
10 UNDERSTANDING OF WHAT IT STATES?

11 A. I CLEARLY THOUGHT THAT I WAS DOING A TERMINATION
12 CASE.

13 Q. CLEARLY?

14 A. YES.

15 Q. EVEN THOUGH IT SAID WORKERS' COMPENSATION? SO IN
16 RELATION TO YOUR INJURY AT TILE DEPOT IN 2006, YOU
17 TREATED AT HALIFAX MEMORIAL HOSPITAL?

18 A. YES.

19 Q. AND YOU REPORTED A HISTORY OF SCOLIOSIS IN YOUR
20 BACK?

21 A. YES.

22 Q. YOU COMPLAINED OF HAVING SHARP PAINS IN YOUR BACK?

23 A. MY UPPER BACK, NOT MY LOWER.

24 Q. OKAY. SO YOU'D BE SURPRISED IF YOU SAW MEDICAL
25 RECORDS FOR THE DURATION OF AT LEAST A FEW MONTHS

1 WHERE IN YOU REPORTED LOW BACK PAIN?

2 A. I'VE HAD LOW BACK PAIN BEFORE, YES, BUT NOT EXTREME,
3 OR I HAVEN'T -- I'VE NEVER BEEN DIAGNOSED WITH
4 ANYTHING LIKE WHAT I HAVE NOW.

5 Q. YOU'LL AGREE THAT IN RELATION TO YOUR 2006 WORKERS'
6 COMPENSATION CLAIM, YOU TREATED AT HALIFAX MEMORIAL
7 AND REPORTED ---

8 A. YES.

9 Q. --- LOW BACK PAIN WITH RADIATION INTO YOUR LEGS,
10 MORE ON THE LEFT?

11 A. I DON'T RECALL ANYTHING RADIATING IN MY LEG.

12 Q. OKAY. SO YOU'D BE SURPRISED TO SEE THAT IN THE
13 MEDICAL RECORD?

14 A. YES.

15 Q. OKAY. AND YOU'LL AGREE THAT YOU WERE PLACED ON WORK
16 RESTRICTIONS BACK THEN?

17 A. THREE DAYS. AND THEN THEY TOLD ME WHEN I WENT BACK
18 THAT I NEEDED TO SEE AN ORTHOPEDIC.

19 Q. RIGHT. AND YOU DID GO AND TREAT WITH AN ORTHOPEDIC,
20 RIGHT?

21 A. NO, BECAUSE THEY TERMINATED ME.

22 Q. SO IS IT YOUR CONTENTION THAT YOU DID NOT TREAT WITH
23 AN ORTHOPEDIC IN RELATION TO YOUR ---

24 A. TERMINATION.

25 Q. IN ROUTE ---

1 A. OH.

2 Q. LET ME FINISH MY QUESTION.

3 A. TO ---

4 Q. IS IT YOUR CONTENTION THAT EVEN THOUGH THE HOSPITAL
5 TOLD YOU TO TREAT WITH AN ORTHOPEDIC IN RELATION TO
6 YOUR LOW BACK INJURY SUSTAINED AT TILE DEPOT, ARE
7 YOU CLAIMING THAT YOU NEVER TREATED WITH AN
8 ORTHOPEDIC?

9 A. NO, I DIDN'T.

10 Q. YOU NEVER DID?

11 A. NEVER.

12 Q. OKAY. DO YOU RECOGNIZE THE NAME OF AN ORTHOPEDIC BY
13 THE NAME OF DR. KIRBY HAWS, H-A-W-S?

14 A. NO.

15 Q. WOULD YOU BE SURPRISED TO SEE ANY MEDICAL RECORDS
16 FROM HIS OFFICE?

17 A. HUH? YES, I WOULD BE. I REALLY WOULD BE.

18 Q. AND NOW IN RELATION TO THIS CLAIM THAT YOU HAD WHILE
19 AT TILE DEPOT BACK IN 2006, YOU ALLEGED THAT THIS
20 INJURY WAS CAUSED BY LIFTING SOME TILES AND YOU FELT
21 PAIN IN YOUR LOW AND MID BACK; IS THAT RIGHT?

22 A. YES.

23 Q. AND YOU ALSO ALLEGED THAT THAT WORK-RELATED INJURY
24 AT TILE DEPOT PREVENTED YOU FROM DOING ALL
25 ACTIVITIES OF DAY -- DAILY LIFE THAT YOU WERE ABLE

1 TO DO BEFOREHAND?

2 A. FOR A CERTAIN AMOUNT -- AMOUNT OF TIME, YES.

3 Q. NOW, THIS WORK-RELATED INJURY AT TILE DEPOT WAS
4 ACTUALLY SIGNIFICANT ENOUGH FOR YOU TO SEEK S.S.D.I.
5 BENEFITS FROM THE SOCIAL SECURITY ADMINISTRATION,
6 CORRECT?

7 A. YEAH.

8 Q. AND YOU ACTUALLY FILED FOR SOCIAL SECURITY ON TWO
9 OCCASIONS PRIOR TO WORKING AT PHILIPS ELECTRONICS,
10 CORRECT?

11 A. ONCE. I'VE APPLIED ---

12 Q. ONCE IN 2008 AND ONCE IN 2009?

13 A. YES. YES. AFTER THE DENIAL, YES.

14 Q. AND BACK IN 2008, YOU INFORMED THE SOCIAL SECURITY
15 ADMINISTRATION THAT YOU WEREN'T ABLE TO WORK AFTER
16 JUNE 28TH OF 2006, CORRECT?

17 A. YES.

18 Q. SO THAT HAD BEEN AT LEAST TWO YEARS?

19 A. YES.

20 Q. AND YOU ACTUALLY WERE EXAMINED BY A SOCIAL SECURITY
21 DISABILITY EVALUATOR ---

22 A. YES.

23 Q. --- IN RELATION TO YOUR 2008 CLAIM, AND YOU REPORTED
24 A TWO-YEAR HISTORY OF WORSENING MIDDLE AND LOWER
25 BACK PAIN WHICH YOU ATTRIBUTED TO YOUR WORK INJURY

1 AT TILE DEPOT?

2 A. YES.

3 Q. SO YOU'LL AGREE THAT AT THAT TIME YOU HAD LOW BACK
4 AND LEFT KNEE PAIN WHICH WAS STILL PRESENT OVER TWO
5 YEARS AFTER YOUR WORK ACCIDENT?

6 A. YES.

7 Q. NOW, YOU TESTIFIED EARLIER THAT YOU HAD NEVER BEEN
8 EVALUATED BY A PSYCHOLOGIST ---

9 A. NO.

10 Q. --- PRIOR TO THIS WORK INJURY? WOULDN'T YOU AGREE
11 THAT WHEN YOU APPLIED FOR SOCIAL SECURITY BACK IN
12 2008, YOU INDICATED THAT YOU HAD BEEN SEEN BY A
13 DOCTOR FOR EMOTIONAL OR MENTAL PROBLEMS THAT LIMITED
14 YOUR ABILITY TO WORK?

15 A. I DON'T RECALL THAT.

16 Q. YOU DON'T RECALL SEEING WITH THE DOCTOR OR
17 INDICATING THAT ON YOUR APPLICATION?

18 A. EITHER.

19 Q. WOULD YOU BE SURPRISED TO SEE THAT IN YOUR
20 APPLICATION?

21 A. YES, 'CAUSE THE LAST TIME I EVEN SEEN ANYBODY IN
22 THAT CAPACITY, I WAS MAYBE EIGHT YEARS OLD FOR
23 SOMETHING THAT HAPPENED IN SCHOOL. I'VE NEVER SEEN
24 A PSYCHOLOGIST FOR ANYTHING ELSE BESIDES THAT.

25 Q. SO YOU'RE SURPRISED TO SEE THAT YOU INDICATED ON

1 YOUR 2008 ---

2 A. YES, I WOULD BE.

3 Q. --- APPLICATION -- CAN I FINISH MY QUESTION? IT
4 JUST HELPS THE TRANSCRIPT READ CLEARER.

5 A. YES.

6 Q. SO YOU'RE SURPRISED -- YOU'D BE SURPRISED TO SEE
7 THAT YOU INDICATED ON YOUR 2008 APPLICATION THAT YOU
8 WERE SUFFERING FROM EMOTIONAL AND MENTAL PROBLEMS
9 THAT LIMITED YOUR ABILITY TO WORK AND THAT YOU HAD
10 SEEN A DOCTOR FOR?

11 A. I'D BE SURPRISED TO SEE THAT I SEEN THE DOCTOR FOR,
12 YES.

13 Q. BUT YOU'RE NOT SURPRISED TO SEE THAT AT THAT TIME
14 YOU WERE ALLEGING THAT YOU WERE SUFFERING FROM
15 EMOTIONAL OR MENTAL ISSUES ---

16 A. I'D BE SURPRISED IF THOSE ---

17 Q. --- THAT LIMITED YOUR -- CAN I FINISH MY QUESTION?
18 SO YOU WOULD NOT BE SURPRISED THAT AT THAT TIME,
19 BACK IN 2008, YOU WERE ALLEGING EMOTIONAL AND MENTAL
20 PROBLEMS THAT LIMITED YOUR ABILITY TO WORK?

21 A. YES, I WOULD BE.

22 Q. AND YOU'D BE SURPRISED. NOW, YOU THEN FILED THE
23 SOCIAL SECURITY CLAIM IN 2009, ALLEGING THAT YOU
24 WERE UNABLE TO WORK AS OF MARCH 30TH, 2007?

25 A. YES.

1 Q. WHAT'S THE SIGNIFICANCE OF THAT DATE?

2 A. I DON'T UNDERSTAND THE QUESTION. THE SIGNIFICANCE?

3 Q. WHERE -- I -- I KNOW THAT YOUR WORK-RELATED INJURY
4 AT TILE DEPOT HAD OCCURRED IN 2006.

5 A. UH-HUH.

6 Q. BUT ON THIS APPLICATION, YOU WERE SAYING THAT YOU
7 COULDN'T WORK AS OF MARCH 30TH, 2007. WHERE DID
8 THAT DATE COME FROM?

9 A. MAYBE THAT'S THE DAY I FILED IT, MAYBE.

10 Q. I'M REFERRING TO YOUR 2009 APPLICATION, YOU
11 INDICATED THAT YOU COULDN'T WORK AS MARCH 30TH,
12 2007?

13 A. I HAVE NO IDEA WHERE THAT DATE CAME FROM.

14 Q. AND YOU'LL AGREE THAT YOU ALLEGED ON THAT
15 APPLICATION THAT YOU COULDN'T WORK BECAUSE OF YOUR
16 BACK PROBLEMS, YOUR BILATERAL KNEE PROBLEMS, AND
17 YOUR DIABETES?

18 A. YES.

19 Q. NOW, YOU TESTIFIED EARLIER TODAY THAT YOU'RE
20 PHYSICALLY UNABLE TO LIFT ANYTHING. YOU'LL AGREE
21 BACK ON YOUR 2009 APPLICATION YOU INDICATED THAT YOU
22 WERE PHYSICALLY UNABLE TO LIFT ANYTHING?

23 A. I DON'T RECALL THAT.

24 Q. WOULD THAT SURPRISE YOU?

25 A. YES.

1 Q. YOU ALSO INDICATED THAT X-RAYS HAD BEEN PERFORMED ON
2 YOUR BACK AT FLORIDA HOSPITAL AND AT HALIFAX MEDICAL
3 CENTER?

4 A. YES.

5 Q. CORRECT? NOW, WHEN YOU WERE DEPOSED BACK IN MAY,
6 YOU WERE ASKED, MAY OF 2013, YOU WERE ASKED IF YOU
7 HAD EVER UNDERGONE ANY DIAGNOSTIC STUDIES IN
8 RELATION TO YOUR BACK; DO YOU RECALL YOUR RESPONSE?

9 A. NO.

10 Q. YOU DON'T RECALL YOUR RESPONSE, OR THAT WAS YOUR
11 RESPONSE?

12 A. THAT WAS MY RESPONSE.

13 Q. RIGHT. SO YOU'LL AGREE THAT YOU WERE ACTUALLY
14 DISHONEST ABOUT THAT?

15 A. I DIDN'T RE -- I DIDN'T REMEMBER IT. I DON'T THINK
16 I WAS BEING COMPLETELY DISHONEST.

17 Q. BUT YOU REMEMBERED IT IN 2009 WHEN YOU WERE APPLYING
18 FOR SOCIAL SECURITY?

19 A. THAT'S SO LONG AGO, I DON'T RECALL.

20 Q. NOW, IN RELATION TO YOUR 2009 CLAIM, YOU COMPLETED A
21 PAIN QUESTIONNAIRE IN MAY OF 2009; DO YOU RECALL
22 THAT?

23 A. IT'S BEEN SO LONG AGO, BUT I GUESS, YES.

24 Q. YES? OKAY. AND YOU'LL AGREE BACK IN MAY OF 2009,
25 YOU INFORMED THE SOCIAL SECURITY ADMINISTRATION THAT

1 YOU SUFFERED FROM PAIN IN YOUR BACK WHEN SITTING,
2 STANDING, AND BENDING?

3 A. IT'S BEEN SO LONG AGO, I DON'T REMEMBER, BUT.

4 Q. YOU DON'T REMEMBER, BUT YOU'LL AGREE THAT THOSE WERE
5 THE SAME COMPLAINTS THAT YOU'RE ALLEGING ARE RELATED
6 TO YOUR WORK INJURY AT PHILIPS?

7 A. YES, BUT I DON'T ---

8 Q. SO YOU HAD THE SAME PAIN A FEW YEARS ---

9 BY MR. SALLEY:

10 WELL, HE'S -- EXCUSE ME.

11 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

12 Q. --- BEFORE YOUR WORK INJURY?

13 BY MR. SALLEY:

14 SO AND IF YOU'D ALLOW HIM TO FINISH HIS ANSWER,
15 AND YOU ASKED, BUT I CONTEND HE NEEDS TO BE ABLE TO
16 FINISH.

17 BY COMMISSIONER TAYLOR:

18 OKAY. HE DID SAY ---

19 BY MS. PAYNE:

20 OH. I'M SORRY. I DIDN'T HEAR HIM SAY THAT.

21 BY COMMISSIONER TAYLOR:

22 THAT'S OKAY. ALL RIGHT. YOU CAN GO AHEAD AND
23 FINISH THAT LAST SENTENCE, SIR.

24 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

25 A. THAT'S WHAT THE DOCUMENT SAYS, BUT I DO NOT RECALL

1 MAKING ANY OF THESE STATEMENTS.

2 Q. OKAY. JUST TO REFRESH ---

3 A. IT'S BEEN A WHILE.

4 Q. --- YOUR MEMORY.

5 A. IT'S BEEN A WHILE.

6 Q. OH, I UNDERSTAND.

7 A. AND I DON'T RE -- I DON'T, 'CAUSE I -- I DON'T KNOW.
8 I REALLY DON'T.

9 BY MS. PAYNE:

10 MAY I APPROACH?

11 BY COMMISSIONER TAYLOR:

12 SURE.

13 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

14 Q. I'M SHOWING YOU THE SUPPLEMENTAL PAIN QUESTIONNAIRE
15 THAT'S INCLUDED IN OUR EXHIBITS; IT'S TWO-OH-SEVEN-
16 SEVEN THROUGH TWO-OH-SEVEN-NINE. JUST TO CLARIFY,
17 THIS IS THE THIRD PAGE OF WHAT I'M ABOUT TO SHOW
18 YOU.

19 A. UH-HUH.

20 Q. IS THAT YOUR SOCIAL SECURITY NUMBER?

21 A. UH-HUH.

22 Q. I'M SORRY. YOUR TELEPHONE NUMBER?

23 A. UH-HUH.

24 Q. YES? IS THAT A YES? SHE HAS TO TAKE DOWN THE WORDS
25 YOU'RE SAYING.

1 A. YES, AT THE TIME IT WAS.

2 Q. IS THAT YOUR SIGNATURE?

3 A. YES.

4 Q. AND CAN YOU STATE WHAT THE DATE IS OF THIS
5 QUESTIONNAIRE RESPONSE?

6 A. 5/5/09.

7 Q. OKAY. THE FIRST OR THE SECOND ---

8 BY MR. SALLEY:

9 IS THAT -- IT THAT MARKED INTO EVIDENCE? ARE
10 WE ---

11 BY COMMISSIONER TAYLOR:

12 IT'S ---

13 BY MS. PAYNE:

14 YES.

15 BY COMMISSIONER TAYLOR:

16 IT'S IN THE APA SUBMISSIONS.

17 BY MR. SALLEY:

18 OKAY. I GOT IT.

19 BY MS. PAYNE:

20 IT'S EXHIBIT ---

21 BY MR. SALLEY:

22 THANK YOU.

23 BY MS. PAYNE:

24 --- "N."

25 BY MR. SALLEY:

1 I'M SORRY.

2 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

3 Q. THE SECOND QUESTION SAYS "WHAT FACTORS CAUSE YOU TO
4 EXPERIENCE PAIN?"

5 A. "SITTING, STANDING, BENDING."

6 Q. CAN YOU SAY THAT A LITTLE BIT LOUDER SO THAT THE
7 COURT REPORTER ---

8 A. "SITTING, STANDING, BENDING."

9 Q. AND I'M SORRY. BACK TO THE FIRST QUESTION, "PLEASE
10 DESCRIBE YOUR PAIN SYMPTOMS." WHAT WERE YOUR
11 PAIN ---

12 A. "VERY SHARP -- VERY SHARP."

13 Q. CAN YOU LET ME FINISH MY QUESTION REAL QUICK? "WHAT
14 WERE YOUR PAIN SYMPTOMS ON THAT DATE?"

15 A. "VERY SHARP PAIN FROM THE MIDDLE OF MY SPINE DOWN TO
16 MY HIPS."

17 Q. AND NUMBER THREE SAID "HOW FREQUENTLY DO YOU
18 EXPERIENCE PAIN, AND HOW LONG DOES YOUR PAIN USUALLY
19 LAST?" AND WHAT WAS YOUR RESPONSE?

20 A. IT SAYS, "SOME DAYS IT WAS SOME DAYS FIVE, SIX
21 HOURS, SOME DAYS, WEEKS."

22 Q. SO YOU'LL AGREE THAT THIS WAS AT LEAST TWO YEARS
23 AFTER YOUR -- ALMOST THAT WAS THREE YEARS, I'M
24 SORRY, AFTER YOUR WORK INJURY AT TILE DEPOT, AND YOU
25 WERE STILL SUFFERING FROM PAIN THAT LASTED FIVE TO

1 SIX HOURS A DAY AND UP TO WEEKS AT A TIME?

2 A. THAT'S WHAT THE DOCUMENT SAYS, YES.

3 Q. WELL, THAT'S WHAT YOU WROTE, CORRECT?

4 A. UH-HUH.

5 Q. IS THAT A YES?

6 A. YES.

7 Q. OKAY. I'M NOT TRYING -- TRYING TO BE RUDE. SHE
8 JUST HAS TO TAKE DOWN ALL THE ACTUAL WORDS THAT YOU
9 SAY, AND IT SAYS "BESIDES MEDICATION, HAVE YOU TRIED
10 ANY OTHER FORMS OF THERAPY OR TREATMENT?" AND WHAT
11 WAS YOUR RESPONSE?

12 A. "HOT TUB THERAPY."

13 Q. "WHERE DID YOU UNDERGO HOT TUB THERAPY AT?"

14 A. "AT THE I -- I DID IT ON MY OWN. THAT WAS AT THE
15 Y.M.C.A."

16 Q. "THE Y.M.C.A.?"

17 A. "YEAH."

18 Q. OKAY. AND THEN AND NUMBER NINE SAYS "PLEASE
19 DESCRIBE HOW YOUR CONDITION AFFECTS THE FOLLOWING
20 AREAS WITH REGARD TO PERSONAL CARE, BATHING, HAIR
21 CARE." CAN YOU STATE WHAT YOUR RESPONSE WAS?

22 A. "STANDING TOO LONG IN THE SHOWER."

23 Q. "SO STANDING UP TOO LONG IN THE SHOWER IRRITATED
24 YOUR BACK?"

25 A. "YES."

1 Q. "AND WITH HOUSECLEANING?" WHAT WAS YOUR RESPONSE?

2 A. "I CAN'T MOVE STUFF AROUND."

3 Q. "AND SLEEPING?" WHAT WAS YOUR RESPONSE?

4 A. "CERTAIN POSITIONS."

5 Q. SO EVEN BACK THEN, YOU HAD TO SLEEP IN CERTAIN
6 POSITIONS TOO BECAUSE OF YOUR BACK PAIN?

7 A. THAT'S WHAT THE DOCUMENT SAYS, YES.

8 Q. THAT'S WHAT YOU SAID IN THE DOCUMENT?

9 A. THAT'S WHAT THE DOCUMENT SAYS, YES.

10 Q. IS THAT YOUR HANDWRITING?

11 A. YES.

12 Q. OKAY. "AND THEN WITH REGARD TO YARD WORK AND
13 GARDENING?" WHAT WAS YOUR RESPONSE?

14 A. "I CAN'T RAKE THE YARD."

15 Q. OKAY. SO TWO YEARS AFTER THE INJURY, YOU STILL WERE
16 UNABLE TO RAKE THE YARD?

17 A. UH-HUH.

18 Q. AND HAD TO SLEEP IN CERTAIN POSITIONS, STANDING TOO
19 LONG IN THE SHOWER AGGRAVATED YOU, CORRECT?

20 A. YES.

21 Q. AND AT THAT TIME, WHICH WAS TWO YEARS AFTER YOUR
22 WORK INJURY, YOU WERE TAKING LORTABS AND TYLENOL?

23 A. YES.

24 Q. NOW, YOU TESTIFIED EARLIER THAT YOU ACTUALLY COULD
25 DO YARD WORK PRIOR TO YOUR WORK INJURY AT PHILIPS?

1 A. YES, I COULD.

2 Q. AND YOU CAN'T DO THAT, BUT YOU'LL AGREE THAT YOU
3 INDICATED ON THAT PAIN QUESTIONNAIRE THAT YOU
4 WEREN'T ABLE TO DO THAT AT LEAST TWO YEARS PRIOR TO
5 YOUR WORK INJURY ---

6 BY MR. SALLEY:

7 IT'S A ---

8 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

9 Q. --- AT PHILIPS?

10 BY MR. SALLEY:

11 OBJECT TO ---

12 BY COMMISSIONER TAYLOR:

13 SUSTAINED. THAT'S NOT EXACTLY WHAT IT SAYS,

14 BUT A ---

15 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

16 Q. YOU'LL AGREE THAT YOU WERE UNABLE TO DO -- TO RAKE
17 YOUR YARD ---

18 A. YES.

19 Q. --- AT LEAST A FEW YEARS PRIOR TO YOUR WORK INJURY
20 AT PHILIPS? OKAY. SO YOU WEREN'T COMPLETELY ABLE
21 TO DO YARD WORK?

22 A. NO. I COULD MOW THE GRASS AND ALL TYPES OF STUFF.
23 IT JUST WAS AT THAT TIME I GUESS IT WAS JUST THAT
24 PARTICULAR THING I COULDN'T DO.

25 Q. NOW, YOU WERE ALSO EXAMINE AND -- EXAMINED BY A

1 DISABILITY EXAMINER IN RELATION TO YOUR 2009
2 APPLICATION?

3 A. UH-HUH.

4 Q. CORRECT? AND THAT TOOK PLACE IN JULY OF 2009?

5 A. YES.

6 Q. AND YOU'LL AGREE THAT AT THAT TIME YOU WERE
7 SPECIFICALLY COMPLAINING OF LOW BACK PAIN THAT
8 RADIATED ON YOUR LEFT SIDE?

9 A. I DON'T RECALL THAT BUT, YES.

10 Q. YOU'LL AGREE THAT IN JULY OF 2009, THAT WAS WHAT
11 YOUR SYMPTOMS WERE?

12 A. I DON'T RECALL BUT, YES.

13 Q. YOU DON'T RECALL TELLING A DISABILITY EVALUATOR, OR
14 YOU DON'T RECALL HAVING THAT PAIN?

15 A. I DON'T RECALL AT THE TIME.

16 Q. OKAY. SO IT DOESN'T SURPRISE YOU THAT LESS THAN TWO
17 YEARS PRIOR TO -- OR SORRY -- TWO YEARS EXACTLY
18 PRIOR TO YOUR WORK INJURY AT PHILIPS, YOU WERE
19 HAVING THAT LOW BACK PAIN INTO YOUR LEFT SIDE?

20 A. YES.

21 Q. AND YOU ACTUALLY WERE REPORTING TO THE S.S.A. THAT
22 YOU WERE UNABLE TO WORK BECAUSE OF YOUR LEFT-SIDED
23 LOW BACK PAIN AND YOUR LEFT KNEE?

24 A. YES.

25 Q. AND YOU COMPLAINED THAT YOUR BACK BOTHERED YOU ANY

1 TIME YOU DID ANY BENDING WHATSOEVER?

2 A. YES.

3 Q. OKAY. NOW, WE ALREADY WENT THROUGH YOUR EMPLOYMENT
4 HISTORY, BUT BACK TO YOUR EDUCATIONAL HISTORY.
5 YOU'VE TESTIFIED TODAY AND YOU'VE TOLD ALL THE VOC
6 EVALUATORS THAT YOU ATTENDED ONE YEAR OF COLLEGE AT
7 GEORGIA MILITARY?

