

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Appellate Panel Chairman, Commissioner

WCC File No.: 0818219

JOE OSMANSKI, EMPLOYEE,

APPELLANT,

V.

WATKINS & SHEPARD TRUCKING, INC.,
EMPLOYER, AND ZURICH NORTH AMERICAN
INSURANCE COMPANY, CARRIER,

DEFENDANTS,

OF WHOM, ZURICH NORTH AMERICAN
INSURANCE COMPANY, CARRIER, IS THE

RESPONDENT.

RECORD ON APPEAL

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0818219

JOE A. OSMANSKI,

EMPLOYEE,
CLAIMANT/APPELLANT,

V.

WATKINS & SHEPARD TRUCKING, INC.,

EMPLOYER,

AND

ZURICH NORTH AMERICAN INSURANCE
COMPANY,

CARRIER,
DEFENDANTS/RESPONDENT.

Appellate Panel Review held in
Columbia, South Carolina on April 18, 2011.

Appellate Panel Decision and Order
filed 7/26, 2011.

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SC Court of Appeals

STATEMENT OF THE CASE

The hearing was scheduled pursuant to the Form 50 filed by the Claimant on January 20, 2010. The Claimant maintained that he sustained a compensable injury to the left upper extremity while in the course and scope of his employment with the Defendants on November 1, 2008. The Claimant maintained that he was entitled to authorized medical treatment with Dr. Shealy and temporary total disability benefits from November 1, 2008 to the present and continuing.

In response, the Defendants maintained that the Claimant would be unable to satisfy his burden of proving a compensable injury to the left upper extremity while in the course and scope of his employment with the employer. In addition, the Defendants took the position that the Claimant was not entitled to benefits on the basis that the Claimant engaged in fraud in the application, when he obtained employment with the employer in November 2006, where the Claimant misrepresented his physical condition to the employer in November 2006.

A hearing was held on April 29, 2010, and in an Order dated November 10, 2010, the Single Commissioner held that the Claimant's allegations of a left upper extremity injury were denied in their entirety based on the Claimant's failure to carry his burden of proof in showing he suffered a compensable injury by accident arising out of and in the course and scope of his employment with the Defendants on November 1, 2008. . The Commissioner further found that Claimant did not sustain an accidental injury pursuant to Capers and that Claimant engaged in fraud in the application in violation of Cooper v. McDevitt and Street. The Claimant then timely filed a Form 30, Request for Commission Review. This matter was heard before the Full Commission on April 18, 2011 where both parties presented oral arguments in support of their positions.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 45 years of age, and resides in Pelion, South Carolina with his wife and nine children. (Hr'g Tr. p. 24, Deposition of Claimant pp. 5-6). The Claimant stated that he last completed the 11th grade, but has not obtained his GED or high school equivalent. (Hr'g Tr. pp. 24-25). The Claimant indicated that he sustained injuries to the left elbow, right elbow, left shoulder, right shoulder, left wrist, and right wrist as a result of a work-related injury that occurred in December 1987. (Hr'g Tr. pp. 25-26; Deposition of Claimant pp. 9-10). The Claimant testified that he sought and received medical treatment with Dr. Chidgey as a result of the injuries sustained in his 1987 work-related accident. (Hr'g Tr. pp. 25-28; Deposition of Claimant pp. 12-14). Dr. Chidgey determined that the Claimant reached maximum medical improvement on March 20, 2002 and assigned a 20% impairment rating to the left upper extremity. (Defendants' APA #19, p. 88 (c)). The Claimant stated that he received weekly workers' compensation benefits, as a result of his 1987 work-related accident, for approximately 7 years, and eventually received a settlement in the amount of approximately \$86,000.00. (Deposition of Claimant, p. 15).

The Claimant testified that he contacted Watkins & Shepard Trucking, Inc. (the "Employer") in 2006 regarding possible employment as a truck driver. (Deposition of Claimant, p. 21). The Claimant stated that he was extended an offer of employment by Rodney Stephens, who instructed the Claimant to travel to Hickory, North Carolina for purposes of completing activities prior to the Claimant's beginning employment with Watkins & Shepard Trucking, Inc. as a truck driver. (Deposition of Claimant, pp. 21-22). The Claimant indicated that, while in Hickory, North Carolina, he underwent a D.O.T. physical, which was conducted by Dr. Osbahr.

(Hr'g Tr. p. 35, Deposition of Claimant, p. 22). Most notably, the Claimant testified that he informed Dr. Osbahr of his previous work-related left upper extremity injury, and informed Dr. Osbahr that he had undergone multiple surgeries on the left upper extremity, including a left elbow replacement. (Hr'g Tr. pp. 36-39). The Claimant stated that he also underwent a lift test, pursuant to the request of the Employer, and successfully completed the lift test. (Hr'g Tr. p. 39, ll. 3-22). The Claimant testified that he did not recall anyone at Watkins & Shepard Trucking, Inc. asking him about prior injuries. (Hr'g Tr. pp. 40-41; Deposition of Claimant, p. 22, ll. 19-25, p. 23, ll. 23-25, p. 24, ll. 1-17). The Claimant testified that he was of the opinion that he was able to perform his job duties as a truck driver with Watkins & Shepard Trucking, Inc. (Hr'g Tr. pp. 39-40).

The Claimant testified that he began working with Watkins & Shepard Trucking, Inc. in October 2006 as a truck driver, and that his job duties and responsibilities required the Claimant to engage in physical activities such as lifting, pulling and pushing. (Hr'g Tr. p. 40, ll. 8-21, p. 42, ll. 15-19). Most notably, the Claimant stated that he did not experience any problems with his left upper extremity, while working with Watkins Shepard Trucking, Inc., prior to his November 2008 work-related accident. The Claimant indicated that he injured his left upper extremity while in the course and scope of his employment with the Employer on November 1, 2008. (Hr'g Tr. pp. 43-44). More specifically, the Claimant testified that he hyperextended his left elbow while attempting to break down freight weighing 100-150 lbs while in the course and scope of his employment with the Employer. (Hr'g Tr. pp. 43-44; Deposition of Claimant, pp. 30-31).

The Claimant testified that he has sought and received medical treatment from multiple physicians, for the injuries he sustained in his alleged November 2008 work-related accident,

including Dr. Bethea, Dr. Chidgey, Dr. McIntosh, and Dr. Shealy. (Hr'g Tr. p. 44). The Claimant stated that he has sought and received medical treatment from Dr. Shealy, who is an orthopaedic physician in Charleston, South Carolina, in the form of 3 surgeries, including the replacement and repair of the Claimant's left elbow prosthesis. (Hr'g Tr. pp. 44-45; Claimant's APA ## 7-8). The Claimant indicated that he has not been released from the care of Dr. Shealy, and is currently being placed out of work by Dr. Shealy due to his work-related left upper extremity injury. (Hr'g Tr. pp. 45-46).

On cross-examination, the Claimant testified that he was released from the care of Dr. Chidgey in March 2002. (Hr'g Tr. pp. 55-57; Deposition of Claimant, p. 14, ll. 10-24). Most notably, the Claimant stated that, when he was released from the care of Dr. Chidgey in March 2002, he was aware that he had been provided with a permanent restriction by Dr. Chidgey of no lifting in excess of 10-15 pounds with the left upper extremity. (Hr'g Tr. pp. 55-57; Defendants' APA #19, pp. 88(a)-(c)). The Claimant indicated that his job duties and responsibilities with Watkins & Shepard Trucking, Inc. were outside of the permanent work restrictions, which he had been provided by Dr. Chidgey. (Hr'g Tr. pp. 55-57, pp. 64-65). The Claimant testified that he was of the opinion that he was physically capable of performing his job duties and responsibilities with Watkins & Shepard Trucking, Inc., despite the permanent work restriction that had been placed upon the Claimant by Dr. Chidgey, and that he would have informed the Employer of the above-referenced permanent work restriction had the Employer questioned the Claimant as to whether he possessed any permanent work restrictions. (Hr'g Tr. pp. 57-59). Most interestingly, the Claimant stated that, while he was not questioned by Watkins & Shepard Trucking, Inc. regarding any permanent work restrictions prior to his beginning employment with the Employer, he did not voluntarily inform Watkins & Shepard Trucking, Inc. that he

possessed a permanent lifting restriction, with regards to the left upper extremity, prior to this beginning employment with Watkins & Shepard Trucking, Inc. in November 2006. (Id.).

The Claimant testified that he possessed limited range of motion of the left elbow and some occasional numbness of the left upper extremity prior to his November 2008 work-related accident. (Hr'g Tr. p. 61). Despite the deposition testimony of Dr. Osbahr, the Claimant stated that he informed Dr. Osbahr of his 1987 work-related accident as well as the multiple surgeries, which the Claimant underwent as a result of his 1987 work-related accident. (Hr'g Tr. pp. 46-49, 62-63). The Claimant indicated that he did not misrepresent any impairment, which he possessed with regard to the left upper extremity, when completing forms associated with his D.O.T. physical as he was under the impression that he did not possess any impairment to the left upper extremity as a result of his 1987 work-related accident. (Hr'g Tr. pp. 60-62; Deposition of Claimant, p. 47). The Claimant indicated that he was of the opinion that his prior work-related left upper extremity injury did not prevent the Claimant from performing his job duties and responsibilities with Watkins & Shepard Trucking, Inc. as a truck driver. (Hr'g Tr. p. 59).

The deposition of Larry Chidgey, M.D., was taken on March 15, 2010. Dr. Chidgey is an expert in the orthopedic medicine. Dr. Chidgey testified that he began treating the Claimant in 2000 for treatment of a severe left elbow injury. (Deposition of Dr. Chidgey, pp. 4-5). Dr. Chidgey testified that he provided the Claimant with treatment in the form of two surgeries, including placement of an artificial elbow joint in September of 2000 and a procedure on the ulnar nerve of the Claimant's left elbow. (Deposition of Dr. Chidgey, p. 5). Dr. Chidgey testified that on February 11, 2002 he recommended a 10lb lifting restriction indefinitely for the Claimant's left upper extremity due to the Claimant's total elbow arthroplasty. (Deposition of Dr. Chidgey, p. 8). Thereafter, on March 22, 2002, Dr. Chidgey recommended a lifting

restriction of 10-15 lbs after the Claimant underwent a functional capacity evaluation. (Deposition of Dr. Chidgey, p. 9). Dr. Chidgey testified that the Claimant was informed of these restrictions and understood the restrictions that had been recommended by Dr. Chidgey. (Deposition of Dr. Chidgey, p. 7, 10, 21). Dr. Chidgey testified that he released the Claimant on March 22, 2002 and assigned a 14% impairment rating to the upper extremity. (Deposition of Dr. Chidgey, p. 10; Defendants' APA #19, p. 88 (c)). Although Dr. Chidgey testified that the Claimant's work restrictions were permanent unless things changed, Dr. Chidgey also testified that there was no medical evidence to suggest that the Claimant's condition had changed between March 2002 and the date of the Claimant's alleged November 2008 work-related accident. (Deposition of Dr. Chidgey, p. 12).

Dr. Chidgey testified that he examined the Claimant on January 12, 2009 following the Claimant's alleged 2008 work-related accident. Dr. Chidgey testified that there were some concerns that the Claimant's implant had possibly loosened as well as a biceps tendon rupture. (Deposition of Dr. Chidgey, pp. 17-18). The Claimant was most recently examined by Dr. Chidgey on April 1, 2009. (Deposition of Dr. Chidgey, p. 18).

The deposition of Albert James Osbahr, M.D. was taken on March 15, 2010. Dr. Osbahr is an expert in occupational medicine. Dr. Osbahr testified that he provided the Claimant with a D.O.T. examination as a new hire for Watkins Shepard Trucking, Inc. on October 30, 2006. (Deposition of Dr. Osbahr, p. 6). Dr. Osbahr testified that he had no recollection of the Claimant informing him of the Claimant's 1987 work-related accident. (Deposition of Dr. Osbahr, p. 7). Dr. Osbahr also testified that the Claimant failed to inform him that the Claimant had undergone left elbow replacement surgery in 2000. (Deposition of Dr. Osbahr, p. 7). Although Dr. Osbahr identified some impairment with regards to the Claimant's left arm during the examination, Dr.

Osbahr testified that the Claimant failed to inform that Dr. Chidgey had assigned a 14% impairment rating to the Claimant's left arm. (Deposition of Dr. Osbahr, pp. 8-10). Dr. Osbahr further testified that the purpose of his examination of the Claimant was to determine if the Claimant's physical condition met the general standards as set forth by D.O.T. and not necessarily the specific requirements of the job for Watkins & Shepard Trucking, Inc. In fact, Dr. Osbahr confirmed that at the time of the examination he had no information with regards to the particular job that the Claimant was to perform for Watkins & Shepard Trucking, Inc. (Deposition of Dr. Osbahr, pp. 11-14).

The deposition of Matthew Grandy was taken on March 17, 2010. Mr. Grandy testified that he is the Director of Driver Recruiting and Training for Watkins & Shepard Trucking, Inc., and has worked for the Employer from 1989 to 1999 and then again starting in January 2008. Mr. Grandy testified that all hiring for Watkins & Shepard Trucking, Inc. is conducted from corporate headquarters in Missoula, Montana. Mr. Grandy testified that the company engages in a post job offer phase in order to identify an individual's ability to perform the job. (Deposition of Grandy, pp. 9-10). Mr. Grandy testified that a conditional offer of employment is contingent upon a drug test, a lift test, a D.O.T. physical, as well as the post-job offer questionnaire administered by the safety department. (Deposition of Grandy, pp. 10, 18). Mr. Grandy further testified that, had the Claimant provided Watkins Shepard Trucking, Inc. with accurate information regarding the permanent work restrictions, which were placed upon the Claimant by Dr. Chidgey, the Claimant would not have been subjected to a lift test. (Deposition of Grandy, p. 25). Rather, the Employer would have conducted further research, including obtaining a copy of the Claimant's work release for the treating physician. (Deposition of Grandy, pp. 25-26). Mr. Grandy further testified that the Employer would want any medical records regarding restrictions

in order to conduct a through investigation in order to determine if an applicant is physically capable of performing a job. (Deposition of Grandy, pp. 25-27).

The deposition of Rodney Stephens was taken on March 10, 2009. Mr. Stephens testified that he is a terminal manager for Watkins & Shepard Trucking, Inc. Mr. Stephens testified that the Claimant worked for the Employer as a delivery driver for nearly 2 years and was required to lift over 100lbs daily while delivering furniture. (Deposition of Stephens, pp. 7-8, p. 18). Mr. Stephens testified that he was the Claimant's direct supervisor while the Claimant was employed with Watkins & Shepard Trucking, Inc. (Deposition of Stephens, pp. 18-19). Mr. Stephens testified that the Claimant did not inform him of his 1987 work-related accident or that he had been provided permanent lifting restrictions by Dr. Chidgey. (Deposition of Stephens, pp. 19-20).

FINDINGS OF FACT

Based upon the testimony and exhibits submitted before the Single Commissioner, the undersigned Appellate Panel adopts the findings of fact as made by the Single Commissioner in their entirety. They are as follows:

1. The parties are subject to and bound by the South Carolina Workers' Compensation Act.

2. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100 Dollars (\$1,068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).

3. The Claimant alleges that he injured his left upper extremity (elbow and biceps) in a work-related accident on November 1, 2008, a claim we find, based on the substantial

evidence, including the medical evidence and testimony, is not supported by the greater weight of the evidence.

4. The Claimant is 45 years of age and resides in and resides in Pelion, South Carolina with his wife and children. (Deposition of Claimant, pp. 5-9).

5. The Claimant has 9 children between the ages of 3 and 24, eight of whom reside with Claimant and seven of whom are under the age of 18. (Deposition of Claimant, p. 7).

6. The Claimant's wife is unemployed. (Deposition of Claimant, p. 21, ll. 1-2).

7. The Claimant last completed the 11th grade, and has not obtained his GED or high school equivalent. (Hr'g Tr. p. 25, ll. 1-4).

8. Prior to the alleged accident in issue, the Claimant underwent left total elbow replacement surgery (after other multiple elbow surgeries) for a 1987 workers' compensation injury for which the Claimant received a settlement of approximately \$86,000.00. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, after the prior total elbow replacement surgery, the Claimant was assigned permanent lifting restrictions of 10 to 15 lbs. for his left arm. **The Claimant admitted at the hearing that he knew he was subject to the 10-15 lb. lifting restriction when he began work for Employer in 2006, that the treating physician who assigned the restriction did not subsequently lift it, and that he (Claimant) was subject to the restriction on the date of the alleged accident in issue.** ((Hr'g Tr. pp. 55-57, pp. 64-65); Defendants' APA #19 and #20; Deposition of Claimant, pp. 9, 11, 15, and 44-45; Deposition of Dr. Chidgey, p. 22; Claimant's APA #14, pp. 50-53).

9. The Claimant underwent the elbow replacement surgery in September 2000, and then ulnar nerve neurolysis surgery in November 2001. Based on the substantial evidence,

including the medical records of the Claimant, after the elbow replacement surgery, the Claimant's treating physician records state that the physician "again stressed the importance of limited use of the Claimant's left arm to increase the longevity of this prosthesis," the that Claimant "will always have a 15 lb. weight limit restriction [later changed to 10-15] for the left upper extremity," and that the Claimant "should also avoid situations where he might fall or excessively stress his left arm. We stressed this multiple times today, and the patient stated he understands." Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, the Claimant was released from care in March 2002 (after an FCE), and assigned a 20% impairment rating. (Defendants' APA #19, pp. 83, 86, and 88a-c; Claimant's APA #14, p. 50-53; Deposition of Dr. Chidgey, pp. 6-12 and 22).

10. Notwithstanding his hearing testimony, the Claimant gave inconsistent sworn deposition testimony that he did "not recall" whether or not he had any restrictions after the 1987 workers' compensation injury and related elbow surgeries. (Deposition of Claimant, p. 17).

11. In addition to the previous left elbow surgeries, the Claimant also underwent 3 previous surgeries to his left shoulder and 1 to the right elbow. The condition of the Claimant's left shoulder was referred to as "complex" in 1998 and 1999. (Defendants' APA #19, pp. 70-72, dated 1998 and June 1999, referring to "two previous" left shoulder surgeries; Defendants' APA #2Q, pp. 94-95, containing the operative notes of the third left shoulder surgery; Claimant's APA #12, p. 42; testimony of Claimant; Claimant's APA #14, p. 47, containing a reference to the right elbow surgery).

12. Based on the substantial evidence, medical records from 1998 state that the Claimant has been disabled since 1987 because of his left arm. Based on the substantial evidence, including the medical records of the Claimant, medical evidence from 2000 states that

the Claimant's pain is "disabling and barely tolerable," and that he is unable to use the arm for any significant activity. (Defendants' APA #19; pp. 72, 73, and 79; Deposition of Claimant, page 15, in which the Claimant testified that he received workers' compensation benefits for 7 years prior to receiving a settlement for the 1987 injury).

13. Although the Claimant testified at the hearing that he injured his left shoulder playing sports, this Panel finds that he inconsistently testified in his deposition that he injured his left shoulder in the 1987 injury. Although the Claimant would admit to 1 left shoulder surgery, there actually were actually three prior surgeries. (Hr'g Tr. pp. 25-26, pp. 49-55; Deposition of Claimant, pp. 9-10, in which Claimant testified that he injured "both shoulders" in the work injury of 1987).

14. After releasing the Claimant in 2002—with a "permanent" lifting restriction of 10-15 lbs.—Dr. Chidgey did not see the Claimant again until 2009 (2 months after the alleged accident in issue). There is no notation in Dr. Chidgey's 2002 record that the restriction imposed was only in place "unless things changed." The word "permanent," repeatedly used by Dr. Chidgey in his treatment notes prior to and after the date of the Claimant's 2002 FCE, speaks for itself and (with no qualifying language at the time the notes were written) is unequivocal. (Defendants' APA #19, pp. 88 (a) – (c)). We also note that, in 2002, Dr. Chidgey warned the Claimant of the danger of excessively stressing the implant (to prolong its longevity) because of the Claimant's young age. (Defendants' APA #19). Dr. Chidgey admits that the Claimant understood that he was to avoid heavier lifting. (Deposition of Dr. Chidgey, pp. 7, 22). Therefore, we find Dr. Chidgey's 2010 attempt to retreat from the permanent restrictions he imposed in 2002 appears more than a little-result oriented. However, at the end of his deposition,

Dr. Chidgey did reiterate the left arm lifting restriction as he imposed it in 2002. (Deposition of Dr. Chidgey, particularly pp. 8-14, 20-22, 26, and 28).

15. In 2006, the Claimant applied with Employer for work involving truck driving and delivering furniture. The Claimant admitted at the hearing that prior to accepting employment he knew the job required him to lift 100-150 lbs. (Hr'g Tr. pp. 64-65; Defendants' APA #17, p. 59; Defendants' APA #26, p. 114, and particularly pp. 117 and 121-123; Deposition of Stephens, page 7; Deposition of Grandy, pp. 23 and 26-28).

16. Based on the substantial evidence, including the medical records and testimony, the Claimant's alleged accident was unwitnessed. (Hr'g Tr. pp. 43-44; Deposition of Claimant, pp. 30-31).

17. According to the Claimant, the recliner that hit the Claimant's left arm (after he pulled on it to get it down) weighed 100-150 lbs. The Claimant's job required him to use both arms. (Deposition of Claimant, pp. 30-32).

18. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find it odd and unusual that at a visit to his family doctor, Dr. Fisher, in November 13, 2008. (12 days after the date of the alleged accident), the Claimant would not (and did not) mention a work accident or work injury to his elbow. Based on the substantial evidence, including the medical records of the Claimant, the record shows that the Claimant was in fact examined (contrary to his hearing testimony), as his abdomen is noted as "soft" with "no obvious swelling or masses." (Claimant's APA #10, page 40; Hr'g Tr. p. 66).

19. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, after the date of the alleged accident in issue, the Claimant's

implant was noted to be loosened. The Claimant had to undergo another total elbow arthroplasty in 2009. (Deposition of Dr. Chidgey, pp. 16, 18 and 31; Claimants APA #8, pp. 28-29).

20. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that Capers defeats this claim. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that it is irrelevant that the Claimant: (a) may have "felt" or thought he could perform the work (notwithstanding the ongoing restrictions); (b) may have been taught "good lifting techniques" in physical therapy; (c) was able to pass Employer's lift test; or (d) was able to work without incident for Employer for 2 years before the injury in issue occurred. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that if the legislature intended for a Capers defense to "expire" after a certain length of time a claimant is able to work outside his restrictions without injury, it could have enacted such a measure. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we decline to create an "expiration" exception to Capers.

21. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that the reality, in this case, is that the Claimant's "luck" (i.e., his ability to work outside his restrictions) eventually ran out.

22. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Dr. Chidgey, we find Dr. Chidgey's most telling comments--and which certainly apply to this textbook Capers case--is Dr. Chidgey's testimony that "if you want to try and gain life out of the arthroplasty, you keep your weight [lifting] to a lower level. *If you increase that, you may get away with it.*" I find that it would be patently unfair to require

Defendants to bear the burden for a risk that the Claimant knowingly and willfully chose to take, notwithstanding the Claimant's need to support his unemployed wife and large family, and to pay his mortgage. (Deposition of Dr. Chidgey, pp. 23 and 27-28; Claimant's Deposition, p. 6).

23. Even Dr. Chidgey testified that as to whether the Claimant had any problems with his left elbow between 2002 and 2009, "I can only guess" (Deposition of Dr. Chidgey, page 33).

24. As to the Claimant's claim of a biceps tendon rupture, Dr. Chidgey testified that he is not certain whether the Claimant's biceps tendon is ruptured. (Deposition of Dr. Chidgey, pages 32-34).

25. The general rule is that certain factors must be present for a false statement to bar benefits in a workers' compensation case.

26. First, the Employee must have knowingly and willfully made a false representation as to his physical condition.

27. Second, the Employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring.

28. Third, that there must have been a causal connection between the false representation and the injury.

29. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, as to Defendants' McDevitt defense, we find it applies. The Claimant contends that the case is inapplicable because the Claimant's post-hire physical examination revealed some impairment (but that Employer hired the Claimant anyway, ratifying any non-disclosure on the Claimant's part), and that the Claimant "misunderstood the form" and did not intend to mislead the Employer when he denied having any pre-existing impairment or injury. The Claimant's hearing testimony—that he knew he had a prior impairment/injury but

that he misinterpreted the CDL forms—seemed to the undersigned Panel to be "canned" and rehearsed. Further, the Employer never had the opportunity to explore the full extent of the Claimant's condition because it was concealed. Based on the substantial evidence, including the medical records of the Claimant and the testimony of Dr. Osbahr, we find that, although Dr. Osbahr on his own discovered some impairment during the examination, he never knew the full extent. The Claimant's hearing testimony—that he is "certain" he showed Dr. Osbahr his surgical scars—is refuted by the testimony of Dr. Osbahr (Hr'g Tr. pp. 36-38; Deposition of Dr. Osbahr, pp. 7-13 and 18, and particularly pp. 20-22; Defendants' APA #17, p. 62; Defendants' APA #22, p. 109; Claimant's APA #4, pp. 13-14; Claimant's APA #1, p. 1). This supports the contention that the Claimant knowingly and willfully made a false representation as to his physical condition.

30. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we do not believe the Claimant's testimony that he does not remember the telephone conversation with Employer's agent during which the agent completed the post job offer questionnaire. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we fail to see why (and do not believe) that the Employer's own agent would falsify or otherwise fail to document the Claimant's impairment and his previous workers' compensation claim. We base this finding on the fact that the Claimant has also been less than forthcoming about other information to various providers and in sworn testimony. Based on the substantial evidence, including, but not limited to, the medical records of the Claimant and the testimony of the Claimant, we find that the telephonically completed document is substantiated by Grandy's testimony that the post job offer questionnaire is generally conducted by telephone ("our standard practice") when an applicant does not live in Montana.

The Employer relied on the telephone document. Nonetheless, we do note that the Claimant never subsequently signed this particular form after it was completed. (Deposition of Grandy, pp. 8-15, 17-18, 30, 34-36, and 46-47; Defendants' APA #21, p. 108, dated October 30, 2006; Deposition of Stephens, pp. 17-18). This satisfies the second requirement that the Employer relied upon the false representation made by the Claimant and this reliance was a substantial factor in the hiring

31. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, because of the Claimant's failure to disclose his prior injury/impairment, the Employer had no opportunity to obtain from the Claimant's treating doctor a certification that the Claimant would have no problems doing the job. Grandy also states that the Claimant would not have undergone the lift test if Employer had known about the Claimant's prior injury/limitations for the reason that the Claimant could have injured himself during the lift test. (Deposition of Grandy, pages 12-13, 15-16, and 28-29). This satisfies the third requirement that there was a causal connection between the Claimant's misrepresentation and the resulting injury.

32. Based on the substantial evidence, including the medical records of the Claimant and the testimony, we find that the Claimant knowingly and willfully made a false representation as to his physical condition to the Defendants.

33. Based on the substantial evidence, including the medical records of the Claimant and the testimony, we find that the Defendants relied upon the false representation and this reliance was a substantial factor in the hiring of the Claimant by the Defendants.

34. Based on the substantial evidence, including the medical records of the Claimant and the testimony, we find that there was a causal connection between the false representation, knowingly and willfully made by the Claimant, and the Claimant's injury.

35. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that, even if McDevitt does not serve to defeat this claim, Capers clearly does.

36. Based on the substantial evidence, we find that Dr. Chidgey's checklist/questionnaire (particularly the "pursuant to my recommendations" portion in #2) is refuted by his own medical records. Therefore, this checklist/questionnaire is given de minimis weight. (Claimant's APA #2, pages 2-3; Defendants' APA #19, pages 69-88c).

37. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, the Claimant's request for benefits under the Act is denied.

38. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, the Claimant did not satisfy his burden of proving a compensable injury within the course and scope of his employment with the Defendants.

39. The Claimant's average weekly wage is \$1,068.84, yielding a compensation rate of \$661.29.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87

(S.C. Ct. App. 1984).

2. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and 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 Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc.

3. The general rule is that certain factors must be present for a false statement to bar benefits in a workers' compensation case.

4. First, the Employee must have knowingly and willfully made a false representation as to his physical condition.

5. Second, the Employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring.

6. Third, that there must have been a causal connection between the false representation and the injury. Cooper v. McDevitt Street & Company, 260 S.C.463; 196 S.E.2d. 833 (SC 1973).

7. We find that based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, as to Defendants' McDevitt defense, we find it applies. The Claimant contends that the case is inapplicable because the Claimant's post-hire physical examination revealed some impairment (but that Employer hired the Claimant anyway, ratifying any non-disclosure on the Claimant's part), and that the Claimant "misunderstood the form" and did not intend to mislead the Employer when he denied having any pre-existing impairment or injury. The Claimant's hearing testimony—that he knew he had a prior impairment/injury but that he misinterpreted the CDL forms—seemed to the undersigned to be

"canned" and rehearsed. Further, the Employer never had the opportunity to explore the full extent of the Claimant's condition because it was concealed. Based on the substantial evidence, including the medical records of the Claimant and the testimony of Dr. Osbahr, we find that, although Dr. Osbahr on his own discovered some impairment during the examination, he never knew the full extent. The Claimant's hearing testimony—that he is "certain" he showed Dr. Osbahr his surgical scars—is refuted by the testimony of Dr. Osbahr (Hr'g Tr. pp. 36-38; Deposition of Dr. Osbahr, pp. 7-13 and 18, and particularly pp. 20-22; Defendants' APA #17, p. 62; Defendants' APA #22, p. 109; Claimant's APA #4, pp. 13-14; Claimant's APA #1, p. 1). We find that this supports the contention that the Claimant knowingly and willfully made a false representation as to his physical condition.

8. We find that based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we do not believe the Claimant's testimony that he does not remember the telephone conversation with Employer's agent during which the agent completed the post job offer questionnaire. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we fail to see why (and do not believe) that the Employer's own agent would falsify or otherwise fail to document the Claimant's impairment and his previous workers' compensation claim. We base this finding on the fact that the Claimant has also been less than forthcoming about other information to various providers and in sworn testimony. Based on the substantial evidence, including, but not limited to, the medical records of the Claimant and the testimony of the Claimant, we find that the telephonically completed document is substantiated by Grandy's testimony that the post job offer questionnaire is generally conducted by telephone ("our standard practice") when an applicant does not live in Montana. The Employer relied on the telephone document.

Nonetheless, we do note that the Claimant never subsequently signed this particular form after it was completed. (Deposition of Grandy, pp. 8-15, 17-18, 30, 34-36, and 46-47; Defendants' APA #21, p. 108, dated October 30, 2006; Deposition of Stephens, pp. 17-18). We find that this satisfies the second requirement that the Employer relied upon the false representation made by the Claimant and this reliance was a substantial factor in the hiring.

9. We find that based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, because of the Claimant's failure to disclose his prior injury/impairment, the Employer had no opportunity to obtain from the Claimant's treating doctor a certification that the Claimant would have no problems doing the job. Grandy also states that the Claimant would not have undergone the lift test if Employer had known about the Claimant's prior injury/limitations for the reason that the Claimant could have injured himself during the lift test. (Deposition of Grandy, pages 12-13, 15-16, and 28-29). We find that this satisfies the third requirement that there was a causal connection between the Claimant's misrepresentation and the resulting injury.

10. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that Capers defeats this claim. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that it is irrelevant that the Claimant: (a) may have "felt" or thought he could perform the work (notwithstanding the ongoing restrictions); (b) may have been taught "good lifting techniques" in physical therapy; (c) was able to pass Employer's lift test; or (d) was able to work without incident for Employer for 2 years before the injury in issue occurred. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that if the legislature intended for a Capers defense to "expire" after a certain

length of time a claimant is able to work outside his restrictions without injury, it could have enacted such a measure. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we decline to create an "expiration" exception to Capers.

11. Based on the substantial evidence, including the medical records of the Claimant and the testimony of the Claimant, we find that, even if McDevitt does not serve to defeat this claim, Capers clearly does.

12. Based on a review of the substantial medical evidence and testimony presented before the Single Commissioner, we conclude that the Conclusions of Law are adopted in their entirety. They are as follows:

13. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.

14. The Claimant alleges that he sustained a compensable left upper extremity (elbow and biceps) by accident arising out of and occurring in the course and scope of his employment with the Defendants on November 1, 2008.

15. The Claimant knew he was subject to a 10-15 lb. lifting restriction when he knowingly accepted employment requiring him to lift 100-150lbs. (See Capers finding that the claimant, who worked as a dishwasher, did not sustain an injury by accident arising out of and in the course of his employment, when the claimant knew, based on prior experiences, that detergents and water would cause him to develop contact dermatitis. The substantial evidence supported the Court's conclusion that the claimant's contact dermatitis was not accidental within the meaning of Section 42-1-160).

16. The Claimant has not carried the burden of proof, required under the South Carolina Workers' Compensation Act, to establish that his alleged left upper extremity injury arose out of and in the course and scope of his employment with the Defendants. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998) (the workers' compensation claimant has the burden of proving facts that show that the injury arose out of the employment, and an award of benefits must not be based on surmise, conjecture or speculation); Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E.2d 305 (1951) (the burden is upon the claimant to prove the facts which render the injury compensable);
17. The Claimant is not entitled to any benefits or compensation under the South Carolina Workers' Compensation Act. See Cooper v. McDevitt & Street Co, 260 S.C. 463, 196 S.E.2d 833 (SC 1973), A false statement in an employment application will bar workmen's compensation benefits when: 1) the employee knowingly and willfully makes a false representation as to his physical condition; 2) the employer relies upon the false representation and this the reliance is a substantial factor in the hiring; and 3) there is a causal connection between the false representation and the injury.
18. Section 42-1-140 governs average weekly wage.
19. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100 Dollars (\$1068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).

ORDER

IT IS HEREBY ORDERED, that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED** in its entirety.

IT IS FURTHER ORDERED, that the substantial evidence supports a finding that this that the greater weight of the evidence supports a finding that this claim is denied because the Claimant failed to satisfy his burden of proof that he suffered a compensable injury by accident to the left upper extremity arising out of and in the course of his employment with the Defendants on November 1, 2008.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Defendants are not responsible for providing the Claimant with any benefits or compensation under the South Carolina Workers' Compensation Act.

IT IS HEREBY ORDERED.

AFFIRMED.

S.C. WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE

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

This 26 day of July, 2008
By Valerie D. Parker

Administrative Assistant to the Commissioner

Avery B. Wilkerson, Commissioner

Andrea P. Roche, Commissioner

David W. Hufstetler, Commissioner

Paula Anick
Kevin Smith
David Pearlman
Jasom W. Lockhart

received
11/15/10

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0818219

JOE A. OSMANSKI,

Employee,

Claimant,

vs.

WATKINS & SHEPARD TRUCKING, INC,

Employer,

AND

ZURICH NORTH AMERICA,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, South Carolina on April 29 2010.

APPEARANCES:

Claimant represented by David T. Pearlman, Esquire of The Steinberg Law Firm, L.L.P. of Charleston, South Carolina.

Defendants represented by Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

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

COMMISSIONER:

Commissioner Susan S. Barden

FILED:

November 10, 2010

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records were submitted into evidence.

The Claimant submitted the following exhibits:

1. Al Osbahr, M.D., Statement, dated 11/05/09, consisting of 1 page. (Claimant's APA #1).
2. Larry K. Chidgey, M.D., Questionnaire, dated 04/03/09, consisting of 2 pages. (Claimant's APA #2).
3. Larry K. Chidgey, M.D., Medical Records, dated 01/12/09 – 05/14/09, consisting of 9 pages. (Claimant's APA #3).
4. Al Osbahr, M.D., Medical Examination Medical Examiner's Certificate, dated 10/30/06, consisting of 3 pages. (Claimant's APA #4).
5. Watkins Shepard Trucking, Employee History, dated 01/31/07 – 11/01/08, consisting of 1 page. (Claimant's APA #5).
6. Watkins Shepard Trucking, Correspondence, dated 01/30/07 – 11/24/08, consisting of 4 pages. (Claimant's APA #6).
7. Gerald J. Shealy, M.D., Medical Records, dated 05/21/09 – 08/25/09, consisting to 7 pages. (Claimant's APA #7).
8. Gerald J. Shealy, M.D., Operative Notes, dated 07/08/09, consisting to 2 pages. (Claimant's APA #8).
9. Various Providers, Diagnostics, dated 11/02/08 – 01/12/09, consisting of 10 pages. (Claimant's APA #9).

10. John Fisher, M.D., Medical Notes, dated 10/22/08 – 11/13/08, consisting of 1 page. (Claimant's APA #10).
11. John Fisher, M.D., Medical Examiner's Certificate, dated 10/22/08, consisting of 1 page. (Claimant's APA #11).
12. James F. Bethea, Medical Records, dated 12/23/08, consisting of 2 pages. (Claimant's APA #12).
13. Lexington Orthopaedics, Medical Records, dated 11/2/08 – 11/06/08, consisting of 3 pages. (Claimant's APA #13).
14. Larry K. Chidgey, M.D., Medical Records, dated 08/5/88 – 11/01/01, consisting of 7 pages. (Claimant's APA #14).

The Defendants submitted the following exhibits:

1. James C. McIntosh, M.D., dated 11/06/08 – 11/20/08, consisting of 2 pages. (Defendants' APA #15).
2. Lexington Medical Center – Lexington, dated 11/02/08 – 11/04/08, consisting of 3 pages. (Defendants' APA #16).
3. John H. Fisher, Jr., M.D., Lexington Family Practice, dated 10/22/08 – 11/13/08, consisting of 6 pages. (Defendants' APA #17).
4. Gerald J. Shealy, M.D., Charleston Hand Group, LLC, dated 11/10/09 – 02/22/10, consisting of 4 pages. (Defendants' APA #18).
5. Larry K. Chidgey, M.D., dated 02/19/92 – 03/22/02, consisting of 20 pages. (Defendants' APA #19).
6. Shands Hospital at the University of Florida, dated 08/23/88 – 11/02/01, consisting of 19 pages. (Defendants' APA #20).

7. Watkins & Shepard Trucking, Inc. Post Job Offer Questionnaire, dated 10/30/06, consisting of 1 page. (Defendants' APA #21).
8. Medical Examination Report for Commercial Driver Fitness Determination, dated 10/30/06, consisting of 1 page. (Defendants' APA #22).
9. Watkins & Shepard Trucking, Inc. Driver Procedural Manual and Driver Policy Manual Receipt Acknowledgment, consisting of 1 page. (Defendants' APA #23).
10. Watkins & Shepard Trucking, Inc. Guidelines for Appropriate Conduct, consisting of 2 pages. (Defendants' APA #25).
11. Life Care Services Job Analysis, dated 06/07/06, consisting of 10 pages. (Defendants' APA #26).

STIPULATIONS

The parties stipulate to the following:

1. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100 Dollars (\$1068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).
2. Notice of the hearing was timely and properly served on all parties of interests.
3. The South Carolina Worker's Compensation Commission has jurisdiction over the claim.
4. Venue is proper in Lexington County, but, pursuant to the consent of both parties, the hearing was conducted in Richland County.

STATEMENT OF THE CASE

The hearing was scheduled pursuant to the Form 50 filed by the Claimant on January 20, 2010. The Claimant maintained that he sustained a compensable injury to the left upper extremity while in the course and scope of his employment with the Defendants on November 1, 2008. The Claimant maintained that he was entitled to authorized medical treatment with Dr. Shealy and temporary total disability benefits from November 1, 2008 to the present and continuing.

In response, the Defendants maintained that the Claimant would be unable to satisfy his burden of proving a compensable injury to the left upper extremity while in the course and scope of his employment with the employer. In addition, the Defendants took the position that the Claimant was not entitled to benefits on the basis that the Claimant engaged in fraud in the application, when he obtained employment with the employer in November 2006, where the Claimant misrepresented his physical condition to the employer in November 2006.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 45 years of age, and resides in Pelion, South Carolina with his wife and nine children. (Hr'g Tr. p. 24, Deposition of Claimant pp. 5-6). The Claimant stated that he last completed the 11th grade, but has not obtained his GED or high school equivalent. (Hr'g Tr. pp. 24-25). The Claimant indicated that he sustained injuries to the left elbow, right elbow, left shoulder, right shoulder, left wrist, and right wrist as a result of a work-related injury that occurred in December 1987. (Hr'g Tr. pp. 25-26; Deposition of Claimant pp. 9-10). The Claimant testified that he sought and received medical treatment with Dr. Chidgey as a result of the injuries sustained in his 1987 work-related accident. (Hr'g Tr. pp. 25-28; Deposition of

Claimant pp. 12-14). Dr. Chidgey determined that the Claimant reached maximum medical improvement on March 20, 2002 and assigned a 20% impairment rating to the left upper extremity. (Defendants' APA #19, p. 88 (c). The Claimant stated that he received weekly workers' compensation benefits, as a result of his 1987 work-related accident, for approximately 7 years, and eventually received a settlement in the amount of approximately \$86,000.00. (Deposition of Claimant, p. 15).

The Claimant testified that he contacted Watkins & Shepard Trucking, Inc. (the "Employer") in 2006 regarding possible employment as a truck driver. (Deposition of Claimant, p. 21). The Claimant stated that he was extended an offer of employment by Rodney Stephens, who instructed the Claimant to travel to Hickory, North Carolina for purposes of completing activities prior to the Claimant's beginning employment with Watkins & Shepard Trucking, Inc. as a truck driver. (Deposition of Claimant, pp. 21-22). The Claimant indicated that, while in Hickory, North Carolina, he underwent a D.O.T. physical, which was conducted by Dr. Osbahr. (Hr'g Tr. p. 35, Deposition of Claimant, p. 22). Most notably, the Claimant testified that he informed Dr. Osbahr of his previous work-related left upper extremity injury, and informed Dr. Osbahr that he had undergone multiple surgeries on the left upper extremity, including a left elbow replacement. (Hr'g Tr. pp. 36-39). The Claimant stated that he also underwent a lift test, pursuant to the request of the Employer, and successfully completed the lift test. (Hr'g Tr. p. 39, ll. 3-22). The Claimant testified that he did not re all anyone at Watkins & Shepard Trucking, Inc. asking him about prior injuries. (Hr'g Tr. pp. 40-41; Deposition of Claimant, p. 22, ll. 19-25, p. 23, ll. 23-25, p. 24, ll. 1-17). The Claimant testified that he was of the opinion that he was able to perform his job duties as a truck driver with Watkins & Shepard Trucking, Inc. (Hr'g Tr. pp. 39-40).

The Claimant testified that he began working with Watkins & Shepard Trucking, Inc. in October 2006 as a truck driver, and that his job duties and responsibilities required the Claimant to engage in physical activities such as lifting, pulling and pushing. (Hr'g Tr. p. 40, ll. 8-21, p. 42, ll. 15-19). Most notably, the Claimant stated that he did not experience any problems with his left upper extremity, while working with Watkins Shepard Trucking, Inc., prior to his November 2008 work-related accident. The Claimant indicated that he injured his left upper extremity while in the course and scope of his employment with the Employer on November 1, 2008. (Hr'g Tr. pp. 43-44). More specifically, the Claimant testified that he hyperextended his left elbow while attempting to break down freight weighing 100-150 lbs while in the course and scope of his employment with the Employer. (Hr'g Tr. pp. 43-44; Deposition of Claimant, pp. 30-31).

The Claimant testified that he has sought and received medical treatment from multiple physicians, for the injuries he sustained in his alleged November 2008 work-related accident, including Dr. Bethea, Dr. Chidgey, Dr. McIntosh, and Dr. Shealy. (Hr'g Tr. p. 44). The Claimant stated that he has sought and received medical treatment from Dr. Shealy, who is an orthopaedic physician in Charleston, South Carolina, in the form of 3 surgeries, including the replacement and repair of the Claimant's left elbow prosthesis. (Hr'g Tr. pp. 44-45; Claimant's APA ## 7-8). The Claimant indicated that he has not been released from the care of Dr. Shealy, and is currently being placed out of work by Dr. Shealy due to his work-related left upper extremity injury. (Hr'g Tr. pp. 45-46).

On cross-examination, the Claimant testified that he was released from the care of Dr. Chidgey in March 2002. (Hr'g Tr. pp. 55-57; Deposition of Claimant, p. 14, ll. 10-24). Most notably, the Claimant stated that, when he was released from the care of Dr. Chidgey in March

2002, he was aware that he had been provided with a permanent restriction by Dr. Chidgey of no lifting in excess of 10-15 pounds with the left upper extremity. (Hr'g Tr. pp. 55-57; Defendants' APA #19, pp. 88(a)-(c)). The Claimant indicated that his job duties and responsibilities with Watkins & Shepard Trucking, Inc. were outside of the permanent work restrictions, which he had been provided by Dr. Chidgey. (Hr'g Tr. pp. 55-57, pp. 64-65). The Claimant testified that he was of the opinion that he was physically capable of performing his job duties and responsibilities with Watkins & Shepard Trucking, Inc., despite the permanent work restriction that had been placed upon the Claimant by Dr. Chidgey, and that he would have informed the Employer of the above-referenced permanent work restriction had the Employer questioned the Claimant as to whether he possessed any permanent work restrictions. (Hr'g Tr. pp. 57-59). Most interestingly, the Claimant stated that, while he was not questioned by Watkins & Shepard Trucking, Inc. regarding any permanent work restrictions prior to his beginning employment with the Employer, he did not voluntarily inform Watkins & Shepard Trucking, Inc. that he possessed a permanent lifting restriction, with regards to the left upper extremity, prior to this beginning employment with Watkins & Shepard Trucking, Inc. in November 2006. (Id.).