8 A. NO, I SAID SOME.

9 Q. OKAY. WOULDN'T YOU AGREE THAT YOU ACTUALLY ATTENDED
10 ONE YEAR AT GEORGIA MILITARY, AND THEN YOU ATTENDED
11 ANOTHER YEAR AT KEISER COLLEGE?

12 A. ONLY I DIDN'T COMPLETE A YEAR AT KEISER COLLEGE,
13 BECAUSE I ONLY TOOK TWO COURSES.

14 Q. AND YOU MAJORED IN COMPUTER PROGRAMMING?

15 A. THAT'S WHAT MY MAJOR WAS, BUT I WAS DOING MY CORE
16 CLASSES FIRST, SO I NEVER REALLY...

17 Q. RIGHT. BUT WHEN ANY OF THE VOC EVALUATORS INVOLVED
18 IN THIS CLAIM, SUCH AS YOUR COUNSEL'S EVALUATOR DR.
19 BRABHAM OR MINE MS. JAN WESTMORELAND ---

20 A. YES.

21 Q. --- YOU NEVER INFORMED ANY OF THEM OF HAVING GONE TO
22 KEISER AND THE PROGRAM BEING COMPUTER PROGRAMMING,
23 DID YOU?

24 A. NO, BECAUSE IT WAS ONLY TWO CLASSES. I ONLY TOOK
25 TWO CLASSES AT THAT SCHOOL.

1 Q. SO YOU SAID EARLIER THAT YOU'RE NOT COMPUTER
2 PROFICIENT?

3 A. NO, I'M NOT.

4 Q. BUT YOU'LL AGREE THAT IF YOU WERE IN A COMPUTER
5 PROGRAMMING COURSE AT YOUR COLLEGE ---

6 A. I WAS TRYING TO LEARN HOW TO BE COMPUTER PROFICIENT.

7 Q. SO YOU AT LEAST HAD A FEW CLASSES, RIGHT?

8 A. NO. I ---

9 Q. YOU NEVER STARTED ANY COMPUTER PROGRAMMING CLASSES?

10 A. NO, I DIDN'T GET TO.

11 Q. AND THIS WAS AT KEISER COLLEGE. WHAT, WHERE IS THAT
12 LOCATED?

13 A. IN DAYTONA BEACH, FLORIDA.

14 Q. OKAY. AND JUST TO BRIEFLY GO OVER YOUR TREATMENT
15 RELATED TO THIS CLAIM, YOU TESTIFIED EARLIER THAT
16 YOU DON'T KNOW WHAT RELIEF IS WHEN IT COMES TO THE
17 TREATMENT YOU'VE RECEIVED?

18 A. YES.

19 Q. YOU'LL AGREE THAT ---

20 **BY MR. SALLEY:**

21 OBJECTION. I WOULD -- AND HE DID STATE
22 SOMETHING ABOUT THE NEURONTIN, AND THERE WAS SOME
23 MENTION ABOUT THAT, AND BUT I'LL LET THE RECORDS
24 SPEAK FOR ITSELF ABOUT HOW THAT COULD LESSEN BUT NOT
25 ALLEVIATE THE PAIN.

1 BY COMMISSIONER TAYLOR:

2 OKAY. NOTED FOR THE RECORD. THANK YOU.

3 BY MR. SALLEY:

4 THANK YOU.

5 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

6 Q. YOU'LL AGREE THAT THERE'S BEEN TIMES THROUGHOUT YOUR
7 TREATMENT WITH DOCTORS HOLBROOK AND STORICK WHERE
8 YOU HAD IN THE PHYSICAL THERAPY THAT THEY
9 RECOMMENDED, WHERE YOU'VE INDICATED THAT YOU'VE
10 RECEIVED RELIEF IN ONE WAY OR ANOTHER SUCH AS
11 COMPLETE RESOLATION (PHONETIC) -- RESOLUTION OF YOUR
12 LEFT LEG PAIN?

13 A. NO. I'VE ALWAYS STATED THAT I HAD LEFT LEG PAIN.
14 IT JUST WASN'T AS BAD AS IT WAS, AND THEN AFTER THE
15 SECOND SURGERY, IT GOT WORSE.

16 Q. SO YOU -- IF YOU -- IF THERE WERE MEDICAL RECORDS
17 FROM MAY AND JULY IN 2012 WHERE YOU TOLD DR.
18 HOLBROOK THAT YOU HAD COMPLETE RELIEF FROM YOUR LEFT
19 LEG PAIN, YOU WOULD DISPUTE THOSE?

20 A. YES, I WOULD, CAUSE I'VE NEVER TOLD HIM THAT.

21 Q. AND YOU'LL AGREE THAT YOU NEVER INFORMED DR.
22 HOLBROOK OF YOUR PRIOR LOW BACK INJURY WHILE WORKING
23 IN FLORIDA?

24 A. NO. I DID NOT INFORM HIM ABOUT THAT.

25 Q. AND HE SENT YOU FOR PHYSICAL THERAPY AFTER YOUR

1 FIRST WORK IN -- I'M SORRY -- AFTER YOUR FIRST
2 SURGERY?

3 A. YES.

4 Q. AND IN FOLLOWING THAT PHYSICAL THERAPY IN OCTOBER OF
5 2012, YOU AGAIN REPORTED TO DR. HOLBROOK THAT YOU
6 HAD NO RADICULAR LEG PAIN WHATSOEVER?

7 A. I'VE NEVER TOLD HIM THAT.

8 Q. OKAY. SO YOU WOULD DISPUTE THAT?

9 A. YES.

10 Q. AND YOU UNDERWENT YOUR SECOND SURGERY IN SEPTEMBER
11 OF 2013?

12 A. YES.

13 Q. YOUR SECOND BACK SURGERY?

14 A. UH-HUH.

15 Q. AND WOULD YOU AGREE WITH A NOTE DATED FEBRUARY OF
16 2014 WHERE YOU AGAIN REPORTED TO DR. HOLBROOK NO
17 RADICULAR LEG PAIN?

18 A. I'VE NEVER TOLD HIM THAT.

19 Q. OKAY. YOU WOULD DISPUTE THAT?

20 A. YES.

21 Q. BUT YOU WOULD AGREE THAT AT THAT TIME YOU ACTUALLY
22 STARTED COMPLAINING OF RIGHT LEG AND RIGHT HIP PAIN
23 TO YOUR PHYSICAL THERAPIST?

24 A. RIGHT HIP PAIN.

25 Q. YOU WOULD DISPUTE THE LEG PAIN?

1 A. THERE WAS NOTHING DOWN MY RIGHT LEG.

2 Q. I'M SORRY?

3 A. IT WAS RIGHT HIP. IT WAS RIGHT HIP. AND, YEAH.

4 Q. OKAY. AND YOU'LL AGREE THAT THROUGHOUT YOUR
5 PHYSICAL THERAPY IN 2014, WHICH WAS FOLLOWING YOUR
6 SECOND SURGERY, YOU REPORTED TO YOUR PHYSICAL
7 THERAPIST THAT YOU -- YOUR PAIN WAS IMPROVING?

8 A. YES. TO A SEVEN, YES.

9 Q. YOU'LL AGREE THAT IN MAY OF 2014, YOU REPORTED THAT
10 YOUR BACK WAS SO MUCH BETTER?

11 A. NO, I DON'T RECALL THAT.

12 Q. OKAY. YOU WOULD DISPUTE IT?

13 A. YES.

14 Q. AND YOU'LL AGREE THAT ON MAY 21ST, 2014, YOU
15 REPORTED TO YOUR PHYSICAL THERAPIST THAT YOU
16 PRACTICALLY HAD NO PAIN?

17 A. I'VE NEVER TOLD ANY ONE THAT ONE. I WISH THAT WAS
18 TRUE.

19 Q. OKAY. SO YOU WOULD ALSO DISPUTE THAT. AND THE LAST
20 TIME YOU'VE TREATED WITH DR. HOLBROOK WAS IN JULY OF
21 2014; DOES THAT SOUND ABOUT RIGHT?

22 A. YEAH, THAT SOUNDS ABOUT RIGHT. I'M TRYING TO -- I'M
23 TRYING TO PLACE THE YEARS. SORRY.

24 Q. AND YOU REPORTED THAT EVERYTHING WAS THE SAME AT
25 THAT POINT?

1 A. WHAT? WHAT IS THE SAME? COULD YOU CLARIFY THAT FOR
2 ME?

3 Q. I -- THAT'S WHAT YOU REPORTED, THAT EVERYTHING WAS
4 THE SAME, WHICH I ASSUME TO INDICATE MEANING THAT
5 WHAT YOUR REPORTS HAVE BEEN LEADING UP TO THAT DATE?

6 A. I STILL DON'T UNDERSTAND THE QUESTION.

7 Q. DO YOU RECALL THE LAST TIME YOU TREATED WITH DR.
8 HOLBROOK SAYING THAT EVERYTHING WAS THE SAME?

9 A. SO YOU'RE ASKING ME DID I HAVE THE PAIN DOWN MY LEG,
10 DID I HAVE THE SAME PAIN?

11 Q. I -- I ---

12 A. OR A DIFFERENT PAIN, OR? THAT'S -- THAT'S WHAT I'M
13 -- THAT'S WHAT I'M TRYING TO FIGURE OUT.

14 Q. MY QUESTION TO YOU WAS YOU'LL AGREE THAT YOU
15 REPORTED TO HIM THAT EVERYTHING WAS THE SAME?

16 A. I DISPUTE THAT.

17 Q. YOU DISPUTE IT?

18 A. BECAUSE I -- I HAVE NO I -- BECAUSE I DON'T KNOW THE
19 CONDITIONS.

20 Q. OKAY. NOW, WOULD YOU BE SURPRISED IF THE LAST TIME
21 YOU TREATED WITH DR. HOLBROOK IN JULY OF 2014, YOU
22 MADE NO MENTION OF ANY PAIN IN YOUR LEFT HIP OR LEFT
23 LEG?

24 A. YES, I REPORTED TO ---

25 BY MR. SALLEY:

1 OBJECT. YEAH, I OBJECT. THAT'S NOT WHAT THE
2 RECORD SAYS.

3 BY COMMISSIONER TAYLOR:

4 WELL ---

5 BY MS. PAYNE:

6 THAT IS ---

7 BY COMMISSIONER TAYLOR:

8 WELL, IT'S STILL A PROPER QUESTION.

9 BY MR. SALLEY:

10 YEAH, I'LL ASK.

11 BY COMMISSIONER TAYLOR:

12 AND I DON'T KNOW WHAT'S SHE'S REFERRING TO.

13 BY MR. SALLEY:

14 AND I'LL GO ABOUT IT. THANKS.

15 BY COMMISSIONER TAYLOR:

16 OKAY.

17 BY MS. PAYNE:

18 SURE.

19 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

20 Q. AND ON THAT SAME DATE YOU WENT TO AN I.M.E. WITH DR.
21 HUTCHINSON, CORRECT?

22 A. I DON'T KNOW WHAT DAY IT WAS. I GUESS SO. YES.

23 Q. DO YOU RECALL SEEING TWO DOCTORS IN ONE DAY, IN JULY
24 OF 2014?

25 A. I GUESS SO. I DON'T KNOW. I DON'T. I DON'T

1 RECALL. BUT, YES.

2 Q. AND IN AUGUST OF 2014, YOU STARTED TREATING WITH DR.
3 STORICK?

4 A. YES.

5 Q. AND YOU UNDERWENT SOME INJECTIONS WITH HIM?

6 A. YES.

7 Q. AND IN OCTOBER OF 2014, DR. STORICK NOTED THAT YOUR
8 PRIMARY COMPLAINT WAS YOUR LOW BACK PAIN; DOES THAT
9 SOUND RIGHT?

10 A. PRIMARY COMPLAINT, YES.

11 Q. AND AT THAT POINT IN TIME, HE FOUND THAT YOU WEREN'T
12 A CANDIDATE FOR A SPINAL CORD STIMULATOR?

13 BY MR. SALLEY:

14 YOUR HONOR, I WOULD OBJECT.

15 BY MS. PAYNE:

16 IF THAT'S WHAT IT SAYS ---

17 BY MR. SALLEY:

18 I THINK THE RECORD'S GOING TO READ WHATEVER IT
19 IS WE'RE GOING TO KNOW WHO. SHE'S ALLOWED A
20 LATITUDE HERE, BUT I THINK WE'RE JUST RESTATING
21 WHAT'S IN THE RECORD ALREADY.

22 BY COMMISSIONER TAYLOR:

23 I'M JUST ---

24 BY MS. PAYNE:

25 I BELIEVE I GAVE A LOT OF LATITUDE.

1 BY COMMISSIONER TAYLOR:

2 WELL, OKAY. BUT I'M GOING TO SUSTAIN THE
3 OBJECTION JUST IN REGARDS TO THE -- THE PHRASING OF
4 THE QUESTION, AND YOU CAN ASK HIM ---

5 BY MS. PAYNE:

6 OKAY.

7 BY COMMISSIONER TAYLOR:

8 --- IF HE REMEMBERS THAT, THEN THAT'S A --
9 THAT'S A PROPER QUESTION.

10 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

11 Q. AND YOU REMEMBER HAVING A DISCUSSION WITH DR.
12 STORICK ABOUT SPINAL CORD STIMULATORS?

13 A. YES.

14 Q. AND THERE WAS A TIME WHERE HE SAID THAT SINCE MOST
15 OF YOUR PAIN IS LOCATED IN YOUR BACK, THAT YOU
16 AREN'T A CANDIDATE?

17 A. THAT'S NOT EXACTLY WHAT HE SAID TO ME. HE SAID IF
18 HE DIDN'T WANT TO DO IT IF IT WASN'T GOING TO MAKE
19 MY BACK 50 PERCENT BETTER. HE'S LIKE BECAUSE YOU'VE
20 HAD TWO SURGERIES, HE DIDN'T KNOW.

21 Q. OKAY.

22 A. THAT'S WHAT HE ---

23 Q. THAT'S FAIR.

24 A. THAT'S WHAT HE SAID TO ME. HE DIDN'T SAY THAT I
25 WASN'T A CANDIDATE, NOT TO ME DIRECTLY ANYWAY.

1 Q. OKAY. NOW, YOUR FIRST TREATMENT WITH DR. STORICK
2 WAS ON AUGUST 20TH.

3 A. UH-HUH.

4 Q. AND THE DAY AFTER YOU HAD YOUR FIRST EVALUATION WITH
5 DR. HOLT, WHO'S THE S.S.D.I. EVALUATOR?

6 A. I ---

7 Q. DOES THAT SOUND ABOUT RIGHT?

8 A. I GUESS SO. I DON'T KNOW THE S.S.D.I., I DON'T KNOW
9 WHAT THAT IS. I'M SORRY.

10 Q. SOCIAL SECURITY DISABILITY.

11 A. OKAY. OKAY. YEAH.

12 Q. AND YOU TOLD DR. HOLT AT THAT APPOINTMENT THAT DR.
13 STORICK HAD RECOMMENDED YOU UNDERGO A SPINAL CORD
14 STIMULATOR?

15 A. YES.

16 Q. BUT THAT'S ACTUALLY NOT TRUE, RIGHT?

17 A. HE -- NO. IT IS TRUE, BECAUSE THAT'S WHAT WE
18 DISCUSSED. HE SAID HE DIDN'T WANT TO DO IT IF IT
19 DIDN'T MAKE ME 50 PERCENT BETTER. HE NEVER SAID TO
20 ME THAT I WASN'T A CANDIDATE OR I, YOU KNOW WHAT I'M
21 SAYING, HE NEVER TOLD ME THAT I WASN'T A CANDIDATE.

22 Q. AND THROUGHOUT YOUR TREATMENT WITH DOCTOR ---

23 A. HE'S ALWAYS SAID -- HE'S ALWAYS SAID THERE'S A
24 50/50.

25 Q. AND THROUGHOUT YOUR TREATMENT WITH DR. STORICK, HE

1 DETERMINED THAT HE WOULD TRY SOME INJECTIONS?

2 A. UH-HUH.

3 Q. AND IF YOU RECEIVED ENOUGH BENEFIT FROM THE
4 REJECTION (PHONETIC) -- INJECTIONS, THEN HE WOULD
5 THEN TRY A RHIZOTOMY?

6 A. WHAT DID HE SAY? THAT'S SOMETHING THAT WE -- I
7 DON'T -- WHAT'S A RHIZOTOMY?

8 Q. DO UNDER -- REMEMBER UNDERGOING INJECTIONS WITH DR.
9 STORICK?

10 A. YES.

11 Q. AND THEN THERE WAS ANOTHER PROCEDURE THAT WAS A
12 LITTLE BIT MORE INVASIVE?

13 A. YES.

14 Q. AND THROUGH THE INJECTIONS, AS WELL AS -- OR AFTER
15 THE INJECTIONS, AS WELL AS AFTER THE RHIZOTOMY,
16 WHICH WAS THE OTHER PROCEDURE, YOU REPORTED
17 IMPROVEMENT IN YOUR PAIN?

18 A. NONE OF THE INJECTIONS WORKED.

19 Q. NONE OF THEM?

20 A. AND IT'S A -- IT SHOULD -- IT SHOULD BE STATED IN
21 THERE, BECAUSE HE -- HE ALSO TOLD ME THAT HE WAS --
22 WASN'T GOING TO TRY TO, YOU KNOW, INJECT ME WITH
23 ANYTHING ELSE. I DON'T KNOW WHY THAT'S NOT STATED
24 IN THERE, BUT IT SHOULD BE. THAT'S WHY HE TRIED SO
25 MANY.

1 Q. WOULD YOU BE SURPRISED IF DR. STORICK OPINED THAT
2 YOU HAD SHOWN BENEFIT FROM THE INJECTIONS?

3 A. I WOULD BE SURPRISED, YES.

4 Q. WHAT ABOUT FROM THE RHIZOTOMY, WOULD YOU BE
5 SURPRISED IF HE NOTED OR OPINED OR TESTIFIED THAT
6 YOU RECEIVED A BENEFIT FROM THE RHIZOTOMY?

7 A. I SURE WOULD. AM I ALLOWED TO SAY SOMETHING?

8 BY COMMISSIONER TAYLOR:

9 NOT YET.

10 BY THE WITNESS:

11 OKAY.

12 BY COMMISSIONER TAYLOR:

13 JUST ---

14 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

15 Q. WOULDN'T YOU AGREE THAT FOLLOWING THE INJECTIONS,
16 YOU REPORTED AT LEAST 50 TO 50 PERCENT -- I'M SORRY
17 -- 50 TO 55 PERCENT TEMPORARY RELIEF?

18 A. I NEVER TOLD HIM THAT, THAT HIGH.

19 Q. SO YOU'D BE SURPRISED TO SEE THAT IN HIS NOTE?

20 A. YES.

21 Q. AND WOULDN'T YOU AGREE THAT FOLLOWING AN INJECTION
22 IN JULY OF 2015, YOU RETURNED STATING THAT YOU HAD
23 SIGNIFICANT IMPROVEMENT OVER THE LAST FEW DAYS, AND
24 THAT AT THAT TIME YOUR LOW BACK PAIN WAS ACTUALLY ON
25 THE RIGHT SIDE AS OPPOSED TO THE LEFT?

1 A. YES, BECAUSE HE GAVE ME THE SHOT IN -- IN THE LEFT
2 SIDE.

3 Q. CORRECT. AND YOU RECEIVED BENEFIT FOR A FEW DAYS?

4 A. FOR MAYBE LIKE TWO DAYS AFTER THE, YEAH.

5 Q. AND YOU'LL AGREE THAT YOU REPORTED TO DR. STORICK
6 THAT YOU HAD A FAIR AMOUNT OF IMPROVEMENT IN YOUR
7 LEFT LOW BACK PAIN?

8 A. I TOLD HIM I HAD SOME IMPROVEMENT BUT NOT A LOT OF
9 IMPROVEMENT. I DON'T UNDERSTAND WHY IT KEEPS SAYING
10 THAT I HAD HAD SIGNIFICANT, 'CAUSE I HAVE NEVER TOLD
11 THIS GUY THIS.

12 Q. AND WHAT ABOUT WHEN YOU RETURNED TO HIM IN AUGUST OF
13 2015, YOU'LL AGREE THAT YOU REPORTED THAT YOU
14 CONTINUED TO HAVE ISSUES WITH YOUR RIGHT BACK OR
15 RIGHT SIDE OF YOUR BACK MORE THAN YOUR LEFT SIDE OF
16 YOUR BACK?

17 A. I DIDN'T TELL HIM MORE. I TOLD HIM IT'S BECOMING
18 EQUAL, BECAUSE IT SEEMS LIKE MY RIGHT SIDE IS
19 COMPENSATING FOR MY LEFT SIDE.

20 Q. OKAY. SO YOU WOULD DISPUTE THAT?

21 A. YES.

22 Q. AND YOU WOULD DISPUTE AS DR. STORICK NOTED THAT YOU
23 PRIMARILY COMPLAINED OF MORE PAIN ON THE RIGHT SIDE?

24 A. I NEVER TOLD HIM THAT I COMPLAINED. I NEVER TOLD
25 HIM THAT MY LEFT WAS LESS THAN MY RIGHT.

1 Q. OKAY. BUT YOU'LL AGREE THAT YOU'VE ---

2 A. I DISPUTE THAT. I DISPUTE THAT.

3 Q. OKAY. AND YOU'LL AGREE THAT YOU DID TELL HIM THAT
4 YOUR LEFT LEG PAIN WAS CONTROLLED BY THE NEURONTIN?

5 A. I TOLD HIM IT HELPS.

6 Q. OKAY. SO YOU WOULD DISPUTE ANY MEDICAL NOTE
7 FOLLOWING YOUR INJURY WITH PHILIPS ELECTRONICS
8 SHOWING THAT YOU HAD RECEIVED ANY IMPROVEMENT WITH
9 REGARD TO THE CONSERVATIVE TREATMENT?

10 A. THERE WAS NO IMPROVE -- IMPROVEMENT WITH THE
11 INJECTIONS.

12 Q. WITH PHYSICAL THERAPY?

13 A. PHYSICAL THERAPY, THERE WAS SOME BECAUSE MY MUSCLES
14 WERE SO TIGHT, BUT THERE WAS MINIMAL. IT WASN'T --
15 IT WASN'T SIGNIFICANT.

16 Q. AND YOU RECENTLY JUST RE -- JUST BEGAN ANOTHER
17 SERIES OF PHYSICAL THERAPY AT PROGRESSIVE P.T.?

18 A. UH-HUH. WHICH I'M ALREADY DONE WITH.

19 Q. AND THAT BEGAN ON JUNE 20TH, 2016?

20 A. UH-HUH.

21 Q. AND YOU'LL AGREE THAT THROUGHOUT THIS COURSE OF
22 THERAPY YOU HAVE REPORTED ---

23 BY MR. SALLEY:

24 HE'S A -- IF HE COULD ANSWER ---

25 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

1 Q. --- IMPROVEMENT TO YOUR THERAPIST?

2 BY MR. SALLEY:

3 --- INSTEAD OF UH-HUH OR UH-UH?

4 BY THE WITNESS:

5 YEAH. I'M SORRY.

6 BY MR. SALLEY:

7 IF YOU CAN JUST ANSWER YES OR NO FOR THE
8 RECORD, PLEASE.

9 BY THE WITNESS:

10 I'M SORRY. THAT LAST QUESTION WAS YES.

11 BY MS. PAYNE:

12 SORRY, I DIDN'T CATCH THAT.

13 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

14 Q. YOU'LL AGREE THAT YOU'VE REPORTED IMPROVEMENT TO
15 YOUR PHYSICAL THERAPIST SINCE JUNE OF 20 -- JUNE
16 20TH, 2016?

17 A. I REPORTED MY MUSCLE TIGHTNESS WASN'T AS TIGHT. I
18 DIDN'T REPORT THAT MY PROBLEM WASN'T STILL THERE.

19 Q. WELL, RIGHT. YOU'LL AGREE THAT IN JULY OF 2016, YOU
20 STATED -- OR I'M SORRY -- THAT -- THAT YOU SHOWED
21 SOME IMPROVEMENT IN YOUR MOVEMENTS?

22 A. YEAH. BECAUSE MY MUSCLES WASN'T AS TIGHT, YES.

23 Q. AND YOU'LL AGREE THAT YOU REPORTED ON JULY 7TH, AND
24 THIS IS A QUOTE FROM THE NOTE, "I THINK THAT THE
25 PAIN ISN'T TAKING AS LONG ---

1 BY MR. SALLEY:

2 OBJECT.

3 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

4 Q. --- TO GO AWAY, ---

5 BY MR. SALLEY:

6 OBJECT TO THE ---

7 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

8 Q. --- SO THAT'S A GOOD SIGN"?

9 BY MR. SALLEY:

10 OBJECT TO ---

11 BY COMMISSIONER TAYLOR:

12 IS THERE A ---

13 BY THE WITNESS:

14 WHAT DID HE SAY?

15 BY COMMISSIONER TAYLOR:

16 SIR, THERE'S AN OBJECTION ON THE RECORD TO THE
17 FORM OF THE QUESTION?

18 BY MR. SALLEY:

19 YES.

20 BY COMMISSIONER TAYLOR:

21 AND IT'S JUST THE RESTATEMENT OF THE MEDICALS?

22 BY MR. SALLEY:

23 RIGHT.

24 BY COMMISSIONER TAYLOR:

25 OKAY.

1 BY MS. PAYNE:

2 WELL, IT -- IT WAS A QUOTE THAT HE SAID. I --
3 I'M ASKING IF HE REPORTED THAT.

4 BY COMMISSIONER TAYLOR:

5 OH. A QUOTE THAT THE DOCTOR SAID OR THAT THE
6 CLAIMANT SAID?

7 BY MS. PAYNE:

8 A QUOTE THAT'S CONTAINED IN THE PHYSICAL
9 THERAPY. IT SAYS "PATIENT REPORTS, QUOTE."

10 BY MR. SALLEY:

11 IF HE --

12 BY MS. PAYNE:

13 SO I'M ASKING HIM IF HE RECALLS REPORTING THAT.

14 BY THE WITNESS:

15 WHAT WAS IT? I MEAN, WHAT WAS IT AGAIN?

16 BY COMMISSIONER TAYLOR:

17 I'M GOING TO OVERRULE THE OBJECTION IF IT'S THE
18 CLAIMANT'S QUOTE.

19 BY MS. PAYNE:

20 UH-HUH.

21 BY COMMISSIONER TAYLOR:

22 OKAY.

23 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

24 Q. YOU'LL AGREE THAT ON JULY 7TH, YOU REPORTED TO THE
25 PHYSICAL THERAPIST, AND I QUOTE, "I THINK THE PAIN

1 ISN'T TAKING AS LONG TO GO AWAY, SO THAT'S A GOOD
2 SIGN."

3 A. THAT -- THAT STATEMENT, CAN I EXPLAIN THAT
4 STATEMENT?

5 BY COMMISSIONER TAYLOR:

6 WELL, ANSWER THE QUESTION FIRST.

7 BY THE WITNESS:

8 YEAH.

9 BY COMMISSIONER TAYLOR:

10 DO YOU RECALL?

11 BY THE WITNESS:

12 YES, I RECALL SAYING THAT. THAT STATEMENT WAS
13 BE -- WAS TO THE THERAPIST THAT I HAD HAD HIM
14 PREVIOUSLY. BEFORE IT TOOK ME, OH, I'D NEVER SAID
15 ANYTHING ABOUT PAIN. I SAID THE MUSCLE IT'S
16 WASN'T...

17 CROSS EXAMINATION RESUMED BY MS. PAYNE:

18 Q. SO DO YOU AGREE OR DO YOU NOT AGREE THAT YOU
19 SPECIFICALLY STATED THAT TO THE THERAPIST?

20 A. I'M BEING MISQUOTED. I SAID THE MUSCLE.

21 Q. OKAY.

22 A. AND I SAID ---

23 Q. SO YOU DISPUTE THAT?

24 A. --- IT'S NOT TAKING IT AS LONG TO.

25 Q. SO RATHER THAN I THINK THE PAIN ISN'T TAKING AS

1 LONG ---

2 BY MR. SALLEY:

3 HOLD UP. HOLD ON A SECOND.

4 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

5 Q. --- TO GO AWAY?

6 BY MR. SALLEY:

7 WELL, HE NEEDED TO ANSWER THAT.

8 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

9 Q. YOU SAID MUSCLE?

10 BY MR. SALLEY:

11 IF I CAN -- IF HE COULD PLEASE BE ALLOWED TO
12 FINISH HIS ANSWER?

13 BY COMMISSIONER TAYLOR:

14 OKAY. AND, ALL RIGHT.

15 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

16 A. I SAID THE MUSCLE WAS, AND I -- I WAS TALKING ABOUT
17 THE TIGHTNESS IN THE MUSCLE. BEFORE IT TOOK ME TWO-
18 AND-A-HALF MONTHS. THIS TIME IT TOOK ME TWO WEEKS
19 WORTH TO THE MUSCLE TO START TO STRETCH MORE.

20 Q. RIGHT.

21 A. THAT'S WHAT I WAS TALKING ABOUT.

22 Q. OKAY. SO YOU'LL AGREE THAT THAT WAS IMPROVEMENT?

23 A. THE MUSCLE. BUT MY -- MY INJURY IS NOT MY MUSCLE;
24 IT'S MY -- IT'S MY SPINE. RIGHT?

25 Q. AND YOU'LL AGREE THAT ON JULY 14TH, YOU REPORTED,

1 QUOTE, YOU HAVE FELT THE BEST YOU HAVE FELT SINCE
2 THE START OF THERAPY?

3 A. SINCE THE START OF THAT THERAPY, YES.

4 Q. OKAY. AND YOU'VE BEEN ABLE TO COMPLETE ALL OF THE
5 ACTIVITIES IN THERAPY?

6 A. NO, NOT ALL OF THEM.

7 Q. SO IF THE THERAPIST NOTED YOU WERE ABLE TO COMPLETE
8 ALL ACTIVITIES, YOU WOULD DISPUTE THAT?

9 A. YES, I WOULD.

10 Q. AND THEN IN YOUR DISCHARGE ON JULY 19TH, YOU WOULD
11 DISPUTE IF THE THERAPIST NOTED THAT YOU WERE ABLE TO
12 COMPLETE ALL ACTIVITIES?

13 A. YES, I WOULD. BECAUSE I -- I COULD TELL YOU THE --
14 I CAN TELL YOU THE EXERCISE THAT I NEVER DID,
15 BECAUSE I COULDN'T DO IT.

16 Q. OKAY.

17 A. THE WALL SQUATS.

18 Q. AND YOU'VE ALSO RECENTLY BEEN EVALUATED BY DR.
19 GIRAULT, ANOTHER PAIN MANAGEMENT PHYSICIAN?

20 A. YES.

21 Q. AND IT WAS HER OPINION THAT A SPINAL CORD STIMULATOR
22 WASN'T NECESSARY?

23 BY MR. SALLEY:

24 OBJECT TO WHATEVER HER OPINION IS, IS HER
25 OPINION; HE CAN'T AND ---

1 BY COMMISSIONER TAYLOR:

2 SUSTAINED.

3 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

4 Q. DID -- DID YOU GUYS DISCUSS WHETHER YOU NEEDED A
5 SPINAL CORD STIMULATOR?

6 A. NO. NOT. NO.

7 Q. SHE NEVER HAD THAT CONVERSATION WITH YOU?

8 A. I THINK I MENTIONED IT, AND SHE WAS LIKE, OH, WELL.
9 BUT IT WASN'T -- I DON'T -- I DON'T AND ---

10 BY MR. SALLEY:

11 OBJECT TO HEARSAY AS TO WHAT SHE SAID.

12 BY THE WITNESS:

13 YEAH.

14 BY COMMISSIONER TAYLOR:

15 SUSTAINED.

16 BY THE WITNESS:

17 I DON'T ---

18 BY COMMISSIONER TAYLOR:

19 THAT'S OKAY. I SUSTAINED THE OBJECTION. YOU
20 JUST WAIT FOR THE NEXT QUESTION.

21 BY THE WITNESS:

22 ALL RIGHT.

23 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

24 Q. NOW, YOU NEVER TOLD DR. GIRAULT ABOUT ANY OF YOUR
25 PRIOR BACK INJURIES, DID YOU?

1 A. NO. NO, I DIDN'T.

2 Q. YOU NEVER TOLD DR. BRABHAM ABOUT THEM?

3 A. NO.

4 Q. DR. HOLBROOK?

5 A. NO.

6 Q. DR. STORICK?

7 A. NO.

8 Q. JAN WESTMORELAND?

9 A. NO.

10 Q. YOU NEVER REPORTED YOUR PRIOR BACK INJURIES OR
11 LIMITATIONS TO ANY OF THE I.M.E. PHYSICIANS THAT
12 YOU'VE ---

13 BY MR. SALLEY:

14 OBJECT ---

15 BY THE WITNESS:

16 NO.

17 BY MR. SALLEY:

18 --- TO THE PRIOR LIMITATION. I'M NOT AWARE OF
19 ANY PRIOR LIMITATIONS.

20 BY COMMISSIONER TAYLOR:

21 OBJECTION SUSTAINED TO THE FORM OF THE
22 QUESTION.

23 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

24 Q. DO YOU REMEMBER THOSE DISABILITY QUESTIONNAIRES THAT
25 YOU JUST READ OUT LOUD THAT YOU COMPLETED BACK IN

1 2009?

2 A. IF YOU SHOWED THEM TO ME.

3 Q. THEY WERE IN YOUR HANDWRITING?

4 A. YES.

5 Q. AND -- AND YOU STATED WITHIN THOSE THAT YOU HAD
6 LIMITATIONS ON THINGS YOU COULD DO AT THAT TIME?

7 A. YES.

8 Q. NOW, WHEN THESE VOCATIONAL EVALUATORS HAVE BEEN
9 INTERVIEWING YOU IN RELATION TO THIS WORK INJURY,
10 YOU NEVER TOLD THEM THAT YOU HAD ANY LIMITATIONS
11 PRIOR TO YOUR WORK INJURY AT PHILIPS, DID YOU?

12 BY MR. SALLEY:

13 OBJECT TO THE ---

14 BY COMMISSIONER TAYLOR:

15 WELL, I THINK SHE LAID THE FOUNDATION THIS
16 TIME. SO I'M GOING TO OVERRULE ---

17 BY MR. SALLEY:

18 OKAY.

19 BY COMMISSIONER TAYLOR:

20 --- THE OBJECTION.

21 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

22 A. REPEAT THE QUESTION.

23 Q. WHEN YOU WERE EVALUATED BY ALL OF THE I.M.E.
24 PHYSICIANS AND THE VOCATIONAL EVALUATORS IN RELATION
25 TO YOUR WORK INJURY AT PHILIPS, YOU NEVER INFORMED

1 THEM ABOUT ANY PRIOR PHYSICAL LIMITATIONS, DID YOU?

2 A. NO.

3 Q. AND THEY ASKED YOU, DIDN'T THEY?

4 A. YES.

5 Q. RIGHT. AND THEY ASKED YOU IF YOU HAD ANY PRIOR
6 ACCIDENTS OR INJURIES, CORRECT?

7 A. YES.

8 Q. AND YOU DIDN'T INFORM THEM OF ANY OF THEM?

9 A. NO.

10 Q. OKAY. NOW, WITH REGARD TO YOUR CONTENTION THAT
11 YOU'VE SUFFERED SOME PSYCHOLOGICAL ISSUES RESULTING
12 FROM YOUR WORK INJURY AT PHILIPS, YOU'LL AGREE THAT
13 YOUR PSYCH COMPLAINTS HAVEN'T BEEN CONSISTENT SINCE
14 YOUR DATE OF ACCIDENT AT PHILIPS, CORRECT?

15 A. REPEAT THAT AGAIN.

16 Q. YOU'LL AGREE THAT WHEN YOU WERE DEPOSED IN MAY OF
17 2013 AND YOU WERE ASKED ABOUT IF YOU HAD ANY PSYCH
18 ISSUES RELATED TO YOUR WORK INJURY; DO YOU RECALL
19 THAT?

20 BY MR. SALLEY:

21 I WOULD -- I WOULD OBJECT, AND I THINK ---

22 BY COMMISSIONER TAYLOR:

23 WELL, I KNOW WHAT YOU'RE GOING TO SAY, BUT THAT
24 QUESTION IN AND OF ITSELF IS A -- IS A PROPER
25 QUESTION. I KNOW WHERE YOU'RE GOING NEXT.

1 BY MR. SALLEY:

2 OKAY. SURE.

3 BY COMMISSIONER TAYLOR:

4 BUT THAT ONE IS, THAT QUESTION IS PROPER. YOU
5 CAN ANSWER THAT ONE.

6 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

7 A. I'VE DONE FORGOT THE QUESTION. COULD YOU PLEASE
8 REPEAT THAT AGAIN?

9 Q. SURE. YOU WERE DEPOSED IN MAY OF 2013, ---

10 A. OKAY. YEAH.

11 Q. --- WHICH WAS NEARLY TWO YEARS AFTER YOUR DATE OF
12 ACCIDENT WITH PHILIPS.

13 A. OKAY.

14 Q. DO YOU REMEMBER BEING DEPOSED?

15 A. YES.

16 Q. I DIDN'T ACTUALLY DO THE DEPOSITION; IT WAS ANOTHER
17 DEFENSE COUNSEL.

18 A. RIGHT.

19 Q. BUT HE ASKED YOU IF YOU HAD ANY EMOTIONAL OR MENTAL
20 ISSUES THAT YOU WERE CLAIMING WERE RELATED TO YOUR
21 WORK INJURY AT PHILIPS; DO YOU RECALL?

22 A. NOT EXACTLY. BUT I -- I BELIEVE THAT HE DID ASK ME
23 THAT RIGHT ON -- RIGHT OFFHAND.

24 Q. WOULD IT SURPRISE YOU IF YOUR RESPONSE WAS YOU WERE
25 FEELING A LITTLE DEPRESSED?

1 A. NO, IT WOULDN'T SURPRISE ME.

2 Q. AND YOU ALSO TOLD DR. WESTERKAM IN THAT MONTH THAT
3 YOU HAD SOME DEPRESSION BUT NO SUICIDAL THOUGHTS?

4 A. YES, BUT THEY COME AND GO.

5 Q. RIGHT. 'CAUSE SEVEN DAYS AFTER YOUR APPOINTMENT
6 WITH DR. WESTERKAM, WOULDN'T YOU AGREE THAT YOU TOLD
7 DR. LIND THAT YOU HAD THOUGHTS OF SLICING YOUR
8 WRISTS AND TAKING PILLS?

9 A. I DID.

10 Q. SO YOU HAVE HAD SUICIDAL THOUGHTS RELATED TO YOUR
11 WORK INJURY AT PHILIPS?

12 A. BUT AT THE TIME WHEN I TOLD DR. WESTERKAM THAT, I
13 DIDN'T HAVE THOSE THOUGHTS. SO THAT'S -- I THOUGHT
14 I WAS ANSWERING IT THE BEST WAY I COULD.

15 Q. WELL, ACTUALLY YOU TREATED WITH DR. LIND ON MAY
16 16TH, 2013, AND THAT'S ---

17 A. WELL, WHATEVER ORDER IT WAS, YOU KNOW WHAT I'M
18 SAYING.

19 Q. AND YOU WERE ACTUALLY DEPOSED SIX DAYS LATER. SO
20 WITHIN THOSE SIX DAYS, YOUR SUICIDAL THOUGHTS JUST
21 SUBSIDED?

22 A. THEY COME AND GO.

23 Q. OKAY. AND YOU'VE SUFFERED FROM DIABETES FOR QUITE
24 SOME TIME, CORRECT?

25 A. YES.

1 Q. AND IT GETS OUT OF CONTROL AT TIMES?

2 A. YES. YES.

3 Q. AND YOU ACTUALLY GO TO THE EMERGENCY ROOM QUITE
4 OFTEN TO GET DIABETIC MEDICATION?

5 A. YES, BECAUSE I CAN'T AFFORD TO GO TO THE DOCTOR,
6 AND I MEAN AT LEAST WITH THE HOSPITAL BILL, I KNOW I
7 CAN GO PAY IT LATER. WITH THE DOCTOR, I HAVE TO PAY
8 IT UP FRONT.

9 Q. AND YOU APPLIED FOR SOCIAL SECURITY BACK IN 2012,
10 AFTER YOUR WORK INJURY AT PHILIPS, AND THAT IN YOUR
11 INITIAL APPLICATION JUST LISTED YOUR LOWER BACK.

12 BY MR. SALLEY:

13 OBJECT. THAT WOULD BE S.S.I., JUST TO PUT IN
14 THE RECORD.

15 BY COMMISSIONER TAYLOR:

16 OKAY. SUSTAINED.

17 BY MR. SALLEY:

18 WE'VE BEEN SAYING S.S.D.I.; IT'S S.S.I. THANK
19 YOU.

20 BY COMMISSIONER TAYLOR:

21 SUSTAINED.

22 BY MS. PAYNE:

23 WAS THE INITIAL ONE JUST S.S.I.?

24 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

25 Q. ANYWAY, YOUR INITIAL APPLICATION TO THE SOCIAL

1 SECURITY ADMINISTRATION WAS BASED SOLELY ON YOUR --
2 YOUR INITIAL APPLICATION IN 2012 WAS BASED SOLELY ON
3 YOUR BACK INJURY?

4 A. YES.

5 Q. AND THAT WAS DENIED?

6 A. I GUESS SO. YEAH. BECAUSE I HAD A LAWYER, I DON'T
7 KNOW IF IT WAS DENIED OR NOT.

8 Q. AND THEN YOU LATER MODIFIED YOUR APPLICATION TO
9 INCLUDE YOUR NECK AND YOUR DIABETES?

10 A. I -- I HAD A -- I HAD ANOTHER ATTORNEY. I DON'T
11 RECALL. BUT, YES.

12 Q. YOU DON'T RECALL FILLING OUT AN APPLICATION?

13 A. I DON'T RECALL AT THE MOMENT.

14 Q. YOU'VE ALSO SUFFERED FROM HYPERTENSION?

15 A. YES.

16 Q. AND NOW, YOU TESTIFIED EARLIER THAT YOU'RE ALLEGING
17 INJURIES TO NOT ONLY YOUR BACK AND RADICULOPATHY
18 INTO YOUR LEFT LEG BUT ALSO TO YOUR LEFT HIP, LEFT
19 FOOT, NERVOUS SYSTEM, AND PSYCH?

20 A. YES. SORRY. I HAD TO CATCH THE LAST PART KIND OF.

21 Q. NOW, WHEN YOU WERE DEPOSED BACK IN MAY 2013, YOU
22 WERE ASKED WHETHER YOU WERE CLAIMING INJURIES TO ANY
23 BODY PART OTHER THAN YOUR BACK AND RADIATING PAIN TO
24 YOUR LEFT LEG; DO YOU RECALL WHAT YOUR ANSWER WAS?

25 A. REPEAT THE QUESTION, MA'AM.

1 Q. BACK WHEN YOU WERE DEPOSED IN MAY OF 2013, WHICH WAS
2 TWO YEARS -- ALMOST TWO YEARS AFTER YOUR DATE OF
3 ACCIDENT WITH PHILIPS, YOU WERE ASKED SPECIFICALLY
4 WHICH BODY PARTS YOU WERE ALLEGING WERE RELATED TO
5 YOUR WORK INJURY ASIDE FROM YOU BACK AND
6 RADICULOPATHY INTO YOUR LEFT LEG; DO YOU RECALL?

7 A. I DON'T RECALL WHAT THE ANSWER WAS, NO.

8 Q. OKAY. YOUR ANSWER WAS YOUR NECK AND NUMBNESS INTO
9 YOUR LEFT THUMB.

10 A. YEAH, I'VE HAD THAT TOO. I STILL HAVE NUMBNESS IN
11 MY LEFT THUMB.

12 Q. SO THESE OTHER INJURIES THAT YOU ARE ALLEGING TODAY
13 ARE THAT ARE RELATED, YOUR LEFT HIP, YOUR LEFT FOOT,
14 AND YOUR NERVOUS SYSTEM, HAVE THOSE COME ABOUT SINCE
15 YOUR DEPOSITION?

16 A. REPEAT THAT.

17 Q. TODAY, YOU'RE ALSO ALLEGING OTHER INJURIES LIKE YOUR
18 LEFT HIP, YOUR LEFT FOOT, AND YOUR NERVOUS SYSTEM.
19 SO MY QUESTION IS HAVE THOSE ALL COME ABOUT SINCE
20 YOUR DEPOSITION IN MAY OF 2013?

21 A. THOSE WERE REPORTED BEFORE THE -- I THOUGHT THEY WAS
22 ALREADY INCLUDED.

23 Q. INCLUDED IN THE RADICULOPATHY?

24 A. YEAH.

25 Q. OKAY. SO YOU'RE NOT ALLEGING A SPECIFIC INJURY TO

1 YOUR LEFT FOOT, CORRECT?

2 A. YEAH, I AM, BUT I'M SAYING I THOUGHT IT ALL WAS
3 CONNECTED.

4 Q. OKAY.

5 A. ISN'T -- ISN'T THAT -- DOESN'T THAT HAVE SOMETHING
6 TO DO WITH THE NERVE RUNNING DOWN YOUR LEG?

7 Q. IT -- IT WAS MY QUESTION TO YOU.

8 A. OH, NO. I'M ASKING. I'M ASKING IF THOSE ARE.

9 Q. I -- I DON'T KNOW. I -- I WAS JUST ASKING HOW --
10 HOW YOU PERCEIVED IT?

11 A. YEAH.

12 Q. SO YOU'RE NOW LOOKING INTO WORKING AS A SECURITY
13 GUARD, RIGHT?

14 A. I DID LOOK WHERE WHEN I TALKED TO -- AND I HOPE HE
15 PUT THIS IN HIS RECORD. I ASKED HIM ABOUT IT. HE'S
16 LIKE "THERE'S NO WAY YOU'RE GOING TO BE ABLE TO DO
17 IT."

18 Q. ASKED WHO?

19 A. WELL, DR. STORICK TOLD ME I COULD ONLY DO SEDENTARY
20 WORK.

21 Q. YOU'RE AWARE THAT WE TOOK THE DEPOS -- OR I TOOK THE
22 DEPOSITION OF DR. STORICK, CORRECT?

23 A. NO, I WASN'T AWARE.

24 Q. YOU WEREN'T AWARE. OKAY. AND THE ISSUE AT THE
25 DEPOSITION -- WELL, THERE WERE A LOT OF ISSUES. ONE

1 OF THEM WAS A SPINAL CORD STIMULATOR, AND DR.
2 STORICK TESTIFIED THAT HE DOESN'T GENERALLY
3 RECOMMEND SPINAL CORD STIMULATORS TO -- TO PATIENTS
4 THAT ARE ON SOCIAL SECURITY DISABILITY. WERE YOU
5 AWARE THAT THAT WAS HIS OPINION?

6 A. HE NEVER TOLD ME THAT.

7 Q. HE NEVER TOLD YOU THAT?

8 A. NO.

9 Q. AND THEN IT WAS THE FOLLOWING APPOINTMENT THAT YOU
10 STATED TO HIM THAT YOU WERE LOOKING INTO BECOMING A
11 SECURITY GUARD?

12 A. I HAD STATED TO HIM, I SAID, DOCTOR -- WAS IT
13 WESTERKAM? THE -- THE VOCATIONAL -- THE VOCATIONAL
14 LADY? THE DOCTOR STATED THAT I COULD DO -- BE A
15 SECURITY GUARD AND SOMETHING ELSE I MENTIONED TO
16 HIM, AND HE TOLD ME THAT IF HE RELEASED ME, I WOULD
17 BE ON SEDENTARY WORK ONLY. IS THAT STATED IN -- I
18 HOPE THAT'S STATED IN THERE, BECAUSE THAT WAS
19 EXACTLY WHAT HE TOLD ME.

20 Q. SO YOU'D BE SURPRISED IF THAT WASN'T IN HIS MEDICAL
21 NOTE?

22 A. I WOULD BE VERY SURPRISED.

23 Q. SO YOU HAVE NO INTENTION OF RETURNING TO WORK AS A
24 SECURITY GUARD?

25 A. IF I COULD WORK THAT -- LET ME ANSWER LIKE THIS: IF

1 I COULD WORK ANY JOB, IF I WAS CAPABLE TO WORK ANY
2 JOB, I WOULD, THAT, PERIOD. I DON'T WANT TO SIT AT
3 THE HOUSE, AT HOME. I DON'T WANT TO BE IN THIS
4 PAIN. I DON'T WANT THE LIMITATIONS. I WANT TO BE
5 ABLE TO EARN MY KEEP. SO TO ANSWER THAT QUESTION,
6 NO, I DIDN'T. I'M NOT. THE DOCTOR TOLD ME THAT I
7 WAS NOT ABLE TO WORK THAT JOB. NOT ---

8 Q. OKAY. JUST TO ---

9 A. --- REFUSING IT.

10 Q. --- CONFIRM. SO ON AUGUST 24TH, 2016, YOU DID NOT
11 TELL DR. STORICK THAT YOU WERE LOOKING AT A SECURITY
12 GUARD JOB THROUGH A VOCATIONAL REHABILITATION?

13 BY MR. SALLEY:

14 OBJECTION. ASKED AND ANSWERED.

15 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

16 A. I TOLD -- I ASKED HIM ABOUT IT, YES.

17 BY COMMISSIONER TAYLOR:

18 SUSTAINED. HE'S GOING TO SAY THE SAME ANSWER.

19 IT'S SUSTAINED.

20 BY MR. SALLEY:

21 YES, AND ---

22 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

23 Q. YOU SAID THAT YOU WANTED TO, AND -- AND?

24 A. I ASKED HIM ABOUT IT, BECAUSE THAT'S WHAT ON THE
25 LIST OF JOBS THAT THEY SAID I COULD DO, AND HE TOLD

1 ME THAT I WOULD NOT BE ABLE TO DO THAT UNLESS I WAS
2 SITTING DOWN, AND -- AND I'LL QUOTE HIM. UNLESS I
3 WAS SITTING DOWN WITH A TASER, THAT'S WHAT HE TOLD
4 ME.