The Claimant testified that he possessed limited range of motion of the left elbow and some occasional numbness of the left upper extremity prior to his November 2008 work-related accident. (Hr'g Tr. p. 61). Despite the deposition testimony of Dr. Osbahr, the Claimant stated that he informed Dr. Osbahr of his 1987 work-related accident as well as the multiple surgeries, which the Claimant underwent as a result of his 1987 work-related accident. (Hr'g Tr. pp. 46-49, 62-63). The Claimant indicated that he did not misrepresent any impairment, which he possessed with regard to the left upper extremity, when completing forms associated with his D.O.T. physical as he was under the impression that he did not possess any impairment to the left upper

extremity as a result of his 1987 work-related accident. (Hr'g Tr. pp. 60-62; Deposition of Claimant, p. 47). The Claimant indicated that he was of the opinion that his prior work-related left upper extremity injury did not prevent the Claimant from performing his job duties and responsibilities with Watkins & Shepard Trucking, Inc. as a truck driver. (Hr'g Tr. p. 59).

The deposition of Larry Chidgey, M.D., was taken on March 15, 2010. Dr. Chidgey is an expert in the orthopedic medicine. Dr. Chidgey testified that he began treating the Claimant in 2000 for treatment of a severe left elbow injury. (Deposition of Dr. Chidgey, pp. 4-5). Dr. Chidgey testified that he provided the Claimant with treatment in the form of two surgeries, including placement of an artificial elbow joint in September of 2000 and a procedure on the ulnar nerve of the Claimant's left elbow. (Deposition of Dr. Chidgey, p. 5). Dr. Chidgey testified that on February 11, 2002 he recommended a 10lb lifting restriction indefinitely for the Claimant's left upper extremity due to the Claimant's total elbow arthroplasty. (Deposition of Dr. Chidgey, p. 8). Thereafter, on March 22, 2002, Dr. Chidgey recommended a lifting restriction of 10-15 lbs after the Claimant underwent a functional capacity evaluation. (Deposition of Dr. Chidgey, p. 9). Dr. Chidgey testified that the Claimant was informed of these restrictions and understood the restrictions that had been recommended by Dr. Chidgey. (Deposition of Dr. Chidgey, p. 7, 10, 21). Dr. Chidgey testified that he released the Claimant on March 22, 2002 and assigned a 14% impairment rating to the upper extremity. (Deposition of Dr. Chidgey, p. 10; Defendants' APA #19, p. 88 (c)). Although Dr. Chidgey testified that the Claimant's work restrictions were permanent unless things changed, Dr. Chidgey also testified that there was no medical evidence to suggest that the Claimant's condition had changed between March 2002 and the date of the Claimant's alleged November 2008 work-related accident. (Deposition of Dr. Chidgey, p. 12).

Dr. Chidgey testified that he examined the Claimant on January 12, 2009 following the Claimant's alleged 2008 work-related accident. Dr. Chidgey testified that there were some concerns that the Claimant's implant had possibly loosened as well as a biceps tendon rupture. (Deposition of Dr. Chidgey, pp. 17-18). The Claimant was most recently examined by Dr. Chidgey on April 1, 2009. (Deposition of Dr. Chidgey, p. 18).

The deposition of Albert James Osbahr, M.D. was taken on March 15, 2010. Dr. Osbahr is an expert in occupational medicine. Dr. Osbahr testified that he provided the Claimant with a D.O.T. examination as a new hire for Watkins Shepard Trucking, Inc. on October 30, 2006. (Deposition of Dr. Osbahr, p. 6). Dr. Osbahr testified that he had no recollection of the Claimant informing him of the Claimant's 1987 work-related accident. (Deposition of Dr. Osbahr, p. 7). Dr. Osbahr also testified that the Claimant failed to inform him that the Claimant had undergone left elbow replacement surgery in 2000. (Deposition of Dr. Osbahr, p. 7). Although Dr. Osbahr identified some impairment with regards to the Claimant's left arm during the examination, Dr. Osbahr testified that the Claimant failed to inform that Dr. Chidgey had assigned a 14% impairment rating to the Claimant's left arm. (Deposition of Dr. Osbahr, pp. 8-10). Dr. Osbahr further testified that the purpose of his examination of the Claimant was to determine if the Claimant's physical condition met the general standards as set forth by D.O.T. and not necessarily the specific requirements of the job for Watkins & Shepard Trucking, Inc. In fact, Dr. Osbahr confirmed that at the time of the examination he had no information with regards to the particular job that the Claimant was to perform for Watkins & Shepard Trucking, Inc. (Deposition of Dr. Osbahr, pp. 11-14).

The deposition of Matthew Grandy was taken on March 17, 2010. Mr. Gandy testified that he is the Director of Driver Recruiting and Training for Watkins & Shepard Trucking, Inc.,

and has worked for the Employer from 1989 to 1999 and then again starting in January 2008. Mr. Grandy testified that all hiring for Watkins & Shepard Trucking, Inc. is conducted from corporate headquarters in Missoula, Montana. Mr. Grandy testified that the company engages in a post job offer phase in order to identify an individual's ability to perform the job. (Deposition of Grandy, pp. 9-10). Mr. Grandy testified that a conditional offer of employment is contingent upon a drug test, a lift test, a D.O.T. physical, as well as the post-job offer questionnaire administered by the safety department. (Deposition of Grandy, pp. 10, 18). Mr. Grandy further testified that, had the Claimant provided Watkins Shepard Trucking, Inc. with accurate information regarding the permanent work restrictions, which were placed upon the Claimant by Dr. Chidgey, the Claimant would not have been subjected to a lift test. (Deposition of Grandy, p. 25). Rather, the Employer would have conducted further research, including obtaining a copy of the Claimant's work release for the treating physician. (Deposition of Grandy, pp. 25-26). Mr. Grandy further testified that the Employer would want any medical records regarding restrictions in order to conduct a through investigation in order to determine if an applicant is physically capable of performing a job. (Deposition of Grandy, pp. 25-27).

The deposition of Rodney Stephens was taken on March 10, 2009. Mr. Stephens testified that he is a terminal manager for Watkins & Shepard Trucking, Inc. Mr. Stephens testified that the Claimant worked for the Employer as a delivery driver for nearly 2 years and was required to lift over 100lbs daily while delivering furniture. (Deposition of Stephens, pp. 7-8, p. 18). Mr. Stephens testified that he was the Claimant's direct supervisor while the Claimant was employed with Watkins & Shepard Trucking, Inc. (Deposition of Stephens, pp. 18-19). Mr. Stephens testified that the Claimant did not inform him of his 1987 work-related accident or that he had

been provided permanent lifting restrictions by Dr. Chidgey. (Deposition of Stephens, pp. 19-20).

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following findings of fact:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100 Dollars (\$1068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).
3. The Claimant alleges that he injured his left upper extremity (elbow and biceps) in a work-related accident on November 1, 2008, a claim I find is not supported by the greater weight of the evidence.
4. The Claimant is 45 years of age and resides in and resides in Pelion, South Carolina with his wife and children. (Deposition of Claimant, pp. 5-9).
5. The Claimant has 9 children between the ages of 3 and 24, eight of whom reside with Claimant and seven of whom are under the age of 18. (Deposition of Claimant, p. 7).
6. The Claimant's wife is unemployed. (Deposition of Claimant, p. 21, ll. 1-2).
7. The Claimant last completed the 11th grade, and has not obtained his GED or high school equivalent. (Hr'g Tr. p. 25, ll. 1-4).
8. Prior to the alleged accident in issue, the Claimant underwent left total elbow replacement surgery (after other multiple elbow surgeries) for a 1987 workers' compensation injury for which the Claimant received a settlement of approximately

\$86,000. After the prior total elbow replacement surgery, the Claimant was assigned permanent lifting restrictions of 10 to 15 lbs. for his left arm. The Claimant admitted at the hearing that he knew he was subject to the 10-15 lb. lifting restriction when he began work for Employer in 2006, that the treating physician who assigned the restriction did not subsequently lift it, and that he (Claimant) was subject to the restriction on the date of the alleged accident in issue. ((Hr'g Tr. pp. 55-57, pp. 64-65); Defendants' APA #19 and #20; Deposition of Claimant, pp. 9, 11, 15, and 44-45; Deposition of Dr. Chidgey, p. 22; Claimant's APA #14, pp. 50-53).

9. The Claimant underwent the elbow replacement surgery in September 2000, and then ulnar nerve neurolysis surgery in November 2001. After the elbow replacement surgery, the Claimant's treating physician records state that the physician "again stressed the importance of limited use of the Claimant's left arm to increase the longevity of this prosthesis," the that Claimant "will always have a 15 lb. weight limit restriction [later changed to 10-15] for the left upper extremity," and that the Claimant "should also avoid situations where he might fall or excessively stress his left arm. We stressed this multiple times today, and the patient stated he understands." The Claimant was released from care in March 2002 (after an FCE), and assigned a 20% impairment rating. (Defendants' APA #19, pp. 83, 86, and 88a-c; Claimant's APA #14, p. 50-53; Deposition of Dr. Chidgey, pp. 6-12 and 22).
10. Notwithstanding his hearing testimony, the Claimant gave inconsistent sworn deposition testimony that he did "not recall" whether or not he had any restrictions

after the 1987 workers' compensation injury and related elbow surgeries. (Deposition of Claimant, p. 17).

11. In addition to the previous left elbow surgeries, the Claimant also underwent 3 previous surgeries to his left shoulder and 1 to the right elbow. The condition of the Claimant's left shoulder was referred to as "complex" in 1998 and 1999. (Defendants' APA #19, pp. 70-72, dated 1998 and June 1999, referring to "two previous" left shoulder surgeries; Defendants' APA #2Q, pp. 94-95, containing the operative notes of the third left shoulder surgery; Claimant's APA #12, p. 42; testimony of Claimant; Claimant's APA #14, p. 47, containing a reference to the right elbow surgery).
12. Medical records from 1998 state that the Claimant has been disabled since 1987 because of his left arm. Medical evidence from 2000 states that the Claimant's pain is "disabling and barely tolerable," and that he is unable to use the arm for any significant activity. (Defendants' APA #19; pp. 72, 73, and 79; Deposition of Claimant, page 15, in which the Claimant testified that he received workers' compensation benefits for 7 years prior to receiving a settlement for the 1987 injury).
13. Although the Claimant testified at the hearing that he injured his left shoulder playing sports, he inconsistently testified in his deposition that he injured his left shoulder in the 1987 injury. Although the Claimant would admit to 1 left shoulder surgery, there actually were actually three prior surgeries. (Hr'g Tr. pp. 25-26, pp. 49-55; Deposition of Claimant, pp. 9-10, in which Claimant testified that he injured "both shoulders" in the work injury of 1987).
14. After releasing the Claimant in 2002--with a "permanent" lifting restriction of 10-15 lbs.—Dr. Chidgey did not see the Claimant again until 2009 (2 months after the

alleged accident in issue). There is no notation in Dr. Chidgey's 2002 record that the restriction imposed was only in place "unless things changed." The word "permanent," repeatedly used by Dr. Chidgey in his treatment notes prior to and after the date of the Claimant's 2002 FCE, speaks for itself and (with no qualifying language at the time the notes were written) is unequivocal. (Defendants' APA #19, pp. 88 (a) – (c)). I also note that in 2002, Dr. Chidgey warned the Claimant of the danger of excessively stressing the implant (to prolong its longevity) because of the Claimant's young age. (Defendants' APA #19). Dr. Chidgey admits that the Claimant understood that he was to avoid heavier lifting. (Deposition of Dr. Chidgey, pp. 7, 22). Therefore, I find Dr. Chidgey's 2010 attempt to retreat from the permanent restrictions he imposed in 2002 appears more than a little result-oriented. However, at the end of his deposition, Dr. Chidgey does reiterate the left arm lifting restriction as he imposed it in 2002. (Deposition of Dr. Chidgey, particularly pp. 8-14, 20-22, 26, and 28).

15. In 2006, the Claimant applied with Employer for work involving truck driving and delivering furniture. **The Claimant admitted at the hearing that prior to accepting employment he knew the job required him to lift 100-150 lbs.** (Hr'g Tr. pp. 64-65; Defendants' APA #17, p. 59; Defendants' APA #26, p. 114, and particularly pp. 117 and 121-123; Deposition of Stephens, page 7; Deposition of Grandy, pp. 23 and 26-28).

16. The Claimant's alleged accident was unwitnessed. (Hr'g Tr. pp. 43-44; Deposition of Claimant, pp. 30-31).

17. According to the Claimant, the recliner that hit the Claimant's left arm (after he pulled on it to get it down) weighed 100-150 lbs. The Claimant's job required him to use both arms. (Deposition of Claimant, pp. 30-32).
18. I find it odd and unusual that at a visit to his family doctor, Dr. Fisher, in November 13, 2008 (12 days after the date of the alleged accident), the Claimant would not (and did not) mention a work accident or work injury to his elbow. The record shows that the Claimant was in fact examined (contrary to his hearing testimony), as his abdomen is noted as "soft" with "no obvious swelling or masses." (Claimant's APA #10, page 40; Hr'g Tr. p. 66).
19. After the date of the alleged accident in issue, the Claimant's implant was noted to be loosened. The Claimant had to undergo another total elbow arthroplasty in 2009. (Deposition of Dr. Chidgey, pp. 16-18 and 31; Claimants APA #8, pp. 28-29).
20. I find that Capers defeats this claim. It is irrelevant that the Claimant: (a) may have "felt" or thought he could perform the work (notwithstanding the ongoing restrictions); (b) may have been taught "good lifting techniques" in physical therapy; (c) was able to pass Employer's lift test; or (d) was able to work without incident for Employer for 2 years before the injury in issue occurred. If the legislature intended for a Capers defense to "expire" after a certain length of time a claimant is able to work outside his restrictions without injury, it could have enacted such a measure. I decline to create an "expiration" exception to Capers.
21. The reality in this case is-that the Claimant's "luck" (i.e., his ability to work outside his restrictions) eventually ran out.

22. Dr. Chidgey's most telling comments--and which certainly apply to this textbook Capers case--is Dr. Chidgey's testimony that "if you want to try and gain life out of the arthroplasty, you keep your weight [lifting] to a lower level. *If you increase that, you may get away with it.* " I find that it would be patently unfair to require Defendants to bear the burden for a risk that the Claimant knowingly and willfully chose to take, notwithstanding the Claimant's need to support his unemployed wife and large family, and to pay his mortgage. (Deposition of Dr. Chidgey, pp. 23 and 27-28; Claimant's Deposition, p. 6).

23. Even Dr. Chidgey testified that as to whether the Claimant had any problems with his left elbow between 2002 and 2009, "I can only guess" (Deposition of Dr. Chidgey, page 33).

24. As to the Claimant's claim of a biceps tendon rupture, Dr. Chidgey testified that he is not certain whether the Claimant's biceps tendon is ruptured. (Deposition of Dr. Chidgey, pages 32-34).

25. As to Defendants' McDevitt defense, I find it applies. The Claimant contends that the case is inapplicable because the Claimant's post-hire physical examination revealed some impairment (but that Employer hired the Claimant anyway, ratifying any non-disclosure on the Claimant's part), and that the Claimant "misunderstood the form" and did not intend to mislead the Employer when he denied having any pre-existing impairment or injury. The Claimant's hearing testimony—that he knew he had a prior impairment/injury but that he misinterpreted the CDL forms—seemed to the undersigned to be "canned" and rehearsed. Further, the Employer never had the opportunity to explore the full extent of the Claimant's condition because it was

concealed. Although Dr. Osbahr on his own discovered some impairment during the examination, he never knew the full extent. The Claimant's hearing testimony—that he is "certain" he showed Dr. Osbahr his surgical scars—is refuted by the testimony of Dr. Osbahr (Hr'g Tr. pp. 36-38; Deposition of Dr. Osbahr, pp. 7-13 and 18, and particularly pp. 20-22; Defendants' APA #17, p. 62; Defendants' APA #22, p. 109; Claimant's APA #4, pp. 13-14; Claimant's APA #1, p. 1).

26. I do not believe the Claimant's testimony that he does not remember the telephone conversation with Employer's agent during which the agent completed the post job offer questionnaire. I fail to see why (and do not believe) that the Employer's own agent would falsify or otherwise fail to document the Claimant's impairment and his previous workers' compensation claim. I base this finding on the fact that the Claimant has also been less than forthcoming about other information to various providers and in sworn testimony, I find that the telephonically completed document is substantiated by Grandy's testimony that the post job offer questionnaire is generally conducted by telephone ("our standard practice") when an applicant does not live in Montana. The Employer relied on the telephone document. Nonetheless, I do note that the Claimant never subsequently signed this particular form after it was completed. (Deposition of Grandy, pp. 8-15, 17-18, 30, 34-36, and 46-47; Defendants' APA #21, p. 108, dated October 30, 2006; Deposition of Stephens, pp. 17-18).

27. Because of the Claimant's failure to disclose his prior injury/impairment, the Employer had no opportunity to obtain from the Claimant's treating doctor a certification that the Claimant would have no problems doing the job. Grandy also

states that the Claimant would not have undergone the lift test if Employer had known about the Claimant's prior injury/limitations for the reason that the Claimant could have injured himself during the lift test. (Deposition of Grandy, pages 12-13, 15-16, and 28-29).

28. However, even if McDevitt does not serve to defeat this claim, Capers clearly does.

29. Dr. Chidgey's checklist/questionnaire (particularly the "pursuant to my recommendations" portion in #2) is refuted by his own medical records. Therefore, this checklist/questionnaire is given de minimis weight. (Claimant's APA #2, pages 2-3; Defendants' APA #19, pages 69-88c).

30. The Claimant's request for benefits under the Act is denied.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act, § 42-1-10, S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.
2. The Claimant alleges that he sustained a compensable left upper extremity (elbow and biceps) by accident arising out of and occurring in the course and scope of his employment with the Defendants on November 1, 2008.
3. The Claimant knew he was subject to a 10-15 lb. lifting restriction when he knowingly accepted employment requiring him to lift 100-150lbs. (See Capers finding that the claimant, who worked as a dishwasher, did not sustain an injury by accident arising out of and in the course of his employment, when the claimant

knew, based on prior experiences, that detergents and water would cause him to develop contact dermatitis. The substantial evidence supported the Court's conclusion that the claimant's contact dermatitis was not accidental within the meaning of Section 42-1-160.

4. The Claimant has not carried the burden of proof, required under the South Carolina Workers' Compensation Act, to establish that his alleged left upper extremity injury arose out of and in the course and scope of his employment with the Defendants. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998) (the workers' compensation claimant has the burden of proving facts that show that the injury arose out of the employment, and an award of benefits must not be based on surmise, conjecture or speculation); Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E.2d 305 (1951) (the burden is upon the claimant to prove the facts which render the injury compensable);
5. The Claimant is not entitled to any benefits or compensation under the South Carolina Workers' Compensation Act. See Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E.2d 833 (1973), A false statement in an employment application will bar workmen's compensation benefits when: 1) the employee knowingly and willfully makes a false representation as to his physical condition; 2) the employer relies upon the false representation and this the reliance is a substantial factor in the hiring; and 3) there is a causal connection between the false representation and the injury.
6. Section 42-1-140 governs average weekly wage.
7. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100

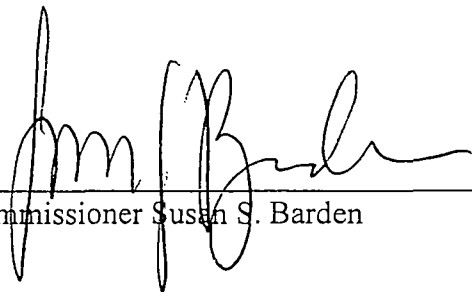
Dollars (\$1068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).

ORDER

IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that this claim is denied because the Claimant failed to satisfy his burden of proof that he suffered a compensable injury by accident to the left upper extremity arising out of and in the course of his employment with the Defendants on November 1, 2008.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Defendants are not responsible for providing the Claimant with any benefits or compensation under the South Carolina Workers' Compensation Act.

AND IT IS SO ORDERED.



Commissioner Susan S. Barden

CERTIFICATE OF SERVICE

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

DP
JL
This 10th day of November, 2010.

By KRISTI LOVE
Administrative Assistant to the Commissioner

South Carolina Workers' Compensation Commission

1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov

WCC File #: 0818219

Carrier File #: _____

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Joe OsmanskiSSN: 264-97-6730Employer's Name: Watkins Shepard TruckingAddress: 157 Cliff RoadAddress: 750 18th Street NCCity: Pelion State: SC Zip: 29123City: Hickory State: NC Zip: 28601Home Phone: (803) 894-7661Work Phone: () -Insurance Carrier: Zurich American InsurancePreparer's Name: Paula Howker AmickLaw Firm: George Sink, P.A.Preparer's Phone #: (803) 929 - 1920

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

A claim for workers' compensation benefits is made based on the following grounds Date of Injury or Illness: on or about 11/1/2008

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to left shoulder/arm/elbow (Part(s) of Body Injured) on or about 11/1/2008 (Month/Day/Year) in Aiken county, state of SC.

1b. Body part(s) affected are: left shoulder/arm/elbow

Briefly describe how the accident occurred. Claimant was delivering furniture when heavy object caused hyperextension of left arm.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of 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 11/2/2008 (Month/Day/Year) in the following manner:

Verbally to Randy Stevenson

☒ 6. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☐ (b) additional medical examination and treatment for: above-referenced injuries

☒ 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): (extent & nature of disability to be determined)

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$Max CR, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

11a. Further grounds or unusual aspects of claim: The Claimant asserts any and all other benefits available to the Claimant pursuant to the South Carolina Workers' Compensation Act. Claimant also reserves the right to amend.

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:
LMC and LFP, West Columbia, SC; Doctor's Care, Lexington, SC; Lexington Ortho, Lexington, SC; University of FL Physicians, Gainesville, FL

11c. To the best of your knowledge, did you have any prior permanent disability? yes

If yes, describe: prior Surgeries to L arm/shoulder and other injuries from 1987 or 1988 work-related fall

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☒ 13a. I am filing a claim. I am not requesting a hearing at this time.

☐ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 30 minutes

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

Preparer's Signature - Paula Howker Amick

Attorney for Claimant

Title

pamick@sinklaw.com

Email

RECEIVED

3/4/09

DATE

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

WCC Form # 50

Revised 9/07

50

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

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 0818219

Joseph A. Osmanski,

Claimant,

v.

Watkins Shepard Trucking,

Employer.

and

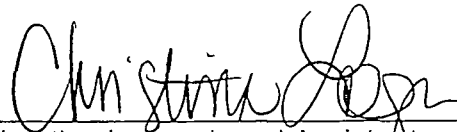
Zurich American Insurance Company,

Carrier,

CERTIFICATE OF SERVICE

I hereby certify that on this day, March 4, 2009, I mailed copies of the attached Pre-Hearing Brief, Form 50 and Notice of Witnesses/Evidence with APA Submissions by depositing same with the U.S. Postal Service, postage pre-paid, for first-class delivery to Defendant's attorney, addressed as follows:

Mr. Jason W. Lockhart
McAngus Goudelock & Courie, L.L.C.
70 Gervais Street, Suite 300
Post Office Box 12519
Columbia, SC 29211-2519



Christina Logan, Legal Assistant
George Sink, P.A.
Attorney for Employee/Claimant

Columbia, SC
March 4, 2009

C Workers' Compensation Commission

33 Main Street, suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803)737-5723



WCC File #: 0818219

Carrier File #: 2800063420-001

Carrier Code #:

Employer FEIN #:

Joe A. Osmanski 264-97-6730

Claimant's Name SSN
157 Cliff Road
Pelion, South Carolina 29123
Address City State Zip

(803) 687-0866

Home Phone # Work Phone #
Jason W. Lockhart McAngus Goudelock & Courie
Preparer's Name Law Firm

Watkins & Shepard Trucking, Inc

Employer's Name
Post Office Box 5328
Missoula, Montana 59808
Address City State Zip

Zurich North America

Insurance Carrier
(803) 227-2283
Phone Number

Date of Accident: 11/1/08

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

1. It is **denied** that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: The investigation of the Employer/Carrier does not reveal a compensable injury by accident within the course and scope of the Claimant's employment. In addition, the Employer/Carrier maintain that the Claimant's current problems with his left elbow, left shoulder, and/or left upper extremity are not causally connected to his alleged November 1, 2008 work-related accident.
2. It is **admitted** that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See Number 1 above.
3. It is **denied** that the relationship of employer and employee existed at the time in question. The reasons for denial are: See Number 1 above.
4. It is **denied** that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are: See Number 1 above.
5. It is **admitted** that notice of injury was given to the employer. The reasons for denial are: See Number 1 above.
6. It is **denied** that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: The Employer/Carrier maintains that there is no medical evidence to support the Claimant's entitlement to additional medical treatment.
7. It is **denied** that the employee is entitled to temporary total disability for the period(s) of: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to temporary total disability benefits.
8. It is **denied** that the employee is permanently disabled. The reasons for denial are: The Employer/Carrier maintain that there is no medical evidence to support the Claimant's entitlement to permanent disability benefits.
9. It is **denied** that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of **\$Form 20 to be submitted** applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: The Employer/Carrier maintain that the Claimant will be unable to satisfy his burden of proof pursuant to §42-1-160 and/or §42-9-35 of the Act. In addition, the Employer/Carrier maintain that the Claimant's claim for compensation would be barred on the basis that the Claimant engaged in fraud in the application of employment with the Employer.
12. Estimated time needed for hearing: 2 hours

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

David T. Pearlman, Esquire
The Steinberg Law Firm, L.L.P.
Post Office Box 9
Charleston, South Carolina 29402-0009

on the 28th day of January, 2010 by ☒ first class mail; ☐ personal service; ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Attorney for Employer/Carrier jlockhart@mcclaw.com
Title _____ Email _____

January 28, 2010
Date

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

P48

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
KEVIN B. SMITH
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CHARLES S. GOLDBERG, LLC, OF COUNSEL

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IRVING STEINBERG (1902-1980)

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FAX (843) 871-8565

November 29, 2010

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

RE: Claimant: Joe Osmanski
Employer: Watkins Shepard Trucking
WCC No.: 0818219 (DOI: November 1, 2008)

Dear Ms. Crocker:

Enclosed please find the original and three (3) copies of a WCC Form No. 30 (Request for Commission Review) with three (3) copies of the Decision & Order attached, and our firm check for \$150.00 for your filing fee.

By copy of this letter to Jason Lockhart, Esquire, attorney for the Defendants, I am serving upon the Defendants a copy of this WCC Form No. 30 as shown on the enclosed Certificate of Mailing.

With kindest regards, I am

Sincerely,

Kevin B. Smith

KBS/jhd

Enclosures

cc: Joe Osmanski
Jason Lockhart, Esquire
Paula Howker Amick, Esquire

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723



WCC File #: 0818219
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Joe Osmanski Employer's Name: Watkins Shepard Trucking
Address: 157 Cliff Road Address: 750 18th Street NC
City: Pelion State: SC Zip: 29123 City: Hickory State: NC Zip: 28601
Home Phone: (803) 894-7661 Work Phone: Insurance Carrier: Zurich American Insurance Co.
Preparer's Name: Kevin B. Smith, Esquire Law Firm: The Steinberg Law Firm Preparer's Phone #: (843) 720-2800

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: November 1, 2008

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

Please see attached.

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Jason Lockhart, Esquire, McAnugus, Goudelock, and Courie, P.O. Box 12519, Columbia, SC 29211.

on the 29 day of November, 2009 by ☒ first class mail; ☐ personal service; ☒ certified mail.

Preparer's Signature

Attorney for the Claimant
Title

November 29, 2010
Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

GROUND\$ FOR REVIEW

Claimant: Joe Osmanski
Employer/Carrier: Watkins Shepard Trucking
WCC No.: 0818219

- FIRST: The Hearing Commissioner erred in failing to find as fact and conclude as a matter of law that the Claimant sustained a compensable injury by accident on November 1, 2008.
- SECOND: The Hearing Commissioner erred as a matter of law in failing to find and conclude that the Defendants' defenses were inapplicable to the facts of this claim.
- THIRD: The Hearing Commissioner erred in finding of fact No. 3; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- FOURTH: The Hearing Commissioner erred in finding of fact No. 8; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- FIFTH: The Hearing Commissioner erred in finding of fact No. 10; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- SIXTH: The Hearing Commissioner erred in finding of fact No. 13; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- SEVENTH: The Hearing Commissioner erred in finding of fact No. 14; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- EIGHTH: The Hearing Commissioner erred in finding of fact No. 15; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- NINTH: The Hearing Commissioner erred in finding of fact No. 17; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- TENTH: The Hearing Commissioner erred in finding of fact No. 18; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.

- ELEVENTH: The Hearing Commissioner erred in finding of fact No. 20; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- TWELFTH: The Hearing Commissioner erred in finding of fact No. 21; the error being the substantial evidence in the record does not support this finding.
- THIRTEENTH: The Hearing Commissioner erred in finding of fact No. 22; the error being the substantial evidence in the record does not support this finding.
- FOURTEENTH: The Hearing Commissioner erred in finding of fact No. 25; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- FIFTEENTH: The Hearing Commissioner erred in finding of fact No. 26; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- SIXTEENTH: The Hearing Commissioner erred in finding of fact No. 27; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- SEVENTEENTH: The Hearing Commissioner erred in finding of fact No. 28; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- EIGHTEENTH: The Hearing Commissioner erred in finding of fact No. 29; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- NINETEENTH: The Hearing Commissioner erred in finding of fact No. 30; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- TWENTIETH: The Hearing Commissioner erred as a matter of law in Conclusion of Law No. 3; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.
- TWENTY-FIRST: The Hearing Commissioner erred as a matter of law in Conclusion of Law No. 4; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.

TWENTY-SECOND: The Hearing Commissioner erred as a matter of law in Conclusion of Law No. 5; the error being the substantial evidence in the record does not support this finding and it also constitutes an error of law.

TWENTY-THIRD: The Hearing Commissioner erred as a matter of law in failing to address or even consider the Claimant's arguments concerning fraud and the cases of Outlaw v. Calhoun Life and Hansen v. DHL Laboratories.

TWENTY FOURTH: The Hearing Commissioner erred as a matter of law in failing to set forth reasons for disbelieving the Claimant and his doctors so as to enable meaningful appellate review.

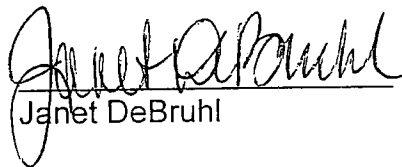
CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2010, I served the Defendant in the foregoing matter with a copy of the attached WCC Form No. 30 (Request for Commission Review) by mailing a copy of same via certified mail and first class mail, postage pre-paid and addressed as follows:

S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Jason Lockhart, Esquire
McAngus, Goudelock, and Courie
P.O. Box 12519
Columbia, SC 29211
Attorney For: Watkins Shepard Trucking

By:


Janet DeBruhl

Received
10/15/10

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0818219

JOE A. OSMANSKI,

Employee,

Claimant,

vs.

WATKINS & SHEPARD TRUCKING, INC,

Employer,

AND

ZURICH NORTH AMERICA,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, South Carolina on April 29 2010.

APPEARANCES:

Claimant represented by David T. Pearlman, Esquire of The Steinberg Law Firm, L.L.P. of Charleston, South Carolina.

Defendants represented by Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER:

Commissioner Susan S. Barden

FILED:

November 10, 2010

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records were submitted into evidence.

The Claimant submitted the following exhibits:

1. Al Osbahr, M.D., Statement, dated 11/05/09, consisting of 1 page. (Claimant's APA #1).
2. Larry K. Chidgey, M.D., Questionnaire, dated 04/03/09, consisting of 2 pages. (Claimant's APA #2).
3. Larry K. Chidgey, M.D., Medical Records, dated 01/12/09 – 05/14/09, consisting of 9 pages. (Claimant's APA #3).
4. Al Osbahr, M.D., Medical Examination Medical Examiner's Certificate, dated 10/30/06, consisting of 3 pages. (Claimant's APA #4).
5. Watkins Shepard Trucking, Employee History, dated 01/31/07 – 11/01/08, consisting of 1 page. (Claimant's APA #5).
6. Watkins Shepard Trucking, Correspondence, dated 01/30/07 – 11/24/08, consisting of 4 pages. (Claimant's APA #6).
7. Gerald J. Shealy, M.D., Medical Records, dated 05/21/09 – 08/25/09, consisting to 7 pages. (Claimant's APA #7).
8. Gerald J. Shealy, M.D., Operative Notes, dated 07/08/09, consisting to 2 pages. (Claimant's APA #8).
9. Various Providers, Diagnostics, dated 11/02/08 – 01/12/09, consisting of 10 pages. (Claimant's APA #9).

10. John Fisher, M.D., Medical Notes, dated 10/22/08 – 11/13/08, consisting of 1 page. (Claimant's APA #10).
11. John Fisher, M.D., Medical Examiner's Certificate, dated 10/22/08, consisting of 1 page. (Claimant's APA #11).
12. James F. Bethea, Medical Records, dated 12/23/08, consisting of 2 pages. (Claimant's APA #12).
13. Lexington Orthopaedics, Medical Records, dated 11/2/08 – 11/06/08, consisting of 3 pages. (Claimant's APA #13).
14. Larry K. Chidgey, M.D., Medical Records, dated 08/5/88 – 11/01/01, consisting of 7 pages. (Claimant's APA #14).

The Defendants submitted the following exhibits:

1. James C. McIntosh, M.D., dated 11/06/08 – 11/20/08, consisting of 2 pages. (Defendants' APA #15).
2. Lexington Medical Center – Lexington, dated 11/02/08 – 11/04/08, consisting of 3 pages. (Defendants' APA #16).
3. John H. Fisher, Jr., M.D., Lexington Family Practice, dated 10/22/08 – 11/13/08, consisting of 6 pages. (Defendants' APA #17).
4. Gerald J. Shealy, M.D., Charleston Hand Group, LLC, dated 11/10/09 – 02/22/10, consisting of 4 pages. (Defendants' APA #18).
5. Larry K. Chidgey, M.D., dated 02/19/92 – 03/22/02, consisting of 20 pages. (Defendants' APA #19).
6. Shands Hospital at the University of Florida, dated 08/23/88 – 11/02/01, consisting of 19 pages. (Defendants' APA #20).

7. Watkins & Shepard Trucking, Inc. Post Job Offer Questionnaire, dated 10/30/06, consisting of 1 page. (Defendants' APA #21).
8. Medical Examination Report for Commercial Driver Fitness Determination, dated 10/30/06, consisting of 1 page. (Defendants' APA #22).
9. Watkins & Shepard Trucking, Inc. Driver Procedural Manual and Driver Policy Manual Receipt Acknowledgment, consisting of 1 page. (Defendants' APA #23).
10. Watkins & Shepard Trucking, Inc. Guidelines for Appropriate Conduct, consisting of 2 pages. (Defendants' APA #25).
11. Life Care Services Job Analysis, dated 06/07/06, consisting of 10 pages. (Defendants' APA #26).

STIPULATIONS

The parties stipulate to the following:

1. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100 Dollars (\$1068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).
2. Notice of the hearing was timely and properly served on all parties of interests.
3. The South Carolina Worker's Compensation Commission has jurisdiction over the claim.
4. Venue is proper in Lexington County, but, pursuant to the consent of both parties, the hearing was conducted in Richland County.

STATEMENT OF THE CASE

The hearing was scheduled pursuant to the Form 50 filed by the Claimant on January 20, 2010. The Claimant maintained that he sustained a compensable injury to the left upper extremity while in the course and scope of his employment with the Defendants on November 1, 2008. The Claimant maintained that he was entitled to authorized medical treatment with Dr. Shealy and temporary total disability benefits from November 1, 2008 to the present and continuing.

In response, the Defendants maintained that the Claimant would be unable to satisfy his burden of proving a compensable injury to the left upper extremity while in the course and scope of his employment with the employer. In addition, the Defendants took the position that the Claimant was not entitled to benefits on the basis that the Claimant engaged in fraud in the application, when he obtained employment with the employer in November 2006, where the Claimant misrepresented his physical condition to the employer in November 2006.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 45 years of age, and resides in Pelion, South Carolina with his wife and nine children. (Hr'g Tr. p. 24, Deposition of Claimant pp. 5-6). The Claimant stated that he last completed the 11th grade, but has not obtained his GED or high school equivalent. (Hr'g Tr. pp. 24-25). The Claimant indicated that he sustained injuries to the left elbow, right elbow, left shoulder, right shoulder, left wrist, and right wrist as a result of a work-related injury that occurred in December 1987. (Hr'g Tr. pp. 25-26; Deposition of Claimant pp. 9-10). The Claimant testified that he sought and received medical treatment with Dr. Chidgey as a result of the injuries sustained in his 1987 work-related accident. (Hr'g Tr. pp. 25-28; Deposition of

Claimant pp. 12-14). Dr. Chidgey determined that the Claimant reached maximum medical improvement on March 20, 2002 and assigned a 20% impairment rating to the left upper extremity. (Defendants' APA #19, p. 88 (c). The Claimant stated that he received weekly workers' compensation benefits, as a result of his 1987 work-related accident, for approximately 7 years, and eventually received a settlement in the amount of approximately \$86,000.00. (Deposition of Claimant, p. 15).

The Claimant testified that he contacted Watkins & Shepard Trucking, Inc. (the "Employer") in 2006 regarding possible employment as a truck driver. (Deposition of Claimant, p. 21). The Claimant stated that he was extended an offer of employment by Rodney Stephens, who instructed the Claimant to travel to Hickory, North Carolina for purposes of completing activities prior to the Claimant's beginning employment with Watkins & Shepard Trucking, Inc. as a truck driver. (Deposition of Claimant, pp. 21-22). The Claimant indicated that, while in Hickory, North Carolina, he underwent a D.O.T. physical, which was conducted by Dr. Osbahr. (Hr'g Tr. p. 35, Deposition of Claimant, p. 22). Most notably, the Claimant testified that he informed Dr. Osbahr of his previous work-related left upper extremity injury, and informed Dr. Osbahr that he had undergone multiple surgeries on the left upper extremity, including a left elbow replacement. (Hr'g Tr. pp. 36-39). The Claimant stated that he also underwent a lift test, pursuant to the request of the Employer, and successfully completed the lift test. (Hr'g Tr. p. 39, ll. 3-22). The Claimant testified that he did not recall anyone at Watkins & Shepard Trucking, Inc. asking him about prior injuries. (Hr'g Tr. pp. 40-41; Deposition of Claimant, p. 22, ll. 19-25, p. 23, ll. 23-25, p. 24, ll. 1-17). The Claimant testified that he was of the opinion that he was able to perform his job duties as a truck driver with Watkins & Shepard Trucking, Inc. (Hr'g Tr. pp. 39-40).

The Claimant testified that he began working with Watkins & Shepard Trucking, Inc. in October 2006 as a truck driver, and that his job duties and responsibilities required the Claimant to engage in physical activities such as lifting, pulling and pushing. (Hr'g Tr. p. 40, ll. 8-21, p. 42, ll. 15-19). Most notably, the Claimant stated that he did not experience any problems with his left upper extremity, while working with Watkins Shepard Trucking, Inc., prior to his November 2008 work-related accident. The Claimant indicated that he injured his left upper extremity while in the course and scope of his employment with the Employer on November 1, 2008. (Hr'g Tr. pp. 43-44). More specifically, the Claimant testified that he hyperextended his left elbow while attempting to break down freight weighing 100-150 lbs while in the course and scope of his employment with the Employer. (Hr'g Tr. pp. 43-44; Deposition of Claimant, pp. 30-31).

The Claimant testified that he has sought and received medical treatment from multiple physicians, for the injuries he sustained in his alleged November 2008 work-related accident, including Dr. Bethea, Dr. Chidgey, Dr. McIntosh, and Dr. Shealy. (Hr'g Tr. p. 44). The Claimant stated that he has sought and received medical treatment from Dr. Shealy, who is an orthopaedic physician in Charleston, South Carolina, in the form of 3 surgeries, including the replacement and repair of the Claimant's left elbow prosthesis. (Hr'g Tr. pp. 44-45; Claimant's APA ## 7-8). The Claimant indicated that he has not been released from the care of Dr. Shealy, and is currently being placed out of work by Dr. Shealy due to his work-related left upper extremity injury. (Hr'g Tr. pp. 45-46).

On cross-examination, the Claimant testified that he was released from the care of Dr. Chidgey in March 2002. (Hr'g Tr. pp. 55-57; Deposition of Claimant, p. 14, ll. 10-24). Most notably, the Claimant stated that, when he was released from the care of Dr. Chidgey in March

2002, he was aware that he had been provided with a permanent restriction by Dr. Chidgey of no lifting in excess of 10-15 pounds with the left upper extremity. (Hr'g Tr. pp. 55-57; Defendants' APA #19, pp. 88(a)-(c)). The Claimant indicated that his job duties and responsibilities with Watkins & Shepard Trucking, Inc. were outside of the permanent work restrictions, which he had been provided by Dr. Chidgey. (Hr'g Tr. pp. 55-57, pp. 64-65). The Claimant testified that he was of the opinion that he was physically capable of performing his job duties and responsibilities with Watkins & Shepard Trucking, Inc., despite the permanent work restriction that had been placed upon the Claimant by Dr. Chidgey, and that he would have informed the Employer of the above-referenced permanent work restriction had the Employer questioned the Claimant as to whether he possessed any permanent work restrictions. (Hr'g Tr. pp. 57-59). Most interestingly, the Claimant stated that, while he was not questioned by Watkins & Shepard Trucking, Inc. regarding any permanent work restrictions prior to his beginning employment with the Employer, he did not voluntarily inform Watkins & Shepard Trucking, Inc. that he possessed a permanent lifting restriction, with regards to the left upper extremity, prior to this beginning employment with Watkins & Shepard Trucking, Inc. in November 2006. (Id.).

The Claimant testified that he possessed limited range of motion of the left elbow and some occasional numbness of the left upper extremity prior to his November 2008 work-related accident. (Hr'g Tr. p. 61). Despite the deposition testimony of Dr. Osbahr, the Claimant stated that he informed Dr. Osbahr of his 1987 work-related accident as well as the multiple surgeries, which the Claimant underwent as a result of his 1987 work-related accident. (Hr'g Tr. pp. 46-49, 62-63). The Claimant indicated that he did not misrepresent any impairment, which he possessed with regard to the left upper extremity, when completing forms associated with his D.O.T. physical as he was under the impression that he did not possess any impairment to the left upper

extremity as a result of his 1987 work-related accident. (Hr'g Tr. pp. 60-62; Deposition of Claimant, p. 47). The Claimant indicated that he was of the opinion that his prior work-related left upper extremity injury did not prevent the Claimant from performing his job duties and responsibilities with Watkins & Shepard Trucking, Inc. as a truck driver. (Hr'g Tr. p. 59).

The deposition of Larry Chidgey, M.D., was taken on March 15, 2010. Dr. Chidgey is an expert in the orthopedic medicine. Dr. Chidgey testified that he began treating the Claimant in 2000 for treatment of a severe left elbow injury. (Deposition of Dr. Chidgey, pp. 4-5). Dr. Chidgey testified that he provided the Claimant with treatment in the form of two surgeries, including placement of an artificial elbow joint in September of 2000 and a procedure on the ulnar nerve of the Claimant's left elbow. (Deposition of Dr. Chidgey, p. 5). Dr. Chidgey testified that on February 11, 2002 he recommended a 10lb lifting restriction indefinitely for the Claimant's left upper extremity due to the Claimant's total elbow arthroplasty. (Deposition of Dr. Chidgey, p. 8). Thereafter, on March 22, 2002, Dr. Chidgey recommended a lifting restriction of 10-15 lbs after the Claimant underwent a functional capacity evaluation. (Deposition of Dr. Chidgey, p. 9). Dr. Chidgey testified that the Claimant was informed of these restrictions and understood the restrictions that had been recommended by Dr. Chidgey. (Deposition of Dr. Chidgey, p. 7, 10, 21). Dr. Chidgey testified that he released the Claimant on March 22, 2002 and assigned a 14% impairment rating to the upper extremity. (Deposition of Dr. Chidgey, p. 10; Defendants' APA #19, p. 88 (c)). Although Dr. Chidgey testified that the Claimant's work restrictions were permanent unless things changed, Dr. Chidgey also testified that there was no medical evidence to suggest that the Claimant's condition had changed between March 2002 and the date of the Claimant's alleged November 2008 work-related accident. (Deposition of Dr. Chidgey, p. 12).

Dr. Chidgey testified that he examined the Claimant on January 12, 2009 following the Claimant's alleged 2008 work-related accident. Dr. Chidgey testified that there were some concerns that the Claimant's implant had possibly loosened as well as a biceps tendon rupture. (Deposition of Dr. Chidgey, pp. 17-18). The Claimant was most recently examined by Dr. Chidgey on April 1, 2009. (Deposition of Dr. Chidgey, p. 18).