5 Q. AND WHICH VOCATIONAL REHABILITATION EXPERT ARE YOU
6 REFERRING TO THAT SAID YOU COULD PERFORM THIS JOB?

7 A. WAS IT JANE WESTERKAMP, IS THAT HER NAME?

8 BY COMMISSIONER TAYLOR:

9 MS. WESTMORELAND?

10 BY THE WITNESS:

11 WESTMORELAND.

12 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

13 Q. MS. WESTMORELAND?

14 A. WITH THE I GIVE YOU ---

15 BY MR. SALLEY:

16 JAN WESTMORELAND.

17 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

18 A. YEAH, THAT'S WHO HAD A LIST OF JOBS FOR ME.

19 Q. DID YOU EVER REACH OUT TO ANY SECURITY GUARD
20 EMPLOYERS?

21 A. AFTER HE TOLD ME THAT, I'D HANDS OFF.

22 Q. PRIOR TO HIM, PRIOR TO YOUR DISCUSSION WITH HIM ON
23 AUGUST 24TH, HAD YOU REACHED OUT TO ANY EMPLOYERS?

24 A. SECURITY GUARD?

25 Q. YES.

1 A. NO.

2 Q. ANY OTHER EMPLOYERS?

3 A. YES.

4 Q. WHO ARE THOSE?

5 A. I REACHED OUT TO HOME -- NOT HOME DEPOT, AUTOZONE TO
6 TRY TO BECOME A CASHIER.

7 Q. AND WHAT -- WHERE IS THAT AUTOZONE LOCATED?

8 A. IN NEWBERRY.

9 Q. DID YOU SUBMIT AN APPLICATION?

10 A. I DID THAT MONTHS AGO, YES.

11 Q. AND DID YOU GET THE JOB?

12 A. NO.

13 Q. WHO DID YOU SPEAK WITH THERE?

14 A. THEY DIDN'T -- THEY DIDN'T CONTACT ME, BECAUSE I HAD
15 PUT MY LIMITATIONS ON THERE.

16 Q. ON THE APPLICATION?

17 A. YES.

18 Q. SO IT'S -- IT'S YOUR TESTIMONY TODAY THAT THE ACTUAL
19 JOB APPLICATION ASKED YOU IF YOU HAD ANY PHYSICAL
20 LIMITATIONS?

21 A. NO, I PUT IT IN OTHER, BUT THEY HAD -- BECAUSE WHEN
22 I WAS ON I THINK IT WAS MY -- WHEN I HAD A -- A -- A
23 CASE MANAGER, SHE TOLD ME ONCE YOU -- ONCE THEY DO
24 THAT FORM, THAT YOU HAVE TO PUT THAT, BY LAW YOU
25 HAVE TO PUT THAT ON EVERY APPLICATION THAT YOU --

1 THAT YOU APPLY FOR.

2 Q. ONCE THEY DO WHAT?

3 A. THE JOB YOU APPLIED FOR, YEAH. WELL, DR. HOLBROOK
4 HAD, WHEN HE RELEASED ME THE FIRST TIME, I HAD THOSE
5 FORMS. SO THAT'S WHAT I PUT ON THERE. I ALSO GOT
6 FORMS FROM MY ATTORNEY TOO.

7 Q. YOU'RE TALKING ABOUT YOUR WORK RESTRICTIONS?

8 A. YES.

9 Q. WHAT FORMS FROM YOUR ATTORNEY?

10 A. THAT I -- I CAN'T RECALL THE NAME OF THEM, BUT
11 THEY'RE AT MY HOUSE.

12 Q. SO YOU'RE SAYING THAT WHEN YOU APPLIED, THERE WAS
13 JUST AN OTHER BOX THAT DIDN'T ASK YOU ANYTHING ABOUT
14 YOUR WORK LIMITATIONS, BUT YOU INDICATED ---

15 A. I ATTACHED IT TO IT.

16 Q. YOU ATTACHED THE MEDICAL NOTE?

17 A. YES.

18 Q. OKAY. DID YOU EVER HEAR BACK FROM AUTOZONE?

19 A. NO.

20 Q. WHAT OTHER EMPLOYERS HAVE YOU APPLIED TO?

21 A. I DID A TEMP SERVICE. MAN, WHAT'S THE NAME OF THE
22 TEMP SERVICE? IT'S IN NEWBERRY. IT'S NOT -- IT'S
23 NOT GALLMAN. IT'S, WELL, I -- OH. I'M TRYING TO
24 THINK OF THE NAME OF IT, BUT I DID THE TEMP SERVICE.

25 Q. YOU DID IT, MEANING YOU WORKED THERE FOR A LITTLE

1 BIT?

2 A. NO, I APPLIED TO.

3 Q. AND WHERE IS IT LOCATED IN NEWBERRY?

4 A. IT'S ON WILSON ROAD. THERE'S TWO OF THEM -- THERE'S
5 THREE OF THEM ON WILSON ROAD, BUT IT'S -- AND I ALSO
6 APPLIED TO THE DRUGSTORE NEXT DOOR, WHICH, LOVE'S.

7 Q. THAT'S IN NEWBERRY?

8 A. YES.

9 Q. WHICH ROAD?

10 A. WILSON.

11 Q. AND ---

12 A. BUT THAT WAS MONTHS AGO TOO.

13 Q. OKAY. AND WHEN YOU APPLIED TO THIS TEMP SERVICE,
14 DID YOU INDICATE WHAT YOUR RESTRICTIONS WERE?

15 A. YES.

16 Q. DID THEY SPECIFICALLY ASK ON THE APPLICATION?

17 A. LIKE I WAS -- I WAS TOLD BY LAW YOU HAVE TO ATTACH
18 THOSE.

19 Q. TOLD BY WHO?

20 A. MY CASE MANAGER ANN CLARK, YEARS, A COUPLE OF YEARS
21 AGO.

22 Q. RELATED TO THIS CLAIM?

23 A. YES.

24 Q. SO YOU ATTACHED THOSE TO THE TEMP SERVICE?

25 A. YES.

1 Q. DID YOU SPEAK WITH ANYBODY IN PARTICULAR AT THE TEMP
2 SERVICE?
3 A. NOT AFTER I DID THE APPLICATION, NO.
4 Q. AND WHAT ABOUT THE DRUGSTORE, LOVE'S?
5 A. I FORGET, IS IT LOVE'S? YEAH.
6 Q. DID YOU SPEAK WITH ANYONE IN PARTICULAR IF THAT'S
7 WHERE?
8 A. I SPEAK TO A -- I SPEC -- I SPOKE TO THE -- TO THE
9 PHARMACY MANAGER, AND THEY SAID THEY WEREN'T REALLY
10 LOOKING FOR ANYBODY RIGHT AT THE TIME, BUT THAT THEY
11 WOULD KEEP ME -- KEEP MY FILE ON ---
12 Q. DID YOU FILL OUT ---
13 A. --- FILE, APPLICATION ON FILE.
14 Q. OKAY. SO YOU DID COMPLETE AN APPLICATION?
15 A. YEAH.
16 Q. ANY OTHER EMPLOYERS?
17 A. THAT'S IT.
18 Q. AND HAVE YOU ALSO WORKED IN THE REAL ESTATE AREA?
19 A. HAVE I?
20 Q. UH-HUH. YES.
21 A. NO.
22 Q. DID YOU -- DO YOU HAVE A LINKEDIN PROFILE?
23 A. HUH?
24 Q. DO YOU HAVE A LINKEDIN PROFILE?
25 A. NO. I'M SORRY. I DIDN'T HEAR THAT THE FIRST TIME.

1 I DIDN'T HEAR WHAT YOU SAID. I'M SORRY.

2 Q. JUST TO GO BACK, ONE OF YOUR PRIOR JOBS WAS WORKING
3 AS A FOOTBALL COACH AT ATLANTIC HIGH SCHOOL?

4 A. YES.

5 Q. RIGHT. SO WOULD YOU BE SURPRISED IF THERE WAS A
6 LINKEDIN PROFILE THAT SAID PRIOR JOB, ASSISTANT
7 FOOTBALL COACH AT ATLANTIC HIGH SCHOOL, AND IT ALSO
8 INDICATES THAT YOU'VE ALSO WORKED IN REAL ESTATE?

9 A. YES, I WOULD BE SURPRISED, 'CAUSE I'VE NEVER WORKED
10 IN REAL ESTATE.

11 Q. HAVE YOU EVER ASPIRED TO WORK IN REAL ESTATE?

12 A. NO.

13 Q. COINCIDENTAL. AND YOU DON'T HAVE A DRIVER'S LICENSE
14 RIGHT NOW?

15 A. NO.

16 Q. ALL RIGHT. AND THAT'S BECAUSE YOU'RE DELINQUENT IN
17 CHILD SUPPORT PAYMENTS IN FLORIDA?

18 **BY MR. SALLEY:**

19 THE WAY YOU'D ASKED, YOU DON'T HAVE A DRIVER'S
20 LICENSE, HE SAYS NO. THE ANSWER, IF YOU'RE SAYING
21 YOU DON'T HAVE ONE WOULD BE ACTUALLY, YES. JUST
22 BECAUSE IT'S ASKED NEGATIVELY, I'M NOT CERTAIN.

23 **CROSS-EXAMINATION RESUMED BY MS. PAYNE:**

24 Q. DO YOU CURRENTLY HAVE A DRIVER'S LICENSE? DO YOU
25 CURRENTLY HAVE A SOUTH CAROLINA DRIVER'S LICENSE?

1 A. NO.

2 Q. SORRY. I DIDN'T CATCH THAT.

3 BY MS. PAYNE:

4 I -- I'M TALKING TO HIM. SORRY. I DIDN'T
5 CATCH THE -- THE NEGATIVE RESPONSE.

6 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

7 Q. THE REASON YOU DON'T HAVE A DRIVER'S LICENSE IS
8 BECAUSE IT'S BEEN SUSPENDED DUE TO DELINQUENT CHILD
9 SUPPORT PAYMENTS?

10 A. I BELIEVE SO.

11 Q. AND THOSE PAYMENTS HAVE BEEN DELINQUENT SINCE PRIOR
12 TO YOUR WORK INJURY AT PHILIPS?

13 A. YES. BUT WHEN THEY -- WHEN THEY -- WHEN I WAS
14 ORDERED TO PAY IT, I WAS ALREADY IN THE ARREARS.

15 Q. RIGHT. AND NOW, YOU INFORMED DR. BRABHAM THAT YOUR
16 DRIVER'S LICENSE SUSPENSION IS RELATED TO BEING OUT
17 OF WORK FOR YOUR INJURY AT PHILIPS; BUT THAT'S
18 ACTUALLY NOT TRUE, IS IT?

19 A. I DON'T RECALL SAYING THAT, BUT IT'S ---

20 Q. SO YOU WOULD DISPUTE THAT IN HIS REPORT?

21 A. I DON'T RECALL SAYING IT AND AS SAYING THAT.

22 Q. WELL, YOU'LL AGREE THAT THAT'S ACTUALLY NOT TRUE?

23 A. I GUESS, YES. BUT, OH, I DON'T RECALLS -- I DON'T
24 RECALL SAYING THAT AT ALL, ACTUALLY.

25 Q. OKAY.

1 A. I DON'T RECALL SAYING THAT AT ALL.

2 Q. NOW, YOU ALSO TOLD DR. BRABHAM THAT YOU CURRENTLY
3 RECEIVE \$733 A MONTH FROM SOCIAL SECURITY, BUT
4 THAT'S ACTUALLY NOT TRUE EITHER, IS IT?

5 A. I TOLD HIM THAT'S WHAT I WAS AWARDED. I HAVE NOT
6 RECEIVED SOCIAL SECURITY AT ALL. I HAVEN'T RECEIVED
7 ONE CHECK. SO THERE IS NO WAY I WAS TELLING HIM
8 THAT I RECEIVED THAT IF I DON'T GET A CHECK.

9 BY COMMISSIONER TAYLOR:

10 ALL RIGHT.

11 BY THE WITNESS:

12 IT'S LIKE SOME ---

13 BY COMMISSIONER TAYLOR:

14 IT'S OKAY.

15 BY THE WITNESS:

16 AND NEVER MIND. SO I'M GETTING THIS -- SOME OF
17 THESE QUESTIONS IS JUST -- IT'S LIKE IT'S TWISTING
18 MY WORDS AND...

19 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

20 Q. NOW, YOU'VE ACTUALLY TRAVELED FOR SPORTING --
21 SPORTING EVENTS SINCE YOUR WORK INJURY AT PHILIPS,
22 RIGHT?

23 A. YES.

24 Q. LIKE A -- YOU WENT TO A FOOTBALL GAME DOWN IN
25 GEORGIA?

1 A. YES, MA'AM.

2 Q. NOW, YOU TOLD DR. BRABHAM THAT YOU'RE ACTUALLY
3 UNABLE TO ATTEND ANY SPORTING EVENTS BECAUSE OF YOUR
4 WORK INJURY?

5 A. AT THE TIME, YES. I -- I HAD TOOK THE TRIP DOWN TO
6 GEORGIA. IT TOOK US -- A TWO-AND-A-HALF HOUR TRIP
7 TOOK US SIX HOURS, BECAUSE I HAD TO KEEP GETTING IN
8 AND OUT OF THE CAR, AND I STOOD AND SAT MOST OF THE
9 GAME.

10 Q. YOU ACTUALLY WENT ON THE FIELD, RIGHT?

11 A. I DID GO ON THE FIELD, YES.

12 Q. YOU WERE PART OF THE HUDDLE?

13 A. YEAH.

14 Q. SO YOU WERE ABLE TO PHYSICALLY DO THAT?

15 A. BECAUSE THEY WERE HONORING OUR TEAM. YES.

16 Q. OKAY.

17 A. BUT THAT WAS FOR A MINUTE-AND-A-HALF.

18 Q. SO YOU'LL AGREE THAT THAT -- WHEN YOU TOLD DR.
19 BRABHAM THAT YOU WERE UNABLE TO ATTEND SPORTING
20 EVENTS, THAT WAS ACTUALLY INCORRECT?

21 A. AT THE TIME, I COULDN'T. SEE, THAT'S WHAT ---

22 Q. SO YOU GOT -- OH, I SEE WHAT YOU'RE SAYING. SO YOU
23 INFORMED DR. BRABHAM OF THIS AT YOUR FIRST
24 EVALUATION WHICH WAS?

25 A. 2013. PROBABLY, 2014. I WENT TO THE GAME IN 2015.

1 Q. OKAY. SO YOUR SYMPTOMS GOT BETTER TO THE POINT
2 WHERE YOU COULD GO TO A FOOTBALL GAME?

3 A. IS THAT HOW YOU WANT TO WORD IT? 'CAUSE IT JUST
4 SEEMS LIKE -- WELL, LET ME CALM DOWN. BUT IT JUST
5 SEEMS LIKE MY WORDS ARE GETTING TWISTED, THAT --
6 REPEAT THE QUESTION NOW.

7 Q. YOU'LL AGREE THAT WHEN YOU FIRST WERE EVALUATED BY
8 DR. BRABHAM, YOU INFORMED HIM THAT DUE TO YOUR WORK
9 INJURY AT PHILIPS, YOU WERE UNABLE TO TRAVEL TO
10 SPORTING EVENTS?

11 A. YES, BECAUSE I COULDN'T SIT IN THE CAR LONG ENOUGH.

12 Q. OKAY.

13 A. BUT THE REASON I TOLD HIM THAT IS BECAUSE A NORMAL
14 TRIP, YOU KNOW, YOU DON'T STOP AS MUCH. I --
15 THERE'S NO WAY I COULD GO AND SIT IN THE CAR ON A
16 NORMAL TRIP WITHOUT STOPPING TEN TIMES.

17 Q. BUT FORTUNATELY AT LEAST AS OF OCTOBER 2015, YOU
18 WERE ABLE TO SIT IN A CAR AND GO DOWN TO THE
19 FOOTBALL GAME IN GEORGIA?

20 A. THAT TOOK SIX HOURS, YES.

21 Q. BUT YOU WERE ABLE TO DO IT?

22 A. IT TOOK SIX HOURS TO GO; IT'S A TWO-AND-A-HALF HOUR
23 TRIP.

24 Q. OKAY.

25 BY MR. SALLEY:

1 OBJECTION. WE'VE ASKED AND ANSWERED THE
2 QUESTION SEVERAL TIMES.

3 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

4 Q. OKAY. OKAY. YOU'VE TREAT -- OR YOU'VE BEEN
5 EVALUATED BY DR. BRABHAM TWICE?

6 A. UH-HUH.

7 Q. THE FIRST ONE BEING IN 2013?

8 A. UH-HUH.

9 BY COMMISSIONER TAYLOR:

10 IS THAT A YES?

11 BY THE WITNESS:

12 YES. I'M SORRY.

13 CROSS-EXAMINATION RESUMED BY MS. PAYNE:

14 Q. AND THEN IN OCTOBER ---

15 A. I'M SORRY. I'M SORRY. I'M SORRY.

16 Q. --- OF 2015, YOU TRAVELED FOR YOUR COLLEGE OR YOUR
17 -- YOUR ---

18 A. IN WHEN?

19 Q. IN OCTOBER OF 2015, YOU TRAVELED ---

20 A. YES.

21 Q. --- TO THE COLLEGE FOOTBALL GAME?

22 A. YES.

23 Q. AND YOU WERE ACTUALLY REEVALUATED BY DR. BRABHAM IN
24 DECEMBER OF 2015?

25 A. YES.

1 Q. AND AT THAT POINT, YOU'LL AGREE THAT YOU INFORMED
2 HIM THAT YOU WERE NO LONGER ABLE TO ATTEND SPORTING
3 EVENTS?

4 A. I DO NOT RECALL HIM EVEN ASKING ME THAT QUESTION.

5 Q. OKAY. SO YOU'D BE SURPRISED TO SEE THAT IN HIS
6 REPORT?

7 A. YES, I WOULD. BECAUSE THAT -- THE SECOND TIME, THE
8 SECOND TIME I SAW HIM, I KNOW HE DIDN'T EVEN ASK ME
9 THAT QUESTION, BECAUSE I WOULD HAVE TOLD HIM THAT I
10 WENT.

11 Q. AND YOU RECENTLY UNDERWENT A -- AN EVALUATION WITH
12 DR. LIND?

13 A. UH-HUH. YES. SORRY. SORRY.

14 Q. LAST WEEK OR SO?

15 A. YES.

16 Q. AND WHERE DID YOU GUYS MEET?

17 A. WHERE DID WE MEET?

18 Q. YES.

19 A. IN HIS OFFICE.

20 Q. AND HIS OFFICE IS IN LANCASTER?

21 A. NO.

22 Q. OR LEXINGTON?

23 A. NO.

24 Q. WHERE IS HE LOCATED?

25 A. HE'S IN COLUMBIA.

1 Q. OKAY. SO YOU MET AT HIS OFFICE IN COLUMBIA?

2 A. YES.

3 Q. AND HOW LONG DID THAT MEETING LAST?

4 A. I DON'T REMEMBER HOW LONG IT LASTED.

5 Q. WAS IT MORE THAN AN HOUR?

6 A. I WAS THERE MORE THAN AN HOUR, YES.

7 Q. AND DID YOU COMPLETE ANY WRITTEN TESTS?

8 A. YES.

9 Q. HOW MANY?

10 A. WRITTEN TESTS?

11 Q. YES.

12 A. ONE.

13 Q. JUST ONE?

14 A. YES.

15 Q. HOW MANY PAGES WAS IT?

16 A. I DON'T RECALL.

17 Q. WAS IT A TEST THAT YOU RECALL UNDERGOING PREVIOUSLY
18 WITH DR. LIND?

19 A. I DON'T REMEMBER DOING A -- A WRITTEN TEST OF HIM
20 THE FIRST TIME. I DON'T REMEMBER DOING ONE. I
21 PROBABLY DID, BUT I DON'T REMEMBER DOING ONE.

22 Q. WELL, LET'S TALK ABOUT THE MOST RECENTLY.

23 A. OKAY.

24 Q. A WEEK AGO, DO YOU RECALL DOING A WRITTEN TEST?

25 A. YES.

1 Q. AND JUST ONE?

2 A. YES.

3 Q. OKAY. AND HOW DID YOU GET TO THE APPOINTMENT?

4 A. A TAXI.

5 Q. SO WE'VE DISCUSSED YOUR PRIOR WORK INJURY AT TILE
6 DEPOT THAT OCCURRED IN FLORIDA?

7 A. YES.

8 Q. AND SINCE YOU DIDN'T INFORM US OF THAT EMPLOYER WHEN
9 WE DEPOSED YOU, I DIDN'T HAVE AN OPPORTUNITY OR
10 PRIOR DEFENSE COUNSEL DIDN'T HAVE AN OPPORTUNITY TO
11 TALK TO YOU ABOUT ALL THE DOCTORS THAT YOU HAD
12 TREATED WITH IN RELATION TO THAT CLAIM. SO WHO WAS
13 YOUR MAIN TREATING PHYSICIAN?

14 A. I DIDN'T HAVE ONE.

15 Q. YOU NEVER TREATED WITH A DOCTOR?

16 A. NO.

17 Q. WHERE DID YOU RECEIVE MEDICAL TREATMENT?

18 A. HALIFAX HOSPITAL.

19 Q. HALIFAX?

20 A. YES.

21 Q. WHERE ELSE?

22 A. HUH?

23 Q. WHERE ELSE?

24 A. IF I WENT ANYWHERE ELSE, IT WOULD BE FLORIDA
25 HOSPITAL.

1 Q. AND WHAT ---

2 A. EMERGENCY ROOMS.

3 Q. WHAT OTHER E.R. WAS NEAR YOUR HOUSE THAT YOU MIGHT
4 HAVE GONE TO?

5 A. THAT'S THE ONLY TWO.

6 Q. LOOKS LIKE AT ONE POINT, HALIFAX HOSPITAL INDICATES
7 THAT YOU WERE REFERRED BY DR. KIRBY HAWS; THAT
8 DOESN'T RING A BELL?

9 A. NO.

10 Q. AND YOU ALSO TREATED AT ORTHOPEDIC CLINIC OF DAYTONA
11 BEACH?

12 A. I DON'T RECALL. THAT MUST BE WHERE THE -- THE
13 SOCIAL SECURITY OFFICE SENT ME.

14 Q. OKAY. SO THAT -- THAT WOULD FALL INTO THE SCOPE OF
15 ANY PHYSICIANS THAT YOU TREATED WITH IN FLORIDA.
16 CAN YOU THINK OF ANY OTHERS?

17 A. THAT'S IT. I -- I, WHEN I WAS IN FLORIDA, I DIDN'T
18 EVEN HAVE A PRIMARY DOCTOR, PRIMARY-CARE DOCTOR.

19 Q. SO WHEN YOU FILED A COMP CLAIM, YOU WEREN'T SENT TO
20 BE EVALUATED BY ANY CERTAIN PHYSICIANS?

21 A. I WASN'T -- I WASN'T SENT TO ANYONE.

22 Q. YOU DIDN'T HAVE ANY MEDICAL EVIDENCE TO SUPPORT YOUR
23 CLAIM?

24 A. I HAD -- WASN'T SENT TO ANYONE.

25 Q. DID YOU HAVE ANY MEDICAL EVIDENCE ---

1 A. NO.

2 Q. --- TO SUPPORT YOUR CLAIM?

3 A. JUST THE HOSPITAL.

4 Q. DID YOU GO TO ANY PHYSICAL THERAPY?

5 A. NO.

6 Q. LOOKS LIKE AT ONE POINT YOU WERE TOLD TO FOLLOW UP
7 WITH DR. JAMES BRYAN?

8 A. I DON'T EVEN KNOW ---

9 Q. WHO IS THAT?

10 A. --- WHO THAT IS. I DON'T KNOW. HONESTLY, I DON'T
11 KNOW WHO THAT IS, MA'AM.

12 Q. SO YOU LIVED IN DAYTONA?

13 A. ORMOND BEACH, WHICH IS A SUBURB OF DAYTONA BEACH,
14 YES.

15 Q. ANY OTHER CITIES IN FLORIDA DID YOU LIVE IN?

16 A. I'VE LIVED IN DAYTONA BEFORE, YES, WHEN I WAS
17 MARRIED, BUT THAT'S IT. THAT'S THE ONLY TWO CITIES.

18 Q. IT LOOKS LIKE YOU WERE ALSO EVALUATED BY ORMOND
19 MEDICAL ARTS?

20 A. THAT LOOKS LIKE THAT'S THE PEOPLE THAT THEY SENT ME
21 TO, BUT I -- I DON'T REMEMBER, UNLESS -- UNLESS IT'S
22 IN THE SAME -- I DON'T REMEMBER GOING TO SEE AN
23 ORTHOPEDIC SURGEON, AN ORTHOPEDIC DOCTOR AT ALL FOR
24 THAT.

25 Q. CAN YOU THINK OF ANY OTHER DOCTORS YOU MAY HAVE

1 TREATED WITH?

2 A. NO, BUT I DO RECALL THE -- THE WHAT -- WHAT'S THE
3 LAST DOCTOR YOU SAID?

4 Q. ORMOND MEDICAL ARTS.

5 A. THAT'S WHO THE SOCIAL SECURITY PEOPLE SENT ME TO.

6 Q. WHAT ABOUT DID YOU UNDERGO ANY CHIROPRACTIC
7 TREATMENT IN FLORIDA?

8 A. CHIROPRACTIC, NO.

9 Q. ANY PHYSICAL THERAPY?

10 A. NO.

11 Q. YOU SAID THAT YOU WENT TO THE Y.M.C.A. FOR THERAPY?

12 A. I DID THAT ON MY OWN. THAT WAS MY SELF THERAPY, BY
13 JUST GOING TO GET IN THEIR -- THEIR, YOU KNOW,
14 WHIRLPOOL OR HOT TUB OR WHATEVER. MEANING THAT I
15 HAD THE MEMBERSHIP, AND THEY HAD THE HOT TUB, SO I
16 MIGHT AS WELL USE IT, YOU KNOW.