The deposition of Albert James Osbahr, M.D. was taken on March 15, 2010. Dr. Osbahr is an expert in occupational medicine. Dr. Osbahr testified that he provided the Claimant with a D.O.T. examination as a new hire for Watkins Shepard Trucking, Inc. on October 30, 2006. (Deposition of Dr. Osbahr, p. 6). Dr. Osbahr testified that he had no recollection of the Claimant informing him of the Claimant's 1987 work-related accident. (Deposition of Dr. Osbahr, p. 7). Dr. Osbahr also testified that the Claimant failed to inform him that the Claimant had undergone left elbow replacement surgery in 2000. (Deposition of Dr. Osbahr, p. 7). Although Dr. Osbahr identified some impairment with regards to the Claimant's left arm during the examination, Dr. Osbahr testified that the Claimant failed to inform that Dr. Chidgey had assigned a 14% impairment rating to the Claimant's left arm. (Deposition of Dr. Osbahr, pp. 8-10). Dr. Osbahr further testified that the purpose of his examination of the Claimant was to determine if the Claimant's physical condition met the general standards as set forth by D.O.T. and not necessarily the specific requirements of the job for Watkins & Shepard Trucking, Inc. In fact, Dr. Osbahr confirmed that at the time of the examination he had no information with regards to the particular job that the Claimant was to perform for Watkins & Shepard Trucking, Inc. (Deposition of Dr. Osbahr, pp. 11-14).

The deposition of Matthew Grandy was taken on March 17, 2010. Mr. Grandy testified that he is the Director of Driver Recruiting and Training for Watkins & Shepard Trucking, Inc.,

and has worked for the Employer from 1989 to 1999 and then again starting in January 2008. Mr. Grandy testified that all hiring for Watkins & Shepard Trucking, Inc. is conducted from corporate headquarters in Missoula, Montana. Mr. Grandy testified that the company engages in a post job offer phase in order to identify an individual's ability to perform the job. (Deposition of Grandy, pp. 9-10). Mr. Grandy testified that a conditional offer of employment is contingent upon a drug test, a lift test, a D.O.T. physical, as well as the post-job offer questionnaire administered by the safety department. (Deposition of Grandy, pp. 10, 18). Mr. Grandy further testified that, had the Claimant provided Watkins Shepard Trucking, Inc. with accurate information regarding the permanent work restrictions, which were placed upon the Claimant by Dr. Chidgey, the Claimant would not have been subjected to a lift test. (Deposition of Grandy, p. 25). Rather, the Employer would have conducted further research, including obtaining a copy of the Claimant's work release for the treating physician. (Deposition of Grandy, pp. 25-26). Mr. Grandy further testified that the Employer would want any medical records regarding restrictions in order to conduct a through investigation in order to determine if an applicant is physically capable of performing a job. (Deposition of Grandy, pp. 25-27).

The deposition of Rodney Stephens was taken on March 10, 2009. Mr. Stephens testified that he is a terminal manager for Watkins & Shepard Trucking, Inc. Mr. Stephens testified that the Claimant worked for the Employer as a delivery driver for nearly 2 years and was required to lift over 100lbs daily while delivering furniture. (Deposition of Stephens, pp. 7-8, p. 18). Mr. Stephens testified that he was the Claimant's direct supervisor while the Claimant was employed with Watkins & Shepard Trucking, Inc. (Deposition of Stephens, pp. 18-19). Mr. Stephens testified that the Claimant did not inform him of his 1987 work-related accident or that he had

been provided permanent lifting restrictions by Dr. Chidgey. (Deposition of Stephens, pp. 19-20).

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following findings of fact:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100 Dollars (\$1068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).
3. The Claimant alleges that he injured his left upper extremity (elbow and biceps) in a work-related accident on November 1, 2008, a claim I find is not supported by the greater weight of the evidence.
4. The Claimant is 45 years of age and resides in and resides in Pelion, South Carolina with his wife and children. (Deposition of Claimant, pp. 5-9).
5. The Claimant has 9 children between the ages of 3 and 24, eight of whom reside with Claimant and seven of whom are under the age of 18. (Deposition of Claimant, p. 7).
6. The Claimant's wife is unemployed. (Deposition of Claimant, p. 21, ll. 1-2).
7. The Claimant last completed the 11th grade, and has not obtained his GED or high school equivalent. (Hr'g Tr. p. 25, ll. 1-4).
8. Prior to the alleged accident in issue, the Claimant underwent left total elbow replacement surgery (after other multiple elbow surgeries) for a 1987 workers' compensation injury for which the Claimant received a settlement of approximately

\$86,000. After the prior total elbow replacement surgery, the Claimant was assigned permanent lifting restrictions of 10 to 15 lbs. for his left arm. The Claimant admitted at the hearing that he knew he was subject to the 10-15 lb. lifting restriction when he began work for Employer in 2006, that the treating physician who assigned the restriction did not subsequently lift it, and that he (Claimant) was subject to the restriction on the date of the alleged accident in issue. ((Hr'g Tr. pp. 55-57, pp. 64-65); Defendants' APA #19 and #20; Deposition of Claimant, pp. 9, 11, 15, and 44-45; Deposition of Dr. Chidgey, p. 22; Claimant's APA #14, pp. 50-53).

9. The Claimant underwent the elbow replacement surgery in September 2000, and then ulnar nerve neurolysis surgery in November 2001. After the elbow replacement surgery, the Claimant's treating physician records state that the physician "again stressed the importance of limited use of the Claimant's left arm to increase the longevity of this prosthesis," the that Claimant "will always have a 15 lb. weight limit restriction [later changed to 10-15] for the left upper extremity," and that the Claimant "should also avoid situations where he might fall or excessively stress his left arm. We stressed this multiple times today, and the patient stated he understands." The Claimant was released from care in March 2002 (after an FCE), and assigned a 20% impairment rating. (Defendants' APA #19, pp. 83, 86, and 88a-c; Claimant's APA #14, p. 50-53; Deposition of Dr. Chidgey, pp. 6-12 and 22).
10. Notwithstanding his hearing testimony, the Claimant gave inconsistent sworn deposition testimony that he did "not recall" whether or not he had any restrictions

after the 1987 workers' compensation injury and related elbow surgeries. (Deposition of Claimant, p. 17).

11. In addition to the previous left elbow surgeries, the Claimant also underwent 3 previous surgeries to his left shoulder and 1 to the right elbow. The condition of the Claimant's left shoulder was referred to as "complex" in 1998 and 1999. (Defendants' APA #19, pp. 70-72, dated 1998 and June 1999, referring to "two previous" left shoulder surgeries; Defendants' APA #2Q, pp. 94-95, containing the operative notes of the third left shoulder surgery; Claimant's APA #12, p. 42; testimony of Claimant; Claimant's APA #14, p. 47, containing a reference to the right elbow surgery).
12. Medical records from 1998 state that the Claimant has been disabled since 1987 because of his left arm. Medical evidence from 2000 states that the Claimant's pain is "disabling and barely tolerable," and that he is unable to use the arm for any significant activity. (Defendants' APA #19; pp. 72, 73, and 79; Deposition of Claimant, page 15, in which the Claimant testified that he received workers' compensation benefits for 7 years prior to receiving a settlement for the 1987 injury).
13. Although the Claimant testified at the hearing that he injured his left shoulder playing sports, he inconsistently testified in his deposition that he injured his left shoulder in the 1987 injury. Although the Claimant would admit to 1 left shoulder surgery, there actually were actually three prior surgeries. (Hr'g Tr. pp. 25-26, pp. 49-55; Deposition of Claimant, pp. 9-10, in which Claimant testified that he injured "both shoulders" in the work injury of 1987).
14. After releasing the Claimant in 2002--with a "permanent" lifting restriction of 10-15 lbs.—Dr. Chidgey did not see the Claimant again until 2009 (2 months after the

alleged accident in issue). There is no notation in Dr. Chidgey's 2002 record that the restriction imposed was only in place "unless things changed." The word "permanent," repeatedly used by Dr. Chidgey in his treatment notes prior to and after the date of the Claimant's 2002 FCE, speaks for itself and (with no qualifying language at the time the notes were written) is unequivocal. (Defendants' APA #19, pp. 88 (a) – (c)). I also note that in 2002, Dr. Chidgey warned the Claimant of the danger of excessively stressing the implant (to prolong its longevity) because of the Claimant's young age. (Defendants' APA #19). Dr. Chidgey admits that the Claimant understood that he was to avoid heavier lifting. (Deposition of Dr. Chidgey, pp. 7, 22). Therefore, I find Dr. Chidgey's 2010 attempt to retreat from the permanent restrictions he imposed in 2002 appears more than a little result-oriented. However, at the end of his deposition, Dr. Chidgey does reiterate the left arm lifting restriction as he imposed it in 2002. (Deposition of Dr. Chidgey, particularly pp. 8-14, 20-22, 26, and 28).

15. In 2006, the Claimant applied with Employer for work involving truck driving and delivering furniture. **The Claimant admitted at the hearing that prior to accepting employment he knew the job required him to lift 100-150 lbs.** (Hr'g Tr. pp. 64-65; Defendants' APA #17, p. 59; Defendants' APA #26, p. 114, and particularly pp. 117 and 121-123; Deposition of Stephens, page 7; Deposition of Grandy, pp. 23 and 26-28).
16. The Claimant's alleged accident was unwitnessed. (Hr'g Tr. pp. 43-44; Deposition of Claimant, pp. 30-31).

17. According to the Claimant, the recliner that hit the Claimant's left arm (after he pulled on it to get it down) weighed 100-150 lbs. The Claimant's job required him to use both arms. (Deposition of Claimant, pp. 30-32).
18. I find it odd and unusual that at a visit to his family doctor, Dr. Fisher, in November 13, 2008 (12 days after the date of the alleged accident), the Claimant would not (and did not) mention a work accident or work injury to his elbow. The record shows that the Claimant was in fact examined (contrary to his hearing testimony), as his abdomen is noted as "soft" with "no obvious swelling or masses." (Claimant's APA #10, page 40; Hr'g Tr. p. 66).
19. After the date of the alleged accident in issue, the Claimant's implant was noted to be loosened. The Claimant had to undergo another total elbow arthroplasty in 2009. (Deposition of Dr. Chidgey, pp. 16, 18 and 31; Claimants APA #8, pp. 28-29).
20. I find that Capers defeats this claim. It is irrelevant that the Claimant: (a) may have "felt" or thought he could perform the work (notwithstanding the ongoing restrictions); (b) may have been taught "good lifting techniques" in physical therapy; (c) was able to pass Employer's lift test; or (d) was able to work without incident for Employer for 2 years before the injury in issue occurred. If the legislature intended for a Capers defense to "expire" after a certain length of time a claimant is able to work outside his restrictions without injury, it could have enacted such a measure. I decline to create an "expiration" exception to Capers.
21. The reality in this case is that the Claimant's "luck" (i.e., his ability to work outside his restrictions) eventually ran out.

22. Dr. Chidgey's most telling comments--and which certainly apply to this textbook Capers case--is Dr. Chidgey's testimony that "if you want to try and gain life out of the arthroplasty, you keep your weight [lifting] to a lower level. *If you increase that, you may get away with it.* " I find that it would be patently unfair to require Defendants to bear the burden for a risk that the Claimant knowingly and willfully chose to take, notwithstanding the Claimant's need to support his unemployed wife and large family, and to pay his mortgage. (Deposition of Dr. Chidgey, pp. 23 and 27-28; Claimant's Deposition, p. 6).
23. Even Dr. Chidgey testified that as to whether the Claimant had any problems with his left elbow between 2002 and 2009, "I can only guess" (Deposition of Dr. Chidgey, page 33).
24. As to the Claimant's claim of a biceps tendon rupture, Dr. Chidgey testified that he is not certain whether the Claimant's biceps tendon is ruptured. (Deposition of Dr. Chidgey, pages 32-34).
25. As to Defendants' McDevitt defense, I find it applies. The Claimant contends that the case is inapplicable because the Claimant's post-hire physical examination revealed some impairment (but that Employer hired the Claimant anyway, ratifying any non-disclosure on the Claimant's part), and that the Claimant "misunderstood the form" and did not intend to mislead the Employer when he denied having any pre-existing impairment or injury. The Claimant's hearing testimony—that he knew he had a prior impairment/injury but that he misinterpreted the CDL forms—seemed to the undersigned to be "canned" and rehearsed. Further, the Employer never had the opportunity to explore the full extent of the Claimant's condition because it was

concealed. Although Dr. Osbahr on his own discovered some impairment during the examination, he never knew the full extent. The Claimant's hearing testimony—that he is "certain" he showed Dr. Osbahr his surgical scars—is refuted by the testimony of Dr. Osbahr (Hr'g Tr. pp. 36-38; Deposition of Dr. Osbahr, pp. 7-13 and 18, and particularly pp. 20-22; Defendants' APA #17, p. 62; Defendants' APA #22, p. 109; Claimant's APA #4, pp. 13-14; Claimant's APA #1, p. 1).

26. I do not believe the Claimant's testimony that he does not remember the telephone conversation with Employer's agent during which the agent completed the post job offer questionnaire. I fail to see why (and do not believe) that the Employer's own agent would falsify or otherwise fail to document the Claimant's impairment and his previous workers' compensation claim. I base this finding on the fact that the Claimant has also been less than forthcoming about other information to various providers and in sworn testimony, I find that the telephonically completed document is substantiated by Grandy's testimony that the post job offer questionnaire is generally conducted by telephone ("our standard practice") when an applicant does not live in Montana. The Employer relied on the telephone document. Nonetheless, I do note that the Claimant never subsequently signed this particular form after it was completed. (Deposition of Grandy, pp. 8-15, 17-18, 30, 34-36, and 46-47; Defendants' APA #21, p. 108, dated October 30, 2006; Deposition of Stephens, pp. 17-18).

27. Because of the Claimant's failure to disclose his prior injury/impairment, the Employer had no opportunity to obtain from the Claimant's treating doctor a certification that the Claimant would have no problems doing the job. Grandy also

states that the Claimant would not have undergone the lift test if Employer had known about the Claimant's prior injury/limitations for the reason that the Claimant could have injured himself during the lift test. (Deposition of Grandy, pages 12-13, 15-16, and 28-29).

28. However, even if McDevitt does not serve to defeat this claim, Capers clearly does.

29. Dr. Chidgey's checklist/questionnaire (particularly the "pursuant to my recommendations" portion in #2) is refuted by his own medical records. Therefore, this checklist/questionnaire is given de minimis weight. (Claimant's APA #2, pages 2-3; Defendants' APA #19, pages 69-88c).

30. The Claimant's request for benefits under the Act is denied.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act, § 42-1-10, S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries by accident arising out of and in the course of employment.
2. The Claimant alleges that he sustained a compensable left upper extremity (elbow and biceps) by accident arising out of and occurring in the course and scope of his employment with the Defendants on November 1, 2008.
3. The Claimant knew he was subject to a 10-15 lb. lifting restriction when he knowingly accepted employment requiring him to lift 100-150lbs. (See Capers finding that the claimant, who worked as a dishwasher, did not sustain an injury by accident arising out of and in the course of his employment, when the claimant

knew, based on prior experiences, that detergents and water would cause him to develop contact dermatitis. The substantial evidence supported the Court's conclusion that the claimant's contact dermatitis was not accidental within the meaning of Section 42-1-160.

4. The Claimant has not carried the burden of proof, required under the South Carolina Workers' Compensation Act, to establish that his alleged left upper extremity injury arose out of and in the course and scope of his employment with the Defendants. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998) (the workers' compensation claimant has the burden of proving facts that show that the injury arose out of the employment, and an award of benefits must not be based on surmise, conjecture or speculation); Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E.2d 305 (1951) (the burden is upon the claimant to prove the facts which render the injury compensable);
5. The Claimant is not entitled to any benefits or compensation under the South Carolina Workers' Compensation Act. See Cooper v. McDevitt & Street Co, 260 S.C. 463, 196 S.E.2d 833 (1973), A false statement in an employment application will bar workmen's compensation benefits when: 1) the employee knowingly and willfully makes a false representation as to his physical condition; 2) the employer relies upon the false representation and this the reliance is a substantial factor in the hiring; and 3) there is a causal connection between the false representation and the injury.
6. Section 42-1-140 governs average weekly wage.
7. The Claimant's average weekly wage is One Thousand Sixty Eight and 84/100

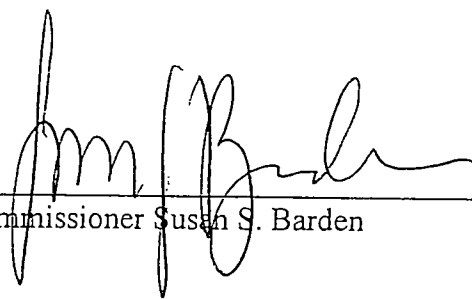
Dollars (\$1068.84.) with a corresponding compensation rate of Six Hundred Sixty One and 29/100 Dollars (\$661.29).

ORDER

IT IS HEREBY ORDERED, that the greater weight of the evidence supports a finding that this claim is denied because the Claimant failed to satisfy his burden of proof that he suffered a compensable injury by accident to the left upper extremity arising out of and in the course of his employment with the Defendants on November 1, 2008.

IT IS FURTHER ORDERED, that the greater weight of the evidence supports a finding that the Defendants are not responsible for providing the Claimant with any benefits or compensation under the South Carolina Workers' Compensation Act.

AND IT IS SO ORDERED.



Commissioner Susan S. Barden

CERTIFICATE OF SERVICE

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

DP
JL
This 10th day of November, 2010.

By KRISTI LOVE
Administrative Assistant to the Commissioner

Transcript of the Testimony of
WCC HEARING Osmanski Watkins & Shepard

Date: April 18, 2011

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Joe Osmanski,)
 Claimant,) Claim No. 0818219
)
 -vs-)
)
Watkins & Shepard,)
 Employer,))
)
 and)
)
Zurich North America,)
 Carrier/))
 Defendants.))
- - - - -)

FULL COMMISSION PANEL HEARING

- - - - -
Monday, April 18th, 2011
4:00 p.m. - 4:22 p.m.
- - - - -

The Full Commission Panel Hearing was
held before the South Carolina Workers'
Compensation Commission at the South Carolina
Workers' Compensation Commission, 1333 Main
Street, 5th Floor, Columbia, South Carolina, on
the 18th day of April, 2011, before Jill H.
Vickers, Certified Court Reporter and Notary
Public in and for the State of South Carolina.

1 APPEARANCES:
2 COMMISSION PANEL:
3 Andrea Pope Roche, Chairman
4 David W. Huffstetler
5 Avery B. Wilkerson
6 Kevin B. Smith, Esquire.
7 Steinberg Law Firm
8 61 Broad Street
9 Charleston, South Carolina 29401
10 Attorney for the Claimant
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14 Columbia, South Carolina 29201
15 Attorney for the Defendants

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1 taught in physical therapy to be able to
2 work. He employed those techniques and
3 he worked successfully until something
4 unexpected happened, until something
5 happened that did not come in the usual
6 course of what he did. So, I'll just submit
7 to you, this is an unusual case from our
8 point of view and hopefully from yours, as
9 well, being that we've got such a hard
10 working man motivated to take care of his
11 family.

12 The case was really denied on two
13 theories. One was the Fraud on the
14 Application. The second was the Capers
15 Defense. As you all know, Fraud on the
16 Application requires three things, and it
17 can't be proven unless all three things are
18 present. There must be a knowingly and
19 willful false representation as to the
20 person's physical condition, and as to the
21 physical condition, it's very important,
22 because it ties into really the general
23 characteristics of fraud in any case,
24 whether it's pled as a cause of action
25 defense or otherwise. You've got to show

1 COURT REPORTER: Today is April
2 18th, 2011. This is South Carolina Workers'
3 Compensation Case Number 0818219. This is
4 the case of Joe Osmanski versus Watkins &
5 Shepard and Zurich North America, Carrier.

6 The Appellant is the Claimant
7 represented by Jason B. Smith. The
8 Respondent is represented by Jason Lockhart.

9 MR. SMITH: May it please the
10 Commission. I'm here today on behalf of
11 Mr. Osmanski. This is a unique sort of
12 case. It's a case involving Fraud on the
13 Application, Capers Defense, things like
14 that. It's an unusual case in the sense
15 that, I guess, more times than not, we find
16 ourselves arguing about a person who says
17 he's more disabled than he really is. Often
18 there are competing vocational reports,
19 competing doctors and things that.

20 This case is the exact opposite from all
21 that. This is a fellow who contends just
22 the opposite of that. He wanted to work.
23 He paid attention to the things his doctor
24 told him to do in order to be able to work.
25 He paid attention to the things he was

1 that the employer relied on the false
2 representation and that must have been a
3 substantial factor in the hiring. Again,
4 that goes back to the general elements of
5 fraud. You've got to have the right to rely
6 on it. It's got to cause some damage. And
7 finally, you've got to show a causal
8 connection between the representation and
9 the injury. Like I said, any case of fraud
10 requires these sorts of things. This is
11 just how they tie into it.

12 I'll say out front that any claim in
13 fraud, whether it's a cause of action,
14 whether it's a defense, fraud must always
15 be proven by clear and convincing evidence.
16 The case law is absolutely clear to this
17 point. And that, again, is true whether or
18 not it's raised as a cause of action or
19 defense.

20 Actually, I raised that in my Brief, and
21 when I got the response from Mr. Lockhart
22 here, I guess the response to that was,
23 well, no one ever told the Hearing
24 Commissioner that that was the standard upon
25 which this case was to be judged by. Either

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1 way, we will submit that it's an
2 error of the law.
3 And the reason that you have to prove
4 these cases by clear and convincing evidence
5 is because the standard is so tough, because
6 it's such a harsh remedy, because you're
7 looking at things from the injured worker's
8 point of view. You're judging what was
9 in his mind when he made these things. That
10 shouldn't be a gut reaction. That shouldn't
11 be something that you come to on a whim.
12 You should have to prove that if you're
13 going to get inside someone's mind and show
14 a false representation.
15 The issues here: One, did Mr. Osmanski
16 make a false statement about his physical
17 condition; two, was there reliance; three,
18 was the accident unexpected; and four, are
19 there reasons why he was found not
20 credible, are they legally sufficient in
21 this case.
22 The false statement, the false statement
23 comes from a form that was suspect, and I
24 hope y'all will agree at the very least that
25 it was a suspect. This is a form that asks

1 this. Somehow, the one form, the one really
2 important form, this is the only one they
3 don't get him to sign personally or fill
4 out, but either way, let's say this.
5 There's one question on that form that deals
6 with his physical condition. It's like, "Do
7 you have any impairment that would affect
8 your ability to do this job?" That's the
9 only question that goes to the physical
10 condition.
11 Let's assume that Mr. Osmanski did
12 answer these questions over the phone, and
13 his testimony was not that he didn't do this
14 form or he didn't answer these questions.
15 His testimony was simply that he was there
16 for two days, and he filled out all this
17 stuff, and he took all these tests. He
18 doesn't remember answering any questions on
19 the phone for anyone, but let's assume for a
20 minute that Mr. Osmanski did, in fact,
21 answer these questions. Is the statement
22 false? Is the answer to the questions
23 false?
24 The history in the case, Mr. Osmanski
25 had an injury back in 1997 to his arm, and

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1 various questions. The case after Mr.
2 Osmanski was initially injured, this form
3 and none of this ever surfaced. This form
4 only surfaced after surgery was being
5 recommended and the true nature of how
6 serious or how much this injury was going
7 to cost started to become known. No one
8 will contend that the Claimant filled out
9 this form where the response is the false
10 representation. No one will contend that.
11 This form was filled out by someone else,
12 and Mr. Osmanski's name was signed by
13 someone else. Mr. Lockhart will admit that.
14 The form itself says that this is supposed
15 to be completed by the person, and it is
16 supposed to be FAX'ed to this lady in
17 Massoula at the home office. That's
18 not what happened. The employer's rep
19 testified, "Oh, this is how we usually do
20 it". Well, that's not what the form says.
21 This was such an important document.
22 Mr. Osmanski was at Watkins & Shepard
23 Trucking Company for two days filling out
24 forms, taking tests and doing all of
25 this stuff. They've got him doing all of

1 he had surgery. Afterwards, he was taught
2 proper lifting techniques by his physical
3 therapist. His treating doctor said he
4 could do what he wanted if he used his
5 stronger right dominant arm. This is an
6 injury to his left arm, but if he used his
7 right dominant arm, and this is in the
8 deposition of Dr. Chidgey, the treating
9 doctor from the 1987 injury, that if he used
10 his right dominant arm, if he shifted most
11 of the weight over to it, he could do what
12 he wanted. He didn't have any restrictions
13 at all on his right dominant arm. He had a
14 10 to 15 pound lifting restriction on his
15 left, but nothing on his right. He worked
16 for two years before this happened, six
17 years total after he last saw his treating
18 Doctor. He goes to Watkins & Shepard
19 Shipping, and he gets this job. Before he
20 gets the job, he's certified by the
21 employer's doctor as able to do the
22 job.
23 Two, he passed a very -- we've been
24 calling it a "Lift Test", and we refer
25 to it as a Lift Test in our Brief, but it's

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1 much much more extensive than a Lift Test.
2 It's in our APA's. The employer's rep
3 testified that the physical testing they
4 had him to go through was designed to
5 specifically mirror all of the things that
6 he would be required to do on the job day in
7 and day out. He was certified as able to do
8 the job by their doctor. He passed the test
9 that certified him to do all of the job
10 functions by the employer themselves. When
11 he was asked the question, "Is there
12 anything that would prevent you from
13 performing this job, anything about your
14 physical condition that would prevent you
15 from performing this job", and that's the
16 end of the question, "that would prevent you
17 from performing the job".

18 Keep in mind, he knew he had done this
19 kind of thing before. He was using the
20 proper lifting techniques. He was doing
21 what his doctor told him to do using most
22 of the weight with his right arm, been
23 certified by the company doctor and passed
24 the test designed to mirror all the specific
25 requirements of this job. So, let's assume

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1 he put "no". When he put "no", we would
2 contend that wasn't a false statement.

3 Now, we move on. Let's assume he did
4 fill out the form. Let's assume the answer
5 was false. Let's assume it's a matter of
6 interpretation and we assume the question
7 was false.

8 The second part of the requirements here
9 is that you've got to have reliance, and
10 where this comes in is, when Mr. Osmanski
11 was examined by the company doctor, the
12 company doctor, Dr. Oshbar, wrote on the
13 bottom of the form, "He's got impairment and
14 he's got limitations in movement in the use
15 of his arm". This was sent to the job.

16 Mr. Dandy or Grandy, I forget which one
17 it was, was the employer's rep who testified
18 at the hearing, and he testified
19 specifically that this kind of information
20 should have been followed up by someone.
21 Someone should have called Dr. Oshbar and
22 ask, "Well, what do you mean? How much
23 limitation? What's the problem here? How
24 much impairment?" Dr. Oshbar testified in
25 his deposition that had anyone called him to

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1 follow up on this information, he certainly
2 would have talked to them. He was their
3 doctor. He was the company doctor. But no
4 one ever called him. No one ever followed
5 up on it.

6 Our position regarding the false
7 statement, if it was false and if it was
8 made is that the employer should have known
9 it was false. If they're claiming it's
10 false now, they would have known it was
11 False then, because Dr. Oshbar, their
12 company doctor, notified them that he had
13 impairment and limitations in the movement
14 and use of his arm.

15 The Capers Defense, was the accident
16 unexpected, the term "accident" is defined
17 as an unlooked for and an untoward event
18 which is not expected or designed by the
19 person who suffered the injury, and this is
20 always judged from the perspective of the
21 injured worker.

22 The claimant's job was hauling
23 furniture. He didn't have to load the
24 truck. He didn't have to unload the truck.
25 He drove the truck. He had to push the

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1 boxes down to the end of the truck for the
2 workers at the furniture stores to get it
3 off, and this was his job. The truck was
4 preloaded in the morning. It was loaded in
5 order of his deliveries. So, his job was
6 mostly pushing and pulling, the job that he
7 did for two years before this happened,
8 pushing and pulling and driving. The box
9 that caused the injury here, he noticed that
10 it looked like it was going to fall over.
11 He goes to try and move it, and it shifts
12 and unexpectedly falls on his arm.

13 I'll just leave you with just this one
14 statement from the authorized treating
15 physician -- or not from the authorized
16 treating physician, but from the doctor who
17 had seen him in 1997, "But for the unusual
18 event of the heavy weight falling
19 unexpectedly on his arm damaging the joint
20 replacement itself, Mr. Osmanski undoubtedly
21 would have been able to continue his work
22 activities for the employer, as he did for
23 two years, 'til this work related injury on
24 or about November 1st, 2008".

25 There was no testimony whatsoever

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Page 16

1 from anyone saying that Mr. Osmanski
 2 expected, designed or knew that this box was
 3 going to unexpectedly shift and fall onto
 4 his weaker arm.
 5 COMMISSIONER ROCHE: Mr. Lockhart.
 6 MR. LOCKHART: With the Panel's
 7 permission, if I could remain at the table
 8 here to be able to reference the file
 9 materials and my notes. If I may, let me
 10 address the Capers decision or the Capers
 11 rationale first. We would argue that the
 12 rationale as applied by Commissioner Barden
 13 in this case is supported by the evidence
 14 and the testimony, and that she correctly
 15 applied Capers to deny the compensability of
 16 this claim.
 17 We look at the medical records and
 18 deposition testimony of Dr. Chidgey, the
 19 physician who treated Mr. Osmanski in
 20 Gainesville, Florida. You'll see that at
 21 APA Page 88, Dr. Chidgey released Mr.
 22 Osmanski in March of 2002 with a permanent
 23 lifting restriction of no lifting in excess
 24 of 10 to 15 pounds with the left arm. He
 25 testified in his deposition at Pages 9

1 position that Mr. Osmanski was seeking. It
 2 laid out the specific physical requirements,
 3 the lifting requirements, many of which were
 4 in excess of this 10 to 15 pound restriction
 5 that had been placed upon Mr. Osmanski
 6 by Dr. Chidgey.
 7 Mr. Osmanski himself testified at Page
 8 64 of the hearing transcript and at Page 65
 9 that he knowingly performed the work that
 10 was outside of the restrictions that had
 11 been placed upon him by Dr. Chidgey.
 12 And if you look at Commissioner Barden's
 13 decision, and as you all know, like many of
 14 you, she makes very detailed findings and
 15 goes into a very thorough analysis of the
 16 Claimant's deposition testimony. Finding
 17 of Fact 15, she talks about the Claimant
 18 knowingly performing work on behalf of
 19 Watkins & Shepard that was in excess
 20 of the restrictions that had been placed
 21 upon Mr. Osmanski by Dr. Chidgey.
 22 And I think her most poignant finding of
 23 fact is at Page -- I'm sorry -- Page 17 of
 24 the Order, Finding of Fact 22. She states
 25 "I would find it would be patently unfair to

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Page 17

1 through 10 and Page 12 that he again placed
 2 this permanent work restriction in March of
 3 2002, six years -- six-and-a-half years
 4 prior to the date of this accident, and not
 5 only did he place the restriction upon Mr.
 6 Osmanski, but Mr. Chidgey testified that
 7 Mr. Osmanski understood or at least Dr.
 8 Chidgey believed through his conversations
 9 with Mr. Osmanski that he understood what
 10 his permanent work restriction was, that he
 11 had no lifting in excess of 10 to 15 pounds
 12 with the left arm, and that's documented at
 13 Pages 10 and 22 of Dr. Chidgey's deposition
 14 testimony.
 15 Based on the Claimant's testimony, his
 16 injury which occurred in November 2008 was
 17 not unexpected, and it was not unexpected
 18 because he was performing activities on
 19 behalf of my client that he knew were
 20 in excess of the restrictions that had been
 21 placed upon him by his physician in Florida.
 22 At Page 117 of the APA's, you'll see a
 23 document that was provided or produced
 24 by the employer that laid out the specific
 25 job duties and responsibilities of the

1 require the defendants to bear the burden
 2 for a risk that the Claimant knowingly and
 3 willfully chose to take. In this particular
 4 case, Mr. Osmanski had an elbow problem. He
 5 had an impairment. He had a restriction.
 6 He performed activities that were outside of
 7 those restrictions, and therefore, his
 8 injury in this case was not unexpected. It
 9 was not unlooked for, and as Commissioner
 10 Barden indicated, it was a mere matter of
 11 time before his luck ran out, as she termed
 12 it, which in this case occurred on November
 13 1st of 2008.
 14 With regard to the McDevitt and Street
 15 rationale and analysis, we would argue that
 16 Commissioner Barden's decision is supported
 17 by the medical evidence and the testimony of
 18 the witnesses and other documentation
 19 submitted by the parties.
 20 Clearly, Mr. Osmanski had a prior left
 21 elbow injury. He treated with an
 22 orthopaedic physician from 1987 following
 23 the work related accident until 2002 for a
 24 variety of orthopaedic injuries, most
 25 notably, the left elbow. The medical

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1 records document his impairment rating which
2 again is at Page 88, and his permanent
3 restrictions are outlined by Dr. Chidgey
4 both in his records and in his deposition
5 testimony. Mr. Smith would like you to
6 believe that there's only one document that
7 Mr. Osmanski completed in this particular
8 case that substantiates or supports his
9 willful misrepresentation of his physical
10 Condition, but there actually are several.
11 Page 108 of the APA's is the Post Job Offer
12 Questionnaire which Mr. Osmanski completed
13 during a telephonic interview with a
14 representative of the defendant. Page 110
15 of the APA's is another document where Mr.
16 Osmanski was given the opportunity to
17 inform the employer of his impairment, and
18 he indicated he had none. He admitted to
19 completing this document dishonestly at Page
20 79 of the hearing transcript, and he also
21 denied having any impairment of the arm when
22 he underwent a DOT physical prior to
23 beginning work with my client.
24 So, there are three documents where Mr.
25 Osmanski was given the opportunity to

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1 disclose his impairment, to disclose his
2 restrictions to the employer, and he
3 willfully chose not to do that.
4 The credibility of this witness was
5 obviously at the center of the decision
6 made by Commissioner Barden in this case,
7 and she issued nine separate Findings of
8 Fact that address Mr. Osmanski's lack of
9 credibility. And we maintain that the
10 substantial evidence would support the
11 affirmation of those findings, even though
12 we know that the Full Commission Panel
13 is the ultimate fact finder, and it's within
14 this Panel's right to address the
15 credibility of witnesses, but Mr. Osmanski's
16 lack of credible testimony is consistent
17 ---
18 COMMISSIONER HUFFSTETLER: Could I
19 ask you something before you get away from
20 the McDevitt & Street?
21 MR. LOCKHART: Yes, Your Honor.
22 COMMISSIONER HUFFSTETLER: The
23 third leg, causal relationship between the
24 accident and the pre-existing condition,
25 what evidence is there that there is a

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1 relationship between those two?
2 MR. LOCKHART: Your Honor, that
3 evidence can be found at Pages 16 through 20
4 of Dr. Chidgey's deposition testimony in
5 which he indicates that the Claimant's
6 problems for which he saw the Claimant in
7 2009 were very similar, if not identical to
8 the problems that he treated the Claimant
9 for back in 2002.
10 I'll also point out to, Your Honor, if
11 you review the Appellant's Brief in this
12 case, they make no arguments or present no
13 evidence to contend that that element of the
14 McDevitt & Street defense was not satisfied.
15 And our contention would be that since that
16 argument was not raised in the Brief and not
17 addressed by the Appellant's in their Brief,
18 that they've abandoned that argument at this
19 hearing today.
20 Your Honor, I would also go to point out
21 ---
22 COMMISSIONER HUFFSTETLER: You
23 understand the point of my question is, a
24 person with two healthy arms -- and I don't
25 know how big this box was. If you have two

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1 healthy arms, and you're moving a big box
2 and it shifts, you could hurt your arm.
3 I mean, if somebody drops a piano on you, it
4 doesn't matter if you have a pre-existing
5 condition, you're going to get hurt. So,
6 did anybody ask the doctor about that?
7 MR. LOCKHART: Yes, Your Honor.
8 Again, Pages 16 through 20 of Dr. Chidgey's
9 deposition was a line of questioning that
10 dealt with what the actual injury was that
11 Mr. Osmanski suffered in November of 2008.
12 COMMISSIONER HUFFSTETLER: But did
13 anybody ask the "but for" question, "But for
14 the pre-existing condition, would he have
15 had this injury"?
16 MR. LOCKHART: Yes, Your Honor,
17 Pages 16 through 20, because what
18 Dr. Chidgey says is that based on the
19 diagnostic testing of the elbow that was
20 performed after the 2008 accident, he
21 couldn't determine if the actual damage was
22 to the prosthesis, the prosthetic elbow or
23 to any of the tissue surrounding the
24 prosthetic. One of the issues that came up
25 at this hearing was what the injury was.

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1 what physical tissue had actually been
2 compromised by the incident of November 1st,
3 2008. And if you go and you read
4 Dr. Chidgey's deposition testimony,
5 he's not certain as to what injury actually
6 occurred. He doesn't know if there was a
7 biceps rupture. The only thing that he
8 could tell based on a review of the
9 diagnostic testing was that there had been
10 some loosening of this prosthesis.

11 So, to answer your question, Your Honor,
12 I believe that his deposition testimony
13 addresses your concerns, but the bigger
14 question is, we don't really know, and
15 neither does Dr. Chidgey or anyone else what
16 actually was damaged on November 1.

17 But again, I would also point out to
18 you, Your Honor, the Givens case stands for
19 the proposition, and Givens deals with this
20 prong of the McDevitt & Street defense about
21 the causal connection between the
22 misrepresentation and the injury, and the
23 Givens case says that the causal connection
24 is established when evidence shows that the
25 prior injury caused the current accident and

1 contained in the DOT's physical and the Post
2 Job Offer Questionnaire. That's at Pages 18
3 through 19 in Mr. Grandy's deposition. I'll
4 also point out, too, that -- you know, I
5 find it interesting that Mr. Osmanski
6 testified at the hearing that he had no
7 recollection of having this telephone
8 conversation with a representative of
9 Watkins & Shepard. So, both Mr. Grandy and
10 Rodney Stevens who is Mr. Osmanski's direct
11 supervisor both testified via deposition
12 that it was standard practice on behalf of
13 the employer to have this Post Job Offer
14 Questionnaire completed during a telephonic
15 interview. Thank you, Your Honors.

16 COMMISSIONER ROCHE: Mr. Smith.

17 MR. SMITH: I was just looking
18 through the file trying to find a copy of
19 the hearing transcript to follow up on the
20 question from Commissioner Huffstetler, and
21 you actually raised an interesting point,
22 and interestingly, before I came here, one
23 of the instructions I was given by David
24 Pearlman was to listen very closely to the
25 questions. You can also -- often have good

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1 injury.
2 And in this particular case, the
3 Claimant testified in his deposition and
4 at the hearing that he's having the same
5 problems with the same part of his body now
6 that he had back in 2002. And Dr. Chidgey
7 testified that, of course, this permanent
8 work restriction that he had placed upon the
9 Claimant, as well as the presence of the
10 prosthesis made the Claimant more
11 susceptible to suffering injuries to that
12 arm as a result of physical activity,
13 especially that in excess of the
14 restrictions that had been assigned.

15 We dealt with, I guess, the first and
16 the third prong of the McDevitt defense.
17 The second prong, of course, is whether the
18 defendants relied upon the Claimant's false
19 representation and whether their reliance
20 was a substantial factor in hiring.

21 Matt Grandy who testified via deposition
22 on behalf of the defendants testified at
23 Pages 29 through 30 that the defendants
24 relied upon the Claimant's false
25 representation, relied upon the information

1 insight from the questions other people
2 raise from their view of this. So,
3 Commissioner Huffstetler raised the
4 question.

5 If you look at the transcript of the
6 hearing, one of the very first things that
7 the defendants start to say was, and they
8 said it again here today, "We don't know
9 what was damaged. We don't know what the
10 Injury was." Now, keep in mind, to show the
11 causal connection, that is a burden of proof
12 on the defendants themselves. This is not
13 something I'm required to put forward.
14 They, instead of establishing a causal
15 connection, they are saying in the record,
16 "We don't know what the injury was". Well,
17 if they don't know what the injury was, how
18 can they be contending that they're proving
19 a causal connection between the injury and
20 the pre-existing condition. Again, it was
21 over and over in their pre-hearing
22 conference, in the record and here today as
23 an answer to you all. Simply showing that
24 the person is more susceptible to injury
25 because of the pre-existing condition is not

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1 enough. You've got to show the "but for"
2 question, and Commissioner Huffstetler, the
3 "but for" question was not asked. If the
4 "but for" question was asked, they would
5 know what the injury was.
6 Dr. Chidgey testified in that deposition
7 that Mr. Lockhart keeps referencing, he
8 testified in that deposition he thought he
9 had a ruptured tendon that had nothing to do
10 with the prosthesis.
11 Now, there's other evidence regarding
12 ruptured tendons and things like that, but
13 anyway, the evidence that they put forward
14 and the doctor they put forward to establish
15 this supposed causal connection when they
16 didn't even know what the injury was and
17 is still their position today, that doctor
18 thought it was a ruptured tendon which would
19 have had nothing to do with the pre-existing
20 condition.
21 So, thank you for the question. It does
22 raise an interesting point. And as I was
23 looking for the transcript, it came again
24 out, we don't know what the injury was. So,
25 I submit you, if you don't know what the

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1 injury was, you certainly can't ...
2 COMMISSIONER HUFFSTETLER: You
3 didn't have the same burden, though.
4 MR. SMITH: No, sir, not with the
5 Cooper and McDevitt & Street Defense, it's
6 not my burden to prove that defense.
7 COMMISSIONER HUFFSTETLER: If
8 you'll let me finish.
9 MR. SMITH: Yes, sir.
10 COMMISSIONER HUFFSTETLER: If
11 you're claiming an injury by accident, so
12 that when you have to show -- you don't know
13 what it is. If nobody knows what it is,
14 then what is it that we're to find as the
15 injury? I mean, you both have -- from
16 your arguments, it sounds like you both have
17 that burden, and it's to show that
18 whatever the injury is, that it's causally
19 related to this pre-existing problem and not
20 something that would have happened anyway,
21 but I mean, you do have to show there's an
22 injury by accident, so I mean, you seem to
23 be arguing that in a way that might apply to
24 both of you.
25 MR. SMITH: Yes, sir. Would you

1 like me -- I know I'm out of time. If you'd
2 like me to respond?
3 COMMISSIONER ROCHE: Yes, you can
4 respond.
5 MR. SMITH: That's interesting, as
6 well, because what we have to prove, I
7 guess, is a little bit different than what
8 he has to prove, but I see your point,
9 absolutely. Our position was that he
10 suffered a loosening of his prosthesis and
11 that he suffered a ruptured tendon. And
12 those are what were borne out in the
13 testimony, the medical evidence and things
14 like that, to show beyond that, that causal
15 connection between the injury and the
16 pre-existing condition, not just more
17 susceptible to injury because of the
18 pre-existing condition. That burden of
19 proof is separately on the defendant.
20 Can I just make one last point?
21 MS. ROCHE: I think your time is
22 up. Thank you. We do have your Brief.
23 (Whereupon, the Full Commission Panel Hearing
24 concluded at 4:22 o'clock p.m.)
25

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1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF RICHLAND)
4 I, Jill H. Vickers, Certified Court
5 Reporter and Notary Public, certify that I did
6 have the Full Commission Panel Hearing before me
7 at 4:00 p.m., on Monday, April 18th, 2011, at the
8 South Carolina Workers' Compensation Commission,
9 1333 Main Street, 5th Floor, Columbia, South
10 Carolina; that the foregoing pages constitute a
11 true and accurate transcript of the proceedings
12 held at that time and place.
13 I further certify that I am not of
14 counsel or kin to any of the parties to this cause
15 of action, nor am I interested in any manner in
16 its outcome.
17 IN WITNESS WHEREOF I have hereunto set
18
19 my hand and seal this 14th day of June, 2011.
20
21
22
23
24 Notary Public for South Carolina.
25 My commission expires July 5th, 2016.

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STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER - 0818219

JOE A. OSMANSKI,)
)
CLAIMANT,) SINGLE COMMISSION HEARING
)
VS.) BEFORE
)
WATKINS SHEPARD TRUCKING,) COMMISSIONER SUSAN S. BARDEN
)
EMPLOYER,)
)
ZURICH AMERICAN,)
)
CARRIER,)
)
DEFENDANTS.)
_____)

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE SARA L. QUATTLEBAUM, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
10:26 AM ON THURSDAY, APRIL 29, 2010, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA.

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SARA QUATTLEBAUM, Independent Court Reporter
 (803) 447-0272

1 THE COURT: Today's date is April 29, 2010. This
2 is South Carolina Workers' Compensation Commission
3 File No. 0818219.

4 This is the case of the Claimant, Mr. Joe
5 Osmanski, who is present today and represented by
6 Attorneys David Pearlman and Kevin Smith versus the
7 Employer, Watkins and Shepard Trucking and its
8 Carrier, Zurich American, both of which are
9 represented by Attorney Jason Lockhart.

10 The purpose of today's hearing is to determine
11 issues raised in Forms 50 and 51.

12 This is a denied claim. However the parties do
13 agree and stipulate that Mr. Osmanski's average weekly
14 wage is \$1,068.84 yielding a compensation rate of
15 \$661.29. The date of this alleged accident was
16 November 1, 2008. Are there any objections to APAs,
17 jurisdiction, venue or any other items?

18 MR. PEARLMAN: None from the Claimant, Your
19 Honor.

20 MR. LOCKHART: None from the Defendants, Your
21 Honor.

22 THE COURT: Thank you both. Without objection
23 the Commission File becomes a part of the record with
24 the exception of self-serving declarations and
25 unstipulated medical reports.

1 The body parts alleged in this claim are the left
2 elbow and biceps. At this time I'm going to ask each
3 party to put a brief position on the record. and as
4 you are the moving party, Mr. Pearlman and Mr. Smith,
5 I will begin with you.