17 Q. AND WHEN YOU MOVED TO SOUTH CAROLINA IN 2010, THE
18 CLOSEST HOSPITAL IS NEWBERRY COUNTY?

19 A. YES.

20 Q. AND YOUR FIRST TREATMENT WAS DUE TO BEING STABBED IN
21 THE CHEST?

22 A. UH-HUH. YES.

23 Q. OCTOBER OF 2010?

24 A. YES.

25 Q. OKAY. AND YOUR COMP CLAIM IN FLORIDA EVENTUALLY

1 SETTLED, RIGHT?

2 A. YES.

3 Q. YOU RECEIVED SOME MONEY FROM TILE DEPOT?

4 A. YES.

5 Q. OKAY.

6 BY MS. PAYNE:

7 NO FURTHER.

8 BY COMMISSIONER TAYLOR:

9 ALL RIGHT. THANK YOU. MR. SALLEY.

10 REDIRECT EXAMINATION BY MR. SALLEY:

11 Q. THIS MENTIONS YOU'D SEEN A -- A DOCTOR ---

12 BY MR. SAFRAN:

13 Y'ALL, EXCUSE ME.

14 (INTERRUPTION - OFF THE RECORD DISCUSSION)

15 BY COMMISSIONER TAYLOR:

16 ALL RIGHT. MR. SALLEY.

17 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

18 Q. THANK YOU VERY MUCH. AS FAR AS YOUR INJURIES THAT
19 YOU'RE HERE ON TODAY, DID YOU HAVE ANY NUMBNESS IN
20 YOUR BIG TOE EVER BEFORE THIS PARTICULAR INJURY THAT
21 WE'RE HERE TODAY ON?

22 A. NO, SIR.

23 Q. ANYBODY EVER DIAGNOSE YOU WITH -- WITH ANY KIND OF
24 RADICULOPATHY INTO YOUR LEFT TOE LIKE YOU HAVE NOW?

25 A. NO, SIR.

1 Q. ANYBODY RECOMMEND A SURGERY BEFORE YOU HAD THIS
2 PARTICULAR INJURY WE'RE IN FOR -- WE'RE HERE FOR
3 TODAY?

4 A. NO, SIR.

5 Q. DID ANYBODY EVEN RECOMMEND AN M.R.I. ON YOUR BACK
6 THAT YOU'RE ---

7 A. NO, SIR.

8 Q. OKAY. DID YOU HAVE A C.A.T. SCAN ON YOUR BACK
9 BEFORE THIS PARTICULAR INJURY?

10 A. NO, SIR.

11 Q. AND IT SAYS THAT YOU HAD TREATED, I GUESS, WITH A --
12 THERE WAS MENTION TO YOU ABOUT A DR. HOLT, AND IT
13 SAYS ON HERE THAT DR. HOLT SAYS YOU HAVE DEPRESSION,
14 ANXIETY, MILD TO MOD (PHONETIC) -- MILD TO MODERATE,
15 NOT YET TREATED BUT RECOMMENDED. WOULD YOU AGREE
16 THAT YOU WOULD LIKE TO HAVE SOME MORE ---

17 BY MS. PAYNE:

18 OBJECTION.

19 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

20 Q. --- PSYCHOLOGICAL CARE ---

21 BY MS. PAYNE:

22 LEADING.

23 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

24 Q. --- AS RECOMMENDED BY ---

25 BY COMMISSIONER TAYLOR:

1 SUSTAINED. IT IS. IT IS LEADING.

2 BY MR. SALLEY:

3 OKAY.

4 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

5 Q. WOULD YOU AGREE WITH DOCTOR -- WOULD YOU AGREE WITH
6 DR. HOLT THAT YOU NEED TO HAVE FURTHER CARE FOR YOUR
7 PSYCH CONDITION?

8 BY MS. PAYNE:

9 OBJECTION. LEADING.

10 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

11 Q. WHAT CARE, IF ANY, WOULD YOU ---

12 BY COMMISSIONER TAYLOR:

13 SUSTAINED.

14 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

15 Q. WHAT CARE, IF ANY, WOULD YOU LIKE TO HAVE FOR YOUR
16 PSYCHOLOGICAL CONDITION?

17 A. ANY CARE I CAN GET.

18 Q. OKAY. AND IT LOOKS LIKE YOU WERE EXAMINED BY DR.
19 HOLT ON -- IN 2012, OR WHATEVER, OR 2000 -- I WANT
20 TO MAKE SURE I GET THE RIGHT DATE ON THIS. EXCUSE
21 ME. THIS IS ---

22 BY THE WITNESS:

23 MA'AM, EXCUSE ME. I'M A TRY TO STRETCH MY
24 BACK.

25 BY COMMISSIONER TAYLOR:

1 SURE.

2 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

3 Q. 2014, ON -- ON AUGUST THE 21ST, 2014, HE EXAMINED
4 YOU AS PART OF SOCIAL SECURITY?

5 A. YEAH.

6 Q. DID YOU KNOW THAT HE FOUND THAT YOU HAD A POSITIVE
7 STRAIGHT LEG RAISE ON THE RIGHT -- ON THE LEFT?

8 BY MS. PAYNE:

9 OBJECTION. LEADING.

10 BY MR. SALLEY:

11 BUT THAT'S DO YOU KNOW.

12 BY MS. PAYNE:

13 BUT IT'S ---

14 BY COMMISSIONER TAYLOR:

15 IT'S -- IT'S -- IT ---

16 BY MS. PAYNE:

17 IT'S STRAIGHT OUT OF THE MEDICALS.

18 BY MR. SALLEY:

19 I THINK BUT ---

20 BY COMMISSIONER TAYLOR:

21 SUSTAINED. I KNOW.

22 BY MR. SALLEY:

23 --- SHE ASKED.

24 BY COMMISSIONER TAYLOR:

25 BUT SHE CAN ---

1 BY MS. PAYNE:

2 YOU WERE ---

3 BY COMMISSIONER TAYLOR:

4 BUT NOW YOU'RE BACK ON REDIRECT, SO.

5 BY MR. SALLEY:

6 SURE.

7 BY COMMISSIONER TAYLOR:

8 YOU CAN JUST REPHRASE THE ---

9 BY MR. SALLEY:

10 OKAY.

11 BY COMMISSIONER TAYLOR:

12 --- QUESTION.

13 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

14 Q. WERE YOU AWARE OF ANY KIND OF HAVING ANY KIND OF
15 POSITIVE STRAIGHT LEG RAISE TEST ON THE LEFT?

16 A. NO.

17 BY MS. PAYNE:

18 OBJECTION.

19 BY COMMISSIONER TAYLOR:

20 HE, THE WITNESS HAS ALREADY ANSWERED THAT.

21 BY MR. SALLEY:

22 YEAH.

23 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

24 Q. LET ME ASK YOU THIS THING TOO. YOU HAD MENTIONED --
25 , YOU MENTIONED YOU HAD PROBLEMS RAKING THE YARD.

1 OKAY? THAT'S SOMETHING SHE HAD TALKED ABOUT ON
2 THIS, BUT AS FAR AS ANY OTHER YARD WORK, COULD YOU
3 DO OTHER YARD WORK PRIOR TO THIS PARTICULAR INJURY?

4 A. YES.

5 Q. OKAY. DID YOU HAVE TO PAY SOMEONE TO DO THE YARD
6 WORK?

7 A. BEFORE?

8 Q. YES.

9 A. NO, SIR.

10 Q. OKAY. WOULD YOU MOW THE YARD BEFORE THIS PARTICULAR
11 INJURY?

12 A. YES.

13 Q. OKAY. AS FAR AS THIS IS CONCERNED, WOULD YOU -- DID
14 YOU HAVE ANY PERMANENT LIFTING RESTRICTIONS THAT
15 YOU'RE AWARE OF FROM ANY OTHER DOCTORS PRIOR TO
16 HAVING THIS PARTICULAR WORK INJURY?

17 A. NOT THAT I'M AWARE OF, NO.

18 Q. OKAY. AND AS FAR AS THE INJECTIONS YOU HAD, THEY
19 SAID THOSE WERE -- YOU HAD SOME TEMPORARY
20 IMPROVEMENT, BUT DID YOU HAVE ANY PERMANENT, WHEN I
21 SAY LASTING IMPROVEMENT FROM THE INJECTIONS YOU HAD
22 WITH DR. STORICK?

23 A. NO.

24 Q. OKAY. BUT FOR A WHILE, YOU SAID TWO DAYS, I
25 BELIEVE, THAT IT HELPED YOU?

1 A. YEAH.

2 Q. ALL RIGHT. WHEN YOU WENT BACK TO WORK FOR THIS TEMP
3 AGENCY THAT YOU WENT TO WORK FOR FOR ABOUT SEVEN
4 MONTHS PRIOR TO WORKING FOR TWO DAYS, I GUESS, WITH
5 THE CURRENT EMPLOYER YOU WERE INJURED UNDER, DID YOU
6 MISS WORK FOR LACK OF BEING ABLE TO PHYSICALLY DO
7 THE JOB?

8 A. NO.

9 Q. DID YOU CALL OUT SICK BECAUSE YOU WERE UNABLE TO
10 WORK?

11 A. COULD YOU REPHRASE THE QUESTION?

12 Q. WELL, LET ME REPHRASE IT.

13 A. YEAH.

14 Q. WELL, DID YOU HAVE ANY PROBLEMS ASSOCIATED WITH YOUR
15 BACK OR YOUR LEFT LEG THAT PREVENTED YOU FROM DOING
16 ANY TYPE OF WORK AT THE TEMPORARY AGENCY?

17 A. NO.

18 Q. OKAY. DID YOU HAVE ANY PROBLEMS THAT PREVENTED YOU
19 WHEN YOU WERE HIRED AT PHILIPS ELECTRONICS FROM --
20 YOU KNOW, DID YOU HAVE ANY PROBLEMS WITH YOUR BACK
21 OR YOUR LEFT LEG THAT PROHIBITED YOU FROM DOING THE
22 JOB DUTIES YOU'RE REQUIRED TO DO?

23 A. YOU MEAN WHAT, DID I CALL OUT FOR?

24 Q. WHEN YOU WERE HIRED. WHEN YOU WERE HIRED AT -- YOU
25 WERE ONLY HIRED FOR TWO DAYS.

1 A. RIGHT.

2 Q. SO FROM THE TIME YOU WERE HIRED FOR TWO DAYS, DID
3 YOU HAVE ANY PROBLEMS ---

4 A. NO.

5 Q. --- DOING YOUR PHYSICAL JOB ---

6 A. NO. NO.

7 Q. JOB REQUIREMENTS?

8 A. NO.

9 Q. OKAY. AND YOU WERE ASKED ABOUT DR. STORICK, ABOUT
10 WHAT HE SAID. AND APPARENTLY DR. STORICK ON PAGE 74
11 OF HIS DEPOSITION, HE SAID THEY ASKED -- DOES HE --
12 DOES THAT INDICATE -- HE SAID YOU, THROUGHOUT YOUR
13 NOTES, THAT LEG PAIN IS REASONABLY CONTROLLED. I
14 BELIEVE THOSE WERE THE WORDS I READ BY THE
15 NEURONTIN. DOES -- DOES THAT INDICATE THAT YOU
16 STILL ACTUALLY HAS SOME DEGREE OF SYMPTOMS INTO THE
17 LEG AT THIS POINT ---

18 A. I STILL HAVE THOSE PAINS ---

19 BY MS. PAYNE:

20 OBJECTION.

21 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

22 A. --- I HAD BEFORE ---

23 BY MS. PAYNE:

24 I DON'T EVEN KNOW WHAT THE QUESTIONING IS.

25 BY COMMISSIONER TAYLOR:

1 YEAH, WELL, I'M SORRY.

2 BY MR. SALLEY:

3 I -- WELL, I HAVEN'T FINISHED ASKING THE
4 QUESTION.

5 BY MS. PAYNE:

6 THAT'S WHY I OBJECTED, 'CAUSE HE STARTED
7 ANSWERING YOU.

8 BY COMMISSIONER TAYLOR:

9 HE STARTED ANSWERING.

10 BY MR. SALLEY:

11 YEAH.

12 BY COMMISSIONER TAYLOR:

13 YEAH.

14 REDIRECT EXAMINATION RESUMED BY MR. SALLEY:

15 Q. DO YOU AGREE THAT YOU HAVE SYMPTOMS INTO YOUR LEFT
16 LEG AT THIS POINT DUE TO YOUR WORK INJURY?

17 A. YES.

18 Q. OKAY. AND IS IT STILL ACTIVE AT THIS TIME?

19 A. YES.

20 Q. OKAY. AND ARE THESE SYMPTOMS THAT ARE NEW, THE TYPE
21 OF SYMPTOMS THAT WE'RE DESCRIBING, THE NUMBNESS INTO
22 THE -- INTO THE TOE AND THE PAIN DOWN THE --
23 NUMBNESS IN THE LEG FROM THE HAMSTRING AND THE PAIN
24 INTO THE TOE, ARE THOSE SPECIFICALLY THINGS THAT
25 YOU'VE HAD SINCE THIS WORK-RELATED INJURY?

1 A. YES.

2 Q. OKAY. AND YOU WOULD ASK -- YOU WERE ASKED PRIOR
3 ABOUT YOUR WORK INJURY BACK IN '06, I GUESS IT WAS
4 WITH THE TILE COMPANY OR TILE WHATEVER THIS PLACE
5 WAS, TILE IN FLORIDA, AND DID YOU HAVE -- YOU
6 ACTUALLY DID -- DID YOU ACTUALLY HAVE AN INJURY INTO
7 YOUR BACK AND -- AND SYMPTOMS INTO YOUR LEFT LEG
8 THAT TIME?

9 A. YES.

10 Q. OKAY. WAS IT THE SAME TYPE OF SYMPTOMS THAT WE'RE
11 TALKING ABOUT TODAY FOR THIS CURRENT WORK INJURY?

12 A. NO.

13 Q. HOW IS IT DIFFERENT?

14 A. I DIDN'T HAVE A -- A -- I DIDN'T HAVE PAIN GOING
15 DOWN MY LEG. MY FOOT WASN'T NUMB. MY S.I. JOINT
16 WASN'T CLICKING. I HAD -- THEN I HAD MUSCLE, WHAT I
17 THOUGHT WAS MUSCLE PAIN. NOW IT FEELS LIKE BONE ON
18 BONE PAIN, EXCEPT FOR THE HAMSTRING, AND IT JUST
19 IT'S -- IT'S -- IT'S DIFFERENT.

20 Q. BESIDES ---

21 A. AND I DESCRIBE IT, IT NOW IT JUST FEELS LIKE
22 STRUCTURAL PAIN. LIKE -- LIKE IF IT GO -- I DON'T -
23 - I DON'T HOW TO DESCRIBE IT, 'CAUSE I'M SO -- BACK
24 THEN IT FELT LIKE I HAD PULLED MUSCLES, THAT'S WHAT
25 IT FELT LIKE TO ME. THAT'S WHY I DIDN'T MAKE A BIG

1 DEAL ABOUT IT AFTERWARDS, AFTER THE CLAIM. NOW IT
2 JUST FEELS LIKE -- HAVE YOU EVER HEARD THE -- THE
3 TERM LIKE SCREW IN YOUR BACK? IT FEELS LIKE AT THAT
4 ONE POINT, IT'S A SCREW IN MY BACK. THEN IT FEELS
5 LIKE YOU CAN'T FEEL YOUR FOOT AT TIMES, BUT YOU
6 CAN'T FEEL YOUR TOE ALL THE TIME. AND THEN IT
7 FEELS, IT ALSO FEELS LIKE YOUR HAMSTRING IS JUST
8 ABOUT TO RIP. AND THEN IT FEELS LIKE YOU CAN'T
9 REALLY MOVE YOUR HIP, 'CAUSE IT'S LIKE STUCK. YOU
10 KNOW WHAT I'M SAYING? IT -- IT'S -- IT'S COMPLETELY
11 DIFFERENT. IT'S COMPLETELY DIFFERENT.

12 Q. IS THAT TIGHTNESS YOU'RE DESCRIBING SOME WITH YOUR
13 HAM -- YOUR LEG, TIGHTNESS, KIND OF A TIGHTNESS?

14 A. TIGHTNESS IN MY HAMSTRING, YEAH.

15 Q. OKAY.

16 A. BUT IT'S LIKE TIGHTNESS IN THAT HIP JOINT, THE S.I.
17 JOINT THAT THEY'VE BEEN TELLING ME ABOUT FOR THE
18 LAST YEAR-AND-A-HALF, THAT'S JUST -- IT'S LIKE IT
19 LOCKS. I -- I'VE NEVER FELT -- I DON'T EVEN
20 UNDERSTAND IT, ACTUALLY. I DON'T. I'VE NEVER FELT
21 ANYTHING LIKE THIS.

22 BY MR. SALLEY:

23 PLEASE ANSWER ANY QUESTIONS DEFENSE COUNSEL MAY
24 HAVE.

25 BY THE WITNESS:

1 OKAY.

2 RECROSS-EXAMINATION BY MS. PAYNE:

3 Q. QUICK FOLLOW-UP. YOU'VE PREVIOUSLY UNDERGONE X-RAYS
4 OF YOUR LEFT FOOT?

5 A. YEAH. YES.

6 Q. BUT YOU DIDN'T INFORM US ABOUT THAT IN YOUR
7 DEPOSITION?

8 A. I THOUGHT THEY WERE PERTAINING TO TALKING ABOUT MY
9 BACK AND BACK INJURY, NOT ARTHRITIS IN MY FOOT.

10 Q. AND YOU'VE SUFFERED FROM ARTHRITIS IN YOUR FOOT FOR
11 QUITE SOME TIME, CORRECT?

12 A. YEAH, I HAVE ARTHRITIS IN IT. I HAVE ARTHRITIS, I
13 MEAN.

14 Q. AND YOU'VE REPORTED TO YOUR PHYSICIANS IN FLORIDA
15 THAT YOU HAD A HISTORY OF SCOLIOSIS IN YOUR BACK?

16 A. YEAH, I WAS BORN WITH SCOLIOSIS.. YES. I'VE NEVER
17 BEEN TREATED FOR IT THOUGH.

18 Q. NOW, IN 2008, YOU REPORTED TO THE TO ORMOND MEDICAL
19 ARTS THAT YOU HAD A TWO-YEAR HISTORY OF WORSENING
20 MID BACK AND LOW BACK PAIN?

21 A. I DON'T RECALL THAT.

22 Q. RIGHT? YOU DON'T RECALL THAT? AND I THINK ---

23 A. AND I SAY THAT TO BE MEMORY, MEMORY-WISE.

24 Q. BUT YOU'LL AGREE THAT IN 2008 YOU ACTUALLY HAD
25 NUMBNESS AND TINGLING THAT WENT DOWN YOU LEFT LOWER

1 EXTREMITY?

2 A. AND NOT NOTHING TO DO WITH TINGLING AT ALL.

3 Q. OKAY. SO IF THE MEDICAL RECORD FROM OCTOBER 2008
4 SAYS "HE REPORTS INTERMITTENT NUMBNESS AND TINGLING
5 AFFECTING HIS LEFT LOWER EXTREMITY," YOU WOULD
6 DISPUTE THAT?

7 A. YES. 'CAUSE I -- I -- I DON'T REMEMBER TELLING THEM
8 ANYTHING ABOUT NUMBNESS IN A HOSPITAL OR WHATEVER.

9 Q. AND YOU'VE ALSO HAD ---

10 A. I DON'T RECALL SAYING THAT, I SHOULD JUST SAY.

11 Q. YOU'VE ALSO HAD SOME KNEE INJURIES IN THE PAST?

12 A. YEAH. THAT'S MY KNEE SCOPED.

13 Q. OKAY.

14 A. THAT'S THE REASON I STOPPED PLAYING COMPETITIVE
15 FOOTBALL, THE SECOND ONE, WHEN I HAD THE SECOND
16 SURGERY.

17 Q. NOW, YOU MOVED TO SOUTH CAROLINA IN 2010?

18 A. YES. YES.

19 Q. AND YOU TESTIFIED EARLIER THAT YOUR FIRST
20 APPOINTMENT FOR MEDICAL TREATMENT WAS AT NEWBERRY
21 HOSPITAL IN OCTOBER OF 2010?

22 A. YES.

23 Q. AND YOU'LL AGREE THAT IN DECEMBER OF 2010, YOU
24 REPORTED TO NEWBERRY COUNTY HOSPITAL COMPLAINING OF
25 A CHRONIC LOW BACKACHE?

1 A. YEAH. A BACKACHE, YES.

2 Q. AND THIS WAS APPROXIMATELY SEVEN MONTHS BEFORE YOUR
3 WORK INJURY AT PHILIPS?

4 A. I MEAN, IT WAS A BACKACHE, THOUGH. I MEAN, IT
5 WASN'T LIKE, YOU KNOW, LIKE IT IS NOW.

6 Q. AND YOU WERE REPORTING PAIN IN YOUR LEFT FLANK AT
7 THAT TIME?

8 A. YEAH. THE LITTLE (INDICATING) RIGHT HERE IN THE
9 MUSCLE, YES.

10 Q. AND YOU REPORTED MUSCLE SPASMS?

11 A. YES.

12 BY MR. SALLEY:

13 IF CAN PLEASE OFFSET, 'CAUSE THEY CAN'T TAKE
14 THAT DOWN. IF YOU CAN JUST KIND OF DESCRIBE WHERE
15 THAT IS. 'CAUSE YOU'RE ---

16 BY COMMISSIONER TAYLOR:

17 RIGHT. RIGHT. YEAH.

18 BY MR. SALLEY:

19 --- POINTING TO IT, AND THEY REALLY ---

20 BY THE WITNESS:

21 OH.

22 BY COMMISSIONER TAYLOR:

23 IT WILL JUST SAY INDICATING.

24 BY THE WITNESS:

25 MY ---

1 BY COMMISSIONER TAYLOR:

2 SO WE -- WE NEED TO KNOW WHERE THAT IS.

3 BY THE WITNESS:

4 THE LEFT SIDE OF MY BACK, THE MUSCLE, THE BIG
5 MUSCLE REGION, THAT WAS SORE. IF YOU IF IS THAT A
6 GOOD ENOUGH DESCRIPTION?

7 BY COMMISSIONER TAYLOR:

8 THAT'S BETTER. THANK YOU.

9 BY THE WITNESS:

10 YEAH. SORRY ABOUT THAT, Y'ALL. I -- I'M
11 SORRY.

12 RECROSS-EXAMINATION RESUMED BY MS. PAYNE:

13 Q. AND THEN IN APRIL OF 2011, WHICH WAS JUST A FEW
14 MONTHS BEFORE YOUR WORK INJURY, YOU REPORTED TO
15 NEWBERRY COUNTY HOSPITAL AND REPORTING ---

16 A. FOR ANOTHER BACKACHE.

17 Q. --- NECK PAIN AND BACK PAIN?

18 A. I SLEPT ON IT. YEAH, I SLEPT ON MY NECK WRONG AND
19 IT DIDN'T GO AWAY. SO I DIDN'T HAVE A DOCTOR AT THE
20 TIME, SO I WENT TO THE HOSPITAL.

21 Q. OH. WHAT INJURY THAT -- SO THE LAST TIME YOU HAD --
22 THERE WAS A PERIOD OF TIME WHERE YOU DIDN'T TREAT
23 WITH DR. STORICK RECENTLY?

24 A. YES.

25 Q. SO I THINK YOU TREATED WITH HIM IN AUGUST OF 2015,

1 AND THEN WENT BACK IN ---

2 BY MR. SALLEY:

3 I WOULD OBJECT TO THIS. THIS IS NOT SOMETHING
4 THAT I ASKED ABOUT, AND IT'S NOT IN ANY MATERIAL.
5 WE'RE GOING BACK THROUGH THIS AGAIN, AND I WANT TO
6 SAY THAT'S BEEN NOT PROPER FOR REDIRECT.

7 BY COMMISSIONER TAYLOR:

8 OKAY. AND RECROSS, AND.

9 BY MS. PAYNE:

10 I ---

11 BY MR. SALLEY:

12 AND RE -- RECROSS. EXCUSE ME.

13 BY MS. PAYNE:

14 I HAVEN'T EVEN GOTTEN TO A QUESTION.

15 BY MR. SALLEY:

16 HUH?

17 BY MS. PAYNE:

18 I HAVEN'T EVEN ASKED A QUESTION.

19 BY COMMISSIONER TAYLOR:

20 OKAY. WELL, I'M GOING TO LET HER FINISH HER
21 QUESTION, BUT DON'T ANSWER IT UNTIL I'VE RULED ON
22 THE OBJECTION. OKAY?

23 BY THE WITNESS:

24 OKAY.

25 BY COMMISSIONER TAYLOR:

1 ALL RIGHT. MS. PAYNE.

2 RE CROSS-EXAMINATION RESUMED BY MS. PAYNE:

3 Q. WE'VE DISCUSSED THE -- THE TREATMENT WITH DR.
4 STORICK?

5 A. YES.

6 Q. AND THE NEURONTIN, WHETHER THAT, YOU KNOW, RELIEVES
7 PAIN IN YOUR LEFT LEG.

8 BY MR. SALLEY:

9 OBJECT. OBJECTION. AND HE WAS ALREADY ASKED
10 THAT.

11 BY MS. PAYNE:

12 I'M JUST LAYING A FOUNDATION TO GET TO.

13 BY COMMISSIONER TAYLOR:

14 BUT WE DIDN'T DISCUSS -- MR. SALLEY DIDN'T
15 DISCUSS THE NEURONTIN IN HIS LAST RE CROSS. SO THE
16 SCOPE IS EVEN SMALLER THAN IT WAS.

17 BY MS. PAYNE:

18 OKAY.

19 BY COMMISSIONER TAYLOR:

20 OKAY.

21 BY MS. PAYNE:

22 THEN I'LL MOVE ON.

23 BY COMMISSIONER TAYLOR:

24 DO YOU HAVE ANY OTHER QUESTIONS IN RESPONSE TO
25 THE ----

1 BY MS. PAYNE:

2 NO.

3 BY COMMISSIONER TAYLOR:

4 YOU DON'T? OKAY. ALL RIGHT. ANYTHING

5 FURTHER, MR. SALLEY?

6 BY MR. SALLEY:

7 THANK YOU.

8 BY COMMISSIONER TAYLOR:

9 OKAY. THANK YOU. FOR THE RECORD, ARE THERE

10 ANY OTHER WITNESSES ON BEHALF OF THE CLAIMANT?

11 BY MR. SALLEY:

12 NO, YOUR HONOR.

13 BY COMMISSIONER TAYLOR:

14 OKAY. THANK YOU. ANY WITNESSES ON BEHALF OF

15 THE DEFENDANTS?

16 BY MS. PAYNE:

17 JUST JOEL LEONARD, BRIEFLY.

18 BY COMMISSIONER TAYLOR:

19 OKAY. ALL RIGHT. THANK YOU, SIR. YOU MAY

20 STEP DOWN AND PLEASE HAVE A SEAT ---

21 BY MR. SALLEY:

22 THANK YOU.

23 BY COMMISSIONER TAYLOR:

24 --- AT YOUR ATTORNEY'S TABLE. OKAY?

25 BY MR. CLARK:

1 OKAY. GO OUTSIDE?

2 BY COMMISSIONER TAYLOR:

3 NO. RIGHT, YOU CAN STAY IN HERE.

4 BY MR. CLARK:

5 CAN I USE -- USE THE RESTROOM?

6 BY COMMISSIONER TAYLOR:

7 SURE. WE'LL TAKE A FIVE MINUTE RECESS FOR A
8 BATHROOM BREAK.

9 (OFF THE RECORD)

10 BY COMMISSIONER TAYLOR:

11 ON THE RECORD. THE DEFENDANTS HAVE CALLED MR.
12 JOEL LEONARD TO THE STAND. MADAM COURT REPORTER,
13 WILL YOU PLEASE SWEAR MR. LEONARD?

14 BY THE COURT REPORTER:

15 RAISE YOUR RIGHT HAND, PLEASE.

16 * * * * * * * * * * * *

17 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
18 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
19 MATTER HEREIN:

20 JOEL LEONARD,

21 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
22 FOLLOWS:

23 BY COMMISSIONER TAYLOR:

24 OKAY. MS. PAYNE.

25 DIRECT EXAMINATION BY MS. PAYNE:

1 Q. HI, JOEL. SORRY THAT YOU HAD TO APPEAR TODAY, BUT
2 HOPEFULLY WE CAN MAKE THIS SHORT AND -- SHORT AND
3 SWEET. YOU'VE COMMUNICATED WITH MR. SALLEY ABOUT
4 THIS CASE, CORRECT?

5 A. YOU KNOW, I'M NOT EVEN SURE THAT I NEED TO ANSWER
6 ANY QUESTION THAT YOU'RE BRINGING TOWARDS ME WITH
7 RESPECT TO COMMUNICATIONS ABOUT THIS CASE WITH
8 REGARD TO MR. -- MY INVOLVEMENT WITH RESPECT TO MR.
9 SALLEY.

10 Q. WHAT IS YOUR BASIS IN THAT REGARD?

11 A. MY BASIS IS THAT MY INVOLVEMENT IN THIS MATTER WAS
12 THAT OF A WORK PRODUCT CONSULTANT AND THAT WHAT I
13 HAVE PARTICIPATED WITH, WITH REGARD TO AN
14 INVOLVEMENT IN THIS MATTER, IS LIMITED WITHIN THOSE
15 BOUNDS.

16 Q. BUT YOU'LL AGREE THAT YOU RECEIVED A 20 PLUS PAGE
17 CORRESPONDENCE DETAILING MR. CLARK'S MEDICAL HISTORY
18 AS IT PERTAINS TO THIS CASE?

19 A. WELL, YOU KNOW, I'LL AGREE THAT I'M IN THE CASE,
20 POSSESSION OF THE CASE RECORDS ASSOCIATED WITH IT,
21 BUT REALLY AT THAT POINT, I DON'T REALLY EVEN KNOW
22 WHY I HAVE TO EVEN BE TESTIFYING TO ANYTHING
23 CONCERNING MY INVOLVEMENT IN THIS MATTER.

24 Q. I MEAN ---

25 A. AND I MEAN, I DON'T DO THAT TO BE DIFFERENT -- I

1 MEAN BE DIFFICULT. I MEAN, I'M JUST -- SEE, MY
2 INVOLVEMENT AS A WORK PRODUCT CONSULTING WITH REGARD
3 TO ANY OF THIS, AND I MEAN I'LL ANSWER ANY QUESTIONS
4 THAT YOU HAVE, 'CAUSE I'VE BEEN SUBPOENAED HERE TO
5 APPEAR.

6 Q. THAT'S WHAT I TO ---

7 A. BUT I DON'T KNOW IF YOU'RE GOING TO LIKE THE ANSWER
8 TO MY QUESTIONS, AND I THINK YOU'RE GOING TO FIND
9 THEM SATISFACTORY ---

10 Q. I ---

11 A. --- WITH REGARD TO HOW THAT PROCEEDS, AND I
12 APOLOGIZE IN ADVANCE, BUT.

13 Q. WHAT IS YOUR INTERPRETATION OF WHEN A CASE MOVES
14 FROM CONSULTING TOWARDS YOU GIVING AN OPINION?

15 A. WELL, THAT'S GENERALLY SPEAKING IS WHEN I ACTUALLY
16 HAVE SOME DEGREE OF EVALUATIVE INTERACTION WITH THE
17 INDIVIDUAL WHO'S BEEN REFERRED, BUT THAT'S NOT
18 ALWAYS STEADFAST. I MEAN, I WILL RECEIVE FOR
19 REFERRALS ON CASES, IN THIS CASE GENERALLY IN -- IN
20 -- IN REPRESENTATION OF THIS EXAMPLE FROM LIKE A
21 PLAINTIFF COUNSEL. ALL THE REFERRALS THAT COME TO
22 ME ARE WITHIN THE CONTEXT OF A WORK PRODUCT
23 CONSULTATION. I MIGHT REVIEW THE CASE FILE AND
24 ADVISE THE ATTORNEY ACCORDINGLY, AND LET ME GIVE YOU
25 AN EXAMPLE FIRST. LIKE MAYBE SOME INFORMATION IS

1 MISSING. SOMETIMES THAT ATTORNEY WILL ASK ME TO
2 CONTACT THAT CLAIMANT DIRECTLY AND GET IT FROM THE
3 HORSE'S MOUTH. I MAY DO THAT, AND THEN CALL THE
4 PERSON BACK AND PROVIDE A CONSULTATION AT THAT
5 POINT. SO THE REASON I SORT OF HEDGE ON THAT,
6 GENERALLY SPEAKING, I THINK IT'S WHEN I SCHEDULE
7 THEM FOR AN EVALUATION AND BRING THEM IN AND CONDUCT
8 AN ACTUAL IN PERSON EVALUATION.

9 Q. YOU'LL AGREE THAT THERE'S TIMES WHEN YOU DON'T
10 PERFORM EVALUATION, WHEN YOU CAN RENDER AN OPINION
11 WITHOUT PERFORMING AN EVALUATION?

12 A. I DO THAT, BUT RARELY, VERY RARELY. ACTUALLY,
13 WITHIN THE CONTEXT OF AN EVALUATION, IT'S RARE.
14 EVERY ONCE IN A WHILE I READ OUT WITHIN THE CONTEXT
15 OF THE MEDIATION CONSULTATIONS, BUT THEY ARE JUST
16 ONE OF THAT CIRCUMSTANCE. AND I WILL ADVISE THEM,
17 LISTEN, YOU KNOW, THIS IS A LIMITED CONSULTATION,
18 THIS WAS IN A WORK PRODUCT, THE FRAMEWORK, AND THEN
19 THEY CAN DECIDE IF THEY WANT TO REVEAL THAT
20 THEMSELVES.

21 Q. SO YOU HAVE RESPONDED TO MR. SALLEY THAT ANY OF YOUR
22 INVOLVEMENT IS IN A WORK PRODUCT FRAMEWORK?

23 A. I DON'T THINK YOU'RE CATCHING THE POINT.

24 Q. I ACTUALLY DON'T UNDERSTAND WHAT YOU'RE SAYING.

25 A. WELL, IF THE SPECIFIC QUESTION IS WHAT?

1 Q. THE SPECIFIC, MY QUESTION WAS YOU'LL AGREE THAT
2 THERE'S TIMES WHEN YOU CAN RENDER AN OPINION WITHOUT
3 FINDING IT NECESSARY TO PERFORM AN EVALUATION IN
4 PERSON WITH THE CLAIMANT?

5 **BY MR. SALLEY:**

6 OBJECTION. ASKED AND ANSWERED ALREADY. HE'S
7 ALREADY OPINED TO THAT.

8 **DIRECT EXAMINATION RESUMED BY MS. PAYNE:**

9 Q. I DIDN'T -- I DON'T RECALL YOUR ANSWER.

10 A. WELL, GENERALLY SPEAKING, OFF OF A -- A PLAINTIFF
11 REFERRAL, I USUALLY WILL SEE AND EVALUATE THEM. THE
12 EXCEPTION TO THAT RULE IS IF I AM OFFERING A WORK
13 PRODUCT CONSULTATION WITHIN THE CONTEXT OF THE
14 MEDIATION, AND THE PARTIES ARE WANTING TO SIMPLY
15 HAVE AN UNDERSTANDING. BUT, HOWEVER, IT'S COUCHED
16 AS NOT AN OR NOT AN OPINION REPRIMENDED (PHONETIC)
17 -- REPRESENTING AN OFFER OR MEANT TO REPRESENT A
18 SUBMISSION WITH INFORMAL COURT PROCEEDINGS. EVERY
19 ONCE IN A WHILE WE WILL HAVE A CASE WHERE A PERSON
20 IS A -- CLEARLY IS A P. AND T. OUTCOME, AND
21 BASICALLY, THE CLAIMANT'S ATTORNEY, OR IN MANY CASES
22 EVEN THE DEFENDANT ATTORNEY, JUST WANTS A BLUSH, A
23 WRITTEN BLUSH, AND I'LL EXPLAIN TO THEM THIS IS
24 BASED UPON THESE PROCEEDINGS AND THE NATURE OF
25 DISCLAIMING THE PARAMETERS AND WILL THEN TELL THEM

1 WHAT I THINK THE EVIDENCE IS SUPPORTING BUT WILL
2 ALSO DISCLAIM IT BY SAYING THIS IS NOT INTENDED FOR
3 REPORTS AND ISSUE WITHIN CONTEXT OF FORMAL
4 PROCEEDINGS.

5 Q. SO IT'S YOUR OPINION THAT YOU ARE THE ONE THAT CAN
6 DECIDE WHETHER SOMETHING IS DISCOVERABLE?

7 A. NO. THAT'S NOT MY OPINION AT ALL. I -- IT'S MY
8 OPINION IN THIS CURRENT CIRCUMSTANCE THAT I, MY
9 INVOLVEMENT IS WITHIN A WORK PRODUCT CONSULTANT,
10 AND I DON'T THINK THAT I SHOULD PROFESSIONALLY
11 REVEAL ANY ADDITIONAL INFORMATION WITH RESPECT TO
12 THAT.

13 Q. AND WHAT IS -- WHAT ARE -- WHAT ARE YOUR GUIDELINES
14 FOR THIS?

15 A. WELL, THE BASIS TO THIS IS THAT THAT'S A WORK
16 PRODUCT CONSULTATION. IT'S ATTORNEY CLIENT
17 MATERIALS. I GET THESE. THIS HAPPENS ALL THE TIME.
18 I GET REFERRALS FROM DEFENDANT ATTORNEYS, PLAINTIFF
19 ATTORNEYS. THEY WANT YOU TO LOOK AT THE CASE, AND I
20 GIVE THEM A BLUSH ON THE CASE. THEY MAY AT THAT
21 POINT DECIDE THAT THEY WANT ME TO DO AN EVALUATION,
22 OR THEY MIGHT AT THAT POINT SAY, "WELL, THANKS,
23 THAT'S WHAT -- I JUST WANTED TO KNOW WHAT YOUR TAKE
24 IS. I -- YOU KNOW, I DON'T WANT YOU TO MOVE FORWARD
25 WITH ANY EVALUATIVE INVOLVEMENT." I MEAN, THAT

1 HAPPENS VERY REGULARLY IN DEFENSE CASES WHERE THEY
2 WANT A BLUSH, AND, YOU KNOW, I GIVE THEM A BLUSH,
3 BUT AT THAT POINT, IT'S STILL WORK PRODUCT
4 CONSULTATION. I'M -- I'M BEING RETAINED BY THE
5 ATTORNEY TO CONSULT ON MY PRESENT -- ON THE
6 PRESENTATION OF THE CASE ---

7 Q. SO YOU ---

8 A. --- WITH RESPECT TO THAT OPINION.

9 Q. YOU'LL AGREE THAT YOU WERE RETAINED?

10 A. WELL, I'M PAID NOT NECESSARILY AN EVALUATION
11 RETAINER. I'M KEEPING A -- WE CALL IT A REVIEW
12 RETAINER, BUT ---

13 Q. AND HOW MUCH WAS THAT?

14 A. GENERALLY, IT'S TWO BILLABLE HOURS IS WHAT SHOULD
15 ACCOMPANY MOST CASES WHEN THEY COME TO ME.

16 Q. I DON'T MEAN GENERALLY. I MEAN IN THIS CASE.

17 A. WELL, I DON'T REALLY KNOW IF I HAVE ANYTHING TO
18 SPEAK TO WITH RESPECT TO THIS PARTICULAR CASE, BUT
19 WHEN A GENERAL REQUEST ---

20 Q. WELL, YOU DON'T KNOW, OR YOU DON'T WANT TO ANSWER?

21 A. MY GENERAL REQUEST IS OR MY GENERAL FEES, I REQUEST
22 \$300 AT THE TIME OF THE CASE REFERRAL.

23 Q. AND EARLIER ---

24 A. AND THAT -- AND WITHIN THAT CONTEXT, ALL SERVICES
25 WITHIN THE INITIAL STAGES ARE CONSIDERED IN A WORK

1 PRODUCT CONSULTATION.

2 Q. AND THAT'S JUST SOMETHING THAT YOU'VE DECIDED, THE
3 WORK PRODUCT CONSULTATION?

4 A. THAT'S NOT NECESSARILY WHAT I'VE NOT DECIDED. IT'S
5 WHAT I DETERMINE TO THINK TO BE APPROPRIATE.

6 Q. AND YOU MENTIONED EARLIER THAT THEY'RE COVERED
7 BY ---

8 A. THE REASON I'M HERE IS BECAUSE I ---

9 Q. CAN I FINISH MY QUESTION?

10 A. I RECOGNIZE ---

11 **BY MR. SALLEY:**

12 AND I THINK HE'S STILL ANSWERING HIS QUESTION.

13 **DIRECT EXAMINATION RESUMED BY MS. PAYNE:**

14 A. AND THE REASON I'M HERE IS I RECOGNIZE THAT WHAT
15 GETS DECIDED IS UP TO THE COMMISSION, NOT TO ME.
16 THAT IS HOW I PRACTICE PROFESSIONALLY, AND THAT'S
17 THE REASON I'M HERE, IS THAT I ---

18 Q. BUT YOU'VE ---

19 A. --- RECOGNIZE THAT THE COMMISSION MAY FEEL
20 DIFFERENTLY OR NOT FEEL DIFFERENTLY. BUT QUITE
21 FRANKLY, THAT'S THE ONLY REASON I'M HERE IS OUT OF
22 RESPECT FOR THE WORKERS' COMPENSATION COMMISSION AND
23 OUT OF RESPECT TO THE PARTIES. I MEAN, YOU KNOW, IN
24 TERMS OF A NOTICE ON A SUBPOENA, I COULD SAY I
25 DIDN'T GET THE PROPER NOTICE, ALL THIS, THAT AND THE

1 OTHER, BUT I DIDN'T DO THAT. I JUST SAID, OKAY,
2 FINE. I'LL SHOW UP AND TALK TO THE PARTIES. I'VE
3 GOT NOTHING TO BE CONCERNED ABOUT WITH RESPECT TO
4 THAT.

5 BY COMMISSIONER TAYLOR:

6 AT THIS POINT, I'M GOING TO, BECAUSE I GUESS
7 THE ISSUE FOR ANY FUTURE TESTIMONY, TO NOT WASTE
8 EVERYONE'S TIME, IS WHETHER MR. LEONARD'S TESTIMONY
9 CAN BE EXCLUDED UNDER ANY VALID ---

10 BY MR. SALLEY:

11 WORK PRODUCT.

12 BY COMMISSIONER TAYLOR:

13 --- WORK PRODUCT.

14 BY MS. PAYNE:

15 THAT'S ---

16 BY COMMISSIONER TAYLOR:

17 EXCEPT AND ---

18 BY MS. PAYNE:

19 --- WHAT I WAS ---

20 BY COMMISSIONER TAYLOR:

21 AND SO I GUESS AT THIS POINT I KNOW MR. LEONARD
22 MENTIONED AN ATTORNEY CLIENT WORK PRODUCT, BUT THE
23 ATTORNEY HOLDS THAT PRIVILEGE.

24 BY THE WITNESS:

25 I --- I UNDERSTAND.

1 BY COMMISSIONER TAYLOR:

2 OKAY.

3 BY THE WITNESS:

4 THAT'S CORRECT.

5 BY COMMISSIONER TAYLOR:

6 AND SO I GUESS AT THIS POINT I'LL NEED I GUESS
7 A BETTER UNDERSTANDING ON YOUR POSITION AS TO WHAT
8 PRIVILEGE YOU ARE ASSERTING AS THE EXPERT IN THE
9 MATTER TO DETERMINE WHETHER ANYTHING, WHETHER WE GO
10 FORWARD.

11 BY THE WITNESS:

12 FAIR ENOUGH.

13 BY COMMISSIONER TAYLOR:

14 OKAY.

15 BY THE WITNESS:

16 BUT BASICALLY MY IMPRESSION, PROFESSIONAL WITH
17 RESPECT TO THE PRACTICE AND DISCIPLINE, IS THAT IF
18 THEY REFER IT TO ME, OKAY, AND I AM NOT -- HAVE NOT
19 TOUCHED THE STAGE WHERE I'M ACTUALLY EVALUATING A
20 PERSON, THEN THERE'S NO DIFFERENCE TO THAN -- ME
21 THAN ANYONE ELSE THAT THEY MIGHT COME IN TO DISCUSS
22 OR BLUSH A CASE WITH, AND THEN -- I THEN HAVE A
23 PROFESSIONAL RESPONSIBILITY TO CONFIDENTIALITY
24 WITHIN THE STANDARDS OF BEING A CERTIFIED
25 REHABILITATION COUNSELOR OR A CERTIFIED VOCATION

1 EVALUATOR -- EVALUATOR, THAT THOSE ISSUES ARE
2 CONFIDENTIAL AND NOT TO BE DISCUSSED ---

3 BY COMMISSIONER TAYLOR:

4 OKAY.

5 BY THE WITNESS:

6 --- WITH ANYONE. AND SO THAT IS WHY, I MEAN,
7 THIS IS SOMETHING I DO IN LOTS OF DIFFERENT CASES.
8 I PROBABLY, YOU KNOW -- AND SO I MEAN, THIS IS JUST
9 THE STANDARD.

10 DIRECT EXAMINATION RESUMED BY MS. PAYNE:

11 Q. THAT'S WHY IF I -- MY QUESTION IS IF YOU DO THIS IN
12 SO MANY CASES, I'M JUST LOOKING FOR -- YOU KNOW, AS
13 MEMBERS OF THE BAR, WE HAVE THE RULES OF
14 PROFESSIONAL CONDUCT THAT GUIDE US, THAT TELL US
15 WHAT WE CAN AND CAN'T DO, AND I'M HEARING FROM YOU
16 THAT IT'S -- IT'S YOUR PROFESSIONAL OBLIGATIONS THAT
17 AREN'T ALLOWING YOU TO EVEN DISCUSS IF YOU FORMED AN
18 OPINION. AND IF THAT'S THE CASE, I -- I JUST WANT
19 TO KNOW WHAT RULE OR WHAT GUIDANCE?

20 A. CONFIDENTIALITY IS AN IMPORTANT FACTOR IN -- IN MY
21 PROFESSIONAL CONDUCT, AND SO THAT'S THE WAY I'M
22 LOOKING AT THAT.

23 Q. AND YOU'RE JUST CHOOSING WHERE THE LINE IS DRAWN?

24 A. BECAUSE THAT -- I'M NOT IDENTIFIED AS AN EXPERT BY
25 WHICH I'M GOING TO SUBMIT A REPORT TO THE COURT

1 CONCERNING THE NATURE OF THIS CIRCUMSTANCE, WHICH
2 I'M NOT, THEN I THINK THAT I'M OBLIGATED TO MAINTAIN
3 THE CONFIDENTIALITY ON BEHALF OF THE REFERRING
4 PARTY, REGARDLESS OF WHO THAT REFERRING PARTY IS.

5 **BY COMMISSIONER TAYLOR:**

6 OKAY. SO WITH REGARD TO THAT PARTICULAR
7 STANDARD, AND THIS IS A -- YOU -- A LITTLE UNUSUAL
8 IN THE WAY WE'RE DOING THIS, BUT I'LL HAVE TO RULE
9 ON HIS -- HIS CONTENTION AS TO WHETHER HE HAS
10 PRIVILEGE. GENERALLY IN OUR WORKERS' COMP CASES,
11 THE ISSUE IS NOT WHETHER YOU WERE IDENTIFIED AS AN
12 EXPERT ON THE PLEADINGS, BUT WHETHER YOU ACTUALLY
13 MET AND INTERVIEWED OR EXAMINED THE CLAIMANT.
14 BECAUSE EVEN IF YOU -- EVEN IF YOU WEREN'T LISTED,
15 AND YOU HAD DONE AN EVALUATION, THAT EVALUATION IS
16 STILL DISCOVERABLE. SO I THINK WE AT LEAST NEED TO
17 GET TO THE POINT WHERE WE DETERMINE WHETHER OR NOT
18 AN EVALUATION'S TAKEN PLACE, AND SO...

19 **BY MS. PAYNE:**

20 OR EVEN JUST AN -- AN OPINION, 'CAUSE I MEAN I
21 THINK ---

22 **BY MR. SALLEY:**

23 WELL, I THINK ---

24 **DIRECT EXAMINATION RESUMED BY MS. PAYNE:**

25 Q. --- RULE 26 SAYS A PARTY DOESN'T HAVE TO DISCLOSE OR

1 PRODUCE AN EXPERT WHO IS ONLY CONSULTED INFORMALLY
2 OR CONSULTED AND NOT RETAINED, AND I THINK THAT
3 YOU'VE TESTIFIED THAT YOU WERE RETAINED?

4 A. I WAS CERTAINLY PAID FOR MY INVOLVEMENT IN THE CASE.

5 Q. SO I'M ---

6 A. BUT I'VE NOT ISSUED ANY REPORT OR CONDUCTED ANY
7 PERSON EVALUATION.

8 Q. AND I THINK THAT'S -- THAT'S FINE. AND MY QUESTION
9 IS JUST DID YOU FORMULATE AN OPINION?

10 BY MR. SALLEY:

11 I WOULD OBJECT TO THAT. I THINK IT'S NUMBER
12 ONE, HE HASN'T SEEN -- HE'S ALREADY TESTIFIED THAT
13 NORMALLY YOU WOULD HAVE TO EVALUATE SOMEBODY, LOOK
14 AT THEM. THAT'S HOW HE DOES IN THE PLANE OF HIS
15 PRACTICE. HE HAS NOT, THEREFORE, I DON'T THINK IT'S
16 -- HE SHOULD BE REQUIRED TO ANSWER THAT QUESTION.

17 BY MS. PAYNE:

18 I DON'T THINK THAT WAS HIS TESTIMONY. I THINK
19 HIS TESTIMONY WAS IN SOME CASES HE DOESN'T.

20 BY MR. SALLEY:

21 AND -- AND -- AND OFFERED IN COURT. HE SAID
22 OFFERED IN COURT, HE WOULD HAVE TO DO A -- A REPORT
23 AND DO AN EVALUATION TO -- FOR THIS. OTHERWISE, IF
24 IT WAS AT MEDIATION, HE SAID HE WOULD DO THIS AS A
25 BLUSH, BUT NOT TO BE OFFERED INTO COURT. WE HAVEN'T

1 GOTTEN ---

2 BY MS. PAYNE:

3 IT'S NOT HIS DECISION IF SOMETHING'S OFFERED IN
4 THE COURT. IF IT'S DONE IN ANTICIPATION OF
5 LITIGATION, WHICH SURELY IF YOU ARE RETAINING AN
6 EXPERT, IT'S FOR THE PURPOSE OF PREPARING YOUR CASE
7 FOR COURT.