6 MR. PEARLMAN: Thank you, Your Honor. Your
7 Honor, Mr. Osmanski sustained a significant injury to
8 his left upper extremity on November 1, 2008 while in
9 the course and scope of his employment at Watkins and
10 Shepard. He had been employed with Watkins and
11 Shepard for approximately two years, Your Honor.

12 What the records will reflect, Your Honor, is
13 that Mr. Osmanski is 44 years old, married, has nine
14 children. And the reason I point this out to you once
15 again as important is for this reason. He had a
16 serious work-related injury many years ago, had to
17 have multiple surgeries and ultimately required a
18 total elbow replacement in his left arm. He
19 eventually was released in, I believe 2002 with an
20 impairment and some restrictions but was given some
21 work hardening program and told how to perform work
22 using both arms.

23 He did return to work, Your Honor, in the
24 trucking industry from that point forward and
25 eventually found this job with Watkins in 2000. The

1 doctor that treated him down in Florida was a
2 Dr. Chidgey. Dr. Chidgey's deposition has been
3 presented to Your Honor. And what Dr. Chidgey
4 testified to in his deposition is that yes, he had
5 some limitations. Yes, he had some impairment with
6 his left arm. But with both arms he could perform the
7 type of work he was doing.

8 That's important, Your Honor, because that goes
9 directly to the Defense argument that somehow this is
10 a Capers' defense, that he was doing something beyond
11 the scope of what the doctor had told him and
12 therefore it was not an unexpected result and
13 therefore wouldn't be an accident.

14 In any event, Your Honor, again, I pointed out
15 his family and his children because he wanted to work.
16 This is not a gentleman that didn't want to work. He
17 goes back to work and works from 2002 to 2008
18 performing activities.

19 He joined Watkins in 2006. He finds out about
20 the Watkins job and he gets hired. He's living here
21 in South Carolina and is told to go up to Hickory,
22 North Carolina to complete the application forms and
23 do whatever is necessary to start working.

24 He goes up there, Your Honor, and they put him
25 through an employment application process. He talks

1 to a number of individuals. During the employment
2 application process there's some question of whether
3 he is called from Missoula to answer some questions
4 over the telephone. That form, Your Honor, was
5 presented to you.

6 THE COURT: Right.

7 MR. PEARLMAN: And if you will look at that form,
8 Your Honor, carefully, it's an odd form. Number one,
9 we don't object to it's submission. We withdraw
10 objection with regard to hearsay. But again, the form
11 asks these questions. Did you have a prior
12 work-related accident? And the answer on the form is
13 no. It's not completed by Joe. It's purportedly what
14 he told someone over the telephone, but it doesn't go
15 on. It goes on to say if you did have a work-related
16 accident what is the extent of your injuries? That
17 form is before you without objection. We would ask
18 Your Honor to take note and assign it whatever weight
19 you deem necessary.

20 The reason we believe it should be afforded less
21 weight is if this is such an important form in the
22 employment application, why not have Mr. Osmanski
23 complete it himself and sign it where it says on the
24 bottom he should sign it. It's signed by whoever
25 supposedly completed the form and puts the name Joe

1 Osmanski on it.

2 That's at issue because that is, in essence, the
3 falsity that the Defendants claim prevents him from
4 getting benefits under the McDevitt Street defense.
5 And I would argue to Your Honor that that falsity, if
6 it occurred at all, does not meet the requirements of
7 the McDevitt Street defense in this respect. McDevitt
8 Street defense says that you have misled someone
9 regarding your physical condition.

10 Now, the only question asked on that form is did
11 you have a work related accident? That's not what
12 McDevitt Street says. McDevitt Street doesn't say
13 well you have got to say whether you had a
14 work-related accident or a non-work-related accident.
15 McDevitt Street says you have to mislead someone
16 regarding your physical condition. And if he answered
17 only that first part of the form, did you have a work
18 related accident, and if he truly lied or misled
19 someone, that's of no consequence under McDevitt
20 Street.

21 Secondly, Your Honor, they then go on to say that
22 after he has this form they conditionally - after they
23 had him answer these questions over the telephone,
24 didn't have him answer them in person, that they then
25 additionally employed him.

1 They then send him for a physical, a DOT physical
2 with Dr. Osbahr. You have those records. You have
3 his deposition. Dr. Osbahr's records clearly reflect
4 that he had an impairment to his left arm and clearly
5 reflect that he was limited in the use of his left
6 arm. Dr. Osbahr says he fully has functional use of
7 that left arm. So if they had any falsity, if he for
8 some reason met the requirements of McDevitt Street
9 that we stated earlier, they now know, they now have
10 knowledge of his condition. And under Fuller
11 (phonetic), Your Honor, the case that we handed up as
12 an element of fraud is the hearers ignorance of its
13 falsehood. Once the hearer knows that the information
14 is false, it's no longer false anymore. It doesn't
15 comply with fraud. They have knowledge of it.

16 So at that point once Dr. Osbahr puts in his
17 records that he has an impairment, has limitations,
18 they now know about his condition.

19 They go further, Your Honor, in the employment
20 process and put him through a lift test. And the lift
21 test, even though you don't have a copy of it, I think
22 the parties agree that it occurred, that he passed it
23 and that they had it available to him. And he was
24 fully capable of performing all of the essential
25 requirements of the job.

1 So they then formally hired him. So by the time
2 that they say; Here, start this job, they know about
3 his impairment, they know about the limitations in his
4 arm, he has been able to complete a lift test that
5 says he can do the essential elements of the job.

6 So we contend, Your Honor, that McDevitt Street
7 doesn't apply, but even if he thought that there was a
8 falsity, even if you said, well he lied when he gave
9 the information over the telephone, they now know the
10 truth of the matter. They never had it. They never
11 went back to Mr. Osmanski and said, Joe, what's the
12 story here? They knew about it. They had every
13 opportunity to question him further. They did nothing
14 further and they let him work for two years. And he
15 works for two years without a problem until this event
16 on November 1.

17 This event occurred when - he is a deliverer of
18 furniture, Your Honor. He's a local deliverer. And
19 one of the boxes, as he was trying to reset the back
20 of his truck, shifted and the box took his arm back
21 and hyper-extended it. Now, one of the defenses, Your
22 Honor, is that we don't meet the requirements under
23 42-1-160 in that the medical records don't reflect the
24 exact nature of his injury. I would respectfully
25 argue to Your Honor that 42-1-160 says that you need

1 to have medical evidence to a reasonable degree of
2 medical certainty or other medical evidence by a
3 health care provider that shows the nature and extent
4 of the injury.

5 No one has claimed that Joe Osmanski was unable
6 to do his job before this injury. Mr. Osmanski went
7 to the doctor with more pain in his arm, was unable to
8 continue to work. Everyone agrees he has been unable
9 to work since this injury. From a temporal
10 standpoint, clearly his problems are related to this
11 injury.

12 Now, while the doctors have not clearly stated
13 exactly whether he had a biceps tendon rupture, which
14 would be something separate and apart from the elbow
15 so McDevitt Street wouldn't even apply to that,
16 whether he had a fractured arm or whether he had a
17 broken prosthesis. Clearly, whatever his condition
18 was with his left extremity for which he has now
19 required multiple surgeries, it's related to this
20 event. The medical records, I think, are clear as can
21 be.

22 One of the things, Your Honor, I would point out
23 to you under 42-1-160, when the law changed and the
24 legislature changed, the argument was if you require a
25 reasonable degree of medical certainty for every case,

1 then someone falls off a ladder and breaks their leg,
2 it's clear as a bell, you mean to tell me that some
3 doctor is going to have to say that to a reasonable
4 degree of medical certainty that fractured leg is
5 because he fell off the ladder? It was never intended
6 to deny cases or to be used to deny cases where the
7 medical evidence clearly shows the condition is
8 related to the event.

9 So I believe that is a meritless argument with
10 all due respect to my colleague by the defense. We
11 believe he's had a compensable injury by accident
12 arising out of and in the course and scope of his
13 employment. We believe that McDevitt Street does not
14 apply. We believe that the Defendants, the Employer,
15 had full knowledge of his medical condition with
16 regard to his arm and made no effort to question or to
17 ask him further information.

18 And so any reliance that they contend on that
19 initial telephone form I believe is misplaced in the
20 sense that they now have - they had a medical
21 evaluation and a lift test, and they watched him work
22 for two years. We request an award of temporary
23 compensation and past, present and future medical
24 treatment.

25 THE COURT: Okay. And that would be temporary

1 total from the date of the accident, which would be
2 November 1, 2008, the reimbursement for
3 causally-related medicals, the medical treatment,
4 ongoing medical treatment with Dr. Shealy?

5 MR. PEARLMAN: Correct.

6 THE COURT: The authorized treating physician for
7 all the problems with the left upper extremities?

8 MR. PEARLMAN: Yes, ma'am.

9 THE COURT: All right. Not at MMI. Permanency
10 would be premature if it's compensable. Okay. Thank
11 you.

12 MR. PEARLMAN: Thank you, Your Honor.

13 THE COURT: All right. Mr. Lockhart.

14 MR. LOCKHART: Your Honor, in reply, first of all
15 let me address as far as temporary total medical, if
16 you find it's compensable we would agree that
17 temporary total should be paid from the date of the
18 injury forward and that the Claimant is not at maximum
19 medical improvement. So if you do deem this is
20 compensable injury -

21 THE COURT: Would you have any objection to
22 Dr. Shealy being the authorized treating physician?

23 MR. LOCKHART: I don't have any objection to
24 that, Your Honor.

25 THE COURT: All right. Okay.

1 MR. LOCKHART: Your Honor, let me deal with
2 these arguments individually and first of all start
3 with the argument that we raised that Mr. Osmanski's
4 injury was not accidental in nature.

5 We base that primarily upon, Your Honor, his
6 testimony in his deposition and medical records and
7 deposition testimony of Dr. Chidgey.

8 His records have been offered up into evidence.
9 You will see that Dr. Chidgey informed Mr. Osmanski on
10 three separate occasions what his permanent
11 restrictions would be with regard to the use of his
12 left arm. He informed him first in January 2001 and
13 again in February 2002 and in March 2002 when he
14 released Mr. Osmanski from his care that he would have
15 a restriction of no lifting in excess of 10 to 15
16 pounds with his left arm due to his severe
17 work-related injury that occurred in the late 1980s
18 and the subsequent medical care that he received from
19 Dr. Chidgey.

20 THE COURT: Were the restrictions ever lifted for
21 -

22 MR. LOCKHART: We would argue if you read
23 Dr. Chidgey's deposition he indicates that they had
24 not been lifted. I would respectfully disagree with
25 Mr. Pearlman's characterization of Dr. Chidgey's

1 testimony. You can read it.

2 THE COURT: It sounds like somebody -

3 MR. LOCKHART: He thinks it says one thing. I
4 think it says something else. You have the luxury of
5 deciding what you think it means. And your opinion is
6 the only one that matters at this stage frankly.

7 THE COURT: Go ahead.

8 MR. LOCKHART: Mr. Osmanski testified in his
9 deposition that he performed activities which were
10 clearly in excess of those restrictions. So we would
11 argue that his injury was not accidental because he
12 knew what his restrictions were as indicated by both
13 the records and testimony of his previous treating
14 physician and that he engaged in activities that were
15 outside of those restrictions. Clearly if that is the
16 case then the result, an injury to his arm, is not
17 accidental in nature but should have been expected.
18 In other words, it was just a matter of time before
19 this injury occurred.

20 With regards to McDevitt & Street defense we, of
21 course, argue that Mr. Osmanski knowingly and
22 willfully made a false representation as to his
23 physical condition when he began working at Watkins
24 and Shepard. Not only did he not inform my client of
25 his prior work-related injury he didn't inform them of

1 his restrictions. He did not inform them of his
2 prior rating. Clearly had he done so he probably
3 would not have proceeded as far in the application
4 process and ultimately then, provided with employment.
5 I think if you read Mr. Grandy's deposition, he was
6 deposed yesterday, we should have his transcript to
7 you here within the next 24 hours, you will see that
8 Mr. Grandy's deposition clearly supports the issue of
9 the Employer's reliance upon the false representation
10 and the fact that it was a substantial factor in the
11 hiring of Mr. Osmanski.

12 The medical records too, Your Honor, when you
13 look at them, and I know you will review them
14 thoroughly, indicate that when Mr. Osmanski was
15 examined following this accident there were occasions
16 where he denied to his physician the extent of his
17 prior problems, the number of surgeries that he had
18 undergone and his prior work-related injury. So there
19 are medical records that support this pattern of
20 dishonesty that we think began in November of 2006
21 when Mr. Osmanski sought employment with Watkins and
22 Shepard. In particular, Your Honor, the DOT physical
23 that Mr. Pearlman discussed earlier, it's at our APA
24 Page 109, Claimant's APA 13, Mr. Osmanski was given an
25 opportunity to inform Dr. Osbahr at that time of any

1 impairment he had to his arm. He denied having
2 impairment.

3 If you look at the medical records of Lexington
4 Medical Center where he was seen in November of 2008,
5 he was asked about prior surgeries and only gave his
6 physicians there a very limited history of the extent
7 of medical treatment he had received previously for
8 this same left elbow. So again, I think the medical
9 records support our contention that there was a
10 pattern of dishonesty that began again in November of
11 2006 when Mr. Osmanski began employment.

12 And finally, of course, is a causal connection
13 between the false representation and the injury. That
14 is clear. The previous injury involved the left arm
15 and left elbow. This injury involved the left arm and
16 left elbow. There is clearly a causal connection
17 between the misrepresentation and the injury which is
18 the subject of the claim before you today.

19 Your Honor, with regard to the issue of the
20 Claimant's ability to satisfy his burden of proof
21 under Section 42-1-160, again I certainly would
22 disagree with Mr. Pearlman that our argument on this
23 issue has no merit because I think it has significant
24 merit. 42-1-160 deals with - defines injury by
25 accident. So in every case that you hear or that your

1 colleagues hear you have to determine what is the
2 injury. I think what we are looking at in this case
3 is medical evidence when read as a whole in
4 conjunction with Dr. Chidgey's deposition testimony,
5 we don't exactly know what the injury was that was
6 sustained by Mr. Osmanski as a result of this incident
7 on November 1, 2008.

8 Dr. McIntosh, who is an orthopedist here in
9 Lexington, South Carolina, saw Mr. Osmanski after the
10 accident occurred. In his records at Pages 54 through
11 55 of our APAs, he can't find any objective evidence
12 of what the injury was that Mr. Osmanski sustained
13 allegedly on the date of accident. Dr. Chidgey
14 provided an opinion regarding causation in response to
15 a questionnaire from Ms. Amick's office, I believe,
16 who was handling this case at one point. If you go to
17 read his deposition testimony, however, that causation
18 opinion is not consistent with his deposition
19 testimony.

20 The medical records suggest, Your Honor, that the
21 damage was a compromise that occurred in this case,
22 for lack of a better term, was to Mr. Osmanski's
23 prosthesis and not to his left arm. His prosthesis,
24 of course, was inserted as a result of his prior work-
25 related injury. Dr. Chidgey, Claimant's APA Page 5,

1 notes that
2 Mr. Osmanski has a loose, quote/unquote "loose
3 prosthesis." In Dr. Shealy's records, Your Honor, you
4 will see Claimant's APA Page 28, the surgery that's
5 documented in the records that have been submitted
6 only deal with the removal and the replacement of the
7 prosthesis. We are not looking at a situation where
8 Dr. Shealy went in to address any other injuries, any
9 other pathology. Neither Dr. Chidgey nor Dr. Shealy,
10 who is seeing Mr. Osmanski currently, has provided an
11 opinion as to whether he suffered an injury to his
12 elbow or to any other part of his arm.

13 So while, you know, again Mr. Pearlman maintains
14 respectfully that this argument has no merit. I think
15 it has a significant amount of merit because
16 ultimately the decision you are going to have to make
17 is what is the injury he sustained as a result of this
18 accident? And I don't think the medical records tell
19 us. And if the records don't tell us then how can he
20 satisfy his burden of proof under 42-1-160 or 42-9-35
21 if there is an argument that there is some type of
22 aggravation of a prior problem?

23 Dr. Chidgey was asked about this in his
24 deposition. I asked him specifically what is the
25 injury? Tell us what the diagnosis is. What did you

1 find? What is wrong with this gentleman's arm? He
2 said Page 30 to 32 of the deposition he wasn't certain
3 as to the extent of the injuries. He said at Page 32
4 there was a possible bicep tendon tear or rupture, but
5 he had no medical evidence to support or confirm that
6 diagnoses. What Dr. Chidgey also went on to say, Your
7 Honor, which I found quite interesting, is the
8 loosening of the prosthesis which appears to be
9 documented in a number of medical records including
10 those of Dr. Chidgey and those of Dr. Shealy is a
11 phenomenon that could have occurred without an acute
12 event.

13 So again, I think the issue of what is the injury
14 and did this accident lead to that injury are
15 essential to rendering a decision on the
16 compensability of this claim.

17 Now, just to touch on a couple of other things
18 Mr. Pearlman raised. Mr. Pearlman, again, maintained
19 that the totality of the medical evidence supports the
20 Claimant's burden of proof under 42-1-160. And again,
21 you know, we have to ask ourselves what is the injury
22 which is the basis for an award of compensation in
23 this case.

24 To address Dr. Osbahr's DOT physical and his
25 subsequent deposition, Your Honor, if you look at his

1 report you will see that Dr. Osbahr certified
2 Mr. Osmanski to drive a commercial motor vehicle.
3 Under federal regulations that address - I believe
4 these regulations have been handed up by Mr. Pearlman
5 and Mr. Smith, 49 CFR 391.41. That regulation deals
6 with the driving of the motor vehicle, commercial
7 motor vehicles. It doesn't address the physical
8 requirements that were placed upon Mr. Osmanski as a
9 driver with Watkins and Shepard which includes a
10 number of physical activities which are documented in
11 a job analysis that we have offered up. And so it
12 doesn't take away from the fact that again McDevitt &
13 Street asked the Court, asks the Commission to
14 determine if the Employee knowingly and willfully made
15 a false representation as to his condition.

16 So the findings of Dr. Osbahr's physical doesn't
17 take away or render mute our argument that the
18 Claimant knew he had a prior problem, he knew he had
19 prior restrictions, and he knowingly and willfully did
20 not share those or inform my client of those when he
21 began working there.

22 Thank you, Your Honor.

23 THE COURT: All right. Anything in response?
24 You don't have to. I'm just offering you that
25 opportunity.

1 MR. PEARLMAN: I don't want - I know you will
2 read everything.

3 THE COURT: If you would like to go ahead.

4 MR. PEARLMAN: I would just point out to Your
5 Honor, just briefly, Commissioner, this is exactly
6 what Dr. Shealy says that he - until November when he
7 was caught in a truck in an attempt to extricate the
8 box he re-injured his left elbow. You will find in
9 the medical records sufficient medical evidence to
10 indicate that he injured his left arm and left elbow
11 as a result of this event.

12 Your Honor, also with regard to any type of
13 Capers defense, the idea that he doesn't have an
14 accident because this was not unexpected, remember
15 Dr. Osbahr certifies him as fully functional with the
16 use of that arm. The lift test says that he can
17 perform a functional - all the essential functional
18 capabilities of that job. So at that point, all the
19 doctors and their own internal lift test say you are
20 capable of doing this job.

21 So the event that happened was clearly an
22 accident and clearly was unexpected on those two
23 issues. With regard to the fraud once the hearer, the
24 Employer, knows of the falsity, it's not false
25 anymore. It's not fraud anymore. And that's one of

1 the cases we handed up to you.

2 THE COURT: Okay.

3 MR. PEARLMAN: We just reiterate those reasons,
4 Your Honor.

5 THE COURT: Thank you.

6 MR. PEARLMAN: Thank you, Your Honor.

7 THE COURT: Mr. Lockhart, I will give you the
8 same opportunity.

9 MR. LOCKHART: Your Honor, again, I mean we could
10 be here all day.

11 THE COURT: I know. That's why I usually -

12 MR. LOCKHART: If we leave the last sentence to
13 Mr. Pearlman.

14 THE COURT: - open the record. But because I
15 haven't reviewed any of this evidence and it's
16 important to some of the points you are making, I'm
17 glad we are doing it this way.

18 MR. LOCKHART: Yes, ma'am. Just very briefly.
19 Mr. Grandy in his deposition testified yesterday that
20 the Employer was never provided by Mr. Osmanski with
21 notification of his prior restrictions and impairment
22 until the initiation of this litigation. So the fact
23 that he was certified to work by Dr. Osbahr under the
24 federal regulations does not change the fact that he
25 never informed my client of his restrictions and his

1 prior impairment.

2 So this notion that they had knowledge of all
3 these restrictions and impairments once this DOT
4 physical and lift test took place is certainly - is
5 not true. And I think Mr. Grandy's deposition will
6 support our position on that issue. That's all I
7 have.

8 THE COURT: Thank you. Our only witness today is
9 Mr. Osmanski; is that correct? And I understand you
10 are supplying the deposition on Mr. Grandy.

11 MR. LOCKHART: Yes, Your Honor. Thank you.

12 THE COURT: All right. Mr. Osmanski, if you will
13 raise your right hand, please and look at me.

14 JOSEPH ARTHUR OSMANSKI,
15 having been first duly sworn, testified as follows:

16 THE COURT: Please state your full name for the
17 record.

18 THE WITNESS: Joseph Arthur Osmanski.

19 THE COURT: Thank you very much. Please answer
20 any questions of Mr. Smith.

21 MR. SMITH: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. SMITH:

24 Q Please state your full name.

25 A Joseph Arthur Osmanski.

- 1 Q Mr. Osmanski, where do you currently live?
- 2 A Pelion, South Carolina.
- 3 Q What's your date of birth?
- 4 A 9/24/64.
- 5 Q How old does that make you?
- 6 A 45.
- 7 Q Are you married?
- 8 A Yes.
- 9 Q How long have you been married?
- 10 A 25 years.
- 11 Q How many children do you have?
- 12 A nine.
- 13 Q What do their ages range from the youngest to the
- 14 oldest?
- 15 A Three years to 24 years old.
- 16 Q What's your wife's name?
- 17 A JoAnne.
- 18 Q All right. And she is here with us today?
- 19 A Yes.
- 20 Q Where did you grow up, Mr. Osmanski?
- 21 A Most of my life was in Florida.
- 22 Q Okay. When did you move to South Carolina?
- 23 A Around 2004, I believe it was, 2003.
- 24 Q Did you finish high school?
- 25 A No.

- 1 Q What grade did you last complete?
- 2 A Eleventh.
- 3 Q Did you get a GED?
- 4 A No.
- 5 Q Have you ever been in the military?
- 6 A No.
- 7 Q Let's talk about your work in the past. What kind of
- 8 work have you done? For most of your life, what would
- 9 you categorize?
- 10 A Hard labor, construction, tree service; I've done.
- 11 Q Okay. What were you doing - when was that old injury
- 12 you had?
- 13 A That was carpenter.
- 14 Q Carpenter back then?
- 15 A Yes.
- 16 Q And what kind of work did you end up doing afterwards?
- 17 A Driving a truck.
- 18 Q Okay. Let me talk about your previous injury. When
- 19 was it? What year was it?
- 20 A 1987.
- 21 Q And you said you were working as a carpenter?
- 22 A Yes.
- 23 Q Which arm did you injure?
- 24 A My left arm was the most injury. I injured both arms,
- 25 but the left arm was the one that was requiring more

- 1 surgery.
- 2 Q Do you recall the name of the company you were working
3 for at the time?
- 4 A Patrician Construction.
- 5 Q Where are they located?
- 6 A Sayreville, New Jersey.
- 7 Q And what happened in that accident?
- 8 A I was on a ladder and I fell 32 feet. The ladder slid
9 out down the wall. I stayed on the ladder and my
10 elbows hit first.
- 11 Q You had two surgeries?
- 12 A Yes.
- 13 Q Ultimately what did they do for you?
- 14 A Eventually they put in a total implant, a total
15 replacement elbow.
- 16 Q That was on your left?
- 17 A Yes.
- 18 Q And did you also have surgery on the right?
- 19 A Yes.
- 20 Q Did you have surgical scars from both of those
21 procedures?
- 22 A Yes.
- 23 Q How many scars did you have on each arm from those
24 procedures?
- 25 A Three on the left arm and one on the right arm.

1 Q Okay. As part of that treatment, did you go to
2 physical therapy?

3 A Extensively, yes.

4 Q Were you taught lifting techniques in physical
5 therapy?

6 MR. LOCKHART: I object to the leading form of
7 the question.

8 THE COURT: Counsel at this point refrain from
9 leading. Objection is sustained. Please refrain from
10 leading.

11 MR. SMITH: Yes, ma'am.

12 BY MR. SMITH:

13 Q Tell me what they taught you in physical therapy.

14 A They taught me how to use my legs and to lift mainly
15 with my right arm, more or less use my left arm as a
16 guide. It was very, very extensive. It was five days
17 a week I was going there.

18 Q For about how long?

19 A I don't really remember for how long. I know it was a
20 few months.

21 Q Did you also do a pain management program?

22 A That was included in that same program.

23 Q Was that a different group that was doing the pain
24 management?

25 A Same people, same people.

1 Q Okay. How about lifting, pushing and pulling with
2 Dr. Chidgey?

3 A I talked to him about using my left - my right arm
4 more than my left. Of course I learned how to do a
5 lot of different things with my right arm more than my
6 left.

7 THE COURT: Are you right hand dominant?

8 THE WITNESS: Yes, very much. I was very
9 physical when I performed my job. And I learned
10 really, really fast how to do things with my right arm
11 more than my left.

12 BY MR. SMITH:

13 Q Was that consistent with what you learned from
14 Dr. Chidgey?

15 A Yes.

16 Q You went back to work after Dr. Chidgey released
17 you?

18 A Yes.

19 Q I believe you said you went to truck driving?

20 A Yes.

21 Q Do you recall the name of the company you were working
22 for?

23 A It was CPC Logistics. We hauled freight for Walgreens
24 Pharmacy. And I had to deliver freight to the store.
25 I touched - everything on the truck I picked up and

1 lifted and put on rollers.

2 Q How did you handle the lifting and pushing and pulling
3 that was associated with that job?

4 A It actually made me stronger. I gained more range of
5 motion in both arms from it and lifting using my legs
6 and my right arm, I eventually got stronger and
7 stronger.

8 Q Now, do you recall when the last time you had actually
9 seen Dr. Chidgey before your injury in this case?

10 A I think it was 2002, I believe.

11 Q And since 2002, and I know you just touched on this
12 with increasing the strength in the arm and range of
13 motion and things like that. But in terms of your
14 activity after you had been released by Dr. Chidgey,
15 tell us about how those activities went using the arm.
16 Did you go out there and just start using the arm
17 completely all of a sudden? Did you work up to it?
18 Describe to us -

19 MR. LOCKHART: Your Honor, again I object to the
20 leading form of the question.

21 THE COURT: All right. If you will rephrase.

22 BY MR. SMITH:

23 Q Describe to us your level of activity involving your
24 left arm following your release from Dr. Chidgey?

25 A After I went through the physical therapy it

1 definitely increased more and more as I felt
2 stronger. I was always conscious about it. I always
3 took care of lifting with my legs and mainly with my
4 right arm. A lot of things that you do with a truck
5 was done with a hand truck or it was done with a
6 pallet jack. So I used my right arm. I used my legs.
7 Pushing, I could use more of my body in my legs, so
8 there was a lot of different ways I was able to do
9 things without using my arms.

10 Q Okay. I want to move now to the time that you were
11 applying for the job at Watkins Shepard. How did you
12 learn they were hiring?

13 A Through a newspaper.

14 Q They ran an ad?

15 A Yes.

16 Q Did you contact them?

17 A Yes.

18 Q What position did they have open?

19 A Local delivery position.

20 Q Who did you speak to initially?

21 A Rodney Stephens.

22 Q Did Mr. Stephens offer you a job over the phone?

23 A I filled out applications and after a background
24 check, yes.

25 Q Okay. Was that contingent upon something?

- 1 A Yes.
- 2 Q What was that contingent upon?
- 3 A A DOT physical, a drug test and a lift test.
- 4 Q Okay. Where did you go to do these things?
- 5 A Hickory, North Carolina.
- 6 Q How long were you there?
- 7 A Two days.
- 8 Q Did they have you fill out all the forms you were
- 9 required to complete?
- 10 A Yes.
- 11 Q Did you do a drug test?
- 12 A Yes.
- 13 Q Passed the drug test?
- 14 A Yes.
- 15 Q Did they send you to a doctor for a physical?
- 16 A Yes.
- 17 Q Was that Dr. Osbahr?
- 18 A Yes.
- 19 Q Did you fill out any forms with Dr. Osbahr?
- 20 A I believe it was the top part of the DOT physical I
- 21 had to fill out.
- 22 Q I've actually got a copy of that here.
- 23 MR. SMITH: Commissioner, this is Page 13.
- 24 THE COURT: Okay. Thank you.
- 25 MR. SMITH: Actually, it's a little clearer on

1 Page 14.

2 THE COURT: Okay.

3 BY MR. SMITH:

4 Q Mr. Osmanski, I want to show you this document, Page
5 14 of our documents we have submitted into evidence.

6 Is this the form that you had filled out with
7 Dr. Osbahr?

8 A Yes.

9 Q This top part here, this health history section, are
10 those things you have filled out?

11 A Yes.

12 Q Is that your signature down below?

13 A Yes.

14 Q Dated October 30, 2006?

15 A Yes.

16 Q Everything here, these are your indications in this
17 health history form?

18 A Yes.

19 Q All right. I want to turn your attention straight to
20 the question that asked if you have a missing or
21 impaired hand, arm, foot, leg, finger or toe. And you
22 indicated no in that position; is that correct?

23 A Yes.

24 Q Explain to us why that was.

25 A On part of the DOT physical it states that in the last

1 five years was anything in your history. And in the
2 last five years, no, I have never had a missing or
3 impaired arm. In my opinion I was physically able to
4 do everything that this states. And then it would be
5 discussed with the doctor. And I eventually discussed
6 with him about my arm.

7 Q Okay. Were you intending to mislead anyone by
8 answering no to that question?

9 A No.

10 MR. LOCKHART: I have to object to the leading
11 form of the question.

12 THE COURT: Sustained.

13 BY MR. SMITH:

14 Q So after you filled out this form -

15 THE COURT: Let me make sure I understand. And
16 I'm not trying to put words in your mouth, I'm trying
17 to make sure I understand. You said that you thought
18 that a missing or impaired hand, arm, foot, leg
19 applied to within five years?

20 THE WITNESS: With this part of the questionnaire
21 on that top part that I fill out for any DOT physical
22 it states in the last five years have you had any of
23 this history. And that's what I was going by.

24 THE COURT: Okay.

25 MR. SMITH: I believe that that question is the

1 first question on the top left-hand corner,
2 Commissioner.

3 THE COURT: Okay.

4 MR. SMITH: On the same page as you see in the
5 past five years.

6 THE COURT: Okay.

7 BY MR. SMITH:

8 Q Mr. Osmanski, I want to also - after all of - after
9 you were hired - shortly before your injury did you go
10 get another DOT physical?

11 A Yes.

12 Q And that was with Dr. Fisher?

13 A Yes.

14 Q All right.

15 MR. SMITH: And that's APA 10 of ours, Your
16 Honor, Page 40.

17 THE COURT: Thank you.

18 BY MR. SMITH:

19 Q I believe on that form -

20 MR. SMITH: And this would be in the Defendants
21 APAs, Your Honor, there is a DOT physical dated
22 October 22, 2008, and I think without looking at it I
23 can recall it.

24 BY MR. SMITH:

25 Q Mr. Osmanski, did you put the same indication no on

1 that same answer on your physical at that time?

2 A Yes.

3 Q Okay. In here in this medical record from that same
4 visit it states here "he does have a history of a fall
5 in 1997. Good bit of problems, bad injury, left
6 elbow, had limited range of motion, supination." Did
7 you discuss your prior injuries with your doctor for
8 that DOT physical?

9 A Yes.

10 Q Okay. The reason that you had checked no in 2008,
11 what was that?

12 A I'm going by in the last five years. I mean, that's
13 the way I interpreted the application - the part of
14 the physical that is in the last five years. So I'm
15 thinking everything in the last five years; no, I have
16 had nothing in the last five years.

17 Q Okay. Let's go back to Dr. Osbahr. You saw him for
18 the DOT physical. After you had filled out the forms
19 did he examine you?

20 A Yes.

21 Q Physically examine you, put his eyes on you, touch
22 you, things like that?

23 A Yes.

24 Q All right. Did you tell him about your arm?

25 MR. LOCKHART: Your Honor, again I object to the

1 leading form of the question.

2 THE COURT: I'm not sure that one was but did you
3 or did you not tell him?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 BY MR. SMITH:

7 Q Did he test the movement of your arm?

8 A Yes.

9 THE COURT: The only thing I'm going to ask is
10 that - and I know it's not intentional, but don't
11 suggest the answer with your head, okay?

12 MR. SMITH: I'm sorry.

13 THE COURT: That's all right.

14 MR. SMITH: I didn't realize I was doing that.

15 BY MR. SMITH:

16 Q And so when he tested the movement of your arms with
17 Dr. Osbahr did he see your arms?

18 MR. LOCKHART: Your Honor, I'm sorry, but I'm
19 objecting to what Dr. Osbahr sees. I think a lot of
20 these questions have been asked in the deposition.

21 MR. SMITH: I'll rephrase.

22 THE COURT: He's going to rephrase.

23 BY MR. SMITH:

24 Q Did you show Dr. Osbahr your arms?

25 THE COURT: There you go.

1 THE WITNESS: Yes.

2 BY MR. SMITH:

3 Q Did you have scars from prior surgery in those
4 arms?

5 A Yes.

6 Q And those are the ones we were talking about before
7 with - I think you said with three scars on the left
8 and two scars on the right?

9 A Yes.

10 Q Your surgical scars on your left arm and surgical
11 scars on your right arm, the ones on your right arm,
12 Mr. Osmanski, have they changed at all since you saw
13 Dr. Osbahr?

14 A No.

15 Q Okay. Would you mind rolling up your sleeve for
16 us?

17 THE COURT: You can stay right where you are.
18 I'm going to come over to you.

19 MR. SMITH: This is for the right arm?

20 THE WITNESS: It's the right arm?

21 MR. SMITH: We are going to do both but right arm
22 for now.

23 THE COURT: Okay.

24 BY MR. SMITH:

25 Q You have got one surgical scar there and right here

1 and then where is the other one you were talking
2 about?

3 A There's only - this one right here.

4 THE COURT: And let me see your left.

5 THE WITNESS: Yes.

6 MR. SMITH: Go ahead and do that arm, too.

7 THE COURT: So you've had more surgeries since
8 then; haven't you?

9 THE WITNESS: The only surgery I've had was just
10 the recent one.

11 THE COURT: Right. Okay. Thank you.

12 BY MR. SMITH:

13 Q Did you describe with Dr. Osbahr why you have the
14 scars?

15 A Yes.

16 Q What did you tell him?

17 A That I had a fall in 1987, that I had reconstructive
18 surgery on my left elbow.

19 Q And after -

20 THE COURT: Did you tell him you had a prosthesis
21 in there or just surgery?

22 THE WITNESS: Reconstructive surgery.

23 THE COURT: Okay.

24 BY MR. SMITH:

25 Q After Dr. Osbahr was done examining you, did he fill

- 1 out portions of this form, as well?
- 2 A Yes.
- 3 Q And then after that, were you sent to do any
4 additional testing by Watkins?
- 5 A A lift test.
- 6 Q Okay. Now this test, we have sort of been referring
7 to it as the lift test. What all kinds of things did
8 they test in that evaluation?
- 9 A Pushing, pulling, carrying weight. They tested - I
10 pushed up to 75 pounds and then they checked my heart
11 rate. I'd hold weight for ten minutes and they would
12 check my heart rate. It was pretty extensive. I
13 crawled on my hands and knees. I crawled on my arms.
14 They made me run in place A lot of it was holding
15 weight, pushing weight, pulling weight.
- 16 Q Did they test the range of motion in your arms?
- 17 A Just mainly if I could lift the weight.
- 18 Q Do you remember how much weight they asked you to
19 lift?
- 20 A I believe it was right around 75 pounds.
- 21 Q Were you able to do that?
- 22 A Yes.
- 23 Q Mr. Osmanski, at the time you were going through the
24 application process and reviewing these forms and
25 taking these tests, did you think you would be

1 physically able to perform this job?

2 A Yes.

3 Q Why did you think that?

4 A Because all the training that I had through physical
5 therapy and the job I took with Walgreens and throwing
6 all that freight just made me stronger and stronger
7 and the techniques that I learned on how to lift with
8 my legs and my right arm. And the job with Watkins
9 and Shepard was mainly pushing and pulling.

10 Q What do you mean by that?

11 A My truck was always loaded when I got the trailer.
12 The only thing I had to do with that truck was unload
13 it to stores. And the only thing I had to do was drop
14 the freight down and push it to the back of the truck.
15 I was able to do that, no problem.

16 Q What would happen after the freight would get pushed
17 to the back of the truck?

18 A The workers from the store would pull it off.

19 Q So it was your job to take the freight and get it to
20 the back of the van?

21 A Back of the trailer. Yes.

22 Q Okay. All right. Now, during the application process
23 while you were in Hickory for two days do you recall
24 speaking to anyone on the phone?

25 A I did a lot of things in those two days. I don't

- 1 recall speaking to anybody on the phone.
- 2 Q Do you recall anyone at Watkins asking you about any
3 prior injuries?
- 4 A Not that I recall. No.
- 5 Q If someone asked, what would you have said?
- 6 A I would have told them exactly. That is a big part of
7 my life. I mean, I fell 32 feet in 1987. It's pretty
8 hard to hide my physical - the way I look. My arm
9 hangs differently. It was a big part of my life, and
10 I would have definitely told anybody about it.
- 11 Q So you started working for Watkins?
- 12 A Yes.
- 13 Q All of this information was filled out, at least the
14 DOT physical on October 30, 2006. How long after the
15 DOT physical did you actually start working for
16 Watkins?
- 17 A I think I drove the truck home the day after
18 Halloween, October 31.
- 19 Q And you were describing earlier why you thought you
20 could do the job. You were telling us what sort of
21 work you were doing. Were you doing anything else
22 other than that?
- 23 A No.
- 24 Q And that's the work that you did for two years?
- 25 A Yes.

1 Q How was your left arm feeling during that time,
2 during those two years?

3 A Great. I had no problems.

4 Q And you said in response to the Commissioner's
5 question that your right arm is your dominant arm?

6 A Yes.

7 Q Which arm is stronger?

8 A My right arm.

9 Q Explain to us how using more with the right arm how
10 does that - how does that affect you? How has it
11 helped you? What does that do, you know, to the way
12 you use your arm?

13 A It really - I don't know if it really affected me. I
14 mean, it was just something I was able to do with my
15 right arm. The job required mainly with my - when I
16 lifted with my legs, and if I used a hand truck. I
17 used my legs to push the hand truck and this arm to
18 pull back on the freight. And I was able to roll it.
19 If I couldn't roll it I pushed it.

20 Q Okay. Let's move to your injury in this case. We've
21 got the date down as November 1, 2008; does that sound
22 correct to you?

23 A Yes.

24 Q Where were you when it happened?

25 A Aiken, South Carolina.

1 Q What were you doing in Aiken?

2 A I had just finished delivering furniture to a store.

3 Q Okay. Tell us how you injured yourself.

4 A After I had finished delivering I pulled the truck up
5 to close the doors and I noticed that the freight was
6 all stacked and it could have fell down. So I jumped
7 back in the trailer and I broke down - I tried to
8 break down the freight. And the recliners were
9 stacked three high. And when they are stacked three
10 high they are pretty close to the ceiling. Sometimes
11 it has a tendency to get caught. And at that time it
12 did. And when I went to pull it down with this arm it
13 got stuck and twisted. The weight shifted and came
14 down and caught my arm and straightened it all the way
15 out.

16 Q All right. Let's back up just a moment. When you
17 said you reached up with this arm, which arm are you
18 referring to?

19 A My right arm.

20 Q Okay. When you said it got caught on this arm, which
21 arm are you referring to?

22 A It got caught up here - this arm, my right arm was up
23 here like this, and this arm was here. And when it
24 shifted I was holding this just like this with the
25 guide and as I'm pulling it down the weight shifted

1 and it swung down and straightened my arm out, my
2 left arm.

3 Q Where was the first place that you went for medical
4 treatment?

5 A I believe I went to the hospital first.

6 Q Then you came to a Dr. McIntosh in Columbia?

7 A Yes.

8 Q And Dr. Bethea, these are your medical records from
9 him?

10 A Yes.

11 Q Then you returned to Dr. Chidgey?

12 A Yes.

13 Q And Dr. Chidgey, is he down in Florida?

14 A Yes.

15 Q And you came back up to Charleston and saw
16 Dr. Shealy?

17 A Yes.

18 Q All right. Is Dr. Shealy the doctor who has currently
19 been taking care of you?

20 A Yes.

21 Q What did he do for you? What has he done for you so
22 far?

23 A He removed the top part of my implant.

24 Q Okay.

25 A And replaced it.

1 Q Tell us about your arm currently. How long ago did
2 you put the piece back into the prosthesis?

3 A The first surgery they removed it and it was in July,
4 I believe. And they had to wait for it to be
5 remanufactured. I think in October they replaced it.
6 It was only the top. The implant is in two pieces.
7 The top part of the implant was the only one that was
8 -

9 THE COURT: That was 2009, just for the record,
10 correct?

11 THE WITNESS: Yes.

12 BY MR. SMITH:

13 Q And Mr. Osmanski, how long ago was the last procedure
14 that you just had?

15 A I just had the procedure a week ago from Wednesday and
16 they removed a pin that was sticking out. They just
17 cut it at the bone.

18 Q Okay. And I've seen some mention in the medical
19 records to a k-wire that was sticking out?

20 A Yes.

21 Q Is that the same thing?

22 A Yes.

23 Q All right. So you are still seeing Dr. Shealy
24 currently?

25 A Yes.

1 Q All right. Are you able to work right now?

2 A No.

3 Q Do you think you will be able to work after you get

4 some more treatment, follow through at home?

5 A Yes.

6 Q Is that your ultimate plan?

7 A Yes.

8 MR. SMITH: Mr. Osmanski, please answer any
9 questions Mr. Lockhart might have.

10 THE COURT: Mr. Lockhart.

11 CROSS EXAMINATION

12 BY MR. LOCKHART:

13 Q Mr. Osmanski, you testified earlier that you informed
14 Dr. Osbahr that you had been involved in a
15 work-related accident back in the late 1980s; is that
16 correct?

17 A I don't believe I told him it was work related. I
18 told him I had an accident.

19 MR. LOCKHART: I'm looking at Page 7 of
20 Dr. Osbahr's deposition which has been offered up into
21 evidence in this case.

22 THE COURT: Okay. What was the page number?

23 MR. LOCKHART: Page 7, Your Honor.

24 THE COURT: Thank you.

25 BY MR. LOCKHART:

1 Q Mr. Osmanski, we conducted Dr. Osbahr's deposition in
2 preparation for this hearing, and I asked him the
3 following questions: "When you examined Mr. Osmanski
4 on October 30, 2006 the records reflect or do you have
5 any personal recollection of him telling you if he was
6 involved in a work-related accident in 1987?"

7 Dr. Osbahr replies: "It might be surprising to you."
8 He testified: "My records don't indicate the
9 specifics of any accident." He did not put that into
10 his health history. I would only have a limited
11 knowledge of this based on my examination information
12 which shows limitations. But on my record I don't
13 have that he had an accident."

14 So Dr. Osbahr's testimony regarding what you
15 shared with him is a little inconsistent with yours.
16 So let me ask you the question again. Did you tell
17 Dr. Osbahr that you had had an accident previously and
18 injured your left elbow?

19 A Yes.

20 Q You testified earlier in response to questioning from
21 your lawyer that you had informed Dr. Osbahr that you
22 also had undergone a left elbow replacement; is that
23 correct?

24 A Yes.

25 MR. SMITH: Let me just pose an objection, just

1 maybe for clarification. I think his testimony was
2 that he had reconstructive surgery, Your Honor.

3 THE COURT: I know he told Dr. Osbahr that he had
4 reconstructive surgery. That's in the transcript. I
5 don't know if my note is correct but that's what I
6 wrote down.

7 MR. SMITH: Either way it was just for
8 clarification.

9 THE COURT: Okay. Thank you.

10 BY MR. LOCKHART:

11 Q Mr. Osmanski, I asked Dr. Osbahr the following
12 questions. I asked him: "Do you have any information
13 in your records or any personal recollection following
14 your examination of Mr. Osmanski that he had informed
15 you about having undergone a left elbow replacement?"
16 His answer: "I do not have anything in my record from
17 my examination that shows that this man underwent a
18 surgery." So again, is it your testimony today that
19 you told Dr. Osbahr that you had surgery on your left
20 elbow or left arm?