8 BY MR. SALLEY:

9 I WOULD ALSO HAVE, FRANKLY, AN OBJECTION TO HIM
10 RENDERING AN OPINION WITHOUT SEEING MY CLIENT, WHICH
11 I THINK WOULD BE IMPROPER IF YOU HAVEN'T SEEN MY
12 CLIENT.

13 BY COMMISSIONER TAYLOR:

14 WELL, AND I DON'T KNOW. I THINK SHE'S USING
15 THE OPINION, BUT I DON'T KNOW THAT SHE'S ASKING FOR
16 A FINAL OPINION OR MAYBE JUST WHAT WAS GENERATED AS
17 A RESULT OF -- OF YOUR -- OF YOUR RETAINER. YOU'VE
18 RETAINED, I MEAN ---

19 BY MS. PAYNE:

20 YOU RETAINED HIM.

21 BY COMMISSIONER TAYLOR:

22 CAN WE -- CAN WE GO OFF THE RECORD FOR A
23 SECOND?

24 (OFF THE RECORD)

25 BY COMMISSIONER TAYLOR:

1 OKAY. BACK ON THE RECORD. WHILE WE WERE OFF
2 THE RECORD, THE PARTIES HAD A DETAILED CONVERSATION
3 REGARDING THE, I GUESS THE TESTIMONY OF MR. LEONARD
4 PURSUANT TO THE DEFENDANTS' SUBPOENA REQUIRING HIM
5 TO BE HERE TODAY. THERE AROSE AN ISSUE AS TO
6 WHETHER THE SOUGHT AFTER TESTIMONY IS ADMISSIBLE
7 PURSUANT TO EITHER OUR RULES OR MR. LEONARD'S
8 PROFESSIONAL RULES OR CODES OF CONDUCT AS A C.V.E.
9 I HAVE HELD THAT MATTER IN ABEYANCE AND HAVE ALLOWED
10 THE DEFENDANTS TO SUBMIT WRITTEN INTERROGATORIES TO
11 MR. LEONARD TO SOLICIT THE INFORMATION. DEFENSE
12 COUNSEL WILL SEND A COPY OF THE QUESTIONS TO
13 CLAIMANT'S COUNSEL AS WELL AS TO THE COMMISSION. I
14 WILL RULE ON THE ISSUE AS TO WHETHER THE INFORMATION
15 SOUGHT IN THE QUESTIONNAIRE OR IN THE
16 INTERROGATORIES ARE -- WHETHER THAT INFORMATION IS
17 ADMISSIBLE, AND THEN WE'LL ISSUE DIRECTIVES TO MR.
18 LEONARD'S OFFICE ONE WAY OR THE OTHER AS TO THE
19 ADMISSIBILITY OF THAT TESTIMONY. SO I BELIEVE THAT
20 RESOLVES THE ISSUE. MR. LEONARD IS RELEASED FROM
21 THE PERSONAL APPEARANCE SUBPOENA AT THIS TIME AND
22 JUST WILL AWAIT FOR THE CORRESPONDENCE FROM THE
23 COMMISSION.

24 ARE THERE ANY OTHER WITNESSES ON BEHALF OF THE
25 DEFENDANTS AT THIS TIME?

1 BY MS. PAYNE:

2 NO, YOUR HONOR.

3 BY COMMISSIONER TAYLOR:

4 AGAIN, THE MATTER IS BEING HELD OPEN, OBVIOUSLY
5 FOR A NUMBER OF REASONS AT THIS POINT IN TIME, WHICH
6 I HAVE IDENTIFIED ON THE RECORD, AND I HAVE RECEIVED
7 APA SUBMISSIONS FROM THE CLAIMANT, WHICH WILL BE
8 UPLOADED ONTO THE E-CASE SYSTEM, AS WELL AS APA
9 SUBMISSIONS FROM THE DEFENDANTS WITH THE EXCEPTION
10 OF THOSE TWO DOCUMENTS THAT WERE EXCLUDED AT THE
11 BEGINNING OF THE PROCEEDING. IN ADDITION, I DO HAVE
12 THE DEPOSITION OF MR. CLARK, WHICH WAS REFERRED TO
13 DURING THE DEFENDANTS' CROSS-EXAMINATION. SO I'LL
14 HAVE DEFENDANTS UPLOAD THE DEPOSITION TRANSCRIPT
15 ONTO THE RECORD, AND THEN I ALSO HAVE THE DEPOSITION
16 OF DR. STORICK, WHICH WILL BE UPLOADED AS WELL.
17 THAT CONCLUDES -- WELL, THAT CONCLUDES THIS MATTER
18 FOR TODAY'S PURPOSES, BUT THE HEARING IS ADJOURNED.

19 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
20 ADJOURNED AT THE HOUR OF 4:28 P.M.)

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1115485

Lamar Clark,)
)
Claimant,)
)
v.)
)
Phillips Electronics,)
)
Employer,)
)
and)
)
Fidelity & Guaranty Ins.,)
)
Carrier/Defendants.)
-----)

FULL COMMISSION HEARING

Tuesday, March 20, 2018
4:27 p.m. - 5:00 p.m.

The Full Commission Hearing was heard before Commissioners R. Michael Campbell, II, Susan S. Barden and T. Scott Beck, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 20th day of March, 2018, before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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INDEX

<u>CALL TO ORDER:</u>	<u>PAGE</u>
COURT REPORTER.	3
 <u>ARGUMENT:</u>	
MS. PAYNE.	3
MR. JONES.	13
 <u>REPLY:</u>	
MS. PAYNE.	23
Certificate	27

EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COURT REPORTER: Today is Tuesday, March 20th, 2018.

This is South Carolina Workers' Compensation Case Number 1115485. This is the case of Lamar Clark, claimant, versus Phillips Electronics, employer, and Fidelity & Guaranty Insurance, carrier. The appellant is the defendant represented by Brooke Payne. The respondent is represented by William Jones. Each side is allowed 10 minutes for oral argument and the appellant 3 minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER CAMPBELL: All right. Ms. Payne.

ARGUMENT BY MS. PAYNE:

MS. PAYNE: Good morning, Your Honors. May it please the Court. My name is Brooke Payne, I'm here on behalf of Phillips Electronics. We are here as a result of a December, 2017 award by Commissioner Taylor. The claimant sought PTD designation under 42-9-10 and 42-9-30 as well as causally related medical treatment for his back, left hip, left leg, right leg, left foot, nervous system and psych overlay. We've accepted the injury to his lumbar spine, but

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1 we've denied all other body parts as well as
2 the psych overlay. The Commissioner found that
3 the claimant was entitled to PTD under both
4 statutes as well as entitlement to medical
5 treatment related to his psycholog- -- alleged
6 psychological overlay. We request that Your
7 Honors reverse the Single Commissioner's order
8 for the following reasons. With regard to 42-
9 9-10, I'll start there, I'll get into more
10 arguments about why we're of the opinion that
11 it's, you know, just one body part has been
12 affected. But assuming Your Honors find that
13 two body parts have been affected, I want to
14 start with the fact that this is a 2011 date of
15 accident. The claimant was deposed in 2013.
16 Like I said, we've accepted his injury to his
17 lumbar spine. And since his date of accident,
18 he as complained of pain in his lumbar spine
19 radiating down to both extremities, constant
20 complaints. And from the very first treatment
21 he had with an authorized treating physician,
22 he has consistently maintained that he had
23 never had any prior injuries or accidents. So
24 there was never any question about
25 compensability from the onset. My client

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258

1 picked up the claim, he was deposed in 2013,
2 asked about any prior injuries, accidents,
3 similar injuries and he denies all of it. He
4 was also asked about his prior employers. He
5 listed a few of them but not all of them.
6 Flash forward to this hearing date, which was
7 set in -- it was like -- I think it was set in
8 early 2016, but it was tried eventually in
9 September of 2016. About a month before the
10 hearing we learned that the claimant had a
11 prior 2006 work injury in Florida while working
12 for an employer named Tile Depot. Same injury,
13 low back pain with radiculopathy. You know,
14 it's an older date of accident so we weren't
15 able to get our hands on a lot of medicals.
16 What we were able to get our hands on was his
17 prior SSDI file, which showed that he had
18 applied for SSDI back in 2007 and 2009 as a
19 result of that injury in 2006 alleging that his
20 injuries made him completely unable to work.
21 Specifically he reported that he was unable to
22 lift his arms above his head, physically unable
23 to lift anything, some days he was unable to
24 walk, he couldn't clean or do yard work, and
25 these are the same limitations that he has

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1 complained of as a result of our date of
2 accident. And up until seven months before his
3 work injury with our employer, he was treating
4 at the emergency room complaining of low back
5 pain with radiculopathy. Like I said, we don't
6 know the extent of those because we were only
7 able to get our hands on some of the disability
8 reports within the SSDI file. And the claimant
9 obviously wasn't forthcoming with us about any
10 of his prior medical treatment, so we didn't
11 know any of the providers or anything of that
12 sort. But like I said, there were two separate
13 applications for SSDI, in both of which he had
14 the same complaints, was alleging he was
15 incapable of working as a result of those. The
16 last application was in 2009, I'm not sure what
17 time that claim, you know, eventually resolved.
18 But, you know, a few months before date of
19 accident he was still treating at the emergency
20 room with the same complaints. The reason I
21 bring all this up is because not only did he
22 not inform, you know, defense counsel, he
23 didn't inform any of his treating physicians or
24 voc. evaluators throughout this entire claim
25 about his prior work injury, prior physical

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260

1 limitations whatsoever. In fact, he admitted
2 this on the stand at the hearing that he didn't
3 inform even his own voc. evaluator. And so
4 it's our contention that the Commissioner, she
5 should have taken this into account obviously.
6 She found ---

7 **COMMISSIONER BECK:** She did take it into account.
8 She made a finding of fact ---

9 **MS. PAYNE:** A finding of fact ---

10 **COMMISSIONER BECK:** --- and said it didn't change
11 the end result.

12 **MS. PAYNE:** Her finding of fact was that she found
13 him dishonest with regard to ---

14 **COMMISSIONER BECK:** Uh-huh.

15 **MS. PAYNE:** --- his prior physical limitation. But
16 we want -- we think that she should have taken
17 into account the fact that that could have
18 changed the opinions of the treating
19 physicians, of the voc. evaluators. You know,
20 they weren't provided with the true facts of
21 the claim and his true medical history.

22 **COMMISSIONER BECK:** Did you ever provide it to them?

23 **MS. PAYNE:** We weren't provided with it until a
24 month before the date of hearing. And then the
25 record was left open for us to request



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1 additional records, and those records were just
2 to be tendered -- most of the records that we
3 found regarding his prior history were
4 subpoenaed after the date ---

5 **COMMISSIONER BECK:** Did you ask ---

6 **MS. PAYNE:** --- of accident.

7 **COMMISSIONER BECK:** --- to go back and depose the
8 vocational evaluator, for example?

9 **MS. PAYNE:** We did. We asked to do an updated
10 deposition of the claimant prior to the hearing
11 because we realized, when we got his SSDI file,
12 that he had a prior comp. claim. So we wanted
13 to know where he treated, what the extent of
14 his injuries were ---

15 **COMMISSIONER BECK:** Did you do that?

16 **MS. PAYNE:** No. They did not allow us to do it. We
17 filed a motion to compel. We had a conference
18 call regarding the motion to compel at which
19 time Commissioner Taylor urged Mr. Salley and
20 Mr. Smith to provide us with a list of
21 providers so that we could at least get that
22 information before the hearing, which they
23 refused to do. So it was at the date of the
24 hearing when the claimant was on the stand that
25 we learned of all of these providers, and it



1 was -- our instruction was to, that we were
2 able to subpoena those records and then tender
3 them into evidence. And that was the extent of
4 leaving the record open.

5 **COMMISSIONER BECK:** And that went for over three --
6 so you had three months before the record was
7 finally closed to do that?

8 **MS. PAYNE:** We had until she ruled on the motion
9 regarding Mr. Lenard, compelling his testimony.
10 And we were told that as soon as she ruled on
11 that, that she would give us instructions with
12 regard to tendering everything. Because I had
13 asked her at the hearing, do you want us, you
14 know, as soon as we get these subpoena
15 responses in, do you want us to provide them to
16 -- in piecemeal, and she said no, that she
17 would give us instructions right after she
18 issued an order with regard to Mr. Lenard.

19 **COMMISSIONER BECK:** Okay.

20 **MS. PAYNE:** In addition to defense -- the treating
21 physicians and the voc. evaluators not being
22 aware of his prior back injury and limitations,
23 and the fact that he was alleging an inability
24 to work as a result of his prior back injury
25 for years leading up to our date of accident,



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1 he also wasn't honest with us about the
2 schooling he had had. He had told us that had
3 completed maybe a little bit of college, but
4 then once we got his SSDI file, we realized
5 that he had actually completed two full years
6 of college.

7 **COMMISSIONER BARDEN:** Did either vocational expert
8 know that he had completed two years of
9 college?

10 **MS. PAYNE:** The first -- his expert did not know
11 that. We, once we found out that he had
12 completed the second year, which was at Keiser
13 College, something to do with computer
14 technology, we provided that information to our
15 voc. expert, and she did an updated report and
16 found more jobs that he could work as well as
17 higher pay.

18 **COMMISSIONER BARDEN:** And he denied prior psych too?

19 **MS. PAYNE:** He denied prior psych. He also didn't
20 start alleging psych injuries until two years
21 after the date of accident. Within his SSDI
22 file, he actually completed a questionnaire
23 where he indicated that he had treated with
24 doctors, facilities and physicians in relations
25 to mental and emotional issues, which were



1 causing him to be unable to work. He denied
2 all of that. I mean pretty much anything we
3 presented him with at the hearing, he denied
4 with regard to his prior injuries. He denied
5 that he ever filed a comp. claim in Florida.
6 He said it was some sort of lawsuit about
7 wrongful termination. But we had an affidavit
8 that he had signed, and then he finally
9 acknowledged it. So I, you know -- when we get
10 to the 42-9-30 analysis -- I'm just jumping
11 ahead 'cause I'm probably running out of time.
12 The Commissioner noted that she came to the
13 conclusion that he was PTD under that statute.
14 And one of the main reasons that -- or one of
15 the most persuasive facts was the fact that he
16 had only a 12th grade education, which is
17 simply not true. As we found out later on that
18 he had actually completed two full years of
19 college.

20 **COMMISSIONER BARDEN:** One of them was in computer
21 programing?

22 **MS. PAYNE:** Yes, ma'am. The second one. The first
23 one was Georgia Military College. Which, you
24 know, when you're looking at a vocational
25 analysis, we thought that that should be more

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1 persuasive, I mean, 'cause he was alleging that
2 he couldn't do anything, that he'd only
3 performed manual labor in the past, and could
4 never return to that. But, I mean, a year of
5 computer programing seems to be something that
6 we think should have been assigned greater
7 weight at the hearing. And also in that
8 regard, I mean, you know we didn't know -- we
9 still don't know the extent of his prior
10 injuries. But we know that, you know, right
11 after his initial -- right after his accident
12 with us he reported low back pain and then the
13 doctor said, you know, while he's got this
14 radiculopathy, that he's also never had before,
15 and so that's when the MRI was performed. And
16 then he underwent a surgery. And so, you know,
17 when it comes to the 42-9-30 analysis, we think
18 that she should have taken into account, you
19 know, if there was any sort of offset due to
20 this prior injury or, you know, another thing
21 is she never noted -- Dr. Holbrook was the
22 ortho ATP and he assigned a rating of 20
23 percent which is lower than all of the IME
24 physicians that the claimant's doctors
25 assigned, and that's nowhere to be found in her

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266

1 report. For all these reasons we request that
2 you reverse.

3 **COMMISSIONER CAMPBELL:** Okay. Thank you. And
4 you'll have three minutes in response. All
5 right. Mr. Jones. And you have 10 minutes,
6 sir.

7 **ARGUMENT BY MR. JONES:**

8 **COMMISSIONER BECK:** Based on Ms. Payne's
9 presentation, there appears to be a significant
10 lack of candor on the part of the claimant, and
11 a little bit of obstructionism on the part of
12 the counsel. Why aren't those assertions true?

13 **MR. JONES:** Well as far as -- he was not -- he
14 didn't tell all of his medical history. But --
15 -

16 **COMMISSIONER BECK:** Significant medical history.

17 **COMMISSIONER BARDEN:** Or his psychological history or
18 ---

19 **MR. JONES:** Yeah, but ---

20 **COMMISSIONER BARDEN:** --- his -- vocational expert
21 reports are built on the foundation of
22 experience, education, skill set. This one's
23 a house of cards. Is it not?

24 **MR. JONES:** Well, first of all, Commissioner Taylor
25 addressed the fact that she considered his lack



1 of candor as far as his past medical history.

2 **COMMISSIONER BARDEN:** But not about psychological ---

3 **COMMISSIONER BECK:** As it relates to his past
4 workers' comp. claim I think is what the
5 finding actually said.

6 **MR. JONES:** Like I said, I think she addressed that.

7 And here's what you're looking at. This guy
8 was working for seven months.

9 **COMMISSIONER BECK:** With multiple disability filings.

10 **MR. JONES:** Right. He was never awarded disability
11 under those filings. Okay. That's the first
12 thing. He was never awarded disability. Okay.
13 So, you know, the credibility issue with him --
14 -

15 **COMMISSIONER BECK:** But he made assertions on those
16 applications that he didn't disclose.

17 **MR. JONES:** He made assertions. But he worked for
18 seven months, temporary services for this
19 company out there, and then they hired him.
20 They had no problems with him, no missing work,
21 he testified he didn't miss work, they haven't
22 presented anything that he missed any time from
23 work, had any complaints, and any issues as far
24 as his ability to work. They hired him, he has
25 his injury, he still works for six months



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268

1 afterwards.

2 **COMMISSIONER BARDEN:** Well say we agree with all --
3 say he didn't just manage to do all that for
4 seven months, that we agree with you. Then you
5 get to the vocational aspect of this case which
6 determines whether or not a person's
7 permanently and totally disabled. And that
8 vocational evaluator relies on supposedly
9 truthful information. And if we don't -- if
10 that vocational evaluator, your's that would
11 be, doesn't even know the full extent of his
12 educational achievements or his skill sets,
13 then how can we give anything to that?

14 **MR. JONES:** Well let's address that. He went to one
15 year of college. If I'm correct, Commissioner
16 Taylor addressed the fact that he had some
17 college, he went to one year of college, left
18 there, then he took -- he testified he took a
19 couple classes at this other college that he
20 said was in computer technology. There's
21 nothing to show that he actually took any
22 computer technology classes. He was trying to
23 major in that, but he never went forward, never
24 got a degree. That was also back in 1997. And
25 if you -- I think one of the things you'd have



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1 to address -- may have to address, is whether
2 the skills -- he hasn't -- all he's done is
3 labor work, medium to heavy labor work his
4 whole life.

5 **COMMISSIONER BECK:** I don't see where she addresses
6 any college in finding of fact 21. Said the
7 evidence shows attempted college courses twice.

8 **MR. JONES:** Right. But I don't think we're showing
9 -- the only thing we have is his social
10 security. I don't think we have anything to
11 show when he actually completed any of those
12 courses anyways. We have no -- we don't know
13 if he failed, he got an A. We -- I mean --
14 there's -- I mean, that's not there.

15 **COMMISSIONER BARDEN:** No, we don't because he hasn't
16 been forthright. I mean, what we know maybe is
17 just the tip of the iceberg.

18 **MR. JONES:** I think, like I said, Georgia College
19 sent the information, I believe, they had. So
20 they could have got that as far as grades to
21 show whether he was even -- had a good ability
22 in college to proceed, you know, as far as
23 grades. But we don't have any of that. And,
24 like I said, you're talking about 1997.
25 Technology has gone from beepers from that time



1 to Snapchat.

2 **COMMISSIONER BARDEN:** But does it not show an
3 aptitude, an ability to learn, an ability to
4 perform a certain task or to learn certain
5 information? I mean, that's all been denied in
6 the vocational evaluation.

7 **MR. JONES:** But again, we don't even show what he
8 did in any of the classes. He testified that
9 those classes were just regular core classes.

10 **COMMISSIONER BARDEN:** Can we rely on his testimony?
11 I mean you're asking us to rely on testimony
12 when he's been duplicitous about all this other
13 stuff.

14 **MR. JONES:** Right. But getting back to the job
15 search anyway, he is on limited sedentary was
16 the finding from the FCE, limited sedentary to
17 limited light, okay, from the FC- -- from Tracy
18 Hill. Dr. Hutchison agreed with that. I
19 believe Dr. Gazelle had similar findings. Dr.
20 Westerkam -- I believe Dr. Westerkam agreed
21 with the restrictions. I mean, based on the
22 restrictions, he'd never done sedentary work,
23 and now he's limited sedentary.

24 **COMMISSIONER BARDEN:** And that's from Tracy Hill?

25 **MR. JONES:** Well Tracy Hill, but it's also agreed by



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1 Dr. Hutchison and Dr. Westerkam both agreed
2 with -- specifically with that FCE.

3 **COMMISSIONER BECK:** Treating physician was who?

4 **MR. JONES:** Dr. Holbrook.

5 **COMMISSIONER BECK:** And what'd he say?

6 **MR. JONES:** As far as the limitations, I don't know.

7 **MR. SMITH:** Light duty.

8 **COMMISSIONER BECK:** Okay.

9 **MR. JONES:** Like I said, based on the restrictions,
10 I think, you know, the judgement holds up. He
11 said, himself, as far as him being -- that
12 basically he can't go through a full workday
13 without having to sit reclined for six hours a
14 day.

15 **COMMISSIONER BARDEN:** Initially, after his second
16 surgery, didn't he say that he was 40 percent
17 better, he was a lot better. And then all of
18 a sudden -- I mean, a lot of these restrictions
19 are based on subjective complaints, and his
20 original subjective complaints were quite
21 positive, were they not?

22 **MR. JONES:** There was dispute over whether it's
23 accurate. But the problem is ---

24 **COMMISSIONER BARDEN:** He disputed the medical records

25 ---



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1 **MR. JONES:** But his condition's also gotten worse.
2 I think if you look back at Dr. Holbrook's
3 visit in 2016, Sept- -- well the note was
4 September, 2016, he showed hypoactive knee,
5 ankles, sensation of pin prick over left foot.
6 It's not just subjective complaints.

7 **COMMISSIONER BARDEN:** Well and address the
8 inconsistencies with the psychological
9 complaints where he told one provider he was
10 suicidal and the others that he was just, to
11 quote, a little depressed.

12 **MR. JONES:** People with depression, they say
13 different things at different times. Most
14 people don't want to talk about depression.
15 And I believe ---

16 **COMMISSIONER BARDEN:** But he's claiming it, so he
17 wants to talk about it.

18 **MR. JONES:** Like I said, my experience is most
19 people don't, you know. And what happens is on
20 a given day he ---

21 **COMMISSIONER BARDEN:** Unfortunately, you're not a
22 fact witness here ---

23 **MR. JONES:** --- may be suicidal, another day he may
24 not ---

25 **COMMISSIONER BARDEN:** --- so your experience -- I



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1 mean, I appreciate that but I'm asking about
2 the inconsistencies in the record.

3 **MR. JONES:** And like I say, I think Dr. Lynn's
4 report addresses the psychological issues. Dr.
5 Storick relies on Dr. Lynn's report 'cause he
6 -- he thought a trial spinal cord stimulator
7 was an idea of something he'd recommend, but
8 because of Dr. Lynn's report, he couldn't
9 recommend it at this time because of the
10 depression. Dr. Holbrook also says that before
11 the trial spinal cord stimulator is addressed,
12 again, the depression would have to be
13 addressed. So, I mean, you have Dr. Lynn -- I
14 mean Dr. Storick specifically in his notes
15 relying on Dr. Lynn.

16 **COMMISSIONER BARDEN:** And Dr. Lynn's relying on the
17 statements made by the claimant, correct?

18 **MR. JONES:** Correct. But there's no other testimony
19 that is not work related injuries. No one has
20 said that they -- the only testimony we have is
21 Dr. Lynn, and then the agreement. There are no
22 other doctors saying it's not an injury from
23 pain. A number of the doctors address the fact
24 that it's from the pain. Dr. Hutchison did
25 specifically, Dr. Westerkam talked about



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1 psychological issues resulting from his pain on
2 a 7/21/2014 visit. Dr. Gazelle also did that
3 later on. I mean they talked about
4 specifically the pain is causing that issue.
5 So I think it's been addressed as far as -- and
6 I don't think there's any testimony that it's
7 anything else, you know, testing wise there
8 could have been things done if he didn't think
9 it was pain, so. That's kind of our position
10 on that.

11 **MR. SMITH:** And, Commissioners, I think the other
12 point to make in this case is that, you know,
13 the seriousness of this guy's injury. I mean,
14 he worked for seven months, like Mr. Jones
15 says. He goes to work, he has his accident,
16 and it results in the first surgery, he clearly
17 doesn't recover from that. He has to go back,
18 we have to send him to Dr. Johnson, then
19 ultimately Dr. Holbrook agrees that he needs a
20 second surgery. So he has a second surgery.