21 A Yes.

22 Q Did you inform Dr. Osbahr of the permanent restriction
23 that had been placed upon you by Dr. Chidgey?

24 A Not that I recall. No.

25 Q Any particular reason why?

- 1 A Because of all of the training that I had as far as
2 lifting I didn't feel I had a restriction.
- 3 Q Your accident with Patrician happened in December
4 1987; is that correct?
- 5 A Yes.
- 6 Q You injured your left elbow?
- 7 A Yes.
- 8 Q Your right elbow?
- 9 A Yes.
- 10 Q Your left shoulder?
- 11 A Yes.
- 12 Q Your right shoulder, correct?
- 13 A Yes.
- 14 Q Your left wrist?
- 15 A Yes.
- 16 Q Your right wrist, correct?
- 17 A Yes.
- 18 Q And Dr. Chidgey was your primary physician for those
19 injuries that you suffered in that accident,
20 correct?
- 21 A Yes.
- 22 Q If the medical records reflect that he performed
23 approximately six - five or six surgeries on your left
24 elbow, does that sound correct to you?
- 25 A I believe so.

1 Q And in your deposition I asked you if he performed
2 surgery on your left shoulder and I believe you told
3 me that he had not.

4 A Dr. Chidgey didn't, no.

5 Q You did have surgery on your left shoulder
6 ultimately?

7 A Ultimately, yes.

8 Q And that was a result of this accident with Patrician,
9 correct?

10 A I don't believe so.

11 MR. LOCKHART: The records are reflected on Pages
12 94 and 95 in the APAs, Your Honor.

13 THE COURT: Okay.

14 BY MR. LOCKHART:

15 Q Those records indicate that you actually had
16 left-shoulder surgery in November of 1999 and it was
17 also at the hospital clinic associated with
18 Dr. Chidgey's practice. Was that for something not
19 related to this accident?

20 A I don't think it was related. I think I dislocated my
21 shoulder at one time and it was cleaned out. It was
22 just arthroscopic surgery that I had done on my left
23 shoulder that needed to be cleaned out so it wouldn't
24 - as a matter of fact it was stapled so it wouldn't
25 slide out.

1 Q When you initially went to Lexington Medical Center
2 for treatment related to your accident at Watkins and
3 Shepard, were you asked to complete a health history
4 form?

5 A Not that I remember.

6 MR. LOCKHART: Your Honor, may I approach the
7 witness?

8 THE COURT: Sure.

9 BY MR. LOCKHART:

10 Q Mr. Osmanski, this is a copy of the document that's
11 been offered up into evidence.

12 MR. LOCKHART: That's Page 56 of the APA
13 submissions from the Defendants.

14 THE COURT: Defendants. Okay.

15 BY MR. LOCKHART:

16 Q This is a Lexington Medical Center patient history
17 form dated November 2, 2008. Is that your handwriting
18 and signature on that form?

19 A Yes.

20 Q Did you complete those questions or that questionnaire
21 prior to being seen by a physician?

22 A Yes.

23 Q Under it it asked about surgeries, please be as
24 specific as possible, orthopedic and you
25 indicated -

1 A Left-elbow implant.

2 Q Any particular reason why you didn't talk about your
3 left-shoulder surgery or the other surgeries that you
4 had undergone?

5 A That wasn't bothering me. I mean, there is so much
6 things I could put down there for the surgery that I
7 had from an accident in 1987. I told him about the
8 implant.

9 Q Don't you think it would have been important for your
10 physicians to have had a specific description of your
11 entire medical history? As a matter of fact, the form
12 asked you to be as specific as possible.

13 A About an implant, that's what was bothering me at the
14 time.

15 Q That implant had been bothering you since 2002 when
16 you were released from the care of Dr. Chidgey; hadn't
17 it?

18 A No. I never saw a doctor again when I was released
19 from Dr. Chidgey for my left elbow.

20 Q After you were injured with Patrician you received
21 Workers' Compensation benefits, I believe you
22 testified in your deposition, for approximately seven
23 years?

24 A Yes.

25 Q And ultimately you settled or received a settlement in

- 1 the amount of approximately \$86,000?
- 2 A Yes.
- 3 Q Were you able to return to work at Patrician?
- 4 A No.
- 5 Q Why not?
- 6 A Because I moved from there.
- 7 Q You moved from where?
- 8 A From Sayreville, New Jersey to Florida.
- 9 Q You weren't able to return to work with Patrician
- 10 because you had the permanent restrictions from
- 11 Dr. Chidgey regarding your lifting?
- 12 A Oh, I wouldn't be able to do any construction. No.
- 13 Q So again, you didn't go back to Patrician because you
- 14 had a restriction that had been placed upon you by
- 15 Dr. Chidgey?
- 16 A No. I went to work cutting trees down.
- 17 Q Where was the first place that you worked after being
- 18 released from the care of Dr. Chidgey in March of
- 19 2002?
- 20 A Burnside Trucking.
- 21 Q Where was that located?
- 22 A Palm City, Florida.
- 23 Q How long did you work there?
- 24 A A year and a half.
- 25 Q Why did you leave that employer?

- 1 A I went to work for CPC Logistics delivering freight
2 for Walgreens.
- 3 Q Where were they located?
- 4 A Jupiter, Florida.
- 5 Q How long did you work for them?
- 6 A Eventually I transferred here to South Carolina with
7 them.
- 8 Q Why did they transfer you to South Carolina?
- 9 A To a higher job position within the company.
- 10 Q Why did you leave that company?
- 11 A I was terminated from that company for taking a
12 part-time job, not driving a truck, at an auto parts
13 store, and I didn't log the hours for that job that I
14 was performing.
- 15 Q Explain that to me in a little bit more detail.
- 16 A I didn't realize that I had to log hours - being a
17 driver I have to log hours that I drive. I didn't
18 realize that I had to log the hours that I was working
19 for another company even though I wasn't driving.
- 20 Q So you were working for someone else and not informing
21 your employer that you were working for another
22 business.
- 23 A They knew I worked for them, but I didn't log the
24 hours.
- 25 Q You were terminated for that?

- 1 A Yes.
- 2 Q Is it reasonable to conclude they were calling your
3 honesty into question, your integrity into question?
- 4 A No. I think it was more of a safety issue.
- 5 Q It must have been fairly significant for you to have
6 lost your job over it.
- 7 A Yes.
- 8 Q How long were you out of work before you applied for
9 the position with Watkins and Shepard?
- 10 A I wasn't really out of work. My son was born
11 September 15. That's when I came back from First
12 Express in Nashville. I believe it was roughly a
13 month.
- 14 Q Mr. Osmanski, I want to talk to you for a moment about
15 your treatment with Dr. Chidgey. You testified
16 earlier that Dr. Chidgey released you from his care in
17 March of 2002. In your deposition I asked you when
18 you were released by Dr. Chidgey if he had placed any
19 restrictions upon you with regard to the use of your
20 left arm. In your deposition you told me that he had
21 not. So is it your understanding that when you were
22 released from Dr. Chidgey's care that you were
23 released without any restrictions at all?
- 24 A I didn't remember that.
- 25 Q You didn't remember being provided with restrictions?

1 A With restrictions, yes.

2 MR. LOCKHART: Your Honor, looking at Defendants'

3 APA Page 88.

4 BY MR. LOCKHART:

5 Q Did the records reflect that Dr. Chidgey released you
6 with restrictions of no lifting in excess of 10 to 15
7 pounds to the left upper extremity? Does that sound
8 consistent to you with what you were told when you
9 were last seen by him in March of '02 when you were
10 released?

11 A To no lifting with my left arm?

12 Q In excess of 10 to 15 pounds.

13 A Yes.

14 Q So when you were discharged you were aware of that
15 restriction?

16 A Yes.

17 Q Isn't it true that he had actually given you that
18 restriction in February '02, a month prior, and as far
19 back as January of 2001?

20 A That I don't remember.

21 Q If his records reflect that he assigned a restriction
22 to you as early as January of 2001 of no lifting in
23 excess of 10 to 15 pounds to the left arm, would you
24 have any reason to dispute that?

25 A No.

- 1 Q When you began working for Watkins and Shepard in
2 October of 2006, had you been back to see Dr. Chidgey
3 at all -
- 4 A No.
- 5 Q - when you were released in March '02?
- 6 A No.
- 7 Q Had you received any information at all from
8 Dr. Chidgey's office between March of '02 and October
9 of 2006 indicating that your lifting restrictions were
10 no longer in existence, they were no longer in effect
11 with regards to your left arm?
- 12 A No.
- 13 Q So when you started working at Watkins and Shepard in
14 October of 2006, you had a permanent restriction of no
15 lifting in excess to 10 to 15 pounds with your left
16 arm?
- 17 A With my left arm.
- 18 Q When you contacted Watkins and Shepard and you spoke
19 with Rodney Stephens did you ever tell Mr. Stephens
20 about these restrictions?
- 21 A No.
- 22 Q Why not?
- 23 A I wasn't asked.
- 24 Q Why wouldn't you have told Mr. Stephens about that?
- 25 A Because I thought I could perform the job. If it was

- 1 asked I would have definitely told him.
- 2 Q So your testimony here today is that if somebody asks
- 3 you a question you will give them the answer but you
- 4 won't volunteer information to them otherwise?
- 5 A No.
- 6 Q Don't you think that would have been important to your
- 7 employer to have known that you had a 10 to 15 pound
- 8 restriction with your left arm if you were being hired
- 9 to drive a truck and deliver furniture?
- 10 A It would have been important if there was a problem
- 11 with my arm, but there was no problem.
- 12 Q But Dr. Chidgey had given you a restriction of no
- 13 lifting -
- 14 A With one arm.
- 15 Q I understand that, sir. But that arm is the subject
- 16 of this claim. And you have already testified that
- 17 you had the restriction when you were released. And
- 18 you testified that you didn't tell Mr. Stephens.
- 19 A I testified that I wasn't asked.
- 20 Q You didn't volunteer that information; did you?
- 21 A No, I didn't.
- 22 Q And you had no intention of volunteering that
- 23 information unless you were asked?
- 24 A Correct.
- 25 Q Isn't it true the reason that you didn't volunteer

1 that information to Mr. Stephens is you knew that you
2 wouldn't have gotten the job at Watkins and Shepard if
3 you had told them about that restriction?

4 A I don't believe so.

5 Q Well, if it wasn't a concern why didn't you tell him
6 about it voluntarily?

7 A It didn't come up.

8 Q Were you informed of what your job duties and
9 responsibilities were going to be at Watkins and
10 Shepard from the standpoint of your physical
11 requirements of the job?

12 A Yes.

13 Q Once you became aware of those requirements, wouldn't
14 it have been a good idea at that point to have
15 informed your employer or potential employer of what
16 your restrictions were?

17 A I felt like I could do the job.

18 Q You would agree, though, that there were requirements
19 of your job that were outside of the restrictions that
20 had been placed upon you by Dr. Chidgey. In other
21 words, you were going to have to lift objects with
22 your left arm that weighed more than 15 pounds.

23 A I didn't say I was going to lift with one arm on the
24 job description. It said lifting weight and with all
25 the training that I had I knew I could perform the

1 position.

2 Q Mr. Osmanski, there is a form that is sort of at the
3 center of your case.

4 MR. LOCKHART: It's Page 108 of the Defendants'
5 APAs, Your Honor.

6 BY MR. LOCKHART:

7 Q This is a post job offer questionnaire. Is it your
8 testimony today that you never had a conversation with
9 this David Hughley in regards to the completion of
10 this form?

11 A Not that I recall.

12 Q You completed a variety of paperwork before beginning
13 work with Watkins and Shepard. But your testimony
14 today is that you don't recall -

15 A No, I don't.

16 Q - seeing this form? Did you inform Watkins and
17 Shepard of your prior work-related injury?

18 A No.

19 Q Why not?

20 A It wasn't on the application. I didn't think I had to
21 fill anything out about it.

22 Q In light of the significant injury that you sustained
23 in that accident at Patrician Construction don't you
24 think it would have been a good idea to have told
25 Watkins about the injuries that you sustained and the

1 impact on you?

2 A Probably, yes.

3 Q But you didn't bother telling them?

4 A No.

5 Q When Dr. Chidgey released you from his care in March

6 of 2002, he assigned a 20-percent impairment to

7 your -

8 MR. LOCKHART: I want to rephrase that, Your

9 Honor.

10 BY MR. LOCKHART:

11 Q When Dr. Chidgey released you from his care in March

12 of 2002, he assigned a 14-percent impairment to your

13 left arm; are you aware of that?

14 A No.

15 Q That wasn't the basis for the settlement you received

16 from Patrician?

17 A I didn't know what they were basing it on.

18 Q When you were released by Dr. Chidgey in March of

19 2002, were you still having problems with your left

20 arm?

21 A No.

22 Q Was it limited in any way?

23 A I had a range-of-motion limitation.

24 Q So it was impaired? It wasn't 100 percent?

25 A No.

1 Q What percentage use of your arm do you think you had
2 when you were released from the care of Dr. Chudgey in
3 March of 2002, between zero percent being no use and
4 100 percent being full use?

5 A About 80 percent.

6 Q Okay. So you would agree that you lost about 20
7 percent of the use of your arm?

8 A Until I was through physical therapy. I eventually
9 gained back. I would say I was 95 percent.

10 Q So you did have some impairment of your arm, however?

11 A Yes.

12 Q Going back to the DOT physical that you underwent with
13 Dr. Osbahr in October of 2002, and I apologize,
14 Mr. Smith's copy is a little bit clearer than mine,
15 you were asked whether or not you had any impairment.
16 The form indicates that you answered no.

17 A Yes.

18 Q Why?

19 A Because on the very top question it says in the last
20 five years and that's what I was going by.

21 Q Okay. You would agree with me, would you not, that
22 the form asked if you had any illness or injury in the
23 last five years, correct?

24 A Correct.

25 Q And you would agree with me that the remaining

- 1 questions don't reference five years, correct?
- 2 A No. That's not what I was under that understanding of
- 3 when I filled out that.
- 4 Q Let me ask you this. This form was completed in
- 5 October of 2006, correct?
- 6 A Yes.
- 7 Q All right. And you weren't released from the care of
- 8 Dr. Chidgey until March of 2002, correct?
- 9 A Right.
- 10 Q So within five years of completing this document you
- 11 were still under the care of an orthopedic
- 12 physician.
- 13 A No.
- 14 Q Well, your records reflect that you were.
- 15 A If it's five years, - well, I'm under the impression
- 16 that I had nothing to do in the last five years,
- 17 surgery or anything like that.
- 18 Q You were still seeing a doctor for your left elbow
- 19 within five years of October of 2006.
- 20 A That I didn't recall if it was five years or not.
- 21 Q You worked for Watkins and Shepard for approximately
- 22 two years; is that correct?
- 23 A Yes.
- 24 Q During that two-year period did you ever tell anyone
- 25 at all about your prior restrictions that you had been

1 provided by Dr. Chidgey?

2 A No.

3 Q I believe you testified in your deposition that your
4 job with Watkins and Shepard required you to lift
5 objects that weighed anywhere from 150 and 250 pounds;
6 is that correct?

7 A About 100 to 150, yes.

8 Q These are couches, recliners, boxes.

9 A Most of it was recliners.

10 Q You would agree that performing that activity was
11 outside of the restriction that you had been assigned
12 by Dr. Chidgey?

13 A Yes.

14 Q This restriction you are aware of but your employer at
15 Watkins and Shepard was not?

16 A Yes.

17 MR. SMITH: Your Honor, I just would I guess pose
18 the same objection given earlier. He can testify to
19 what his knowledge is. It's not necessarily to what
20 other people's knowledge is. That's in the records
21 and depositions and things like that.

22 THE COURT: Well, I will read everything.

23 MR. SMITH: Well, it's just an objection to the
24 question about what their knowledge is.

25 THE COURT: Would you ask your question again

1 because the answer was yes. But ask it again and
2 make sure I understood it or I heard it right.

3 BY MR. LOCKHART:

4 Q I asked you a few moments ago if you were required in
5 your job at Watkins to lift objects that weigh between
6 I think 150 and 250. You testified to that at your
7 deposition. I believe your answer was the objects
8 weighed between 100 and 150 pounds, right?

9 A Yes.

10 Q And then I asked you if lifting objects that weighed
11 between 100 and 150 pounds was outside of the
12 restrictions that Dr. Chidgey had placed upon you and
13 you answered that yes, that would have been the case,
14 correct?

15 A Yes.

16 Q I believe I asked you if you were aware of your
17 restrictions with Dr. Chidgey but that you had never
18 provided that restriction or informed your employer,
19 Watkins and Shepard of that restriction?

20 A Yes.

21 THE COURT: Okay. Thank you, Mr. Lockhart, for
22 reconstructing that.

23 BY MR. LOCKHART:

24 Q There was some questions earlier in regards to a DOT
25 physical that you underwent with a Dr. Fisher in

1 Lexington, South Carolina in November of 2008 - I'm
2 sorry, October of 2008. Did you see a Dr. Fisher?

3 A Yes.

4 Q Had your card expired or was it on the verge of
5 expiring? Is that why you went and had another DOT
6 physical?

7 A Yes.

8 Q Did you go to see Dr. Fisher after your accident
9 occurred on November 1 of 2008?

10 A I saw Dr. Fisher for a physical that I had. I had my
11 physical for a health physical. I had some kidney
12 stones before that in November and October. I had
13 kidney stones, so I had to go back and see him. But I
14 don't believe I saw him for my injury at all.

15 Q Did you provide him with any complaints about your
16 left elbow?

17 A No.

18 Q Any particular reason why you wouldn't have told your
19 family physician about this injury you suffered on or
20 about November 1?

21 A I don't believe I saw Dr. Fisher after that for my
22 elbow.

23 MR. LOCKHART: I'm at Page 59 of the Defendants'
24 APAs.

25 BY MR. LOCKHART:

1 Q Mr. Osmanski, this is a note from Dr. Fisher's office
2 dated November 13, 2008 which would have been
3 approximately 12 days after your accident. Does that
4 refresh your memory?

5 THE COURT: Wait a minute. The accident was
6 November 1, 2008?

7 MR. LOCKHART: Yes, Your Honor.

8 THE COURT: You are looking at -

9 MR. LOCKHART: I'm looking at Page 59 of our
10 APAs, which is actually two notes. One is -

11 THE COURT: I see.

12 MR. LOCKHART: Two notes from two visits on one
13 piece of paper.

14 THE COURT: I see it. I'm sorry. I see the date
15 on it. Go ahead.

16 BY MR. LOCKHART:

17 Q November 13, 2008, do you recall being seen at
18 Dr. Fisher's office?

19 A That was a recheck - I believe that was for the test
20 that I had. And that's all I went in there for is to
21 get the results from the tests; the cholesterol test,
22 the blood tests that I had. It wasn't for anything to
23 do with the elbow. He did ask me about my elbow and I
24 did speak to him about that.

25 MR. LOCKHART: I object to anything he asked you

1 about, Your Honor.

2 THE COURT: Sustained. Hearsay. Go ahead.

3 BY MR. LOCKHART:

4 Q In this follow-up visit on November 13, you told
5 Dr. Fisher that you had been injured at work on
6 November 1?

7 A I don't recall if I ever spoke to him about that or
8 not. I know that that appointment was for my
9 cholesterol, my blood work, my iron, all of that. And
10 that's all it was. I don't even think - I don't even
11 think I saw Dr. Fisher right there.

12 Q Okay. When you saw him for the DOT physical in
13 October of 2008, did you have to fill out a health
14 history form and document before you were seen by him
15 for the first time?

16 A I think the top part of the DOT physical.

17 Q Let me show you a copy of something here that was in
18 the records that I received from his office pursuant
19 to a subpoena. This is something from Lexington
20 Family Practice. It's got a date October 22, 2008.
21 Is that your handwriting on that form?

22 A Yes.

23 Q Okay. And is that a form that you would have
24 completed prior to seeing Dr. Fisher for the first
25 time?

- 1 A I don't - yeah, I guess.
- 2 Q Okay. There is a section of the form labeled past
3 history. It says list operations in the past.
4 Include the year the surgery occurred. What answer
5 did you put?
- 6 A I put 1987 elbow surgery.
- 7 Q Is there any mention of your shoulder surgery in
8 there?
- 9 A No.
- 10 Q Any particular reason why you didn't mention
11 that?
- 12 A Probably because it was just too much to write
13 down.
- 14 Q There were three lines, two or three lines there.
- 15 A Yeah, I know. It's just all the surgeries that I had.
16 And then I talk to him about it when I go see him.
17 And I say to him that I didn't write down all my
18 surgeries and I did explain to him everything that
19 happened.
- 20 Q You explained to him everything that happened?
- 21 A Well, I explained all the surgeries that I had. I
22 didn't go in there and say. well this date I had
23 because I don't remember the exact dates of the exact
24 surgeries.
- 25 Q There was another question on this form that said lis'

1 serious injuries or accidents in the year. Is that
2 filled out at all?

3 A No.

4 Q Any particular reason why you left that blank?

5 A It's because I wrote down the surgery.

6 Q You would agree that asked you a question about an
7 accident or an injury and the year and you left that
8 blank.

9 A Well, I put 1987 elbow surgery. I figured that would
10 be just as good.

11 Q I understand, sir. The question, though, was list
12 serious -

13 A No. I didn't answer it.

14 Q There were no witnesses to your accident on
15 November 1?

16 A No.

17 Q It's my understanding you went down to Gainesville and
18 saw Dr. Chidgey in January of '09 after your November
19 '08 accident happened; is that correct?

20 A Yes.

21 Q And initially, I believe the records reflect and you
22 told me in your deposition that he gave you some
23 medication and gave you a sling to wear on your arm;
24 is that correct?

25 A Yes.

1 Q And this sling was very similar to, if not identical
2 to the sling that you had worn several years prior to
3 what he was treating you for your elbow condition; is
4 that correct?

5 A Yes.

6 Q Do you recall seeing a Dr. McIntosh. He was an
7 orthopedic physician in Lexington, South Carolina?

8 A Yes.

9 Q Did you see Dr. McIntosh for another problem related
10 to your hand?

11 A Yes. I got a bump on my finger.

12 Q Did he remove that?

13 A No.

14 MR. LOCKHART: Your Honor, I'm on Page 54 of his
15 APAs.

16 BY MR. LOCKHART:

17 Q Mr. Osmanski, the records reflect that you were seen
18 by Dr. McIntosh on or about 11/5/08 for the injury you
19 suffered on November 1. Did you tell Dr. McIntosh
20 about your prior left-elbow injury and medical
21 treatment that you received as a result?

22 A Yes.

23 Q His records reflect: "Back in the late 1990s when a
24 total elbow arthroplasty in his thirties. This is all
25 in regard to being a truck driver and has been doing

1 this for some time. He is right-hand dominant." Is
2 that consistent to what you told Dr. McIntosh?

3 A Yes, I believe so.

4 Q His records go on to say: "Ever since the injury he
5 has numbness." Even after being released from the
6 care of Dr. Chidgey in March of 2002 did you still
7 continue to have numbness in your left arm and left
8 elbow?

9 A Occasionally.

10 Q So you had some limited range of motion and numbness,
11 occasional numbness in that arm. Anything else at
12 all?

13 A No.

14 Q I believe his records reflect that you described a
15 hyperextension injury which you described to the Court
16 a few moments ago. You are not testifying today that
17 a box actually fell on your arm on November 1,
18 correct?

19 A No.

20 Q Your arm got straightened out.

21 MR. SMITH: Wait, wait wait. I'm sorry. Let him
22 finish answering the question.

23 MR. LOCKHART: Just -

24 MR. SMITH: Let him finish answering your
25 question.

1 MR. LOCKHART: I think he was finished but -

2 THE COURT: Go ahead.

3 MR. SMITH: I don't mean to make a big stink of
4 it. It just sounded to me like he was continuing his
5 answer.

6 BY MR. LOCKHART:

7 Q Please take as long as you want to answer my
8 question.

9 A The box, actually it come down and pulled my arm. It
10 didn't fall. It pulled straight down.

11 Q It pulled your arm. It didn't actually strike your
12 elbow?

13 A No.

14 Q Or the crease of your arm?

15 A No.

16 Q Mr. Osmanski, I think Mr. Smith asked you about this.
17 I want to make sure I'm clear.

18 MR. LOCKHART: This is Page 62 of the Defendants'
19 APAs, Your Honor.

20 BY MR. LOCKHART:

21 Q This appears to be another DOT form you filled out
22 before seeing Dr. Fisher in October of 2008; is that
23 correct?

24 A Right.

25 Q And you would agree that in response to the question

1 of whether you had a missing or impaired hand, arm,
2 foot, leg, finger or toe you answered no to that
3 question; is that correct?

4 A Right.

5 Q Mr. Osmanski, I want to go back to this issue of your
6 knowledge of your restrictions when you began working
7 with Watkins and Shepard. You admitted to me that you
8 weren't asked. You maintain that you weren't asked
9 about your restrictions. You went on to testify, I
10 believe, that you did not inform anyone of those
11 restrictions. Would you agree with me that you would
12 have an incentive to not tell Watkins and Shepard
13 about your prior impairment and your restrictions?

14 A No.

15 Q You wouldn't agree with me that the incentive would be
16 the possibility of employment and a wage at a time
17 that you were unemployed and that if you had notified
18 them of these restrictions you might have not gotten a
19 job with them?

20 A I was still employed with First Express. I took the
21 Watkins and Shepard job because it was a local
22 position.

23 Q You had an incentive to take the job with Watkins and
24 Shepard and to not tell them about your prior
25 restrictions.

- 1 A If it was on the application I would have told them
2 immediately.
- 3 Q Well, if you worked for them for two years why didn't
4 you ever bother to tell anyone about it?
- 5 A Because I really never saw anybody.
- 6 Q You told your lawyer earlier that through therapy and
7 other forms of retraining that you learned to use your
8 right arm primarily?
- 9 A Yes.
- 10 Q I would presume the reason that you used your right
11 arm primarily is because you continued to have
12 problems with your left arm even after being released
13 to Dr. Chidgey's care?
- 14 A No. I never had any problems with my left arm. I
15 never saw another doctor for my left arm.
- 16 Q I understand that, sir. But you went through a long
17 explanation earlier about how you used your right arm.
18 You used it a lot. Why were you using your right arm
19 so much if you had a completely healthy left arm?
- 20 A I didn't say I had a completely healthy left arm. I
21 had a restriction with it where there was a
22 restriction of range of motion. You learn how to use
23 your right arm and use your left arm as a guide. I
24 was taught that through all the training I had through
25 the rehabilitation and pain management.

1 MR. LOCKHART: I beg the court's indulgence just
2 briefly.

3 THE COURT: Okay.

4 BY MR. LOCKHART:

5 Q You told Mr. Smith earlier that you are currently -
6 you are still under the care of Dr. Shealy; is that
7 correct?

8 A Yes.

9 Q The procedures that you have had up to this point, I
10 believe the records reflect this, have dealt primarily
11 with your prosthesis.

12 A Yes.

13 Q Your replacement; is that correct?

14 A Yes.

15 Q To your knowledge have you undergone any other kind of
16 surgery or any other procedure other than the
17 prosthesis replacement and repair and the removal of
18 the wire, I believe, that you testified to earlier?

19 A No.

20 Q Do you have any knowledge of whether when you reached
21 a settlement with Patrician Construction if they were
22 going to remain responsible for your elbow replacement
23 for the remainder of your life?

24 A No.

25 Q When was the last time you saw Dr. Shealy?

- 1 A Yesterday.
- 2 Q And to your knowledge you are still being placed out
3 of work or written out of work by him?
- 4 A Yes.
- 5 Q When is your follow-up visit scheduled?
- 6 A A month and a half, I think.
- 7 Q Are you undergoing any therapy - physical therapy or
8 any other treatment right now besides your visits to
9 Dr. Shealy?
- 10 A Not as of yet.
- 11 Q Are there recommendations for therapy or other forms
12 of treatment?
- 13 A I believe so, yes.
- 14 Q Are you scheduled to begin - what is the therapy? Are
15 you seeing a doctor or what exactly is your -
- 16 A I believe I'm going to be going through vocational
17 rehab.
- 18 Q Through the assistance of Dr. Shealy's office?
- 19 A I believe he's going to coincide with South Carolina
20 Vocational Rehab.
- 21 MR. LOCKHART: One final question and I'll be
22 finished.
- 23 BY MR. LOCKHART:
- 24 Q Mr. Osmanski, there was a document in your personnel
25 file that's been offered into evidence in this case.

1 MR. LOCKHART: And that's page 110 of the
2 Defendants' APAs, Your Honor.

3 BY MR. LOCKHART:

4 Q Does that appear to be a document that has your
5 handwriting on it?

6 A Yes.

7 Q It's something called Watkins and Shepard Trucking
8 Incorporated Affirmative Action Program Information.
9 Would that have been something you would have
10 completed when you began employment?

11 A I don't remember if I filled that paper out when I
12 began.

13 Q But that does have your signature on it, correct?

14 A Yes.

15 Q There's a section that's entitled disabled. The
16 question asks: "Do you have an impairment, physical
17 or mental that substantially limits one or more of
18 your major life activities, i.e. any mental or
19 physical function which if impaired creates a
20 substantial barrier to employment, or you have a
21 record of such an impairment or society regards you as
22 having such an impairment?" There's a box for yes and
23 a box for no. Which one is checked?

24 A No.

25 Q Now, you testified earlier that you knew of your

1 restriction from Dr. Chidgey when you were released
2 in March of '02; is that correct?

3 A Uh-huh.

4 Q You need to say yes.

5 A Yes.

6 Q So you would agree that there was a record of your
7 impairment with Dr. Chidgey, an impairment to your
8 left arm including the restrictions that were placed
9 upon you when he released you in March of '02.

10 A Yes.

11 Q So would you agree that you answered this question
12 untruthfully?

13 A I answered no that I'm not disabled. That's what I
14 answered to.

15 Q Well, the question asked you if you had an impairment.
16 It didn't ask you about disability, per se. It asked
17 you if you were impaired.

18 A I must have not understood that then.

19 Q Did you ask anybody for clarification or assistance -

20 A No.

21 Q - in determining what -

22 A I was under the impression of it saying disabled and
23 I'm not disabled.

24 MR. LOCKHART: Your Honor, those are all the
25 questions I have.

1 Thank you, Mr. Osmanski.

2 THE COURT: Mr. Smith, do you have anything on
3 redirect?

4 MR. SMITH: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MR. SMITH:

7 Q Mr. Osmanski, I just want to revisit a moment the
8 testimony exchange you had with Mr. Lockhart regarding
9 the visit with Dr. Osbahr. He had read you some
10 portions of the deposition testimony and asked you to
11 respond to those things. I will ask you again, did
12 you show your scars to Dr. Osbahr when you had the DOT
13 physical for Watkins?

14 A Yes.

15 Q Describe for me the appearance of those scars at that
16 time. How would you describe what those scars looked
17 like at the time that Dr. Osbahr was seeing you?

18 A They were very visible. At some point they were
19 raised. Through the years they smoothed out, but they
20 were definitely noticeable.

21 Q When Dr. - and you said Dr. Osbahr had checked the
22 range of motion in your arms?

23 A Yes, I believe so.

24 Q And when he is checking the range of motion, did you
25 have any discussions with him about why your range of

1 motion was only half of what it should be?

2 A Yes.

3 Q What was that?

4 A I told him that I had reconstructive surgery where
5 they did one bone in the forearm. My range of motion
6 was, although gaining each year, but I was still
7 limited.

8 Q Okay. And when you filled out the top portion of that
9 form I think you thought - your testimony was that
10 when asked if you had any injuries or illness in the
11 past five years -

12 A Yes.

13 Q - you were thinking that all of those questions dealt
14 with the five years.

15 A Yes.

16 MR. LOCKHART: Your Honor, again, I object to the
17 leading form of the question.

18 MR. SMITH: That wasn't necessarily my question,
19 Your Honor.

20 THE WITNESS: Well, that was his testimony.

21 MR. SMITH: Okay.

22 THE COURT: Let him go ahead and ask. He is
23 recapitulating or restating what his testimony was, so
24 let me hear what the question is.

25 MR. SMITH: Thank you, Your Honor.

1 BY MR. SMITH:

2 Q And then in 2008 when you see Dr. Fisher and you give
3 him a history of your accident you have the same
4 answer, no. Tell me why you are interpreting those
5 forms the way that you were.

6 A From it being the last five years. I mean, that's the
7 way I looked at it was in the last five years have you
8 had anything. And that's how I answered all the
9 questions.

10 Q When you told Dr. Fisher in 2008 before your injury,
11 when you told Dr. Fisher about your left arm or your
12 arm - your accident, your prior accident, keeping in
13 mind you had already checked no to that question up
14 top, how did it come about when you told Dr. Fisher
15 about the problems and about your prior injury?

16 A From the physical of him looking at and seeing my
17 scars.

18 Q The questionnaire -

19 MR. SMITH: And I believe, Your Honor, that's at
20 - that would be the first page of the Defendants'
21 APAs.

22 MR. LOCKHART: It's 108, Your Honor.

23 MR. SMITH: It's 108. I'm sorry.

24 BY MR. SMITH:

25 Q Mr. Osmanski, I want to ask you about this form in

1 particular. Is this your signature?

2 A No.

3 Q Is any of the information on this form in your
4 handwriting?

5 A No.

6 Q Okay. I want to ask you a few of these questions on
7 here. Question No. 1, after receiving a copy of the
8 job description and central function and minimum
9 qualification standards for over-the-road drivers, and
10 upon review of it, let me ask you this: Can you
11 complete all of the essential functions listed in that
12 job description?

13 A Yes.

14 MR. LOCKHART: I have to object to the form of
15 the question because the thing asked, is it being
16 asked in 2010? Is it being asked in 2008? Are we in
17 a time machine back in 2006?

18 THE COURT: Why don't you clarify?

19 MR. LOCKHART: What is the context of when these
20 questions are being answered right now?

21 BY MR. SMITH:

22 Q Mr. Osmanski, I want you to assume we are in 2006.
23 You are completing the application process. And I am
24 asking you these questions. Okay. I want to ask you
25 these questions. I don't know if your knowledge has

1 changed from then to now, whatever it is, but I just
2 want to ask you these questions. Let me just set it
3 up for a moment. You testified you didn't recall
4 speaking to anyone asking you these questions,
5 correct?

6 A Yes.

7 Q I just want to go over what these questions were and
8 see what your answers would be if you were asked
9 them.

10 MR. LOCKHART: Your Honor, I guess I'm having a
11 hard time understanding what the point of this
12 exercise would be because he has already testified
13 that this is not - that he didn't complete it.

14 THE COURT: He says he doesn't recall.

15 MR. LOCKHART: And we have evidence that seems to
16 suggest that he, in all likelihood, did. You can
17 decide how you want to rule on that issue. He has
18 already testified as to his knowledge of his
19 restrictions. He's already testified he didn't
20 disclose it. I'm not really sure what the point of
21 all of this is.

22 THE COURT: He has also testified that anything
23 that he was asked he would have disclosed.

24 MR. LOCKHART: Yes, ma'am.

25 THE COURT: I don't know that you need -

1 MR. LOCKHART: I think what I'm -

2 THE COURT: I'm trying to give you some leeway.

3 MR. SMITH: I understand that. I'm not sure
4 exactly what the objection is and whether, you know,
5 we are just asking what the point of the exercise is,
6 but here is the defense. The defense is that
7 Mr. Osmanski was asked these questions.

8 THE COURT: Right, which he did not recall which
9 means, you know, I have to decide. But he does not
10 recall.

11 MR. SMITH: Yes, ma'am. And then our position -

12 THE COURT: If he doesn't recall, the responses
13 on that questionnaire may not have been his. He
14 doesn't recall.

15 MR. SMITH: Yes, ma'am. And our position has
16 always been that A, he doesn't remember filling out
17 this form.

18 THE COURT: Right.

19 MR. SMITH: But B, our position has been that
20 even if he did fill out this form, he wasn't
21 untruthful in this form. And that's why I'm trying to
22 ask him these questions because, I mean, the question
23 asked can you complete all the essential job
24 functions? I'm asking him in your opinion did you
25 think you could complete all the essential job

1 functions?

2 THE COURT: And he has already testified that he
3 thought he could.

4 MR. SMITH: Yes, ma'am. And I was just going to
5 go through these questions and ask him -

6 THE COURT: I'm going to let you do it. And you
7 have got a running objection to this exercise and to
8 this process and to this testimony, I should say,
9 Mr. Lockhart.

10 MR. LOCKHART: Okay. So I want to make sure what
11 we are doing here because -

12 THE COURT: He's asking him if he was filling it
13 out himself, if he was completing it himself in 2006
14 how would he have responded is what I understand. If
15 he had been given the forms and asked to fill it out,
16 how would he have responded; is that right?

17 MR. SMITH: Yes, ma'am. The defense says that he
18 gave untruthful answers. I'm asking him if these
19 answers, if he gave them, were truthful.

20 THE COURT: Well, he says he doesn't recall, so
21 he can't - this is kind of - I'm trying to make sure
22 everybody gets to put up their case but -

23 MR. LOCKHART: I mean, I'm happy to on re-cross --

24 THE COURT: He has already said he doesn't recall
25 this. We know that.

1 MR. LOCKHART: If we want to go - I mean, I
2 guess what I'm trying to figure out is what relevancy
3 this has based on the totality of the testimony
4 provided up to this point.

5 THE COURT: Well, you've got the woman that
6 completed this, and so I guess the point here is, and
7 I'm not trying to say what you are trying to do. But
8 what I'm guessing you are trying to do is to say if he
9 was, in fact, filling it out would you now fill it out
10 the same way; is that right?

11 MR. SMITH: Yes, ma'am.

12 THE COURT: I'm going to let him do it. You have
13 got a running objection. Go ahead, Mr. Smith.

14 MR. SMITH: And I apologize. I'm sure I didn't
15 set it up correctly. I apologize for the confusion.

16 THE COURT: I know where you are coming from. Go
17 ahead.

18 BY MR. SMITH:

19 Q Question No. 3, have you had any non-work-related or
20 work-related injuries or illnesses? What's the
21 truthful answer to that question?

22 A Non-work-related injuries, yes.

23 Q What were the non-work-related injuries that you
24 had?

25 A I had a dislocation of my shoulder playing softball.

1 Q And when was that?

2 A It could be '87, '88, '86, '85.

3 Q Well over 20 years?

4 A Yes.

5 Q Have you been injured or suffered an occupational
6 disease?

7 A Yes.

8 Q Do you have any physical limitations or restrictions
9 such as lifting, squatting, bending, kneeling that
10 would prevent you from performing the essential job
11 functions?

12 A I probably would have said no to that because in my
13 opinion I could perform the job. Yes, I have a
14 limitation with my left arm, but I also have two arms
15 and two legs so that I can use what I've learned to
16 perform that job.

17 Q Question No. 6, are you currently being prescribed any
18 medication by a physician which may affect your
19 ability to perform the essential job functions?

20 A No.

21 Q Have you been certified by any subsequent injury funds
22 by any state's department of labor and industry such
23 as an impairment rating from a disability or
24 settlement of claim?

25 A I would have said yes.

- 1 Q What's the indication on the form?
- 2 A N/A.
- 3 Q Do you currently have or previously had a DOT waiver?
- 4 A No.
- 5 Q Mr. Osmanski, when you answered Mr. Lockhart's
- 6 questions regarding the ten to fifteen pound lifting
- 7 restriction, I believe your testimony was that you
- 8 were aware of that; is that correct?
- 9 A Yes.
- 10 Q Yet you testified here today that you thought you
- 11 could perform the essential functions of the job.
- 12 A Yes.
- 13 Q All right. And one of those essential functions of
- 14 the job that you went over with Mr. Lockhart was the
- 15 lifting.
- 16 A Yes.
- 17 Q And you admitted to Mr. Lockhart that the lifting part
- 18 of the job was more then 10 to 15 pounds?
- 19 A Yes.
- 20 Q All right. Did you think that - why did you think you
- 21 could - here's the first question. Did you think you
- 22 were violating what Dr. Chidgey had told you by
- 23 working at Watkins?
- 24 A No.
- 25 Q Why did you think that?

1 A Because of all the training that I had as far as
2 lifting with my legs and my arm, my right arm.

3 Q You mentioned earlier that Watkins didn't say this was
4 75 pounds lifting with one arm. What did you mean by
5 that?

6 A Because usually a job, you are using both your arms
7 and your legs. And, I mean, any job description is
8 not going to say, okay, you must lift 100 pounds with
9 one arm. That's not reality. Reality is you use both
10 arms. And over the years of working the position I
11 worked with Walgreens and gaining strength, I felt I
12 was able to do it and I did for two years.

13 MR. SMITH: All right, Mr. Osmanski, thank you.

14 THE COURT: Mr. Lockhart, since I let him go
15 through that is there something you would like to
16 follow up with?

17 MR. LOCKHART: Sure. I have a couple of things,
18 Your Honor.

19 RE-CROSS EXAMINATION

20 BY MR. LOCKHART:

21 Q Mr. Osmanski, you testified in response to your
22 lawyer's questions that you informed Dr. Osbahr of
23 your scarring or showed him the scarring on your left
24 arm and provided him with an explanation as to why
25 those scars were there; is that correct?

1 A Yes.

2 Q Are you certain about that?

3 A Yes.

4 Q I'm looking at Page 20 of Dr. Osbahr's deposition.

5 Dr. Osbahr was asked: "So if he", meaning you, Mr.

6 Osmanski, "had a scar on his arm that would have

7 represented a surgical scar whether or not you saw a

8 surgical scar." His answer: "If it was not. I did

9 not remark on that so it might not have been very

10 obvious.

11 Next question: "I can represent to you that he

12 has one, but you have to look at the arm?" His

13 answer: "I do."

14 Next question: "So if he has a scar, it would

15 have been - it's obvious to anybody, it would have

16 been obvious to a doctor, I would assume; is that

17 fair?" His response: "Yeah, sometimes the scars are

18 hidden pretty good so it was not showing up to me in

19 terms of the exams."

20 So does that sound consistent with the testimony

21 you provided us here today?

22 A I'm pretty sure he could see the scars. I showed them

23 to him. They are very visible. And not only are they

24 visible it's the way my arm hangs.

25 Q When you saw Dr. Osbahr in November of 2008 it had

1 been several years since you last had surgery in your
2 left or right arm, correct?

3 A Yes.

4 Q Go back to the questionnaire for a moment. It's my
5 understanding now that if we could go back in time
6 that you would have answered these questions in a
7 certain way that is much different than what this form
8 indicates.

9 A Yes.

10 Q Let's talk about No. 5 for a moment. My question to
11 you: "Do you have any physical limitations or
12 restrictions such as lifting, squatting, bending,
13 kneeling, etcetera that would prevent you from
14 performing the essential functions - the essential job
15 functions? If so, what?" I believe you told
16 Mr. Smith that your answer still would be no to that
17 question; is that correct?

18 A Yes.

19 Q But you would agree with me -

20 THE COURT: No, that's correct or yes, that's
21 correct? We want to makes sure the record is -

22 BY MR. LOCKHART:

23 Q What would your answer be to question five?

24 A I believe what I said was I would have said no because
25 I would feel that I would be able to perform the

1 essential job functions.

2 Q But you would agree with me that that answer is not
3 consistent with the records of Dr. Chidgey who placed
4 a 10- to 15-pound restriction on you with regard to
5 the use of your left arm?

6 A Yeah. Yes.

7 Q All right. That answer would not be consistent with
8 his records?

9 A Yes.

10 Q Sir?

11 A I said yes.

12 MR. LOCKHART: Your Honor, those are all the
13 questions I have.

14 MR. SMITH: We have no further questions.

15 THE COURT: That concludes this proceeding.

16 (The hearing concluded at 12:22 PM)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

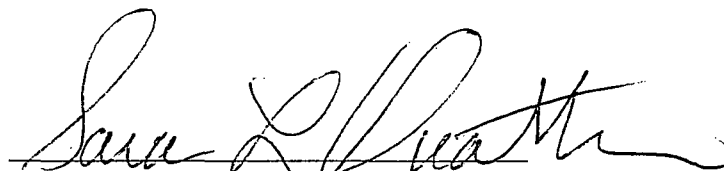
BE IT KNOWN THAT I TOOK THE FOREGOING
WORKERS' COMPENSATION HEARING;

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

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

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,
NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 8TH DAY OF JULY
2010.



SARA L. QUATTLEBAUM
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES JULY 12, 2012

CONDENSED TRANSCRIPT WORD INDEX

Deposition
Of
JOE A. OSMANSKI

JOE A. OSMANSKI v. WATKINS & SHEPARD TRUCKING, INC. AND
ZURICH NORTH AMERICA
WCC #0818219

3/4/2009

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South Carolina Workers' Compensation Commission
W.C.C. File #0818219

Joe A. Osmanski,	)	
	)	
Claimant,	)	Deposition
	)	
vs.	)	of
	)	
Watkins & Shepard Trucking,	)	Joe A. Osmanski
Inc.,	)	
	)	
Employer,	)	
	)	
Zurich North America,	)	
	)	
Carrier.	)	
	)	

Deposition of Joe A. Osmanski, pursuant to the Rules of the South Carolina Workers' Compensation Commission, taken before Cheri B. Williams, Certified Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 10:00 a.m. and commencing at the hour of 10:10 a.m., Wednesday, March 4, 2009 at the office of George Sink, P.A., 240 Stoneridge Drive, Suite 402, Columbia, South Carolina.

Reported by:
Cheri B. Williams, CVR

Appearances

For the Claimant: Paula Amick, Esq.
George Sink, P.A.
240 Stoneridge Drive, Suite 402
Columbia, SC 29210

For the Employer/
Carrier: Jason W. Lockhart, Esq.
McAngus, Goudelock & Courie,
L.L.C.
700 Gervais Street, Suite 300
Post Office Box 12519
Columbia, SC 29211

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Exhibits

No exhibits marked.