21 **COMMISSIONER BARDEN:** But these are two
22 microdiscectomies, correct?

23 **MR. SMITH:** These are two discectomies, that's
24 correct.

25 **COMMISSIONER BARDEN:** Microdiscectomies.

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1 **MR. SMITH:** Correct. But it results in Dr. Storick
2 ultimately saying this guy's gonna need a
3 spinal cord stimulator. And then he backs off
4 of that opinion and says, well due to his
5 psychological stuff maybe he doesn't, maybe he
6 doesn't need a stimulator due to the psych.
7 But at one point Dr. Storick even came in and
8 said the client was not at MMI because he
9 needed this spinal cord stimulator. And we all
10 knows that implies you're having significant
11 problems into the lower extremities.

12 **COMMISSIONER BARDEN:** And he made the recommendation
13 based upon the subjective complaints, correct?

14 **MR. SMITH:** Well subjective complaints and also the
15 physical findings that Mr. Jones went over with
16 the hypoactivity in the legs, also the
17 tingling, the sensation to pin prick, all those
18 things were still present in the client leading
19 up to the hearing, and through the hearing and
20 still to this day. So these things are things
21 that he's actually dealing with that are actual
22 physical objective findings, more so than just
23 the subjective complaints. And that's, you
24 know -- in looking at it, I think he clearly
25 has more than one affected body part under the



1 Molin Acts Case. So 42-9-10 award is
2 absolutely appropriate in this case. With
3 regard to his ability to find work, he
4 testified that he attempted to find work. The
5 fact that we don't have the applications or
6 whatever -- I mean that's something that's not
7 there, but his testimony is that he attempted
8 to find work.

9 **COMMISSIONER BARDEN:** Did they subpoena some of
10 those perspective employers and they didn't
11 have records of him applying?

12 **MR. SMITH:** They subpoenaed them, but I don't
13 believe any records were produced, so ---

14 **COMMISSIONER BARDEN:** All right.

15 **MR. SMITH:** --- whether or not they were received
16 records, we don't know. We didn't subpoena.

17 **COMMISSIONER BECK:** Am I missing a finding in here
18 regarding -- no I found it, number 18. So it's
19 basically found back with affect to the legs
20 and the psych?

21 **MR. SMITH:** Correct. That's correct.

22 **COMMISSIONER CAMPBELL:** All right. Thank you. Ms.
23 Payne, you have three minutes in response.

24 **REPLY BY MS. PAYNE:**

25 **MS. PAYNE:** Okay. Just to hit on -- real quick on



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1 some of their arguments. I think, when I hear
2 he reported tingling and sensation of pin
3 pricks, I think those are subjective findings.
4 Those aren't objective findings that one would
5 find on a diagnostic study. Those are things
6 that he's reporting. So I disagree that all
7 these recommendations were made on any
8 objective findings. Also, yeah he did have two
9 surgeries, microdiscectomies as you pointed
10 out. But who's to say he wasn't a surgical
11 candidate, you know, in 2009 when he was --
12 when he filed his second application for SSDI?
13 We don't know, we'll never know because we've
14 never, I don't think, been told of all the
15 medical providers, and I'm sure there's a
16 reason for that. With regard to his job
17 search, we learned of all the people that he
18 alleged were the employers he allegedly had
19 submitted applications with at the hearing. We
20 sent subpoenas to every single one. And with
21 regard to every single one, I asked him, did
22 you -- okay, you submit an application, did you
23 talk to anybody, did you let them know about
24 your restrictions. All of those he answered in
25 the affirmative. We sent subpoenas to all of

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1 these specific employers, and it's not that we
2 just didn't get a response, we got responses
3 back from all of them saying -- Staff Masters,
4 for instance, has no employment records for Mr.
5 Lamar Clark. Roper Staffing responded to
6 subpoena saying they couldn't find any records
7 for the claimant. We didn't just ask for
8 employment records. We specifically said,
9 we're looking for anyone that may have applied.
10 You know, it wasn't like they misunderstood our
11 subpoena. Roper Staffing said the same thing,
12 they conducted a search by his social and name,
13 they had no applications on file. Corporate
14 Council for Longs Drugs responded to subpoena
15 saying that they have no record that he ever
16 applied. And all of those, once the subpoena
17 responses were returned to us following the
18 hearing, they were all tendered in as part of
19 our supplemental APAs or exhibits. Nothing
20 further unless you guys have any questions.

21 **COMMISSIONER CAMPBELL:** No? All right. Thank y'all
22 and thank you for being here. This concludes
23 today's proceeding. Thank you, everybody, for
24 being here.

25 **(There being nothing further, the full commission**

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1 hearing concluded at 11:19 a.m.)
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280

State of South Carolina
Before the
South Carolina Workers' Compensation
Commission
WCC File No.: 1115485

Lamar Clark,)
Employee,)
Claimant,)
vs.)
Philips Electronics,) Deposition of
Employer,) STEVEN B. STORICK, MD
and) July 25, 2016
Gallagher Bassett)
Services, Inc.,)
Carrier,)
Defendants.)

Deposition on oral examination of
STEVEN B. STORICK, MD, reported by
Shelley Burgoyne, Court Reporter and Notary
Public in and for the State of South Carolina;
said deposition taken pursuant to notice of
deposition and in accordance with the South
Carolina Rules of Civil Procedure, at
Midlands Orthopaedics & Neurosurgery, 1013
Lake Murray Boulevard, Irmo, South Carolina,
commencing on Monday, July 25, 2016, at the
hour of 2:07 p.m.

1 back with radiculopathy into his left leg,
2 going down to his left big toe?

3 A. Yes, ma'am.

4 Q. When you perform IMEs, do you ask
5 patients about their medical history?

6 A. About their what?

7 Q. Medical history.

8 A. Yes, ma'am.

9 Q. Were you aware at this time that
10 Mr. Clark had had a prior work-related injury
11 in which he injured his low back?

12 MR. SMITH: I'm going to object to
13 that. There is -- I mean, I think we need to
14 have a foundation on that as well.

15 MS. PAYNE: A foundation how so?

16 MR. SMITH: I mean --

17 MS. PAYNE: Is your objection to
18 something that's not in evidence?

19 MR. SMITH: Correct.

20 MS. PAYNE: Well, it's going to -- I
21 mean, I'm going to provide him with medical
22 records as well as information at the hearing,
23 but the objection is noted for the record.

24 THE WITNESS: Are you talking about
25 his neck or his back when you say "work

1 related"?

2 MS. PAYNE: Back.

3 THE WITNESS: He's had two previous
4 back surgeries that I'm aware of.

5 BY MS. PAYNE:

6 Q. Well, prior to working at
7 Philips Electronics, did he inform you of a
8 prior back injury?

9 A. Informed -- according to my records,
10 he informed me he had prior neck surgery and
11 prior back surgery, so that's the -- basically
12 what I have. I have those two. The back
13 surgery was in April 2012.

14 Q. Okay.

15 A. Now, as far as any -- when you say
16 "prior back injury," are you talking about an
17 injury that required surgery or are you
18 talking about --

19 Q. We're really not sure of the extent of
20 the injury. We just have some medical
21 records, so my question is: Would you have
22 asked him at an IME if he had ever injured his
23 back prior to his work injury that you were
24 treating him for?

25 A. If you are asking did he ever have any

1 significant back problems, yes, that question
2 would be asked. If you are asking does
3 somebody have a back injury that maybe was a
4 few weeks or a few months, no, and that's a
5 common problem that everybody has.

6 Q. Okay.

7 A. So just because someone filed a claim
8 for a work injury is not by itself of issue,
9 you know.

10 Q. Would you have made note in your
11 report anywhere if he had told you about that?

12 A. Possibly. The answer is I don't -- I
13 would tell you it depends on how significant
14 it was.

15 Q. And that is based on what he said
16 about how significant it was, correct?

17 A. That's correct.

18 Q. Okay. Is there an actual intake form
19 that comes -- that you have patients complete
20 for IMEs that asks their medical history?

21 A. There is a standard intake form for
22 most practices as far as their chronic
23 problems.

24 Q. Where would --

25 A. This one --

1 Q. Where would that be?

2 A. I doubt -- oh, this one? Good luck.

3 Because the clinic doesn't exist anymore and
4 what records are there, you are talking -- it
5 closed in '14, so at least two years, and we
6 have a hard time getting ahold of them for
7 this.

8 Q. So who is the custodian of those
9 records now?

10 A. Palmetto Health.

11 Q. Are they -- but if it's closed, who is
12 handling it?

13 A. Palmetto Health.

14 Q. Isn't there some sort of obligation
15 for them to stay -- like not be destroyed for
16 a certain period of time --

17 A. You tell them --

18 Q. -- and be accessible?

19 A. You tell them that. Okay. Good luck.

20 Q. Okay. Would you have found it
21 significant if Mr. Clark had told you that he
22 had a prior back injury that resulted from
23 lifting tiles at work back in 2006 that caused
24 him to have low back pain with radiation into
25 his left leg?

1 **A. No, it wouldn't surprise me.**

2 Q. It wouldn't surprise you.

3 Would you find it significant that
4 he -- if he sought pain management treatment
5 in relation to that injury and received
6 Toradol shots and Flexeril for pain control?

7 **A. I would expect something like that**
8 **would happen.**

9 Q. Okay. Would that have had any impact
10 on your evaluation of him related to this
11 claim?

12 **A. No.**

13 Q. No.

14 Mr. Clark's injury back in 2006 was
15 significant enough for him to apply for SSDI
16 benefits in relation to his work injury, both
17 in 2008 and 2009.

18 MR. SMITH: I'm going to object to
19 that. There is more significant stuff in
20 there as well. It's not just specifically for
21 the work injury. That's a mischaracterization
22 of the medical document.

23 MS. PAYNE: That -- is that your
24 objection, a mischaracterization?

25 MR. SMITH: Correct.

1 narrative. I can get it for you.

2 So based on that narrative, you will
3 agree that in February of 2015 it was your
4 opinion that his future medical needs related
5 to this work injury included Neurontin and
6 pain management visits twice a year.

7 **A. That's correct.**

8 **Q.** Is that correct?

9 And so at that time you didn't foresee
10 the possibility of him needing a spinal cord
11 stimulator in his future.

12 **A. According to that, no.**

13 **Q.** Okay. And then he returned to you on
14 April 16, 2015, and you noted again that his
15 leg pain was controlled by Neurontin.

16 **A. That's correct.**

17 **Q.** And then you discussed the results of
18 his nerve block injections, that he had 50 to
19 55 percent relief.

20 **A. That's correct.**

21 **Q.** So at that time I assume that that was
22 considered a success?

23 **A. At that time it was enough to**
24 **consider, we would pursue the radiofrequency.**

25 **Q.** Okay. And when you say it was being

1 used for diagnostic purposes -- so since he
2 had success on -- with those two injections,
3 what does that tell you that makes you, from a
4 medical perspective, know that a rhizotomy
5 would be beneficial?

6 A. Well, still based on subjective report
7 by the patient, that all you can go with is
8 when the -- that's one of the reasons we've
9 tightened up the criteria, because even at
10 80 percent relief, there is still at least
11 20 percent chance the patients will not
12 benefit from a radiofrequency rhizotomy, and
13 I've had that happen.

14 So our response is -- one of the
15 reasons we make them do it twice, is to make
16 sure there is not a placebo effect and go with
17 the response the patient has.

18 There is never a guarantee when you
19 are treating the spine that any of these
20 treatments are going to always be successful.

21 Q. So these injections were just to
22 determine whether the level you were injecting
23 was the level that was causing the pain?

24 A. Well, the level and whether the facet
25 joints were possibly a majority of his pain

1 **versus the disks.**

2 Q. And so what exactly is a rhizotomy?

3 A. Basically you're burning, killing, a
4 **nerve.**

5 Q. And you would only be doing that if it
6 was the facet joint as opposed to the disk?

7 A. Try not to do it. In other words, we
8 try to determine the facets are the source of
9 the pain, so then we will pursue that
10 **procedure.**

11 The risks are low, but it still
12 carries some risk. If it's disk-related pain,
13 then the procedure most likely would not be
14 **helpful long term.**

15 Q. And when you are evaluating the
16 patients' pain relief following the
17 injections, how long -- what sort of period of
18 time do you look at? Is it immediate pain
19 relief or for an extended period of time?

20 A. For the radiofrequency?

21 Q. No. For the nerve block injections.

22 A. Normally, the nerve blocks, you are
23 **looking at 24 hours.**

24 Q. Okay.

25 A. If you notice, the only thing utilized

1 **about six weeks.**

2 Q. And in June of 2016, when you
3 completed your office note, you didn't give
4 any indication regarding Mr. Clark no longer
5 being at MMI.

6 A. Well, he's been declared at maximum
7 medical improvement. That doesn't change.

8 Q. And you are referring to when you
9 initially declared him at MMI?

10 A. Back in August 2015.

11 Q. So you still stand by the fact that he
12 was properly at MMI back in August of --

13 A. Yes, ma'am.

14 Q. So why is it that in the most recent
15 questionnaire in June -- that you completed on
16 June 28, 2016, did you agree with --

17 A. Prior to reaching maximum medical
18 improvement? Because I didn't have the
19 records to look at then, and I apologize, but
20 he is at MMI. It doesn't mean he doesn't get
21 further treatment. It just means that, you
22 know, things change. Usually most patients in
23 Mr. Clark's situation are -- have lifetime
24 medicals.

25 Q. Right.

1 as to whether he is a candidate for a spinal
2 cord stimulator trial?

3 **A. One, he needs a psychological**
4 **evaluation to make sure there is no**
5 **significant depression, anxiety or absolute**
6 **contraindications to the trial; two, during a**
7 **trial he would have to report at least 60 to**
8 **80 percent improvement, back and leg pain,**
9 **including some functional improvement,**
10 **activities of daily living, standing/walking**
11 **ability. He potentially, if the stimulator**
12 **works, we would stop the Neurontin during the**
13 **trial, see if the Neurontin helped, see if the**
14 **stimulator helped so that he wouldn't need the**
15 **Neurontin.**

16 **Q. But if he has sufficient resolution of**
17 **pain from the Neurontin, then why would you**
18 **still find him to be a spinal cord stimulator**
19 **candidate?**

20 **A. Because it doesn't help his back pain.**

21 **Q. And that's just based on his**
22 **subjective complaints?**

23 **A. That's how we normally do it.**

24 **Q. Are you referring to his right-sided**
25 **back pain or his left-sided-?**

1 pain, would it not be beneficial to do the
2 trial prior to determining whether or not he's
3 at MMI?

4 A. Well --

5 Q. Or at least --

6 A. -- he has already been declared at
7 MMI. That was almost a year ago. This
8 treatment has now become available since that
9 time. To me, you know, his maximum medical
10 improvement -- I don't think his impairment is
11 going to change or anything is going to
12 change.

13 It's just this is a, you know,
14 situation where I don't know what Mr. Clark's
15 settlement has been or not, but most people in
16 his situation usually have lifetime medicals,
17 unless they -- they take a clincher, and so,
18 you know, if the patient comes back in and he
19 says, look, I'm still having problems with my
20 back, well, okay, well, now this technology is
21 available.

22 As far as I'm concerned, you know,
23 it's not going to change his impairment
24 rating. I don't know what permanent work
25 status Dr. Holbrook issued for him. If you

State of South Carolina
Before the
South Carolina Workers' Compensation Commission
WCC File No.: 1115485

Lamar Clark,
Employee,
Claimant,
vs.
Philips Electronics,
Employer,
and
Fidelity & Guaranty
Insurance Company c/o
Gallagher Bassett Services,
Incorporated,
Carrier,
Defendants.

COPY

Deposition on oral examination of
LAMAR CLARK, reported by Deidre M. Osborne, Court
Reporter and Notary Public in and for the State
of South Carolina; said deposition taken pursuant
to notice of deposition and in accordance with
the South Carolina Rules of Civil Procedure, at
Salley Law Firm, PA, 129 East Main Street,
Lexington, South Carolina, commencing on
Wednesday, May 22, 2013, at the hour of
10:15 a.m.

1 Q. Okay. Did Dr. Lind diagnose you
2 with anything other than depression, like anxiety
3 or any other type of psychological problems to
4 your knowledge?

5 A. He said something about like maybe
6 sleep apnea.

7 Q. Sleep apnea?

8 A. Yeah.

9 Q. Okay.

10 A. Because I'm not getting a lot of
11 sleep.

12 Q. Okay. All right. And you're not
13 sure who the other doctor was that you saw?

14 A. No. I'm not sure of his name.

15 Q. Okay. All right. And I believe
16 you've already testified that this is the first
17 workers' compensation claim that you've ever
18 brought. Is that true?

19 A. Yes, sir.

20 Q. Okay. All right. Have you ever
21 been involved in an automobile accident with
22 injuries?

23 A. No, sir.

24 Q. Okay. Prior to this work accident,
25 Mr. Clark, had you ever had any injuries to your

1 low back?

2 A. No, sir.

3 Q. Had you ever had any medical
4 treatment for your low back before this work
5 accident?

6 A. I've had a pulled muscle but never
7 anything -- nothing major. That's it. I've had
8 a pulled muscle.

9 Q. Okay. All right. You have not
10 applied for Social Security disability, have you?

11 A. Yes, sir.

12 Q. You have applied for Social
13 Security? Okay.

14 Have you done that on your own or
15 has Mr. Salley assisted you with that?

16 A. Mr. Jeffcoat is assisting me with
17 that.

18 Q. Okay. Is he -- is he with
19 Mr. Salley's firm?

20 A. No. Separate firm.

21 Q. Okay. I'm not familiar with him.
22 Do you know his first name?

23 A. Samuel Jeffcoat.

24 Q. Okay. Is he in Lexington?

25 A. No. He's in Newberry.

1 long periods?

2 A. Yes, sir.

3 Q. Okay. How long can you stand
4 before you have to sit?

5 A. I have to rotate. It's about the
6 same, so that would be 30 to 45 minutes.

7 Q. Okay. All right. Let's go ahead
8 and get into your work history now starting after
9 high school and college. I want to know where
10 you've worked throughout your career up to now.
11 Try to give me dates as best you can. I'm not
12 going to hold you to those specific dates.
13 They're helpful, but I want to get a snapshot of
14 your vocational history.

15 A. Okay. From high school?

16 Q. No. I'd -- you went straight --
17 did you go straight from high school to Georgia
18 Military?

19 A. Yes, sir.

20 Q. Okay. Let's go after Georgia
21 Military up to now.

22 A. Olive Garden.

23 Q. And where was that?

24 A. Decatur, Georgia. Well, Tucker,
25 Georgia.

1 job?

2 A. Yes.

3 Q. Okay. What was the heaviest thing
4 you had to lift?

5 A. I'm not sure how much that -- I'm
6 not sure how much those crossarms weighed, but
7 they're well over 50 pounds.

8 Q. Okay. You said "crossarms"; is
9 that --

10 A. Yes.

11 Q. Okay. Why did you leave
12 Shakespeare?

13 A. I haven't left them.

14 Q. So Philips Electronics --

15 A. Is Shakespeare.

16 Q. -- is Shakespeare?

17 A. Yes.

18 Q. Got it. Got it. I've got you with
19 a hire date of 7/18/11. Does that sound correct?

20 A. Yeah.

21 Q. Okay. All right. Before we get
22 into some more specifics with your job with
23 Philips, slash, Shakespeare, before coming to
24 work for Philips and Shakespeare, have you
25 testified about all the places that you worked

1 before coming to work for Philips?

2 A. Explain the question.

3 Q. Sure. Have you -- before -- have
4 you testified about all the places that you
5 worked before coming to work for Shakespeare and
6 Philips? Have you mentioned all the places that
7 you've worked?

8 A. Yes.

9 Q. Okay. For all of those places that
10 you've already testified about, did you ever
11 injure your low back while working for any of
12 those companies?

13 A. No, sir.

14 Q. All right. All right. Who was
15 your supervisor at the time of your accident?

16 A. I'm not sure. Oh, yeah, I am.
17 Terry Langford.

18 Q. Do you know whether or not he's
19 still with the company?

20 A. Yes.

21 Q. He is still with --

22 A. Yes.

23 Q. Still there? Okay.

24 And describe one of these crossarms
25 for me because I've never been out there. I

1 don't know what they look like. What is it?

2 A. It's like a fiberglass beam, and
3 they're about -- some of them can get about that
4 wide. I think the one that we were lifting was
5 about this wide, but it was 27 feet.

6 Q. 27 feet and how many inches wide?
7 What was that, about 6, 7?

8 A. About 8.

9 Q. 8 inches?

10 A. I think it was a 2-by-8 .

11 Q. Okay. About 27 feet long?

12 A. Yes.

13 Q. What are they used for?

14 A. Light poles.

15 Q. Okay. And you were lifting this
16 crossarm with a co-worker when you injured
17 yourself?

18 A. Yes.

19 Q. Okay. Go ahead and tell me exactly
20 what happened with your work accident.

21 A. The beam slipped on his end. He
22 caught his end, and then it slipped out of my
23 hand when he caught it, so I tried to catch it
24 before it broke my foot, and I caught it at like
25 knee level, and it yanked my back.

1 Q. Okay. Yanked your low back?

2 A. Yes.

3 Q. Okay. How heavy would you estimate
4 that beam was?

5 A. I'm not sure how heavy it is. I
6 know it is well over 50 pounds. It's got to be
7 close to 100 if not 100.

8 Q. And moving those beams, you
9 would -- how often would you move those beams on
10 a typical shift?

11 A. Well, that shift we had to move
12 them -- we had to move -- that was the longest
13 one, but there were different size ones. We had
14 to move 28 I think it was.

15 Q. Okay. And two of you would do it;
16 is that right?

17 A. Right.

18 Q. Okay. Who was the co-worker that
19 was working with you when he dropped the end; do
20 you remember?

21 A. Charles Trap.

22 Q. Charles Trap?

23 A. Yes.

24 Q. Is he still with the company?

25 A. I'm not sure.

1 ask you this. Before this accident, had you ever
2 had an MRI of your low back?

3 A. No.

4 Q. Okay. Never had a CT scan of your
5 low back; is that right?

6 A. No.

7 Q. Okay. Any x-rays of your low back
8 before the accident?

9 A. Not that I remember.

10 Q. Okay. All right. So when you saw
11 Dr. Hibbits, he ordered an MRI?

12 A. Yes.

13 Q. All right. And he gave you work
14 restrictions?

15 A. Sedentary.

16 Q. Sedentary duty. Okay.

17 And did they provide that or not?

18 A. No.

19 Q. Okay. So you kept doing your
20 regular job duties?

21 A. (Witness nodding head.)

22 Q. That's a yes, right?

23 A. Yes.

24 Q. Okay. Did you give the excuses to
25 someone with the company?

1 A. Yes.

2 Q. Who did you give it to?

3 A. I gave it to Mike Senn.

4 Q. Is he the safety --

5 A. Yes.

6 Q. -- guy?

7 All right. You went back to
8 Dr. Hibbits on October 19th of 2011; is that
9 right? Does that sound right?

10 A. That sounds right.

11 Q. Okay. And he told you what the MRI
12 showed? It showed a disk herniation at L5, S1?

13 A. Yes.

14 Q. Okay. And he gave you some
15 Neurontin?

16 A. Yes.

17 Q. Okay. He kept you on sedentary
18 duty?

19 A. Yes.

20 Q. But the company was not providing
21 you with sedentary duty --

22 A. No.

23 Q. -- is that your testimony?

24 A. That's my testimony. No, they
25 weren't.

1 Q. Okay. All right.

2 A. It had to be longer than a year and
3 a half ago because -- no. Let me think
4 because -- okay. I started working at -- no. It
5 was before the accident that I saw my son.

6 Q. Okay. All right.

7 A. It was before the accident.

8 Q. All right.

9 A. In fact, it was right before the
10 accident because I saw him for the 4th of July.

11 Q. Okay. Give me very quickly -- then
12 we'll be done. Give me some examples of things
13 that you can't do today from a physical
14 standpoint that you were capable of doing before
15 this accident. I know you said that you can't
16 lift anything without being in pain. Is that
17 right?

18 A. Right.

19 Q. So even if you lifted something
20 that was 5 pounds, you're still going to be in
21 pain?

22 A. It depends on what it is. I mean,
23 10 pounds -- to me, 10 pounds, that's like a bag
24 of sugar. If I lift a bag of sugar, it's going
25 to hurt. You know what I'm saying? But, I mean,

1 I've lifted milk before, but if I'm sitting down
2 and I lift it, it doesn't hurt, but if I'm
3 bending down and bringing it back up, it's going
4 to hurt. You know, it just varies. It depends
5 on how it's being done, you know.

6 Q. Yeah.

7 A. I mean, sometimes I don't have to
8 have anything in my hand. Just bending down to
9 pick a set of headphones off the -- like
10 headphones for a iPhone, it hurts just bending
11 down and doing that.

12 Q. Okay. Are there things that you
13 can't do today from a physical standpoint? I'm
14 talking about hobbies. I'm talking about things
15 around the house.

16 A. I can't mow my yard.

17 Q. Okay.

18 A. It's -- we don't have a garbage
19 man, so we have to take our own garbage. I can't
20 take our own garbage. I can't load the truck up
21 or anything like that. It's hard for me to wash
22 dishes because our sink -- I'm six-five, and our
23 sink's down, so I would have to bend down, and it
24 hurts my back to do that.

25 I can't cook in the oven because I