Transcript Legend

dashes (--) speaker interrupted
ellipsis (...) halting speech, omission of word(s)
(ph) denotes phonetically written
(sic) written as said

1 Stipulations

2 It is stipulated by and between counsel for
3 the respective parties that all objections are
4 reserved until the time of trial, except as to
5 the form of the questions.

6 - - - -

7 The reading and signing of this deposition is
8 waived by the deponent and counsel for the
9 respective parties.

10 Whereupon,

11 Joe A. Osmanski, being duly sworn and
12 cautioned to speak the truth, the whole truth,
13 and nothing but the truth, testified as
14 follows:

15 EXAMINATION

16 BY MR. LOCKHART:

17 Q Mr. Osmanski, good morning.

18 A Good morning.

19 Q My name is Jason Lockhart. I'm a lawyer from a law
20 firm here in Columbia called McAngus, Goudelock &
21 Courie. I represent Watkins & Shepard and their
22 workers' comp carrier, Zurich, in your workers'
23 comp case. We've got a hearing coming up in your
24 case here in the next couple of weeks, and so I'm
25 here this morning to take your deposition.

1 A Okay.

2 Q Have you ever had your deposition taken before?

3 A No.

4 Q Okay. Well, a deposition is just a legal term to
5 describe a conversation that you and I are going to
6 have this morning in the presence of your lawyer,
7 Ms. Amick. I'm going to ask you some questions
8 about your job with Watkins & Shepard. We're going
9 to talk about your accident. I'm going to talk to
10 you about the medical care that you've received as
11 a result of this accident. I'm going to talk to
12 you about some previous medical care you've gotten
13 for the same part of your body that's the subject
14 of this claim. Then I want to talk to you about
15 how you're doing today, what kind of problems you
16 still may be having, et cetera. This should take
17 us about an hour or so. There are a couple of
18 things I ask you to keep in mind during the
19 deposition. The first is that the court reporter
20 is taking down everything that we say to each
21 other, so I need you to speak your answers or
22 verbalize your answers for me, okay?

23 A Okay.

24 Q If you nod your head or shake your head, it's very
25 difficult for her to get that down on the

1 recording. The second thing is if I ask you a
2 question that is confusing or that you don't
3 understand in any way, please let me know. I'll be
4 happy to repeat myself or clarify my question. I'm
5 not here to trick you or mislead you in any way, so
6 it's important that you understand my questions
7 before you answer them. And if you answer my
8 question I'm going to assume that you understood
9 what I was asking you, okay?

10 A Yes.

11 Q And then, finally, if at point during the
12 deposition you need to stop and you need to take a
13 break and go to the restroom, do anything like
14 that, let me know. We'll be happy to stop what
15 we're doing and let you take whatever breaks you
16 need and then get back to the deposition, okay?

17 A Yes.

18 Q Mr. Osmanski, if I could get you to state your full
19 name for the record, please.

20 A Joseph Arthur Osmanski.

21 Q And, sir, what's your present address?

22 A 157 Cliff Road.

23 Q And that's --

24 A Pelion, South Carolina.

25 Q And what type of residence is that? Is that a

- 1 house or an apartment or a mobile home?
- 2 A A home.
- 3 Q It's a house?
- 4 A Yeah, a house.
- 5 Q How long have you lived at that residence?
- 6 A Five years.
- 7 Q And are you renting that or do you have a mortgage
- 8 on that home?
- 9 A I have a mortgage.
- 10 Q How long have you lived in South Carolina?
- 11 A Five years.
- 12 Q Where are you from originally?
- 13 A Florida.
- 14 Q And what's your date of birth?
- 15 A 9/24/64.
- 16 Q So how old does that make you today?
- 17 A Forty-five.
- 18 Q Who lives with you at your residence in Pelion?
- 19 A My wife, Joanne.
- 20 Q And how long have you been married to Joanne?
- 21 A Twenty-five years.
- 22 Q Is she the only lady you've ever been married to?
- 23 A Yes.
- 24 Q Do you have any children?
- 25 A Yes.

1 Q How many children do you have?

2 A Nine.

3 Q Do they all live with you at your residence?

4 A No.

5 Q How many live with you at your residence?

6 A Eight.

7 Q How many of those eight are under the age of 18?

8 A Seven.

9 Q Are all eight of your children reliant upon you for
10 financial support?

11 A No. Seven are.

12 Q Seven of them are? One has their own source of
13 income or employment?

14 A Yes.

15 Q Besides your wife and your children, do you have
16 anyone else living with you at your home?

17 A No.

18 Q Besides your seven children who are under 18 and
19 your wife, do you have anybody else, family
20 members, friends, anyone who relies upon you for
21 financial support?

22 A No.

23 Q How far did you go in school?

24 A Eleventh grade.

25 Q Have you ever gotten your GED?

1 A No.

2 Q Have you ever taken any courses at an institution
3 outside of high school, like a tech school or a
4 community college or any type of institution at
5 all?

6 A I did a driving school.

7 Q And where was that at?

8 A In West Palm Beach, Florida.

9 Q Did you receive any type of certificate or
10 certification from that driving school?

11 A I finished the school and got my CDL license.

12 Q And when was that?

13 A I don't remember exactly.

14 Q Was it in the 80s or the 90s or was it sooner than
15 that?

16 A It was after 2000.

17 Q Any other driving courses or coursework --

18 A No.

19 Q -- besides this one in West Palm? Okay. Have you
20 ever been in the military?

21 A No.

22 Q Have you ever served any time in jail for any type
23 of arrest or criminal conviction?

24 A No.

25 Q Other than the workers' comp case we're here to

1 talk about today that came about as a result of
2 your injury with Watkins & Shepard, have you ever
3 had a workers' comp claim before?

4 A Yes.

5 Q Okay. How many workers' comp claims have you had?

6 A One.

7 Q Who were you employed with for this prior claim?

8 A Patrician Construction.

9 Q And where was Patrician Construction located?

10 Where was their headquarters?

11 A Saraville, New Jersey.

12 Q And what was your job with Patrician?

13 A I was a carpenter.

14 Q Where were you working for them when you had your
15 accident?

16 A Saraville.

17 Q Is that S-a-r-a-v-i-l-l-e? Is it spelled like it
18 sounds?

19 A Yes.

20 Q Okay. When did your accident occur?

21 A 12/18/87.

22 Q Tell me about your accident. What happened?

23 A A ladder slid out from -- a 40 foot extension
24 ladder slid out. Sliding down the wall, I fell 32
25 feet.

1 Q What parts of your body did you injure in this
2 accident?

3 A Both elbows, both wrists, cheekbone. Left
4 cheekbone. Sorry.

5 Q Any other injuries?

6 A Both shoulders.

7 Q Anything else?

8 A No.

9 Q I understand from looking at some of your medical
10 records that you eventually received some medical
11 care down at the University of Florida for your
12 injuries; is that correct?

13 A Yes.

14 Q Before you began treating at the University of
15 Florida, where were you treating for your injuries,
16 do you recall?

17 A The injuries for the original accident?

18 Q Yes, sir. Following this December 1987 accident,
19 the one you just told me about, I understand you
20 eventually ended up at the University of Florida,
21 but was there anywhere else you were treated
22 before?

23 A They were originally -- the original accident was
24 treated in South Amboy, New Jersey.

25 Q Did you see an orthopaedic physician --

1 A The original doctor was -- I believe his name was
2 Dr. Grover.

3 Q Okay. And he was located in New Jersey?

4 A Yes.

5 Q How long did you treat with Dr. Grover?

6 A I don't recall.

7 Q Was it less than a year or more than a year?

8 A I believe it was the period of time that I -- I
9 moved back to Florida. I'm not sure.

10 Q Do you recall what type of treatment Dr. Grover
11 provided to you? Did he perform any surgeries on
12 any of your injuries?

13 A He did reconstruction of the elbow, left elbow.

14 Q How many surgeries did he perform on your left
15 elbow, do you recall?

16 A I believe the one, the original, and then he had to
17 remove pins and a screw, I believe it was. So I
18 think it was a total of two.

19 Q Do you recall any other physicians in particular
20 that you treated with besides Dr. Grover before you
21 ended up going to the University of Florida?

22 A It was transferred to I believe a Dr. Haas in
23 Stewart, Florida, and he referred me to the
24 University -- to a university and the University of
25 Florida took the case.

1 Q And where was Dr. Haas?

2 A Stewart, Florida.

3 Q Stewart, Florida, okay. How long did you treat
4 with him before you ended up over at the
5 University?

6 A I don't recall. I don't remember how long I saw
7 him.

8 Q Did he perform any surgeries on you?

9 A No.

10 Q So you eventually end up over at the University of
11 Florida. And am I saying this physician's name
12 right, Dr. Chidgey?

13 A Chidgey.

14 Q Chidgey, okay. So he assumed your care at this
15 point?

16 A Yes.

17 Q And did you treat primarily with Dr. Chidgey --

18 A Chidgey, yes.

19 Q -- Chidgey during this entire time you were at
20 Florida?

21 A Yes.

22 Q Okay. I have a number of his records, so I can
23 look at the records and look at the dates and --
24 but just trying to make sure I'm clear with you, I
25 want to go through the surgeries that he did and

1 see if I can get a feel for what actually he did
2 for you. And I'm going to go back to the injuries
3 you told me about. You said you injured your left
4 and right elbow in your fall; is that correct?

5 A Correct.

6 Q How many surgeries did he perform on your elbow,
7 your left elbow, do you recall?

8 A I don't remember that.

9 Q Okay. Was it multiple surgeries?

10 A It was multiple surgeries.

11 Q Did he perform any on your right elbow?

12 A No.

13 Q How about on your left wrist?

14 A The first surgery that he did included the left
15 wrist, but it was only -- it was called a one bone
16 forearm.

17 Q Okay. Did he ever perform any type of hardware
18 removal or pin removal from your wrist?

19 A No.

20 Q How about your right wrist, did he perform any
21 surgery on it?

22 A No.

23 Q How about on your cheekbone, did he ever do any
24 surgery on it?

25 A No.

1 Q How about your left shoulder?

2 A No.

3 Q How about your right shoulder?

4 A No.

5 Q So the best to your recollection, then, your
6 surgeries were primarily on your left elbow and
7 your left wrist; is that correct?

8 A It was mainly my left elbow.

9 Q Okay. All right.

10 A The reason I said the wrist was because that's
11 where they went into.

12 Q Okay. The records that I have, Mr. Osmanski, seem
13 to suggest that you started treating with Dr.
14 Chidgey -- I'm going to just butcher his name. I'm
15 going to call him Dr. C, how about that, out of
16 respect for him. The records indicate that you
17 began treating with Dr. C sometime in 1992 and
18 treated with him for about ten years. Does that
19 sound about right? If the records indicate he
20 released you for your injuries with Patrician in
21 March of 2002, do you have any reason to dispute
22 that?

23 A No.

24 Q Okay. So would you agree that you treated with him
25 for approximately ten years?

1 A Yes.

2 Q Following this accident in December of 1987, did
3 you begin receiving any type of workers'
4 compensation benefits?

5 A Yes.

6 Q How long did you receive workers' comp benefits?

7 A For, I believe, until I was released from the
8 doctor. I think there was a -- I don't remember
9 exactly, but I believe it was there was a
10 settlement.

11 Q So during the period of time that you were under
12 the care of Dr. C, were you receiving workers' comp
13 benefits?

14 A Not the whole time.

15 Q How long did you receive benefits? Do you remember
16 how many years you may have received benefits?

17 A I know it was seven years.

18 Q And you were receiving those benefits weekly?

19 A It changed biweekly to monthly.

20 Q At some point in time you received a settlement?

21 A Yes.

22 Q What was the value of your settlement?

23 A I believe it was 86.

24 Q 86,000?

25 A I believe so.

1 Q Was that the amount that you received or did you
2 have an attorney who took a portion of that as a
3 fee?

4 A I believe the attorney took some of that.

5 Q And who was your attorney?

6 A The office was Weiman, Goldman & Spitzer.

7 Q Weiman, Goldman & Spitzer?

8 A And I believe Mr. Spitzer was the attorney.

9 Q And where are they located?

10 A Woodbridge, New Jersey.

11 Q When did you reach this settlement? How long ago
12 has it been since you settled your workers' comp
13 case with Patrician?

14 A I don't remember.

15 Q Was it within the last five years or was it prior
16 to that?

17 A I don't remember.

18 Q As part of the settlement, did Patrician remain
19 responsible for any medical care for the remainder
20 of your life or any treatment related to your elbow
21 or to your surgeries?

22 A I don't remember that, either.

23 Q Did you have to go back to New Jersey when you
24 settled your case or were you living somewhere else
25 at that point?

1 A I believe I went back to see a doctor, but that was
2 -- I don't remember when that was.

3 Q Did you ever have to go to any type of workers'
4 compensation hearings in New Jersey because of your
5 case?

6 A No.

7 Q When your case settled, were you living in Florida
8 or were you living --

9 A Yes.

10 Q -- in New Jersey? And, Mr. Osmanski, I'm sorry.
11 If you could just let me finish my questions before
12 you answer them. I think you anticipate what I'm
13 asking you. It just -- it makes it difficult for
14 her. So I'll try to finish my questions and if
15 you'd just wait until I finish before you answer.
16 Let me go back to Dr. C for just a moment. Again,
17 I think his records reflect that he released you
18 from his care for your accident with Patrician back
19 on March 22, 2002. When he released you from his
20 care, were you aware if he placed any work
21 restrictions upon you as far as what you could or
22 could not do with your arms or shoulders or elbows
23 or wrists?

24 A Not that I recall.

25 Q Once you started treating with Dr. C, did you

1 remain under his care or did he ever send you to
2 any other doctors for any type of medical
3 treatment?

4 A No.

5 Q All right. He never referred you out to anyone?

6 A No.

7 Q Other than Dr. C, Dr. Haas, Dr. Grover, were there
8 any other orthopaedic physicians, any specialists,
9 that you treated with following your accident with
10 Patrician?

11 A No.

12 Q And I believe you said this to me a few moments
13 ago, but this is the only workers' comp claim
14 you've ever had besides the one we're talking about
15 today?

16 A Yeah.

17 Q Have you ever been in a car accident?

18 A Yes.

19 Q How many car accidents have you been involved in?

20 A One.

21 Q Did that accident result in you suffering any
22 injuries?

23 A No.

24 Q Did that accident occur here in South Carolina?

25 A No.

1 Q Where did it occur?

2 A Florida.

3 Q How long ago has it been?

4 A Nine, ten years.

5 Q Was there another driver, another vehicle, involved
6 in the accident?

7 A Yes.

8 Q Sometimes when folks are in car accidents and there
9 is another driver involved, sometimes people file
10 suit against each other over who was at fault. Was
11 there any type of lawsuit that came about as a
12 result of your car accident in Florida?

13 A I don't remember.

14 Q Did you have a lawyer? Did you file a lawsuit that
15 you can recall?

16 A I believe the person didn't have any insurance.

17 Q But you weren't injured in that accident at all?

18 A No.

19 Q Have you ever been involved in a lawsuit as a
20 plaintiff? And when I ask you that question, I
21 mean retained a lawyer or you yourself filed a
22 lawsuit against another person or an entity in the
23 court?

24 A I don't believe so.

25 Q Okay. To your knowledge, have you ever been sued

1 before as a defendant in a lawsuit?

2 A No.

3 Q Since living in South Carolina, have you ever filed
4 for or received unemployment benefits?

5 A No.

6 Q Have you ever received unemployment benefits in any
7 other state?

8 A Yes. I believe Florida.

9 Q How long ago was that?

10 A Five, six, seven years. Six years.

11 Q Six years ago or --

12 A Six years ago.

13 Q All right. Have you ever filed for or received
14 social security benefits?

15 A Just filed for social security.

16 Q How long ago has that been since you filed for
17 social security?

18 A Three weeks.

19 Q Is Ms. Amick handling that matter for you?

20 A No.

21 Q Is there someone in her firm who's handling that or
22 are you handling that on your own?

23 A On my own.

24 Q Do you have any income at the present time?

25 A Food stamps.

1 Q Is your wife employed?

2 A No.

3 Q Mr. Osmanski, I want to talk to you now about your

4 job with Watkins & Shepard and then we're going to

5 talk about your accident here in just a few

6 moments. What information I've been given by

7 Watkins & Shepard states that you started working

8 for them on or about October 31, 2006. Does that

9 sound about right to you or do you think you may

10 have started working for them --

11 A October 30, 2006.

12 Q What were you hired to do?

13 A Truck driver. Local truck driver.

14 Q How did you go about getting employment with

15 Watkins & Shepard?

16 A I saw an ad in the paper and phoned. Of course,

17 called the number and talked to Rodney Stephens.

18 Q Who is Rodney Stephens?

19 A Terminal manager.

20 Q Is he located here in Columbia?

21 A Hickory, North Carolina.

22 Q What did you and Mr. Stephens talk about?

23 A The employment.

24 Q Did he offer you a position over the telephone?

25 A Yes.

1 Q Did he offer you the position of local driver?

2 A Yes.

3 Q And did you accept that position?

4 A Yes.

5 Q What happened next?

6 A I had to -- they arranged a ride for me to travel
7 to Hickory to do a DOT and a lift test.

8 Q DOT meaning a physical?

9 A Physical DOT.

10 Q And what's a lift test?

11 A A test that they perform to be hired with their
12 company.

13 Q Is that a test, a physical test?

14 A Physical lifting test.

15 Q So you went to Hickory with another driver and
16 underwent this physical --

17 A I went and met with Rodney Stephens.

18 Q Okay.

19 A And the whole process was to finish the application
20 out, their physical, their lift test. Drug test,
21 lift test, physical.

22 Q When you met with Mr. Stephens in Hickory, did you
23 have any conversations with him at all about your
24 accident with Patrician and the injuries that you
25 suffered as a result of the accident?

1 A No.

2 Q Did you have to complete paperwork, application
3 paperwork or any other paperwork, while you were in
4 Hickory?

5 A I believe I did most of that before I got there
6 online.

7 Q Where was that paperwork sent? Was it sent to
8 Hickory or somewhere else?

9 A Mazola, Montana.

10 Q Did you have contact with anyone in Montana before
11 you went to Hickory to meet with Mr. Stephens?

12 A No.

13 Q After you arrived in Hickory and you met with Mr.
14 Stephens, did you at that point speak with anybody
15 in Montana?

16 A No.

17 Q Have you ever had any conversations with a
18 representative of Watkins & Shepard who was in
19 Montana?

20 A During the application?

21 Q Yes, sir.

22 A No.

23 Q Okay. After you became an employee of Watkins &
24 Shepard, did you ever have any conversation with
25 anyone who was in Montana who was a representative

1 of Watkins & Shepard?

2 A Through working for them. I worked for two years.

3 Yeah, I've talked to them before.

4 Q Who are some of the people in Montana that you've
5 communicated with?

6 A I don't really know their -- some payroll
7 department, a person named Shamus who handles the
8 insurance and a couple safety directors.

9 Q A few moments ago you told me that you didn't have
10 any conversations with Mr. Stephens during this
11 meeting in Hickory about your prior accident with
12 Patrician. During the two years that you worked
13 with Watkins & Shepard, at any point in time did
14 you ever speak to anyone at Watkins & Shepard about
15 your prior work accident or the injuries you
16 suffered?

17 A No.

18 Q Mr. Osmanski, what were you earning? What were
19 your wages back in November of '08 when your
20 accident occurred? What were you getting paid?

21 A November of '08? For this current accident?

22 Q Yes.

23 A 918 a week.

24 Q How many hours a week were you working?

25 A It varied. 40 to 60.

- 1 Q And how many days a week was it? Was it a five
- 2 day, six day?
- 3 A Most of the time it was a five day.
- 4 Q Back in November of last year, of '08, who was your
- 5 supervisor? Who did you answer to?
- 6 A Rodney Stephens.
- 7 Q Has Mr. Stephens been your supervisor the entire
- 8 time you were employed with Watkins & Shepard?
- 9 A Yes.
- 10 Q Any other supervisors besides him?
- 11 A No.
- 12 Q And has he been located in Hickory this entire
- 13 time, this two years that you worked for them?
- 14 A Yes.
- 15 Q Is there anyone in South Carolina that you answer
- 16 to?
- 17 A No.
- 18 Q Give me an idea, if he's in Hickory and you answer
- 19 to him, give me an example of how a typical day
- 20 would work. You wake up, you're ready to go to
- 21 work. What do you do? Do you call him to get
- 22 instructions from him? How does it work?
- 23 A I usually get instructions the day before of how
- 24 the route will go. It's usually a two-day run.
- 25 Q So he tells you where to go?

1 A He gives me the information of the stores and I
2 usually set it up the way it would run better
3 timewise.

4 Q He tells you where you've got to be; you figure out
5 how to get there. Is that a fair statement?

6 A Exactly.

7 Q Do you have a way of communicating with him while
8 you're on the road?

9 A Nextel Direct.

10 Q And what type of places or customers are you
11 delivering to?

12 A Furniture stores.

13 Q We're going to talk about your accident here in
14 just a -- in just the next few moments. But were
15 you working alone? Were you working by yourself
16 when your accident occurred?

17 A Alone.

18 Q Typically is that how you would do your job was
19 alone?

20 A Yes.

21 Q And what was the last day that you worked at
22 Watkins & Shepard?

23 A I don't understand that question.

24 Q When was your last day of work? Was it the day
25 that your accident happened or did you work at all

1 after the accident?

2 A 11/1.

3 Q Which was the date of your accident?

4 A Correct.

5 Q All right. Have you had any contact with Watkins &

6 Shepard or Mr. Stephens since your accident

7 occurred?

8 A Yes.

9 Q When did you last speak with Mr. Stephens? Today

10 is -- just for a point of reference, today is March

11 the 4th.

12 A January 24th.

13 Q What did y'all talk about on January 24th?

14 A The letter I received from Watkins.

15 Q In regards to?

16 A Voluntary termination.

17 Q Tell me about the conversation you had with Mr.

18 Stephens.

19 A Just was trying to discuss why that was going on.

20 Q What did he tell you?

21 A He didn't have any idea.

22 Q Did that letter come from Mr. Stephens or come from

23 someone else?

24 A Come from someone else.

25 Q Who did it come from, do you recall?

1 A No.

2 Q Was it someone in Montana?

3 A Yes.

4 Q And have you spoken with anyone else besides Mr.
5 Stephens who is with Watkins & Shepard since the
6 date of your injury in November?

7 A Spoke to Char Lewis.

8 Q Who is Char Lewis?

9 A She is the workman's comp nurse for Watkins &
10 Shepard.

11 Q Is she in Montana?

12 A Yes.

13 Q How long ago has it been since you spoke with her?

14 A I want to say in December.

15 Q And what did y'all talk about in December?

16 A That it was being transferred to Zurich.

17 Q Is Mr. Stephens the last person from Watkins &
18 Shepard that you've spoken with?

19 A Yes.

20 Q Besides he and Ms. Lewis, have you had any
21 conversations with anyone else at Watkins & Shepard
22 since your accident happened?

23 A Not that I recall.

24 Q Mr. Osmanski, let me talk to you now about your
25 accident. And, again, all the documents that I

- 1 have indicate it occurred on November 1st of 2008;
2 is that correct?
- 3 A Yes.
- 4 Q Where were you working on November 1st of '08?
- 5 A At the time I was in Aiken County.
- 6 Q Were you delivering furniture?
- 7 A I just finished delivering.
- 8 Q Take me through how your accident happened and kind
9 of give me -- let's start with what you were doing
10 in maybe the half hour/hour before the accident
11 happened and tell me what happened when you were
12 injured.
- 13 A I was delivering to Lawson's Furniture in Aiken.
- 14 Q Lawson's, okay. What happened next?
- 15 A I delivered I don't remember how many pieces, but I
16 slid them to the back and out of the truck. As I
17 finished the delivery, they signed the paperwork.
18 They closed their door. I went out and pulled the
19 truck up. I look in the back and I notice I needed
20 to break down the freight of the truck so it would
21 not fall as I was driving.
- 22 Q And when you say break down freight, tell me what
23 you mean.
- 24 A Just stack it down.
- 25 Q What happened next?

- 1 A I went -- jumped in the back of the truck to stack
2 down the freight, and one of the recliners got
3 stuck on -- up top. And when I kept pulling on it
4 and pulling on it, finally it released quicker than
5 I thought. The weight shifted on it and pulled my
6 arm straight down.
- 7 Q Which arm is that?
- 8 A Left arm.
- 9 Q Other than your left arm, did you injure any other
10 parts of your body in this accident?
- 11 A No.
- 12 Q Where were you having pain or if you were having
13 pain or problems where was it located?
- 14 A I heard a pop and a crack and it was in the elbow.
15 It was extreme pain for a little bit. I was able
16 to get out and close the doors of the truck. I sat
17 in the truck for about ten minutes. I started to
18 feel a little better. I was able to drive the
19 truck home.
- 20 Q Back to your home?
- 21 A Yes.
- 22 Q And how long of a drive is that from Aiken?
- 23 A About 45 minutes.
- 24 Q And I believe I asked you this before, but I want
25 to make sure I'm clear. Were there any witnesses

1 to your accident?

2 A No.

3 Q When you say this recliner released, was it in a
4 box?

5 A Yes.

6 Q Okay. All right. This particular recliner, how
7 much did it weight, do you recall?

8 A I don't remember.

9 Q Do you have any idea?

10 A Probably 100 pounds, 150 pounds.

11 Q When you were delivering -- or let's go back just
12 to the day of this incident. You were delivering
13 furniture to Lawson's Furniture in Aiken. The
14 process of you loading or unloading furniture, tell
15 me what that involves. How do you go about doing
16 that?

17 A I only unload it. Most of the time I pull
18 everything off and slide it to the back of the
19 truck. If there's workers there, I don't -- once
20 it gets to the back of the truck, I don't touch it
21 again. They pull it off. If nobody's there, I
22 usually pull it off.

23 Q And what type of objects are we talking about?

24 A Recliners and sofas.

25 Q And these can weigh anywhere, you said, from 100 to

1 150 pounds?

2 A The recliners.

3 Q How about the sofas, how much do they weigh?

4 A They can weigh anywhere from 150 to 250.

5 Q Pulling these recliners and sofas, is it something
6 that requires you to use both your left and your
7 right arm?

8 A Yes.

9 Q After your accident occurred, did you speak to
10 anyone at Watkins & Shepard about what had happened
11 to you?

12 A Yes.

13 Q Who did you speak with?

14 A Rodney Stephens.

15 Q How did you get in touch with Mr. Stephens?

16 A Called him.

17 Q Did you call him the day the accident occurred?

18 A No.

19 Q When did you speak with him?

20 A The following day, in the morning.

21 Q What did you tell him?

22 A I told him that I had a recliner that straightened
23 -- fell and straightened my arm out. I thought it
24 was something that I could ice up and get over.

25 When I woke up this morning, I could not move my

1 arm.

2 Q What did he say?

3 A He told me to go to an Urgent Care.

4 Q Did you speak with anyone else the day after your

5 accident besides Mr. Stephens?

6 A No.

7 Q Did you ever have any conversations with Ms. Lewis,

8 Char Lewis, about your accident?

9 A The following -- the following day. I believe it

10 was the 3rd.

11 Q What did you tell Ms. Lewis?

12 A She actually told me to go back to Urgent Care.

13 Q You told Ms. Lewis about what happened to you as

14 well?

15 A Yes.

16 Q Did you ever have to fill out any documents,

17 paperwork or report, about what occurred to you or

18 was that filled out by someone else or do you know?

19 A I filled it out.

20 Q And did you send that to who?

21 A I believe it went to Char Lewis.

22 Q How did you send it to her?

23 A Fax.

24 Q Did you have any conversations with Ms. Lewis about

25 your accident after you sent her your report? Did

1 you have any further discussions with her about it?

2 A Not that I recall.

3 Q So both she and Mr. Stephens told you to go to an
4 Urgent Care?

5 A Yes.

6 Q And did you do so?

7 A Yes. When I went to an Urgent Care in Lexington,
8 they told me I needed to go to the emergency room.

9 Q And that was over at Lexington Medical Center?

10 A Yes. Well, because they told me it was -- to go to
11 Lexington Medical Center because it was like a nine
12 hour wait and to go over to the emergency room and
13 they'd see me faster.

14 Q Okay. When you got to the emergency room, what
15 type of problems were you having with your arm at
16 that time?

17 A Extreme pain, unable to move my arm.

18 Q Did you tell your physicians about your accident?

19 A Yes.

20 Q What type of medical treatment did they provide to
21 you, if any?

22 A X-ray and put me in a sling.

23 Q How many times were you seen over at Lexington
24 Medical Center?

25 A I believe once.

1 Q Did they refer you to someone else?

2 A No. They -- Char Lewis referred me to go back to
3 Urgent Care.

4 Q Did you go to Urgent Care?

5 A Yes.

6 Q And where were they at? Was that in Lexington as
7 well?

8 A Yeah. They're Lexington on -- they're a medical
9 center too, but I believe they're an Urgent Care.
10 I believe they're affiliated but --

11 Q Were they in the hospital or near the hospital or -
12 -

13 A No.

14 Q They weren't? Okay. All right. How many times
15 were you seen at Urgent Care?

16 A Once.

17 Q What type of medical treatment did they provide to
18 you?

19 A X-ray and a sling.

20 Q Did Urgent Care refer you to a doctor?

21 A Yes.

22 Q Who did they refer you to?

23 A Dr. McIntosh, Lexington Orthopaedics.

24 Q And I have a copy of his records, Mr. Osmanski, so
25 I -- I don't expect you to remember the specifics,

1 but we can talk about them. Looking at his
2 records, it looks like he saw you for the first
3 time on or about November 5th or 6th. Does that
4 sound about right to you?

5 A Uh-huh.

6 Q I just need you to say yes for me.

7 A Yes.

8 Q Did you tell Dr. McIntosh about your accident?

9 A Yes.

10 Q Did you tell Dr. McIntosh about the prior medical
11 treatment you had received for your elbow?

12 A Yes.

13 Q What type of complaints did you provide to him?

14 A Extreme pain and unable to move my arm.

15 Q And what type of medical treatment did he provide
16 to you?

17 A X-rays, a sling and pain medication. A better
18 sling.

19 Q Did the medication help at all? Did your pain
20 improve with the medication?

21 A Somewhat.

22 Q Looking at his records, Mr. Osmanski, it looks like
23 he saw you three times. Does that sound about
24 right to you?

25 A Yes.

1 Q And the last visit would have been in December? It
2 looks like December 15th of 2008. Does that sound
3 correct to you?

4 A Yes.

5 Q How was your arm, your elbow, doing in December
6 when you last saw him?

7 A There was no change.

8 Q So had your problems gotten worse or had they
9 gotten better or they were just like they had
10 always been?

11 A They were the same, yes.

12 Q What type of treatment did he provide you during
13 this most recent visit?

14 A He didn't want to treat me that day.

15 Q Any particular reason why?

16 A They did not have the medical records from the
17 previous doctor, from --

18 Q Dr. C?

19 A Yes.

20 Q All right. And he wanted to see those?

21 A Yes.

22 Q So during that last visit, did he give you any more
23 medicine or do any more x-rays or --

24 A No x-rays. More pain medicine and he referred me
25 to go back to Dr. C.

- 1 Q Who was the next doctor that you saw after this
- 2 visit with Dr. McIntosh on December 15th?
- 3 A Dr. Bethea, I believe it was.
- 4 Q He's here in Columbia?
- 5 A Yes.
- 6 Q How many times have you seen Dr. Bethea?
- 7 A Once.
- 8 Q The records indicate that he saw you on December
- 9 23rd. Does that sound about right?
- 10 A Yes.
- 11 Q And what type of complaints did you provide to him?
- 12 A Extreme pain, unable to move my arm.
- 13 Q Dr. Bethea just saw you once, correct?
- 14 A Yes.
- 15 Q And did he provide you with any treatment at all?
- 16 A He referred me to Dr. Chidgey.
- 17 Q Did he give you any medications?
- 18 A Yes.
- 19 Q Did he do anything else for you at his office
- 20 besides give you medicine?
- 21 A No. X-ray.
- 22 Q So both he and Dr. McIntosh provided you with x-
- 23 rays?
- 24 A Yes.
- 25 Q Do you know if they determined that you suffered

- 1 any type of fracture to your arm? Do you know what
2 the x-rays revealed, I guess is my question.
- 3 A They determined they didn't know what was wrong.
- 4 Q So they referred you back to Dr. C?
- 5 A Yes.
- 6 Q And did you go down and see him in Gainesville?
- 7 A Yes.
- 8 Q His notes reflect that he saw you on December 12th
9 -- I'm sorry. January 12, 2009. Does that sound
10 about right to you?
- 11 A Yes.
- 12 Q What type of complaints did you provide to him
13 during this examination on January 12th?
- 14 A Extreme pain and unable to move my arm.
- 15 Q Did you tell him about your work accident?
- 16 A Yes.
- 17 Q What exactly did you tell him?
- 18 A I hyper -- it felt like I hyper-extended my elbow.
- 19 Q Did he provide you with any treatment?
- 20 A X-rays, pain meds and he put me in this brace.
- 21 Q The one you're wearing here today?
- 22 A Yes.
- 23 Q Is the brace you're wearing today similar to any
24 that you wore after your 1987 accident?
- 25 A Yes.

1 Q How many times have you seen Dr. C since your
2 accident in November?

3 A Three.

4 Q When was your last visit with him? Today, again,
5 is March --

6 A February 23rd.

7 Q Okay. What type of complaints did you provide to
8 him at that time?

9 A The same. Extreme pain and unable to move my arm.

10 Q What type of treatment did he provide to you?

11 A New x-rays, pain meds.

12 Q Do you have a follow up visit scheduled with him?

13 A Yes.

14 Q When is it scheduled?

15 A March 23rd.

16 Q Does he have any idea -- or what is your
17 understanding of your problem?

18 A The new x-rays revealed a crack in the upper bone.
19 He feels that, in turn, cracked the cement that
20 holds the implant in.

21 Q I know that your claim with Watkins & Shepard has
22 been denied. Who's paying for your medical
23 treatment or your visits with Dr. C? Do you have
24 insurance that's paying for that or how is it being
25 paid, do you know?

1 A I'm probably going to have to pay for it.

2 Q And, again, you're supposed to see him again on
3 March 23rd?

4 A Yes.

5 Q All right. During your last visit with him on
6 February 23rd, did he address your work status at
7 all, whether you're able to work?

8 A Yes.

9 Q What type of work restrictions has he provided to
10 you?

11 A No use of left arm.

12 Q Are you left-handed or right-handed?

13 A Right-handed.

14 Q Okay. Mr. Osmanski, let me go over the doctors
15 that you've seen since your November 2008 accident
16 to make sure that I've covered every one. I
17 believe you told me you've been to Lexington
18 Medical Center and to Urgent Care, which is
19 affiliated with that hospital; is that correct?

20 A Yes.

21 Q I believe you told me you've seen Dr. McIntosh; is
22 that correct?

23 A Yes.

24 Q And you've told me you've seen Dr. Bethea; is that
25 correct?

1 A Yes.

2 Q And you told me that you've seen Dr. C down at
3 University of Florida; is that correct?

4 A Yes.

5 Q Have you seen any other physicians for your work-
6 related injury since November '08 besides the ones
7 that we've talked about?

8 A No.

9 Q All right. Has Ms. Amick sent you to a doctor?

10 A No.

11 Q All right. To your knowledge, do you have any
12 visits with a physician that she has scheduled for
13 you?

14 A No.

15 Q Do you have a family physician here in South
16 Carolina?

17 A Yes.

18 Q All right. Who is your family doctor?

19 A Lexington Family Medical Center.

20 Q Is that Dr. Fisher?

21 A Yes.

22 Q I believe he's at Lexington Family Practice. Does
23 that sound right?

24 A Yes.

25 Q Has he provided you with any treatment at all for

1 the injuries that you suffered in your accident?

2 A No.

3 Q Have you seen him since the accident occurred?

4 A No.

5 Q And, again, you haven't seen him since your

6 November 1, '08 accident?

7 A No.

8 Q Is Dr. Fisher treating you for any type of medical

9 problem or health condition like high blood

10 pressure, diabetes, cholesterol, anything like

11 that?

12 A No.

13 Q Okay. Are you taking any medicines right now that

14 he's prescribed to you?

15 A No.

16 Q Okay. Dr. C gave you some medication for your

17 elbow; is that correct?

18 A Yes.

19 Q And are you taking that now?

20 A Yes.

21 Q Okay. Mr. Osmanski, since your November 1, 2008

22 accident, have you had any type of surgery at all?

23 A No.

24 Q Have you been hospitalized for any reason since

25 that time?

1 A No.

2 Q Okay. And before this accident occurred -- we
3 mentioned this earlier -- you had multiple
4 surgeries following your 1987 work-related fall; is
5 that correct?

6 A Yes.

7 Q And I've gone through your medical records. I want
8 to make sure that I've got all these surgeries
9 covered just so I'm clear on what you've had. If I
10 leave anything out, let me know, okay? The first
11 record -- and, again, these aren't in chronological
12 order. I just kind of went through your records to
13 try and get them all together. But I'm going to
14 make sure I'm clear. September 14, 2000, it
15 appears you had a left elbow arthroplasty or
16 basically an elbow replacement. Does that sound
17 correct to you?

18 A Yes.

19 Q November 1, 2001, it appears you have a left ulnar
20 nerve transposition. They did another surgery on
21 your elbow in November of 2001. Does that sound
22 correct to you?

23 A Yes.

24 Q February of 2000, it appears that you have a left
25 shoulder -- some type of left shoulder surgery.

1 Does that sound correct to you?

2 A Yes.

3 Q November of 1999, you had something that was called
4 an open reduction and internal fixation of the left
5 elbow. Does that sound correct to you?

6 A Yes.

7 Q December 2000. I'm sorry. Let me rephrase that.
8 August 23, 1988, fusion of your ulna joint. Does
9 that sound correct?

10 A Yes.

11 Q Any other surgeries? That would be one, two,
12 three, four, five, six. Any other surgeries that
13 you can recall that I've left out?

14 A Not that I recall.

15 Q Mr. Osmanski, have you worked anywhere at all since
16 November 1, 2008?

17 A No.

18 Q Do you think you can go back to work for Watkins &
19 Shepard right now?

20 A No.

21 Q Why not?

22 A I'm unable to drive the truck.

23 Q Operating a truck requires both your hands, both
24 arms?

25 A Yes.

1 Q Is it a manual transmission?

2 A Yes.

3 Q Okay. All right. Have you sought work anywhere,
4 looked for work, since you last worked for Watkins
5 & Shepard?

6 A No.

7 Q You haven't applied for work, filled out any
8 applications, contacted any employers?

9 A No.

10 Q Any particular reason why not?

11 A I'm unable to move my arm.

12 Q Earlier we talked about a letter that you got from
13 Watkins & Shepard that caused you -- led you to
14 call Mr. Stephens. And you termed it a voluntary
15 termination. Is that what you said?

16 A That's what the letter states.

17 Q Tell me -- I mean, were you terminated by Watkins &
18 Shepard in this letter?

19 A Yes.

20 Q Okay. And you received that letter when?

21 A The 24th was a Friday. I believe I received it
22 that Monday, the following Monday. So the 27th I
23 received that letter.

24 Q And that would be the 27th of what month?

25 A January.

1 Q January. Did the letter say why you were being
2 terminated?

3 A Misrepresented -- misrepresentation of my abilities
4 to perform my job duties.

5 Q Did it go into any specifics at all about the
6 misrepresentation?

7 A No.

8 Q Do you know what they would have been talking
9 about?

10 A No.

11 Q Did you ask Mr. Stephens for an explanation when
12 you talked to him?

13 A Yes.

14 Q What explanation did he give you, if any?

15 A He didn't. He didn't know.

16 Q During the application process for your job with
17 Watkins & Shepard, did you ever misrepresent your
18 ability or your physical abilities to perform your
19 job?

20 A No.

21 Q Were you ever questioned by Watkins & Shepard
22 during the application process about any previous
23 impairment or injuries you may have had that would
24 prevent you from doing your job?

25 A No.

1 Q During the application process or during the entire
2 period that you worked for Watkins & Shepard, were
3 you ever questioned by them about whether or not
4 you had a prior work-related injury or workers'
5 comp claim?

6 A No.

7 Q Never once?

8 A No.

9 Q I asked you a moment ago about whether Dr. Fisher
10 was treating for any kind of medical problem or
11 health condition and you said no; is that correct?

12 A Yes.

13 Q Do you have any physician treating you for any
14 medical problem or health condition right now?

15 A No.

16 Q Okay. Mr. Osmanski, I've got a few more questions
17 for you and then we should be finished. I
18 appreciate your time and your patience and thank
19 you for answering all my questions this morning.
20 Let's talk about your arm, specifically your left
21 arm. What type of problems are you having with it
22 currently?

23 A Extreme pain, unable to move it.

24 Q And where are you having pain?

25 A Elbow, upper bicep, fingers.

1 Q On a scale of one to ten, if zero is no pain and
2 ten is the most excruciating pain you've ever
3 experienced in your life, how would you rate your
4 pain currently?

5 A Nine.

6 Q Is that with medication or without medication?

7 A With.

8 Q You told me earlier you're taking medication right
9 now that's been prescribed to you by Dr. C.

10 A Yes.

11 Q How frequently do you take it?

12 A Two every six hours.

13 Q So four times a day?

14 A Four times a day.

15 Q Other than taking the prescription medication, do
16 you take any over-the-counter medicines?

17 A No.

18 Q And you're wearing the sling that he gave you; is
19 that correct?

20 A Yes.

21 Q Other than taking your prescription medications and
22 wearing your sling, do you do anything else to try
23 and alleviate your arm or elbow pain?

24 A When I'm laying down in bed, I try to raise it up
25 above my heart level.

1 Q Do you have some type of device that allows you to
2 do that or --

3 A Pillows.

4 Q How has your elbow and your arm pain affected your
5 ability to dress yourself or take showers? How has
6 it impacted that?

7 A My wife helps me do it all.

8 Q Now, you're right-handed, so do you eat and write
9 with your right hand?

10 A Yes.

11 Q Do you shave and brush your teeth with your right
12 hand?

13 A Yes.

14 Q Are you able to raise your arm above your shoulder
15 level?

16 A Sometimes.

17 Q As far as your elbow is concerned right now, do you
18 have swelling or discoloration of the elbow?

19 A Swelling.

20 Q Do you have swelling anywhere else besides your
21 elbow?

22 A Forearm.

23 Q Mr. Osmanski, take me through a typical day, if you
24 would. What do you do when you wake up in the
25 morning? What time do you normally get up?

1 A Six thirty a.m.

2 Q What do you do when you wake up in the morning?

3 A Help the kids with breakfast.

4 Q What do you do next?

5 A My wife comes in and helps me get dressed.

6 Q Okay.

7 A Brush my teeth. Usually take the kids to school.

8 Q So you drive your children to school?

9 A Yes.

10 Q How far of a drive is that from your home?

11 A Two miles.

12 Q What do you do when you return from taking your
13 children to school?

14 A Pretty much nothing.

15 Q Do you do anything around the home to assist your
16 wife or your children, like housework of any sort?

17 A No.

18 Q You are able to drive an automobile, though, at
19 least the automobile that you take your kids to
20 school in?

21 A Yes.

22 Q Mr. Osmanski, let me look over my notes. I think
23 I'm through for the most part. You mentioned that
24 Dr. Fisher over at Lexington Family Practice was
25 your family doctor. Would you have gone to him at

1 any point in time for a DOT physical?

2 A Yes. I did a DOT physical there.

3 Q This would have been a DOT physical that you would
4 have needed to stay employed with Watkins?

5 A Yes.

6 Q To keep up your CDL?

7 A Yes.

8 MR. LOCKHART: Okay. All right. Mr.

9 Osmanski, those are all the questions I have.

10 I appreciate your time and thank you for
11 answering all my questions today.

12 MS. AMICK: No questions.

13 (Whereupon, at 11:13 a.m., the deposition in
14 the above-entitled matter was concluded.)

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State of South Carolina)
) Certificate
County of Lexington)

Be it known that I took the foregoing
deposition of Joe A. Osmanski;

That I was then and there a notary public in
and for the State of South Carolina-at-large;

That by virtue thereof I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 52 typewritten
pages represents a true, accurate and complete
transcription of the testimony so given at the time and
place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

Witness my hand and seal this 15th day of
March, 2009.

Cheri B. Williams, CVR

Notary public for South Carolina
My commission expires May 11, 2015.

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1 BEFORE THE SOUTH CAROLINA
2 WORKERS' COMPENSATION COMMISSION
3 WCC NO. 0818219
4

5 JOE OSMANSKI,
6 Employee,

7 vs.

8 WATKINS SHEPARD TRUCKING,
9 Employer,

10 and

11 ZURICH AMERICAN INSURANCE COMPANY,
12 Insurer.

COPY

13
14
15
16 TELEPHONE
17 DEPOSITION OF: RODNEY STEPHENS

18 DATE: March 10, 2009

19 TIME: 9:35 a.m.

20 LOCATION: Law Offices of George Sink, P.A.
 240 Stoneridge Drive, Ste. 402
 Columbia, SC

21 TAKEN BY: Counsel for the Employee

22 REPORTED BY: Marie A. Boyce, C.C.R.
23
24
25

MARIE A. BOYCE, C.C.R.
(803) 603-2211

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MARIE A. BOYCE, C.C.R.
(803) 603-2211

1	I N D E X	
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1 (The witness, after having been advised of his right to
2 read and sign this transcript, waives that right.)

3 RODNEY STEPHENS

4 Being first duly sworn, testified as follows:

5 EXAMINATION

6 BY MRS. AMICK:

7 Q. Okay. And, Mr. Stephens, again, my name is
8 Paula Amick, and I represent Joe Osmanski in his workers'
9 compensation claim, and I'm just -- I'm going to ask you a
10 few questions about that claim and about this employment with
11 Watkins and Shepard Trucking?

12 A. Okay.

13 Q. I appreciate you making yourself available this
14 morning. I'm asking you questions, obviously, in your
15 capacity as a representative of Watkins and Shepard Trucking.

16 A. Okay.

17 Q. Okay?

18 A. Okay.

19 Q. Do you have Mr. Osmanski's personnel records
20 with you?

21 A. No.

22 Q. Do you have any documentation with you?

23 A. I've got -- I've got a copy of the application.
24 Most of that paperwork gets sent to our corporate office --

25 Q. Okay.

MARIE A. BOYCE, C.C.R.
(803) 603-2211

1 A. -- to human resources.

2 Q. And that's in Montana?

3 A. That's correct.

4 Q. And if, during the course of this deposition,
5 you can't answer any of my questions or you feel that there
6 is someone else in the company that has that information
7 would be better able to answer it, just let me know that.
8 Okay?

9 A. Okay.

10 Q. And, if you could, state your full name for the
11 record.

12 A. Rodney Scott Stevens.

13 Q. Okay. And is the spelling of your last name
14 with a V?

15 A. No, it's a P-H.

16 MR. LOCKHART: Oh.

17 BY MRS. AMICK:

18 Q. P-H, okay.

19 And where are you presently?

20 A. Sitting in my car at the terminal.

21 Q. Okay. And you work for Watkins and Shepard
22 Trucking?

23 A. That's correct.

24 Q. And what office are you located in?

25 A. I'm in the Hickory, North Carolina, terminal.

1 Q. Okay. Is there anyone else present with you?

2 A. No.

3 Q. What is your job title?

4 A. Terminal manager.

5 Q. And, are you the -- were you at all times the
6 supervisor to Joe Osmanski?

7 A. Yes.

8 Q. And how much did Mr. Osmanski earn?

9 A. I don't really keep up with that. He was on --
10 he was paid based on a weekly salary. The exact amount, I
11 cannot give you right now. I don't -- that is turned over to
12 the payroll --

13 Q. Okay. And is it a straight salary or is it
14 dependent upon what deliveries he makes and what work he
15 does?

16 A. That's dependent upon working five days a week.

17 Q. Is he still employed with your company?

18 A. I can't answer that. I don't -- I do not know.

19 Q. Okay. What is or was Mr. Osmanski's job title?

20 A. Delivery driver.

21 Q. What were his duties?

22 A. Delivering furniture to our customers, to retail
23 establishments.

24 Q. Okay. And, does he also do loading and
25 unloading of trucks?

1 A. Yes.

2 Q. So, does that require -- okay.

3 A. He does unloading. We do the loading at the

4 terminal.

5 Q. Okay.

6 A. And he does the unloading to the retail

7 customers.

8 Q. What sort of lifting requirements are there in

9 that position, then?

10 A. Must be able to lift strenuous freight. You

11 have to take the product -- I'm not sure if you're familiar

12 with it, with a tractor-trailer, which is a 53-foot trailer.

13 It must come off the trailer onto the ground and what I call

14 a hand truck, you may call it a two-wheel dolly, must be

15 rolled into the customer's location.

16 Q. Okay. What sort of weight would you anticipate

17 drivers having to lift?

18 A. Well, there's well over a hundred pounds.

19 You're delivering love seats, sofas, chairs, recliners,

20 bedroom furniture, which would be headboards, footboards,

21 dressers, mirrors, chests, armoires.

22 Q. Okay. Do you currently have any position with

23 your company where Mr. Osmanski -- that Mr. Osmanski would be

24 qualified to perform where he was -- without using his left

25 arm in any capacity?

1 A. I can't really answer that. That would be a
2 Montana question.

3 Q. When was Mr. Osmanski initially hired by your
4 company?

5 A. I don't keep up with the exact dates, but he was
6 -- he worked for us somewhere around the two-year mark.

7 Q. Okay. And if I have a medical examination
8 report and a post job offer questionnaire provided by your
9 company in response to a subpoena that's all dated October
10 30th of 2006, would you agree that that's most likely the
11 date of hire?

12 A. I would say it would be within a day or two,
13 yes.

14 Q. Okay. Did he work continuously with your
15 company from the date he was hired until the date he was
16 injured?

17 A. Yes.

18 Q. How was his job performance?

19 A. Joe, he basically delivered his freight on time,
20 he -- he basically -- there was a couple days when he had
21 called in that something come up during the night with a
22 family member, child, that he was not able to run that day,
23 but he did work, you know, pretty much any given day.

24 Q. Okay. So, the only issue that you recall was,
25 perhaps, an attendance issue?

1 A. Well, he did come up with, actually, a sick
2 child or a child, you know, had to go to a doctor or
3 something. I know one his child's was jumping on a
4 trampoline and broke a hip or something, and he had to take a
5 couple days off under a load due to that.

6 Q. Okay.

7 A. He was scheduled to work, but then this issue
8 came up, and he had to -- he couldn't work.

9 Q. Okay. Was he ever reprimanded?

10 A. He was written up one time for delivering
11 freight wrong -- to the wrong location.

12 Q. Okay. Any other reprimands or write-ups?

13 A. No.

14 Q. Okay.

15 A. Not that I could recall.

16 Q. Did he have any performance reviews?

17 A. No.

18 Q. Okay. I believe you said he was prompt with his
19 deliveries.

20 A. Yes, he made his deliveries with no problem that
21 I'm aware of.

22 Q. Did you ever receive any complaints about him
23 from any of your customers or vendors?

24 A. I can't recall.

25 Q. So, is that none that you can recall?

1 A. None that I can recall.

2 Q. All right. Prior to his injuries, was there any
3 question about his ability to perform his job?

4 A. No.

5 Q. All right. What, if anything, do you know about
6 Mr. Osmanski's injury?

7 A. Basically, the only thing I'm aware of is the --
8 he got injured on a Saturday, and he called me on a Sunday
9 afternoon and reported the injury to me. And I attempted to
10 get ahold of my work comp manager on a Sunday afternoon, was
11 unsuccessful. I called the safety director and spoken with
12 him and was speaking to him, we both agreed to send him to an
13 Urgent Care to be looked at.

14 Q. Who is the safety director?

15 A. His name is Macon Turner.

16 Q. Okay. And, just to be clear, it happened on a
17 Saturday, and he called you on a Sunday afternoon? That was
18 the very next day?

19 A. That's correct.

20 Q. Do you have any reason to doubt Mr. Osmanski's
21 description of what happened?

22 A. No, I don't have no doubt on that.

23 Q. Okay.

24 A. The way he explained it seems to be very, you
25 know -- the way it could have happened.

1 Q. Okay. Do you have any information or have you
2 heard anything whatsoever that would cause you to question
3 the injury itself or how it happened?

4 A. No, other than just probably being in too big of
5 a hurry.

6 Q. Okay. Did Mr. Osmanski return to work after
7 this injury?

8 A. No, he hasn't.

9 Q. Prior to this injury, did Mr. Osmanski have any
10 other work-related injuries or accidents while working for
11 Watkins and Shepard Trucking?

12 A. Not employed with Watkins Shepard, no.

13 Q. What is your understanding of why this claim was
14 denied?

15 A. I have no way to answer that.

16 Q. Okay.

17 A. That is a workmen's comp manager handled that.

18 Q. Okay. Did Mr. Osmanski undergo a physical
19 examination before he was hired by Watkins and Shepard
20 Trucking?

21 A. Per DOT regulations, you do have to have a DOT
22 physical prior to employment, a current DOT physical.

23 Q. Okay. Did your company arrange for a DOT
24 physical of Mr. Osmanski in North Carolina?

25 A. Yes.

1 Q. Did he pass that physical?

2 A. Yes.

3 Q. What is your understanding of what goes on in a
4 DOT physical examination?

5 A. Just from what I've been through before, you
6 know, it's -- it's -- it's certain protocol that the doctor
7 must follow on a DOT physical, hearing, eyes -- you know,
8 just general stuff to be qualified.

9 Q. Okay. Does he also examine the extremities of
10 drivers?

11 A. They -- on a DOT physical, you have a little
12 section there if you've ever had any prior surgeries, if you
13 had any kind of disease, heart disease, anything like that
14 that you must check off before the physical exam.

15 Q. Okay. And, have you seen Mr. Osmanski's DOT
16 physical paperwork?

17 A. When it was completed, yes, which that's given
18 to the human resources department.

19 Q. Okay. And, do you recall if there was a yes
20 checked regarding the extremities and --

21 A. I do not. I do not recall.

22 Q. Do you recall what date he underwent that
23 physical?

24 A. I do not.

25 Q. If the paperwork was dated October 30th of 2006,

1 would that be accurate? Would that be about the time?

2 A. That would be within the time frame.

3 Q. Okay. And was that, again, performed in
4 Hickory, North Carolina?

5 A. From my knowledge, yes.

6 Q. Okay. Did Mr. Osmanski come up to North
7 Carolina to complete the paperwork and take the physical?

8 A. Yes.

9 Q. Is that typical? Do you bring drivers up to
10 your office or your terminal there in Hickory?

11 A. That is correct.

12 Q. Okay. And that would be prospective employees
13 would come up there before they were actually hired?

14 A. Correct.

15 Q. What happened at that point that they come up to
16 your office?

17 A. Well, prior to that, they must fill out the
18 application. Once the application is filled out, we turn
19 that over to what we call the recruiting department. They
20 process the application, as far as checking work history. By
21 DOT regulations you have to check your work history,
22 basically, you have to fax off to previous employers, drug
23 and alcohol information and stuff like that, and you have to
24 get that back on paper. Once all that is completed, then --
25 then they look at it and say he has basically completed that,

1 and the work history matches. You have to show ten-year
2 history on an application as a driver.

3 Q. Okay.

4 A. And once that is complete, then they make --
5 then they say, Joe is able to come to work per -- you know,
6 as long as the DOT physical and drug screen and lift test
7 come through.

8 Q. Okay. So, he's a prospective employee at that
9 point, and he's invited to come up to Hickory, North
10 Carolina; is that correct?

11 A. Yeah, he comes to Hickory, North Carolina, to do
12 the DOT physical, drug screen and lift test, agility test.

13 Q. Okay. Tell me about that lift test.

14 A. It's a series of things that they do. I can't
15 tell you exactly what they do. I just know that they make
16 them lift, and certain times they lift 25 pounds, 50 pounds,
17 and 100 pounds, and it's repetitive motion. They have to put
18 it up on a shelf three or four times, they have to push a
19 pallet jack back and forth. It's just a series of tests that
20 they have to perform in a certain amount of time.

21 Q. And, just to be clear, this is separate from the
22 DOT physical, correct?

23 A. That is correct.

24 Q. And is that lift test administered by Watkins
25 and Shepard employees?

1 A. No, it's actually through a third party. It's,
2 like, through a hospital or rehabilitation unit where they do
3 the testing.

4 Q. Okay. And, I assume, Mr. Osmanski passed that
5 lift test?

6 A. Correct.

7 Q. Okay. Did he meet with you when he went up to
8 Hickory, North Carolina?

9 A. Yes.

10 Q. Was he there for more than one day or is it all
11 just done in one time?

12 A. It's probably -- depends. It's really about a
13 two to three-day process.

14 Q. Okay.

15 A. Number one is you have to take a drug screen,
16 and the drug screen does not come back normally the next day.
17 It's usually, like, a day and a half afterwards the drug
18 screen comes back.

19 Q. Do prospective employees when they're there for
20 that two or three-day process, do they fill out paperwork?

21 A. Basically, yes, tax information.

22 Q. What else?

23 A. It's a -- I really can't tell you every little
24 detail in it, but I know that we fill out paperwork,
25 insurance when their 90 days are up, any information to

1 pertain to that type environment.

2 Q. Okay. Do you also ask them to complete a post
3 job offer questionnaire asking about prior injuries or
4 illnesses?

5 A. Actually, that is done with the Montana office.

6 Q. Okay. So, you don't have those forms in your
7 office?

8 A. No. That is done, to my understanding, via
9 Missoula. They fax the paperwork in. It's been so long
10 since I hired a driver, I can't really recall. Montana is
11 involved with that, the human resources part of it.

12 Q. So, if this form says, Please fax this
13 immediately to Debbie Houle or Janice Peterson in the
14 Missoula safety department, doesn't that suggest it's filled
15 out elsewhere and faxed to the Montana office?

16 A. It could have been faxed from here, yes, if --
17 once it's completed. I just can't recall what was in -- you
18 know, what paperwork is all there.

19 Q. Typically, is the post job offer questionnaire
20 completed and signed by the applicant and then faxed to
21 Montana?

22 A. I think it's done -- I can't recall, really.
23 It's been so long, I can't recall.

24 Q. And it has a place there for a signature.
25 My signature below certifies that this

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1 questionnaire is true and complete to the best of my
2 knowledge.

3 Does that not suggest that it's intended to be
4 signed by the applicant?

5 A. I can't recall. It's been so long since I've
6 looked at this paperwork and processed a driver.

7 Q. Okay.

8 A. I can't recall.

9 Q. All right. Do you have any direct knowledge of
10 Debbie Houle conducting a phone interview of Joe Osmanski on
11 October 30th of 2006?

12 A. I know that it had to be done. I don't know
13 exactly the date and time.

14 Q. Okay. But, again, if his DOT physical was
15 October 30th of 2006 in Hickory, North Carolina, that's when
16 he was up at the Watkins and Shepard terminal in Hickory,
17 North Carolina; is that correct?

18 A. That would be the time frame, yes.

19 Q. But you're saying your office did not simply
20 have him complete and sign the form on that date?

21 A. That would be probably done -- that would have
22 to be done through the Montana office, but it was done at the
23 terminal here. They get together. They put them together on
24 the phone and deal with paperwork.

25 Q. Okay.

1 A. That's handled through them, too.

2 Q. Okay. So, again, you've got him on the phone in
3 your Hickory, North Carolina, terminal, but he's filling out
4 paperwork over the phone versus just filling it out right
5 there in front of Watkins and Shepard employees; is that what
6 you're telling me?

7 A. Well, he -- from my understanding, it's -- you
8 know, I don't recall the steps right off the top, but there
9 is basically -- I know that they talk on the phone to
10 complete things, but what they complete, I do not know what
11 those are.

12 MRS. AMICK: Okay. Nothing further.

13 EXAMINATION

14 BY MR. LOCKHART:

15 Q. Mr. Stephens, I just have a couple of questions
16 for you. It's Jason Lockhart. Can you hear me?

17 A. Yes, sir.

18 Q. Okay. During the period of time that
19 Mr. Osmanski worked for Watkins and Shepard, you were his
20 supervisor that entire time; is that correct?

21 A. That is correct.

22 Q. Okay. And you said he worked for you for about
23 two years. Does that sound about right?

24 A. That does sound in the time frame, yes.

25 Q. Okay. During the two years that he worked with

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1 you, did he ever inform you that he had suffered work-related
2 injuries as a result of a 1987 work-related accident that he
3 had in New Jersey?

4 A. No.

5 Q. Okay. During the two years that he worked for
6 you, did he ever inform you that he had undergone multiple
7 injuries on his left arm and left elbow as a result of his
8 1987 work-related accident?

9 A. No.

10 Q. All right. During the two years that he worked
11 under your supervision, did he ever inform you that he had
12 been given permanent lifting restrictions by a physician in
13 Florida, as it pertained to his left arm?

14 A. No.

15 Q. Okay. When he came to Hickory, North Carolina,
16 in October of 2006 to go through our application and
17 orientation process, do you have any knowledge that he
18 informed Watkins and Shepard he had been injured in 1987 and
19 suffered injuries to his left arm?

20 A. I have no knowledge of that.

21 Q. Okay. All right. Do you have any documentation
22 or personal knowledge that he ever informed Watkins and
23 Shepard that he injured his left arm in a 1987 work-related
24 accident and had lifting restrictions with regards to that
25 left arm as a result of the accident?

1 A. No.

2 MR. LOCKHART: All right. Thank you,
3 Mr. Stephens. Those are all the questions I have.

4 EXAMINATION

5 BY MRS. AMICK:

6 Q. Just briefly, Mr. Stephens, in follow-up to
7 that, on the paperwork on the DOT physical paperwork, that
8 would have been returned to Watkins and Shepard; is that
9 correct?

10 A. That is correct.

11 Q. And who --

12 A. They have --

13 Q. Okay. And who would have reviewed that?

14 A. I'm sorry. The human resources driver
15 recruiting department.

16 Q. All right. And if there was an indication of,
17 yes, with loss or impairment to a limb and a range of motion
18 issue with the left arm, would that have disqualified
19 Mr. Osmanski from working for Watkins and Shepard Trucking?

20 A. I can't answer that. I don't -- I don't know
21 that answer.

22 Q. All right. What is the -- if this form
23 indicates that he had a loss or impairment of a limb and a
24 range of motion issue with his left arm, would the company be
25 aware by receiving that form of those issues with

1 Mr. Osmanski?

2 A. I have no knowledge of that. I do know under
3 DOT requirements there is some issues with limbs under the
4 regulations, but I do not recall what that chapter is.

5 Q. What is your procedure when you have a driver
6 that indicates a loss or impairment of a limb? Do you
7 typically ask for the questions in that regard?

8 A. That would have been noted on the DOT physical
9 -- should have been noted on the DOT physical if anything
10 would have been noted on there.

11 Q. Okay. So, if you got the DOT physical and you
12 reviewed it and you've still hired Mr. Osmanski, you didn't
13 feel that was fatal to his ability to do the job, did you?

14 A. That would have been the recruiting department's
15 decision.

16 Q. But he was hired, was he not?

17 A. He was hired, yes.

18 Q. And he did work after October 30th of 2006?

19 A. That is correct.

20 Q. And did complete the lift test successfully?

21 A. He did. He did complete the lift test, yes.

22 Q. Okay. Did he ever specifically ask Mr. Osmanski
23 if he had ever had a prior workers' compensation injury?

24 A. No.

25 Q. Did you ever ask him if he had had a prior

1 surgery?

2 A. No.

3 Q. To your knowledge, did he ever say anything to
4 you that was misleading?

5 A. I would say no.

6 MRS. AMICK: All right. Nothing further.

7 MR. LOCKHART: Thank you, Mr. Stephens.

8 THE WITNESS: Thank you, Jason.

9 MRS. AMICK: All right. I'm going to end this
10 call now. Thank you, Mr. Stephens.

11 THE WITNESS: You're welcome.

12 (The deposition was concluded at 10:00 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, MARIE A. BOYCE, Certified Court Reporter, and
4 Notary Public for the State of South Carolina at Large, do
5 hereby certify that the foregoing transcript is a true,
6 accurate, and complete record.

7 I further certify that I am neither related to nor
8 counsel for any party to the cause pending or interested in
9 the events thereof.

10 Witness my hand, I have hereunto affixed my official
11 seal this 12th day of March, 2009, in Lexington, Lexington
12 County, South Carolina.

13

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Marie A. Boyce, C.C.R.

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 0818219

JOE OSMANSKI,

Employee/Claimant,

vs.

WATKINS SHEPARD TRUCKING,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Carrier,

Defendants.

30(b)(6)

TELEPHONIC

DEPOSITION OF: MATTHEW WILLIAM GRANDY

DATE: March 17, 2010

TIME: 3:09 PM

LOCATION: Law Offices of
Steinberg Law Firm
61 Broad Street
Charleston, SC

TAKEN BY: Counsel for the Claimant

REPORTED BY: Laura J. Bash, RPR

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 20 JESSE ELISON (via telephone)

21 (INDEX AT REAR OF TRANSCRIPT)

1 MATTHEW WILLIAM GRANDY,
 2 being first duly sworn, testified as follows:
 3 EXAMINATION
 4 BY MR. SMITH:
 5 Q. Please state your full name.
 6 A. Matthew William Grandy.
 7 Q. Mr. Grandy, my name is Kevin Smith, I'm
 8 a lawyer at the Steinberg Law Firm. We have been
 9 retained to represent a Mr. Joseph Osmanski with
 10 regards to an injury he suffered on the job.

11 The purpose for this deposition today
 12 is to take some testimony from you with regards to
 13 the hiring process at Watkins Shipping. Before we
 14 go forward, would you go ahead and just tell me
 15 what your job title at Watkins is?

16 A. My title is Director of Driver
 17 Recruiting and Training.

18 Q. And how long have you held that
 19 position?

20 A. I have held the position twice. From
 21 1989 until 1999; and then again, starting in
 22 January of 2008.

23 Q. All right. And go ahead and give me a
 24 general description of the position of director of
 25 driver recruiting and training.

1 A. Okay. Well, the job starts with
 2 getting interest in our company through advertising
 3 for open positions with our company. So I'm
 4 responsible for an advertising budget.
 5 Then, also responsible for conducting
 6 background and checks on people. We have a number
 7 of federal mandates through the Department of
 8 Transportation, things that we have to check on a
 9 driver. And ultimately, you know, following that
 10 driver applicant through the hiring process and
 11 into an orientation and then being hired.

12 Q. All right. Well, you know, like I said
 13 earlier, we have asked Watkins to name someone who
 14 could testify best about y'all's hiring process.
 15 Am I correct in assuming, by your presence and from
 16 that description you just gave me of that job, you
 17 are that person?

18 A. Yes.

19 Q. All right. Why don't we just go ahead.
 20 And again, in a general sense, if you can kind of
 21 give me a list of the steps that Watkins would
 22 take, or require an applicant to take, in the
 23 hiring process, assuming they have found out that
 24 y'all are looking for van drivers in one way or
 25 another. How would someone typically contact

1 Watkins? Would they contact a local office? Home
 2 office? How does that generally happen?

3 A. All hiring is done here at our
 4 corporate headquarters in Missoula, Montana.

5 Q. So you talked about running
 6 advertisements. What would we typically see in
 7 those advertisements?

8 A. Quite often it would be -- for example,
 9 in a trucking related magazine an advertisement
 10 that, you know, we have got open positions and
 11 we're seeking applicants.

12 Q. Okay. And then what sort of contact
 13 information would you list in that advertisement?

14 A. Would have the 800 number for the
 15 cooperate office here in Montana.

16 Q. And so who would answer that 800 line
 17 if someone were to call?

18 A. It would be either myself or one of my
 19 staff members.

20 Q. All right. And so let's assume
 21 Mr. Osmanski, or really anyone in particular back
 22 in 2006, would have called up and either would have
 23 gotten you or someone in your office. Assuming
 24 that he said I would like to work for you, what
 25 sort of information would be relayed at that point?

1 A. Over the phone, we would give general
2 information about the position, and then we would
3 have the individual fill out an application. And
4 the application is largely dictated by the federal
5 government, as far as the questions. And, in fact,
6 even the exact wording of the questions are laid
7 out in a series called the Federal Motor Carriers
8 Safety Regulations.

9 And so we would have the person fill
10 out the job application. Along with that job
11 application is a copy of the essential functions of
12 the job that the individual has to meet. And we
13 would conduct some screening. For example, we
14 would look at the person's motor vehicle record.
15 We look at the person's criminal record. By law
16 we're required to contact any former employers
17 within the last three years, if those employers are
18 regulated by the Department of Transportation.

19 And there are two things we need to
20 acquire from those former employers. One, is past
21 drug and alcohol test results; and the other is any
22 DOT reportable accidents that have occurred with a
23 DOT regulated employer.

24 Q. All right. Okay. So let's just stop
25 right there and go through a few specifics in that.

1 they would have had already at the Hickory
2 location?

3 A. It's very conceivable that they could
4 have had some there, yes.

5 Q. Okay. And if Mr. Osmanski says that he
6 went to the Hickory location and filled out the
7 application and other paperwork there, would there
8 be anything wrong that you know of with that
9 statement? Or is that entirely possible?

10 A. Yes, that's entirely possible.

11 Q. Okay. And I assume that the home
12 office in Missoula, they have the ability to fax
13 things, e-mail things, get whatever they need to
14 get to the Hickory office for applicants or
15 potential applicants to complete?

16 A. Yes.

17 Q. All right. And in/around 2006, did
18 Watkins change any of their particular hiring
19 processes? What I mean by that, did they add any
20 new forms, delete any old forms, update forms,
21 anything like that that you can recall?

22 A. Not to my knowledge.

23 Q. And so would you assume that whatever
24 the hiring process in 2006 was, that it was
25 probably that way for quite some time?

1 Assume when the person calls the 800 line, either
2 you or the person who answers the phone informs
3 them of what you have just told me about?

4 A. Yes.

5 Q. All right. And so how is the
6 application sent to the person? How is that
7 completed?

8 A. Probably, you know, in that day in age,
9 2006, probably would have mailed an application.
10 Although it's possible that they could have gone by
11 one of our locations and picked up an application.

12 Q. And where would be your -- where would
13 be your local office -- let me ask you this: How
14 many offices do you have in South Carolina?

15 A. We have none in South Carolina. We
16 have one in Hickory, North Carolina.

17 Q. Okay. And I think that's the local
18 office Mr. Osmanski was associated with?

19 A. Yes.

20 Q. All right.

21 A. It's very conceivable he could have
22 picked up an application there, but that
23 application would have been processed here at our
24 corporate office.

25 Q. Okay. Is the application something

1 A. Yes.

2 Q. All right. And has your hiring process
3 changed at all since 2006?

4 A. Not to my knowledge.

5 Q. All right. Okay. So after the
6 application is filled out, the driving record is
7 pulled, the criminal record is pulled, and any past
8 employers for the past three years that are
9 associated with the Department of Transportation
10 are questioned. Tell me, what's the next step in
11 the process.

12 A. Okay. If the application was processed
13 by one of my staff members, that application is
14 brought to me and I make the determination of
15 whether to extend a job offer to the person. And
16 at that point, we issue what we refer to as a
17 conditionable job offer. And a job offer is
18 conditional upon a number of things. Number one,
19 being the drug test which is mandated by the
20 Department of Transportation.

21 We also, at that point, go into a
22 post-job offer phase. The idea behind that is we
23 want our recruiting department to basically be
24 blind to a person's disabilities or perceived
25 disabilities. We want our recruiting department to

1 focus on people's abilities to do the job.
2 Q. Okay. So what goes on after that? The
3 drug test and the post-job offer.
4 A. After the recruiting department has
5 given a conditional job offer to the applicant,
6 their file is handed off to our safety department
7 who has a questionnaire that we call our post-job
8 offer questionnaire. And that questionnaire is
9 gone over with the applicant by our safety
10 department. And they are questions we do not want
11 our recruiting department to be asking the people.
12 And then upon completing that
13 questionnaire, the next step in the process would
14 be the Department of Transportation drug test. And
15 then we also have a lift test that we do.
16 Q. All right. Hold on just a second for
17 me. All right. So if I understand you correctly,
18 after all these things -- and it looks like really
19 the drug test would be the last step in that puzzle
20 before the post-offer questionnaire. And I think
21 you said all of that was handled by the recruiting
22 department, and then HR steps in and they make the
23 actual post-offer questionnaire?
24 A. It's actually our safety department.
25 Q. Okay. I'm sorry. And where is your

1 safety department, physically, in relationship to
2 the recruiting department?
3 A. It's on the -- in the same building but
4 a different floor.
5 Q. Okay. All right. And then what steps
6 does the safety department take after the post-job
7 offer questionnaire is filled out?
8 A. After the post-job offer questionnaire
9 is filled out, then the individual goes in for
10 their drug test and lift test. And at that point
11 there is also a DOT physical that was administered
12 at the same time.
13 Q. All right. With regards to the drug
14 test, where do y'all have that done? And let's
15 just put this in the context of Mr. Osmanski's case
16 given he's at your Hickory, North Carolina local
17 shop.
18 A. We have a number of drug testing
19 locations around the nation. You know, at each one
20 of our terminals we have got at least one place to
21 do drug tests, and quite a few of our terminals,
22 multiple places. So most likely Mr. -- I don't
23 have his file directly in front of me -- most
24 likely it would have been done at a clinic called
25 Cawtaba, which is part of a hospital that is real

1 near our terminal. But I can't state that that is,
2 in fact, where he did it without looking at his
3 file.
4 MR. SMITH: Jason, we're going to go
5 off the record for just a sec. Is that all right?
6 MR. LOCKHART: Okay.
7 (Off-the-record discussion.)
8 BY MR. SMITH:
9 Q. All right. Mr. Grandy, we're back on
10 the record. Sorry about that.
11 A. Okay.
12 Q. I want to touch -- well, let me ask you
13 this first. Let's just get through the process.
14 After the safety department takes over, the drug
15 test is completed, the lift test is completed, the
16 DOT physical is completed, are there any additional
17 steps in the hiring process before Mr. Osmanski
18 would officially start working for Watkins?
19 A. No.
20 Q. All right. Let's go through some of
21 these pieces. And it might not be in exact order
22 here so bear with me.
23 The recruiting department, they're the
24 ones that make the conditional offer of employment;
25 is that correct?

1 A. That's correct.
2 Q. All right. And you said that one of
3 the reasons why you don't have your recruiting
4 department complete this post-job offer
5 questionnaire is because you don't want them to
6 know about any disabilities that the applicant may
7 have?
8 A. That's true. We want the job offer to
9 be made irregardless of anyone's disabilities.
10 Q. Okay. Do you -- and I just want to get
11 to sort of the root of that. What affect would it
12 have if someone in the recruiting department was
13 made aware that an applicant had any sort of a
14 disability or prior injury? How would that affect
15 their process that they do?
16 A. As far as the recruiting department
17 goes, if someone made us aware of a disability, we
18 would go over with them what the essential
19 functions of the job are. But we would continue to
20 process the application and the conditional job
21 offers made irregardless of any disability.
22 Q. Okay. And so am I correct in assuming
23 your testimony here so far, that even if the
24 recruiting department were to have completed the
25 post-offer job questionnaire, and the applicant

1 would have checked any sort of disabilities or made
2 y'all aware of any disabilities after a discussion
3 of the essential functions of the job, that
4 wouldn't necessary affect the ability or the
5 decision to make an offer of employment at that
6 time? Is that fair to say?

7 A. I think you have got that a little bit
8 confused. Can you restate that.

9 Q. Sure. Once the conditional job offer
10 has been made -- if we assume for a moment that
11 before the conditional job offer was made, that the
12 applicant had actually completed this post-job
13 offer questionnaire and had made Watkins aware of
14 prior injuries, limitations, any number of things,
15 are you saying that after discussing the essential
16 functions of the job which the applicant is
17 applying for, and making those essential functions
18 known to that applicant, that the fact that the
19 person had any type of an injury or illness or
20 limitations in the movement of their extremities or
21 back or anything like that, that none of that would
22 necessarily affect the conditional offer of
23 employment that was made?

24 A. The way that you stated it, you had it
25 backwards. The conditional job offer is made by

1 made.

2 Q. Okay. All right.

3 A. I mean, I'm confused by your question
4 there.

5 Q. Let me just explain it to you. The
6 reason I'm asking is you had said before
7 that -- and I thought you had said before, so
8 correct me if I'm wrong -- that even if a person
9 indicates that on the post-job offer questionnaire,
10 even if they indicate they have had prior injuries
11 or limitations in the use of their body, that what
12 y'all do is y'all discuss with them the essential
13 function of the job.

14 And depending on that discussion, you
15 may still offer the person that job with or without
16 any sort of restrictions, impairment, or loss of
17 the use of, you know, essential body parts, as long
18 as they feel they can do the essential functions of
19 the job. Do you see where I'm going with that?

20 A. I do. But my recollection of your
21 previous question was if it was asked during -- if
22 the individual made the recruiting department known
23 during the recruiting phase that they had a
24 disability, what would be taken. And the answer I
25 gave you had to do with the pre-job offer phase.

1 the recruiting department and then after that is
2 the post-job offer questionnaire. Which is done by
3 the safety department.

4 Q. Okay. I guess what my question is, is
5 if the post-job offer questionnaire was presented,
6 let's just call it a pre-job offer questionnaire --
7 if that was presented before a conditional offer of
8 employment, are you saying that if the person had
9 indicated they had any prior injuries, illnesses or
10 limitations in the use of their body, that that
11 would not necessarily affect the decision to make a
12 conditional job offer?

13 A. That questionnaire would never be
14 presented to the individual before the conditional
15 job offer is made.

16 Q. But if it was, would that
17 questionnaire, if a positive answer was given about
18 prior injuries, limitations, things like that, if
19 that questionnaire was given to the applicant
20 before the conditional offer of employment was
21 made, would that affect the decision as to whether
22 or not to make that actual conditional job offer?

23 A. I'll just restate what I said before.
24 It's always been our policy to never do that
25 questionnaire before the conditional job offer is

1 And now you are asking about the post-job offer
2 phase. And they're two separate things. We would
3 handle the question differently if it was -- if the
4 question was asked before the conditional job offer
5 is made, and after the conditional job offer is
6 made. Our response would be different depending on
7 where that question was asked.

8 Q. Okay. All right. So y'all select a
9 place for the drug test to be done? And by
10 "y'all," I mean, the recruiting department at this
11 time.

12 A. Yes.

13 Q. All right. But then, that's actually
14 done after the safety department takes over the
15 hiring process at that point?

16 A. Yes. After the safety department gives
17 clearance to the recruiting department, the
18 recruiting department basically takes that
19 individual back over again and schedules the drug
20 test and the lift test.

21 Q. All right. And the DOT physical?

22 A. Yes.

23 Q. All right. And all of those, the drug
24 test, the lift test and DOT physical, are those all
25 done at locations selected by Watkins?

1 A. At that point in 2006, yes.
 2 Q. Okay. And the locations that you would
 3 choose for those particular things to be done, do
 4 y'all choose a new location each and every time, or
 5 would y'all go with the same places over and over
 6 again?
 7 A. Generally it would be the same place.
 8 Q. All right. Let's talk about
 9 the -- well, the drug test, first of all.
 10 Mr. Osmanski, do you have any information that he
 11 did anything other than pass that drug test?
 12 A. To my knowledge, he passed it. We
 13 wouldn't have hired him if he didn't.
 14 Q. Okay. Now when -- when you make
 15 the -- a post-job offer questionnaire, at that
 16 point all that's been made is a conditional offer
 17 of employment, correct?
 18 A. That's true.
 19 Q. All right. And so the only things that
 20 that job offer is conditional upon is the drug
 21 test, the lift test, and the DOT physical?
 22 A. Well, it would be those three things
 23 that you just mentioned. And then, you know, the
 24 other thing is -- you know, the purpose of that
 25 questionnaire is to ensure that the person can

1 that you have a copy of this in front of you. Do
 2 you?
 3 A. I don't. I have got it electronically.
 4 Let me pull it up.
 5 Q. All right.
 6 A. Just give me a second here. I have got
 7 to find it in my computer here.
 8 Q. Sure.
 9 A. Okay. I have got it sitting in front
 10 of me.
 11 Q. All right. So let's make sure we're
 12 both reviewing the exact same thing here. Top of
 13 the center of this form: Employee Screening/Human
 14 Performance Evaluation, Watkins and Shepard
 15 Trucking, Incorporated. And the last full sentence
 16 on that sheet reads: The above demands are based
 17 on the job analysis/job description provided by
 18 Watkins Shepard trucking, Inc.
 19 Is that what is on yours?
 20 A. Yes.
 21 Q. All right. At the very bottom in the
 22 center it just says: For more information,
 23 visit -- and it gives the website wksh.com.
 24 A. Yes.
 25 Q. And I had actually just gotten this not

1 fulfill the essential functions of our job.
 2 Q. Okay. And let's talk about the
 3 essential functions of your job. And I think we
 4 started talking about the lift test a little bit.
 5 Do you have a copy of the document -- I just got a
 6 blank one here -- that the evaluator fills out when
 7 they do the lift test?
 8 And I have just been calling it a lift
 9 test. I'm sorry. I think this is actually
 10 entitled: Employee Screening/Human Performance
 11 Evaluation, Watkins and Shepard trucking.
 12 A. Yes. And we refer to that as the HPE,
 13 for human performance evaluation.
 14 Q. All right. We have heard some other
 15 people in this case talk about a lift test from
 16 time to time. Do you know of any other specific
 17 tests that deal with lifting, or is it safe to
 18 assume the lift test is probably encompassed within
 19 the evaluation for this human performance
 20 evaluation?
 21 A. Yes. They're the same. The phrase
 22 "lift test and human performance evaluation," our
 23 HPE, both terms are interchangeable.
 24 Q. What I'm going to do right now,
 25 Mr. Watkins (sic) -- let me first of all confirm

1 too long ago from Mr. Lockhart, y'all's attorney on
 2 this case.
 3 MR. SMITH: Jason, can you just certify
 4 that -- I know you asked them for this document --
 5 that we are both looking at the same thing?
 6 MR. LOCKHART: Yes. I sent it to you
 7 via e-mail correspondence on March 17th at 9:06
 8 a.m.
 9 MR. SMITH: All right. Great. And
 10 I'll just certify that that is what I'm looking at
 11 now.
 12 I am going to go ahead and mark this
 13 for our court reporter so we'll know what we're
 14 referring to.
 15 (CLAIMANT'S EXH. 1, HPE, was marked for
 16 identification.)
 17 BY MR. SMITH:
 18 Q. All right. This document, and we'll
 19 just call it the HPE because I think that's what
 20 you are used to referring to it as.
 21 A. Yes. Here in our office we refer to it
 22 as the HPE.
 23 Q. All right. This HPE, first of all let
 24 me ask you this: Do you have a copy of the actual
 25 HPE that was completed for Mr. Osmanski?

1 A. No, I do not.

2 Q. Do you know why y'all wouldn't have
3 that?

4 A. I don't know. I have looked through
5 his employment record and I could not find it. I
6 also called the clinics that we do them at, there
7 at our Hickory office, and they stated they only
8 keep records for one year and then they destroy
9 them.

10 Q. All right. Well, when we reviewed this
11 document -- let me ask you this. Is this the HPE
12 that was most likely used when Mr. Osmanski went to
13 whatever doctor it was that y'all selected for this
14 test to be performed?

15 A. Yes.

16 Q. All right. And on the left side of the
17 page there is a test description, the critical
18 demands, and then there is an indication where the
19 person or applicant met or did not meet those
20 demands. Is that your understanding?

21 A. Yes.

22 Q. All right. And we've got in here, you
23 know, several tests for cervical range of motion,
24 extremities range of motion. There's some
25 different dynamic strength tests. Are those lift

1 tests?

2 A. Yes.

3 Q. Floor to waist; floor to shoulder.
4 Those would both be lift tests?

5 A. Yes.

6 Q. And this bilateral carry. I assume
7 that's carrying 60 pounds, 25 feet?

8 A. Yes.

9 Q. And this push or pull, that would be
10 pushing and pulling 25 pounds -- I'm sorry -- 62
11 pounds, 25 feet?

12 A. Yes.

13 Q. And it's got some other thing about
14 crawling and walking and bending and all those
15 sorts of things.

16 Mr. Grandy, does this form that we have
17 marked here as Claimant's Exhibit Number 1, the HPE
18 evaluation, does this represent the essential
19 functions of Mr. Osmanski's job?

20 A. They are -- this form itself is not the
21 essential functions of the job. This is a test
22 designed to simulate the essential functions.

23 Q. Okay. But do these tests represent, as
24 best you can in sort of a clinical setting, the
25 essential functions or essential requirements for

1 Mr. Osmanski's job?

2 A. As far as physical abilities, yes.

3 Q. Okay. And how does a -- you said also
4 that the applicant is required to submit to a DOT
5 physical. Does that add to this HPE evaluation in
6 any way?

7 A. The time in 2006 when Mr. Osmanski was
8 hired, the company did have individuals do a DOT
9 physical at the same time that the HPE was done.
10 That is no longer our practice.

11 Q. Okay. What are y'all doing now?

12 A. Every individual who has a commercial
13 driver's license already has a DOT physical. And
14 so now -- basically the DOT physical was kind of a
15 perk to the job. You know, the individual would
16 get a free DOT physical paid for by the company.
17 And now starting in, I believe it was January of
18 2009, we just use the existing DOT physical that
19 the individual already has.

20 Q. Okay. Let's go back to this
21 questionnaire we were talking about before. And I
22 think you and I had got into a little confusion. I
23 was trying to restate some things and we were
24 getting off track a little bit about what happens
25 if a person was to indicate positive answers to

1 really any of these items on the post-job offer
2 questionnaire. And we started talking about that
3 and I used a few hypotheticals. But let's bring it
4 into context about what we're talking now.

5 If an applicant were to indicate yes to
6 any of the questions on the post-job offer
7 questionnaire; meaning yes he has any disability,
8 or yes he has any impairment, or yes he has any
9 limitations in the use of his body. Simply
10 answering yes to any of those questions, after or
11 before anything else is done, would simply
12 answering yes to any of those questions, would that
13 answer in and of itself preclude the applicant from
14 getting a job with Watkins?

15 A. No.

16 Q. All right. Now assuming the applicant
17 did indicate yes to any of those questions and did
18 inform you about impairment, restrictions, the
19 inability to do certain things, would you still
20 have that applicant go and do the HPE/human
21 performance evaluation?

22 A. No. We would not have them do the HPE
23 if they answered yes to anything on that form. We
24 would conduct further research into that before we
25 sent someone in for the lift tests.

1 Q. And what sort of research would you do?
2 A. Probably the first thing would be a
3 copy of work release from the treating physician at
4 the time of -- you know, if they indicated that
5 they, for example, had an on-the-job injury, we
6 would want to see a copy of a work release from the
7 treating physician at the time.
8 Q. Okay. Let's assume for a moment that
9 work release from the treating physician contained
10 restrictions that would be above what would be
11 required from Watkins. Do you also -- are you
12 interested in getting any DOT physicals from any
13 other doctors performed since the time that the
14 physician had released the worker?
15 A. You kind of asked two questions there.
16 The question about the DOT physical is -- you know,
17 we're only required to have one DOT physical on
18 file.
19 Q. Yeah. I gotcha. What I'm saying, is
20 let's assume the worker -- when we talked about
21 these positive answers, you said you would have
22 wanted to see that return-to-work note. And I'm
23 asking you if you were aware of a -- any medical
24 records, including a Department of Transportation
25 physical that had happened which contained

1 different findings, no restrictions, things like
2 that, is that something you would want to have as
3 well?
4 A. Sure.
5 Q. Okay. Give me one sec.
6 At what point, Mr. Grandy, is the
7 post-job offer questionnaire sent? Is that before
8 the HPE test, or the drug test, or DOT physical?
9 Is it before any of those are done?
10 A. Yes, it is. It's before that.
11 Q. Let's talk about the evaluations done
12 in this case. I think we already talked about the
13 drug test that came out clear. We have talked a
14 little bit about this HPE. I want to ask you a
15 little bit about the DOT physical. Do you have a
16 copy of the DOT physical that was done for
17 Mr. Osmanski?
18 A. I do not have it in front of me but I
19 have seen it. You want me to have a copy of it in
20 front of me?
21 Q. Is it something you can find? I'm
22 seeing if I can get it to you real quick. Or -- I
23 don't know if Jason can point you to where it is.
24 A. It's in his personnel file which is
25 downstairs. I can put you on hold.

1 Q. Yes. We may need that eventually.
2 A. Let me put you on hold and I'll go get
3 it.
4 Q. Sure. Thanks.
5 (A recess transpired.)
6 BY MR. SMITH:
7 Q. And I think what we're trying to look
8 at here was the --
9 A. DOT physical.
10 Q. Yeah. Is that Dr. Osbahr?
11 A. Let me see the doctor's name on it.
12 The date of it is 10/30 of '06. Yeah. Looks like
13 Osbahr, I guess would be the spelling. I mean, I'm
14 trying to read the doctor's handwriting here so --
15 Q. It looks like it says Al Osbahr?
16 A. Yes.
17 Q. Okay. Back in 2006, what was the
18 purpose for sending applicants to Dr. Osbahr for a
19 physical examination?
20 A. Well, like I previously stated, you
21 know, everyone who has a commercial driver's
22 license already has a DOT physical. It was kind of
23 customary in our industry back then that employers
24 would provide a free DOT physical for people so
25 that they, you know, start the new job with a fresh

1 physical.
2 Q. But y'all weren't sending Mr. Osmanski
3 to Dr. Osbahr just so Mr. Osmanski could have a
4 free physical. Were you actually interested in the
5 information that Dr. Osbahr would relay as a result
6 of this physical examination?
7 A. Yes.
8 Q. And if you'll turn to the very back
9 page of that examination. I think there are three
10 pages.
11 A. Okay. Yes.
12 Q. And down toward the bottom right of
13 that page there is an indication for Number 10,
14 dealing with the extremities. And it asks for loss
15 or impairment of leg, foot, toe, arm, hands, finger
16 and all sorts of things. Doctor Osbahr indicated
17 yes on that. Is that correct?
18 A. Yes, he did.
19 Q. All right. And this form that
20 Dr. Osbahr completes, this was contained in
21 Mr. Osmanski's personnel file?
22 A. Yes.
23 Q. All right. This is something used and
24 relied upon in the hiring process?
25 A. Yes. That DOT physical is a required

1 document for someone with a commercial driver's
2 license, yes.

3 Q. But the actual findings of that
4 document, this form in particular, the fact that
5 the doctor had checked yes for that Number 10, is
6 that something that is used and relied upon in the
7 hiring process?

8 A. As far as the hiring process, the DOT
9 physical is basically almost a pass/fail thing.

10 Q. Okay. But at this point there's just a
11 conditional offer of employment out there, and that
12 offer of employment is conditional upon several
13 things, one of those being this particular DOT
14 physical. Is that correct?

15 A. That's true.

16 Q. Okay. And Dr. Osbahr had made some
17 additional findings. Do you see the comment
18 section on the bottom of that page?

19 A. I do.

20 Q. And, you know, it's in doctors'
21 writing; it's own art form. I'll do the best I can
22 with it here. Number 1, very functional. Do you
23 agree that that's what it looks like it says?

24 A. Yes. It says Number 1. So that would
25 be relating up to the body system general

1 his supination. But it looks like he was able to
2 pronate okay. Is that fair to say?

3 A. Yes. Based on what I can read from the
4 doctor's handwriting, yes.

5 Q. All right. And so at the time that
6 Watkins was considering whether or not to extend
7 Mr. Osmanski's conditional job offer to a formal
8 job offer, this is one of the documents that was in
9 the possession of Watkins Trucking?

10 A. Yes.

11 Q. All right. And I have got here a
12 statement from Dr. Osbahr. And he's saying that
13 180 degrees would be normal. And Mr. Osmanski, at
14 the time he evaluated him, he had a 90-degree
15 supination. Do you know -- have you ever heard
16 that before?

17 A. No, I have not.

18 Q. Okay. After you received this
19 question -- or this evaluation note, or the DOT
20 physical note from Dr. Osbahr, what steps did
21 Watkins Trucking take to follow up on this
22 limitation involving the use of Mr. Osmanski's
23 arms? Or left arm, I'd say.

24 A. I wouldn't have any knowledge of that.

25 Q. Okay. And I misspoke. I meant to say

1 appearance.

2 Q. Okay. And then there is probably a
3 notation that he's overweight?

4 A. Yes.

5 Q. And then Number 10, does that refer
6 back to that positive indication under the body
7 system section Number 10?

8 A. Yes.

9 Q. All right. And that indicates
10 decreased supination; only 90 degrees. Do you know
11 what that is?

12 A. No, I don't. I mean, I know what
13 90 degrees is, but, you know, I don't know what the
14 normal -- normal amount of supination is.

15 Q. No. What I'm asking you here is
16 basically do you know what a doctor means when he
17 says supination or pronation?

18 A. Yes, I understand those terms.

19 Q. Those are basically the movements of
20 the arm?

21 A. Yes.

22 Q. In one direction or another?

23 A. Yes.

24 Q. And this form, correct me if I'm wrong,
25 indicates that Mr. Osmanski has some limitations in

1 right arm. Is that the same answer?

2 A. Right arm or left arm; no, I -- you
3 know, I was not present then, so I have no idea
4 what --

5 Q. Okay. I'll just ask you this in
6 general terms. Based on a review of the file and
7 information you have been provided, can you -- did
8 Watkins Trucking take any steps once they were made
9 aware by Dr. Osbahr that Mr. Osmanski had some
10 limitations in the movement of his right arm?

11 A. I do not know of any.

12 Q. Okay. And on to the other item we were
13 talking about, Claimant's Exhibit 1, the HPE test.
14 Did Mr. Osmanski successfully complete this test?

15 A. To my knowledge, yes.

16 Q. And beyond completing this test, did he
17 pass all of those items? Meaning, did he score a
18 "met" as opposed to a "not met" in each item?

19 A. To my knowledge, yes.

20 Q. Okay. And the reason this HPE test is
21 done is because if a worker or an applicant can
22 complete these critical demands, is Watkins
23 satisfied that they can complete the job for which
24 the person is applying?

25 A. I would answer yes to that.

1 Q. Okay. So at the time that Mr. Osmanski
2 was taking the HPE, submitting to the DOT physical
3 with Dr. Osbahr, was Watkins satisfied that
4 Mr. Osmanski could do the job?
5 A. You know, based on the information
6 here, yes.
7 Q. Okay. And would it seem reasonable to
8 you to assume that the reason no one followed up
9 with Dr. Osbahr about these limitations, that he
10 made Watkins Trucking aware of, was because
11 Mr. Osmanski had completed this HPE evaluation and
12 passed all of the tests designed to figure out the
13 critical demands of the job?
14 A. I would say it would be the sum total
15 between the post-job offer questionnaire, you know,
16 the DOT physical, the health history part, and then
17 the HPE. Yes. Based on those items, you know,
18 yes, it does appear that he's qualified for the
19 job.
20 Q. Okay. Did Watkins have Mr. Osmanski
21 sign any sort of a medical authorization or release
22 so that y'all would be able to receive this
23 Department of Transportation physical from
24 Dr. Osbahr?
25 A. Not to my knowledge, no.

1 Q. All right. But that certainly is
2 something he allowed you to get -- let me ask the
3 question in a different way.
4 Did Mr. Osmanski object to Dr. Osbahr
5 providing you with these items from his medical
6 file?
7 A. No.
8 Q. All right. And if y'all had any
9 questions about Mr. Osmanski or his physical
10 condition, was there anything preventing Watkins
11 Trucking from calling Dr. Osbahr or following up on
12 any of his findings?
13 A. No.
14 Q. And if you assume for me for a moment
15 that Dr. Osbahr's statement was correct that 180
16 degrees is a normal supination, and that
17 Mr. Osmanski only had 90 degrees supination, if you
18 were taking an application today and you were made
19 aware of that, and you knew that 180 degrees was
20 the max and that this person only had half of the
21 supination or movement in that arm, is that
22 something you would want to follow up on?
23 A. Yes, it is.
24 Q. Okay. With regards to the particular
25 job Mr. Osmanski was doing, he sort of described it

1 involved a whole lot more pushing and pulling than
2 it did lifting. Does that sound correct to you?
3 A. Yes.
4 Q. That most of the time that
5 these -- well, let me back up for a moment. The
6 way that the items are arranged in the truck is the
7 order in which they are to be removed from the
8 truck. Is that fair to say?
9 A. Yes.
10 Q. And the way the items are removed from
11 the truck is they are basically slid off the truck.
12 But the particular van driver, he is not required
13 to lift those items on and off of the truck. Is
14 that correct?
15 A. Yes.
16 Q. Okay. And so would it be correct, or
17 would he be correct in saying that most of the
18 physical requirements of his job is the ability to
19 push and pull? Is that fair to say?
20 A. No, I would not agree with that.
21 Q. What would be --
22 A. It's often that the freight ends up
23 stacked up.
24 Q. Uh-huh. What -- let me ask in I guess
25 a more simpler or plainer term. What would

1 Mr. Osmanski have done more? Would he have done
2 more lifting, or would he have done more pushing
3 and pulling?
4 A. I think it's correct to say more
5 pushing and pulling in that particular job.
6 Q. Okay.
7 A. But there would certainly be times that
8 he would be lifting as well. Lifting or lowering.
9 Q. Okay. All right. Give me one more
10 sec. We might be just about done.
11 MR. SMITH: All right. Mr. Grandy. I
12 think that's all the question I have for.
13 How about you, Jason?
14 MR. LOCKHART: I don't believe I have
15 any questions.
16 MR. SMITH: All right. Mr. Grandy, I
17 appreciate your time.
18 (The witness, after having been advised
19 of his right to read and sign this transcript,
20 waives that right.)
21 (The deposition concluded at 4:06 p.m.)
22
23
24
25

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1 CERTIFICATE OF REPORTER

2
3 I, Laura J. Bash, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the foregoing transcript is a true,
7 accurate, and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 20th day of March,
13 2010, at Charleston, Charleston County, South
14 Carolina.
15
16
17
18

19 Laura J. Bash, RPR
My Commission expires
October 5, 2015
20
21
22
23
24
25

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8 (No Information Requested)
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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 0818219

EMPLOYEE: JOE A. OSMANSKI.

EMPLOYER: WATKINS & SHEPARD TRUCKING, INC.

CARRIER: ZURICH NORTH AMERICA.

STATE OF FLORIDA)

COUNTY OF ALACHUA)

Deposition of LARRY CHIDGEY, M.D., taken on behalf
of the Employer/Carrier herein, pursuant to Notice of Taking
Deposition, at 3450 Hull Road, Third Floor, Gainesville,
Florida, on Monday, March 15th, 2010, at 11:00 a.m., before
STEVEN E. LeBLANC, SR., RPR, Notary Public in and for the
State of Florida at Large.

- - -

APPEARANCES:

KEVIN SMITH, ESQ., and DAVID T. PEARLMAN, ESQ., of
The Steinberg Law Firm, Post Office Box 9, Charleston, South
Carolina, 29402-0009, appeared on behalf of the
Employee/Claimant telephonically.

JASON W. LOCKHART, ESQ., of the law firm of MCANGUS,
GOUDELOCK & COURIE, L.L.C., 700 Gervais Street, Suite 300,
Columbia, South Carolina 29211-2519, appeared on behalf of the
Employer/Carrier telephonically.

COPY

1 S T I P U L A T I O N

It was stipulated by and between counsel for the respective parties, and the witness, LARRY CHIDGEY, M.D., that the reading and signing of the deposition by the witness be waived.

— — —

7 I N D E X

WITNESS: _____ PAGE: _____

LARRY CHIDGEY, M.D.

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15 EXHIBITS

DEPOSITION EXHIBIT

FOR IDENTIFICATION

None

Certificate of Reporter 35

1 Thereupon,

2 LARRY CHIDGEY, M.D.,
3 having been produced and first duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. LOCKHART:

7 Q. Dr. Chidgey, good morning again. My name is Jason
8 Lockhart. I'm a lawyer in Columbia, South Carolina. I'm
9 representing Watkins and Shepard Trucking and their workers'
10 compensation insurance carrier in a workers' compensation
11 claim filed in South Carolina by Joe Osmanski. We're
12 conducting your deposition this morning by telephone. I'm in
13 my office in Columbia. In Charleston we have Mr. Pearlman and
14 Mr. Smith both of whom are representing Joe Osmanski and we
15 have all agreed to do this deposition this morning by
16 telephone.

17 It's my understanding that you are in your office at
18 the University of Florida in Gainesville; is that correct?

19 A. True.

20 Q. Is that where you practice orthopedic medicine?

21 A. Yes.

22 Q. How long have you been an orthopedic physician?

23 A. About 20 years.

24 Q. And are you board-certified in orthopedics?

25 A. Yes.

1 Q. Any other subspecialties or certifications? Or just
2 briefly tell us about your professional background.

3 A. Well, I also am certified in hand surgery, and
4 that's about it.

5 Q. You have been practicing medicine exclusively in
6 Florida for the last 20 years, or did you practice anywhere
7 else before you settled at the University of Florida?

8 A. No. I have been a professor at the University of
9 Florida for about 20 years right after I graduated.

10 Q. Okay. Your practice is through the university's
11 medical facilities; is that correct?

12 A. True.

13 MR. LOCKHART: Kevin and David, I would offer up Dr.
14 Chidgey as an expert in orthopedic medicine.

15 MR. PEARLMAN: No objection.

16 BY MR. LOCKHART:

17 Q. All right. Dr. Chidgey, I want to briefly talk to
18 you about your early treatment of Mr. Osmanski and then we'll
19 move forward a little bit into late 2008 and early 2009. Just
20 for purposes of background, when did you begin seeing Mr.
21 Osmanski at your facility in Gainesville?

22 A. Well, it was 2000. It was in the fall of 2000.

23 Q. When you saw him initially, at that time what were
24 you treating him for? What types of injuries or problems were
25 you treating him for at that time?

1 A. He had some severe elbow injuries that involved
2 putting artificial elbow joints in his elbow.

3 Q. And that would be in his left elbow; is that
4 correct?

5 A. True.

6 Q. How many surgical procedures did you perform on him
7 as a result of, I guess, the treatment or the injuries that
8 you initially saw him for in late 2000?

9 A. Well, we put the artificial elbow joint in in
10 September of 2000, and I believe that's the last surgical
11 procedure that I see on him for that elbow. I will have to
12 look back through but --

13 Q. Did you also perform a procedure on the ulnar nerve
14 of his left elbow as well?

15 A. You're right. That's true.

16 Q. Any other surgeries that you can recall from
17 reviewing your notes other than those two?

18 A. That's correct. That's it.

19 Q. Doctor, do you have your chart with you on
20 Mr. Osmanski this morning?

21 A. I have the clinic chart. I don't have the actual
22 charts from the hospital.

23 Q. Okay. I wanted to take a moment, if we could, and
24 look at some of your particular notes from your examinations
25 of Mr. Osmanski. The first of which I would like to look at

1 is from January the 10th of 2001. Could you look at your
2 chart and tell me when you find your January 10, 2001 note?

3 A. It's in front of me now.

4 Q. Okay. It reflected that Mr. Osmanski was seen on
5 that date in follow up following his left elbow surgery; is
6 that correct?

7 A. True.

8 Q. I would like to look down, the report is divided up
9 into several sections, chief complaint, history of present
10 illness, physical examination, x-rays, impression and plan. I
11 would like to look at the section labeled plan. And in that
12 section of your report is there any discussion at all about
13 weight limitations or lifting restrictions with regards to his
14 left elbow or left arm?

15 A. Yes.

16 Q. What were your, I guess, your conclusions at least
17 as of January 10th, 2001 regarding any restrictions that he
18 had on his left upper extremity or left arm?

19 A. Well, we recommended that he try to avoid anything
20 over about 15 pounds or so.

21 Q. Is it fair to state that your record reflects that
22 he will always have a 15 pound weight limit restriction for
23 the left upper extremity?

24 A. Well, that's a general statement on these. I can't
25 say that that's an absolute on every patient. That is a

1 general statement.

2 Q. Okay. And at least in this note it would be
3 reasonable to conclude that at that time you put a 15 pound
4 weight limit on him?

5 A. Yes.

6 Q. And you also indicated that he should also avoid
7 situations where he might fall or excessively stretch his left
8 arm; is that correct?

9 A. Well, in general, after any surgery, we advise them
10 to try to avoid falling on the arm as they are recovering from
11 surgery, yes.

12 Q. Your report also says that you stressed this
13 multiple times today and that the patient stated he
14 understands?

15 A. True.

16 Q. All right. So is it reasonable to conclude that you
17 informed him of these restrictions and at least according to
18 your diagnostic report he understood what those restrictions
19 were?

20 A. True.

21 Q. This particular restriction, the 15 pound
22 restriction, is that directly tied to the fact that he had a
23 prosthetic in his left elbow? Is that why you would have
24 placed that type of restriction upon him?

25 A. Well, plus he was just three and a half months after

1 surgery so he was also in the recovery phase, yes.

2 Q. I would like to look, if we could, at another note
3 about a year later. This is February 11th of 2002. Let me
4 know when you have identified or located that note in your
5 chart.

6 A. I have it.

7 Q. This note reflects that Mr. Osmanski returned today
8 for evaluation status post ulnar nerve neurolyses on 11/1/01,
9 so would that have been the second surgery, I presume, you
10 performed on his left arm?

11 A. True.

12 Q. For purpose of clarification, what type of surgery
13 is that? What is that designed to accomplish?

14 A. Well, the nerve that goes past the elbow a lot of
15 lay people would call your funny bone nerve when you hit your
16 funny bone, that nerve was caught up in some scar tissue, and
17 so you basically go in and just scrape the scar tissue away
18 from the nerve to relieve some pressure from the nerve.

19 Q. Looking down at the section of your report labeled
20 plan, it appears that you recommended that he have a
21 functional capacity evaluation; is that correct?

22 A. True.

23 Q. Is it also true that your report indicates that he
24 will be at a ten pound lifting restriction indefinitely for
25 his left upper extremity due to his total elbow arthroplasty

1 on that side?

2 A. That's what it says, yes.

3 Q. So at least as of February 11th, 2002 is it
4 reasonable to conclude that you placed a permanent ten pound
5 lifting restriction on his left arm?

6 A. True.

7 Q. And again, it appears based on your report that that
8 restriction is directly related to his elbow arthroplasty?

9 A. True.

10 Q. The next note I would like to look at with you is
11 dated March the 22nd of 2002. Let me know when you have
12 located that note.

13 A. I have it.

14 Q. And this note reflects that Mr. Osmanski was seen in
15 your clinic on March 22nd of 2002 and this evaluation appears
16 to have taken place after he underwent a functional capacity
17 evaluation; is that correct?

18 A. True.

19 Q. Under the section of your report labeled interval
20 history, tell us what it says with regards to his lifting
21 restrictions if he received any at that time?

22 A. 10 to 15 pounds was the lifting restriction.

23 Q. Okay. Does your report also state that you
24 emphasized that Mr. Osmanski cannot lift more than 10 or 15
25 pounds with his left arm due to his total elbow

1 arthroplasty?

2 A. That's what it says, yes.

3 Q. Do you have any reason to doubt that that limitation
4 or restriction was not conveyed to him during your visit with
5 him on March 22nd of 2002?

6 A. I assume that we talked about it.

7 Q. You also provided him with an impairment rating at
8 that time?

9 A. True.

10 Q. According to your note did you assign him a 14
11 percent impairment rating to the upper extremity for or as a
12 result of the elbow arthroplasty?

13 A. Correct.

14 Q. What edition of the AMA Guides would have been
15 utilized back in 2002 to provide impairment ratings to the
16 upper extremities, do you know?

17 A. I would have to go back and look that up and see
18 what we used then.

19 Q. Let me ask you a hypothetical. If you had performed
20 a similar surgery on Mr. Osmanski in 2010, would you be
21 utilizing the Sixth Edition of the AMA Guides to provide an
22 impairment rating to his upper extremity?

23 A. Well, it would depend on what state was covering
24 him. Florida has their own impairment guides and for patients
25 in Florida we use the Florida Impairment Guide which is very

1 similar to the AMA but it's slightly different.

2 Q. You are familiar with the Sixth Edition of the AMA
3 Guides to Permanent Impairment?

4 A. Yes.

5 Q. What would be a generally accepted range of
6 impairment for a total elbow arthroplasty under the Sixth
7 Edition of the AMA Guides?

8 A. I would have to compare the 2002 version versus the
9 newer version, but I don't think that has changed at all.

10 Q. So it's your understanding that the ratings, at
11 least the guides as of 2002 are very similar to those in 2010
12 as far as rating the upper extremity for an elbow
13 replacement?

14 A. True.

15 Q. Did you release Mr. Osmanski from your care as of
16 March 22nd of 2002, or do you have any records that reflect
17 that he was seen after that time but prior to 2009?

18 A. I don't see an interval note between '09 and then.

19 Q. So is it a reasonable statement that you placed him
20 at maximum medical improvement on March 22nd, 2002 and
21 assigned him a total impairment rating of 20 percent to the
22 left upper extremity?

23 A. True.

24 Q. All right. Is it a reasonable statement that when
25 you released him from your care on March 22nd of 2002, that he

1 had a permanent lifting restriction of no lifting over 10 or
2 15 pounds with his left arm due to his total elbow
3 arthroplasty?

4 A. That's the restriction in 2002 that we placed.

5 Q. Okay. And that was a permanent restriction?

6 A. Unless things changed.

7 Q. Do you have any records to reflect that anything
8 changed in his medical care or the state of his upper
9 extremity between March 22nd of 2002 and around January 12th
10 of 2009?

11 A. I don't have anything one way or the other to know
12 if it changed.

13 Q. So again, it's a reasonable statement that when you
14 released him from your care on March 22nd of 2002 he had a
15 restriction of no lifting in excess of 10 or 15 pounds with
16 his left arm?

17 A. In 2002 that's his restriction, yes.

18 Q. But that was a permanent restriction?

19 A. Unless things changed.

20 Q. And we have no records to indicate that anything
21 changed with his upper extremity?

22 A. I don't have a record one way or the other. I
23 haven't seen him so I don't know.

24 Q. Okay. What type of problems would hyperextension of
25 the elbow pose for someone who has an arthroplasty of the left

1 elbow?

2 A. We are talking about an acute injury?

3 Q. Well, I'm just talking about hyperextension in
4 general and/or an acute injury that is a hyperextension type
5 injury. What type of problems would those cause for someone
6 who has an artificial elbow?

7 A. Well, by definition what I mean by hyperextension is
8 that the elbow is forced further than it normally wants to go.
9 We call extension when you extend the elbow and then it quits
10 normally just because that's as far as it wants to go. If you
11 hyperextend it, you're forcing it beyond so that implies an
12 acute injury. And certainly that can put a lot of stress on
13 an artificial elbow joint or it can damage the surrounding
14 soft tissues as well.

15 Q. Is someone that has an artificial elbow more
16 susceptible to a hyperextension injury than someone who has a
17 normal functional, I guess, natural elbow joint?

18 A. Well, the artificial elbow component itself is
19 susceptible to that injury, but the surrounding soft tissues
20 are probably as susceptible as a normal elbow.

21 Q. If Mr. Osmanski has testified in his deposition that
22 he was required to engage in lifting of objects that weighed
23 in excess of one hundred pounds while working for Watkins and
24 Shepard Trucking, would you agree that that activity would be
25 outside the permanent restriction that you placed upon him on

1 March 22nd of 2002?

2 MR. PEARLMAN: Object to the form of the question.

3 BY MR. LOCKHART:

4 Q. You can answer the question, doctor.

5 A. Well, that would be beyond the 2002 restriction.

6 Q. And again, that restriction was a permanent
7 restriction, correct?

8 A. Unless things changed.

9 Q. Okay. And again, I think we -- at least you have
10 indicated you have no records to indicate that anything
11 changed?

12 A. I haven't seen the patient so I don't know if
13 anything changed one way or the other.

14 Q. When did you next see Mr. Osmanski? If you last saw
15 him March 22nd of 2002, when was the next time he was seen in
16 your office?

17 A. The next note I have is 1/12/09.

18 Q. What complaints was he providing to you during this
19 January 12th, 2009 examination?

20 A. He had elbow pain and also he had weakness in
21 flexion.

22 Q. Did he provide you with a history of a work related
23 accident?

24 A. I have a history of a work related accident, but I
25 don't see it on that particular note so it looks like it may

1 have been later.

2 Q. When did he initially provide you with a history of
3 having injured his elbow at work?

4 A. I'm going to have to read the other notes here.

5 Q. Okay.

6 A. It looks like I just have that provided on April
7 3rd, '09, I see a note here provided that there was a work
8 related injury.

9 Q. Was that information provided by his attorney or was
10 it provided by Mr. Osmanski to you directly?

11 A. Well, I see it in an attorney note. I don't recall
12 one way or the other if the patient had talked about it.

13 Q. Okay. With you?

14 A. True.

15 Q. What was your diagnosis of Mr. Osmanski's condition
16 following your examination on January 12th?

17 A. Well, we originally wanted to make sure that no
18 infection had shown up in the elbow joint which that's one of
19 the things that can cause pain, so we had done some lab
20 studies to rule that out and it did not look like any
21 infection was a problem. We were concerned that the elbow
22 joint may be loosening up, but we were also concerned about a
23 tearing of his biceps tendon. That's the muscle that flexes
24 your elbow joint.

25 Q. Did you have him undergo an x-ray of his left elbow

1 on January 12th of 2009?

2 A. Yes.

3 Q. What is the significance -- I'm looking at a
4 radiology department report from Shands Hospital dated January
5 12th of 2009. What were the findings of the radiologist
6 following an x-ray of his elbow?

7 A. Well, there was concern that there could be some
8 loosening or there was -- that can also be caused by
9 infection. That's why we wanted to get those lab studies to
10 rule that out.

11 Q. Do you have a copy of the radiologist's report from
12 January 12th for your review?

13 A. I'll have to look through that. I don't see it
14 here in this particular chart, no.

15 Q. If you will indulge me for a moment, I'll just read
16 the report to you.

17 A. Okay.

18 Q. And certify that I'm reading directly from the
19 January 12th, '09 report from Shands Hospital. It says four
20 views of the left elbow were obtained. A left total elbow
21 arthroplasty is noted. The cemented acrylic component appears
22 uncomplicated; however, there is a very prominent lucency
23 surrounding the cemented humeral component consistent with
24 loosening. There's also suggestion of a healing fracture of
25 the distal humerus. The radial head has been resected.

1 Reactive bone is noted throughout the soft tissues of the
2 elbow. Two humeral K wires are noted. One of which appears
3 to be penetrating soft tissue.

4 Impression number one, loosening suggested within
5 the humeral component of a total elbow arthroplasty.

6 Two, healing humeral fracture.

7 Three, humeral K wire with distal component in soft
8 tissues.

9 What do you take away from those impressions in the
10 x-ray report from January 12th of '09? In other words, what
11 in your opinion is the state of his elbow based on those
12 radiological findings?

13 A. Well, as I mentioned, I agree that there is some
14 concern that the implant possibly could be loosening.
15 Sometimes the shadows you see on an x-ray may or may not mean
16 loosening but it's of concern, yes.

17 Q. Would those findings suggest that there was damage
18 to the prosthetic?

19 A. Well, once again, all it does is suggest that we
20 need to explore what's going on, so things such as infection,
21 loosening, all of those can cause similar x-ray findings, so
22 we wanted to rule out the infection, but loosening also can
23 occur.

24 Q. So did you eventually rule out infection as a cause
25 of his pain complaint?

1 A. Yes.

2 Q. When was the next time that you saw him?

3 A. 2/23/09.

4 Q. Okay. I believe at that point that's when you were
5 recommending that he had infection studies performed in order
6 to assess if that was the cause of his complaint?

7 A. That was my concern as one of the causes, but also
8 very concerned about the tendon or biceps.

9 Q. When was the next time you saw him after that?

10 A. 4/1/09.

11 Q. What was your diagnosis and plan following that
12 examination?

13 A. Well, concerned about a loose prosthesis as well as
14 the biceps tendon rupture.

15 Q. Did you ever perform a MRI of his elbow or his left
16 arm prior to 4/1/09?

17 A. No. We had not.

18 Q. Were you ever in a position based on your
19 examinations or diagnostic testing to confirm whether or not
20 there was any damage to his biceps tendon?

21 A. Well, examination revealed that.

22 Q. Would you have confirmed that through diagnostic
23 testing?

24 A. Well, with an artificial elbow joint and MRI the
25 metal greatly distorts it so I think you would have a very

1 poor image with an MRI. But the fact that he could actively
2 not flex the elbow and we could passively move it, we couldn't
3 feel a biceps there, that it changed so that's pretty much
4 diagnostic of a rupture.

5 Q. Have you seen him at all since April 1 of 2009?

6 A. I have no notes, no.

7 Q. Okay. Are you aware that he has undergone left
8 elbow surgery in Charleston, South Carolina?

9 A. No.

10 Q. Are you aware that he underwent a removal of the
11 humeral component of his left elbow prosthesis on or about
12 July the 8th, 2009?

13 A. No.

14 Q. What was your recommendation after your most recent
15 visit with him on April 1 of 2009?

16 A. Well, we talked to him about possible surgery.

17 Q. What type of surgical procedure were you
18 recommending for him as of April 1 of 2009?

19 A. Well, we were going to look at the elbow
20 arthroplasty itself, but also look at the tendons to see if
21 he, indeed, had ruptured his biceps.

22 Q. When you performed the original arthroplasty on his
23 left elbow, was it likely that he would have needed a
24 replacement at some point in the future or was it your opinion
25 that that would be the only prosthesis that he would have ever

1 need for that elbow?

2 A. No. It's possible that these wear out.

3 Q. Just sort of out of curiosity, were you one of the
4 few physicians that actually were qualified to perform that
5 type of procedure back in 2000 or was that a fairly wide
6 spread surgical procedure, an elbow arthroplasty?

7 A. No. That was common.

8 Q. Okay. We just don't see them very much here in
9 South Carolina and certainly weren't seeing them very
10 frequently back then so just curious.

11 If again, as I mentioned to you a few moments ago,
12 if he had undergone a removal of the humeral component of his
13 prosthesis, would that procedure itself result in any
14 additional impairment to his upper extremity?

15 A. It would depend on the results of the surgery.

16 Q. Explain that for me. If he had a favorable result
17 with no residual complications, would he have any impairment
18 as a result of that procedure?

19 A. Well, it might not worsen his impairment. He had
20 impairment as we dictated back in 2002. It would be a
21 question on whether or not it would worsen it or not, so the
22 potential is that it could worsen. Or if he had a very good
23 result from surgery, it might not.

24 Q. Doctor, earlier when I was asking you about your
25 March 22nd, 2002 visit with Mr. Osmanski, you mentioned that

1 he underwent a functional capacity evaluation prior to that
2 visit; is that correct?

3 A. True.

4 Q. Do you have a copy of that functional capacity
5 evaluation in your chart?

6 A. It would be in the therapy chart. I would have to
7 go get that.

8 Q. Would that be something that Mr. Smith and I could
9 request from you if we provided you with a written request for
10 it?

11 A. Sure.

12 Q. I know you have been kind enough to provide us with
13 most of your notes. I just don't recall actually seeing the
14 functional capacity evaluation.

15 A. We can get that.

16 Q. Okay. Thank you very much. I just have a few more
17 questions and I'll be finished. I know Mr. Smith probably has
18 some for you.

19 Going back for just a brief moment to your last two
20 visits with Mr. Osmanski in February of 2002 and March of
21 2002, is there anything in your reports to suggest that
22 Mr. Osmanski did not understand or fully comprehend the
23 permanent restrictions that you were placing upon him with
24 regards to the use of his left arm?

25 A. Once again, I'm talking about 2002 and not since

1 then, but as of 2002 I believe he understood that we wanted
2 him to hold off on the heavier lifting.

3 MR. LOCKHART: Those are all the questions I have.
4 Thank you. Please answer any questions that Mr. Smith or
5 Mr. Pearlman may have for you.

6 CROSS EXAMINATION

7 BY MR. SMITH:

8 Q. Doctor, good morning. I'm Kevin Smith here for
9 Mr. Osmanski, and David Pearlman is here with me as well.
10 Thank you for time this morning, doctor. We have a few
11 questions in follow up for you.

12 As far as I can tell from your records, it looks
13 like the last time that you had seen Mr. Osmanski before this
14 accident in 2008 was back in March of 2002; is that correct?

15 A. True.

16 Q. And the records that we were going over earlier
17 starting in January of 2001 leading up to March 22nd, 2002 is
18 it fair to say that those records represented sort of his, I'm
19 using your words here, his recovery phase, follow ups after
20 surgery, things like that?

21 A. True.

22 Q. And so any opinions that you have regarding going
23 forward, those would be represented in that March 22nd note as
24 compared to the earlier notes we were discussing?

25 A. Yes.

1 Q. All right. Doctor, in a general sense do you tell
2 your patients to increase their activities as tolerated over
3 time?

4 A. Well, that depends. I mean, you know, I mean, we
5 want them to use reasonable judgement, pain as a guide, the
6 type of surgery they have carries some restrictions so, you
7 know, that's a general statement.

8 Q. Would that be true of Mr. Osmanski's case, that you
9 would have had some discussions with him about being able to
10 increase his activities over time using the pain as a guide
11 keeping in mind the type of surgery he had, any messages his
12 body may be giving him, but if he's feeling okay, to increase
13 those activities keeping those things in mind?

14 A. Well, we talk about the arthroplasty as well. I
15 mean, if you want to try and gain life out of the
16 arthroplasty, you keep your weight to a lower level. If you
17 increase that, you may get away with it. There is a risk
18 involved in increasing loads across arthroplasty so.

19 Q. Would patients who have had procedures like these or
20 surgeries really of any kind involving their upper
21 extremities, is it a good rule of thumb to try to increase at
22 least your activities or use of the arm over time?

23 A. Well, we don't want them to be completely immobile.
24 We want them to use the arm.

25 Q. Would you want them -- I guess what I'm trying to

1 get at here, there is a certain level of movement and activity
2 that you would expect of someone soon after surgery. Would it
3 be fair to say that that would be a very limited movement and
4 use of the arm?

5 A. Yes. It's a progressive thing.

6 Q. And then as they progress further out from surgery
7 and do other things, is it fair to say that you want the
8 person to be increasing their use and activity and involvement
9 of that particular arm?

10 A. As a general statement, yes.

11 Q. Okay. Now, are you aware that Mr. Osmanski didn't
12 see any doctors for any sort of specific problems regarding
13 his left arm from the time he last saw you in March of 2002
14 all the way up through the accident in this case in November
15 of 2008?

16 A. I didn't know one way or the other.

17 Q. Okay. And you said in your notes, and I think it
18 was, well, you had referenced this functional capacity
19 evaluation in March of 2002, and I believe that you had
20 indicated that -- hold on a second here. I'm sorry. Yes.
21 That note March 22nd, 2002 you referenced the functional
22 capacity evaluation, teaching techniques to promote good
23 biomechanics. Right there where it says teaching techniques
24 to promote good biomechanics, would it be fair to say that the
25 people that performed the functional capacity evaluation also

1 gave Mr. Osmanski some instructions on how to lift properly
2 considering his left arm injury?

3 A. True.

4 Q. And what was this conditioning program? Do you have
5 any idea what that was referencing?

6 A. Strengthening would be essentially the same thing.

7 Q. Okay. Would those be basically home exercise
8 techniques and things like that to gradually and over time
9 increase the strength in his left arm?

10 A. Well, but also in the other arm. I mean, the idea
11 is the stronger you get the other arm, the less load you would
12 tend to have to put on the left arm.

13 Q. Doctor, before Mr. Osmanski was going to progress to
14 a new job after the surgery, let's give him a good 4, 5, 6
15 years of recovery since he had seen you, he moves onto another
16 job, would you want Mr. Osmanski to undergo a lift test prior
17 to working anyplace that required lifting and use of the left
18 arm?

19 A. Well, I mean, I don't know exactly what that means.
20 I mean, it would be more than just testing. I mean, if he was
21 going to have to do some lifting, it would be going back to
22 that biomechanics and conditioning so that the right arm was
23 carrying as much load as possible trying to limit the amount
24 of any load on the left arm that you could, so it wouldn't be
25 just a straight test. If I were going to do it, that's what I

1 would be more looking at.

2 Q. All right. Are you familiar with the different
3 things that are done and tests that are performed in a
4 Department of Transportation, a DOT physical for truck
5 drivers?

6 A. I don't know the specifics.

7 Q. I want to go back to real briefly when you were
8 talking about your March 2001, or 2002, I'm sorry, note, you
9 had indicated about his restrictions at that time and his
10 permanent impairment. You indicated that back in 2002 he
11 would have restrictions not allowing him to lift more than 15
12 pounds unless things changed. Do you recall that testimony?

13 A. Yes.

14 Q. Doctor, regarding things that are changing, would it
15 be possible to increase Mr. Osmanski's recommended lifting
16 weight if he had gone five or six years without seeing any
17 doctors if he had been tested by other physicians for his
18 movement in his left arm, the weights he could lift with his
19 left arm if he had been certified by other doctors as having
20 essentially no restrictions during that time frame, would that
21 be something that could change in your mind in terms of
22 possibly increasing the amount of weight that he could lift
23 given his prior procedure?

24 A. Well, once again, I'll go back to the former
25 statement about biomechanics and conditioning. In general a

1 person with an artificial elbow joint we recommend that they
2 try and do as much shifting of weight over to the opposite
3 side. I have patients who have had arm amputations and can
4 still lift 50 pounds with the other arm. They build it up and
5 learn biomechanics techniques to kind of do lifting with that
6 arm so you can shift things over. So that's how we approach
7 it, and so you can do more lifting. It's not specifically
8 lifting more with that left arm, it's lifting in general.

9 Q. Okay. I think I understand what you're saying. So
10 let me just pose this hypothetical, if I could sort of flesh
11 out what I think you're getting at here. Mr. Osmanski, he had
12 conditioning therapy strength work and things like that on
13 both arms; is that correct?

14 A. Yes.

15 Q. And over the course of time if Mr. Osmanski
16 continued to improve and continued to gain strength and
17 actually learned to put more of that weight on his right arm
18 he would not be limited to lifting 10 to 15 pounds overall
19 with both arms, is that what you're getting at?

20 A. True. That was specific. I mean, we tell patients
21 that if they are lifting more than 10 to 15 pounds across that
22 elbow joint that's had the arthroplasty, they increase the
23 risk of troubles down the road so that's why we shift to try
24 to load the other side, try to limit the load. They
25 occasionally will lift more on the arthroplasty side, but we

1 try to avoid that as much as we can by shifting loads to the
2 other side.

3 Q. So in a patient like Mr. Osmanski, the restrictions
4 that were imposed back in 2002, those restrictions would not
5 prevent him from lifting something that was 50 pounds if he,
6 in fact, employed those techniques to shift most of the weight
7 over to the stronger arm?

8 A. Once again, I have patients with no left arm who
9 lift 50 pounds so they are doing it not with the left arm at
10 all.

11 Q. Just to get a good clean answer, I guess, to that
12 question, doctor, I'll just pose it again for you.

13 Keeping in mind the restrictions that you imposed
14 back in 2002, would there be anything wrong with Mr. Osmanski
15 lifting weights in excess of 50 pounds if he is shifting most
16 of that weight to his right healthier arm? Would that be
17 outside of or in violation of the restrictions that you
18 imposed back in 2002?

19 A. I'll give a specific answer. I have a 10 to 15
20 pound weight restriction on the left arm. I have no weight
21 restriction on the right arm.

22 Q. And, doctor, I want to also go back to another point
23 that you all had touched upon briefly. You had seen
24 Mr. Osmanski after his November 2008 accident, correct?

25 A. Well, I saw him in January of '09.

1 Q. Okay. And you were asked some questions by
2 Mr. Lockhart as to how exactly you found out whether or not
3 this was a work related accident. Do you recall those
4 questions?

5 A. Yes.

6 Q. I have in here a questionnaire, and I think it's
7 titled current problems and it has some questions up top. It
8 has a diagram of the human body front and back on the bottom
9 right hand side. Do you have a copy of that in your file?

10 A. I have found that now, yes.

11 Q. And it just says here that the reason for today's
12 visit indicates elbow pain. Is that the form you're
13 holding?

14 A. True.

15 Q. And then it says is the visit due to accident or
16 injury. And he indicates yes; is that correct?

17 A. True.

18 Q. Then it says, how did it happen. What was the
19 response there?

20 A. At work.

21 Q. So is that sufficient in your mind to tell you that
22 the reason you found out this happened at work is because
23 Mr. Osmanski told you and not some other lawyer later on down
24 the road?

25 A. Looking at this form he did inform us of that,

1 true.

2 Q. In a general sense, doctor, do you recall
3 Mr. Osmanski, was he a fellow that was motivated to return to
4 work?

5 A. If I can remember, he was, yes.

6 Q. Did he do everything that you had asked him to do?
7 Was he a cooperative patient?

8 A. As I recall.

9 Q. Were there any times during the course of your
10 treatment of Mr. Osmanski that you were doubting or calling
11 into question things he was saying or did it ever cross your
12 mind this guy is just not telling me the truth?

13 A. Nothing that comes to mind, no.

14 Q. The specific injuries here, doctor, I think we just
15 went over this a moment ago, but you were read some
16 information off of the radiologist's report and things like
17 that. And the way I understand it here, doctor, we are
18 talking about really three different things as far as his
19 injury. I want you to correct me if I'm wrong here. There
20 was a rupture in the biceps tendon; there was a fracture of
21 the humerus bone; and there may or may not have been some
22 actual damage to the actual prosthesis; is that your
23 understanding?

24 A. Well, I question the fracture. That was a radiology
25 report. I have reviewed the x-rays personally, and I think

1 they may have been over reading something there. There was
2 just some debris that was left over from the original surgery.
3 I concur with them that there was concern about loosening of
4 the implant. The biceps rupture possibility was a clinical
5 finding not confirmed at surgery, obviously, since I did not
6 not operate on him, but it was of enough concern that I wanted
7 it addressed

8 Q. Okay. So if we just leave that down to loosening of
9 the prosthesis and biceps tendon rupture, doctor, do you have
10 an opinion either way as to the cause of this particular
11 problem Mr. Osmanski had in November of 2008? What I'm
12 getting at here, was this because of the lifting that he did
13 or was this because of the way that this item actually fell on
14 to his arm?

15 A. Well, thinking about the potential, certainly
16 artificial elbow joint can loosen just on its own, with no
17 excessive loads across it. Just time alone can do that. An
18 acute injury can loosen it. That's another possibility. If,
19 indeed, there was a biceps tendon rupture, that's an acute
20 injury problem so that would take an extreme load, something
21 falling on the arm. So there was a component of the exam that
22 I felt was more definite than acute deal. And then there was
23 also a portion that was potentially a more chronic deal.

24 Q. And, doctor, let me just ask you this question: If
25 Mr. Osmanski never had the prosthesis, never had the prior

1 surgery he had with you, could he have ruptured his biceps had
2 he been working for the same trucking company in November 2008
3 and had all of that the same, could he still have done that?

4 A. Well, that's typically how we see biceps ruptures is
5 something heavy falls, the patient tries to hold it and it
6 pulls the arm out into hyperextension and the biceps
7 ruptures.

8 Q. Doctor, from your understanding of how this accident
9 happened and from the review of the records that you see, is
10 there anything that suggests that the biceps tendon rupture
11 had anything to do with the prosthesis or the prior injury?

12 A. Well, once again, I do not know that the biceps
13 tendon is ruptured. I was concerned significantly about it on
14 that visit and enough so that I thought it was worth exploring
15 surgically, but that I would attribute more to an acute thing
16 as opposed to, I think there are two separate issues here, the
17 implant and the biceps.

18 Q. Okay. And so any, obviously any damage to the
19 implant itself that would be the result of the accident that
20 had happened keeping in mind his prior surgery. But I think
21 what I understand you saying is we have two separate issues
22 here. We have damage to the prosthesis, we have got a
23 ruptured biceps tendon. The ruptured biceps tendon could have
24 happened to Mr. Osmanski with or without this prosthesis in
25 his arm, is that fair to say?

1 A. True.

2 Q. Doctor, based upon, I guess, the information that's
3 been presented to you in the medical records that you have had
4 a chance to review, if we look at the last time he saw you
5 which was March of 2002 and the next time he appeared to see
6 you I think was January of 2009, could we read from that,
7 doctor, that because Mr. Osmanski was never returning to you
8 or any other doctors before his accident in November of 2008,
9 could we take from that that he probably wasn't having any
10 problems with that arm during that time frame?

11 A. I can only guess.

12 Q. Well, I mean, after he had this accident, he
13 returned to see you for elbow pain, correct?

14 A. Yes.

15 Q. Would you suspect that if he was having elbow pain
16 from March 2002 to any time prior to November 2008, that he
17 would have returned to you for elbow pain or examination or at
18 least get your thoughts on what was going on?

19 A. Well, I would think he would, but I don't know that,
20 yes.

21 They have scheduled this for an hour. They are
22 telling me I have got commitments here; that they are pulling
23 me away here pretty soon.

24 MR. SMITH: That's all the questions I have for
25 you.

REDIRECT EXAMINATION

BY MR. LOCKHART:

Q. Doctor, just one question. You are not able to confirm or deny the presence of the biceps tendon rupture without a surgical confirmation, correct?

A. Well, short of trying to get an MRI, but it would be a very poor study so it was a clinical diagnosis that's unconfirmed by anything else.

MR. LOCKHART: Thank you, doctor. Thank you for your time today.

THE WITNESS: Waive.

(Witness excused.)

(Whereupon, at 12:05 o'clock p.m. the taking of the deposition was concluded.)

DEPOSITION CERTIFICATE

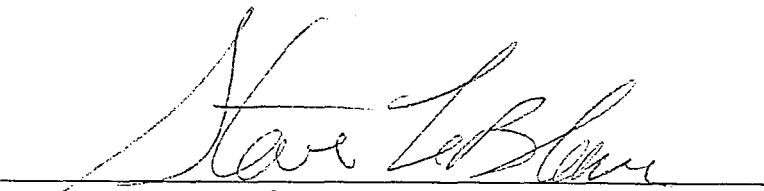
STATE OF FLORIDA)

COUNTY OF ALACHUA)

I, STEVEN E. LeBLANC, SR., R.P.R., and Notary Public in and for the State of Florida at Large, do hereby certify that pursuant to Notice of Taking Deposition, I sat at the place and at the time as hereinabove shown; that I was attended by counsel as hereinabove shown, and the witness, LARRY CHIDGEY, M.D., who was first duly sworn and then testified as is hereinabove shown, and that the testimony of the said witness was reduced to typewriting under my personal supervision and that a review of the transcript was not requested.

I further certify that I am neither of counsel nor attorney to either of the parties in said cause, nor interested in the event of said cause.

Witness my hand and official seal in the City of Gainesville, Alachua County, Florida this 19th day of March, 2010.


Steven E. LeBlanc, SR., R.P.R.
Notary Public in and for the
State of Florida at Large.



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0818219

JOE A. OSMANSKI,)

)

Employee/Plaintiff,)

)

-vs-)

)

WATKINS & SHEPARD)

TRUCKING, INC.,)

)

Employer,)

)

and)

)

ZURICH NORTH AMERICA,)

)

Carrier/Defendants.)

)

3:25 P.M.

April 8, 2010

Hickory, North Carolina

DEPOSITION

OF

ALBERT JAMES OSBAHR, M.D.

A large, stylized 'COPY' stamp with a small icon to the left.

April 8, 2010

2 (Pages 2 to 5)

Page 2

APPEARANCES

1
2
3 For the Employee/
4 Plaintiff: Mr. David T. Pearlman
5 (via telephone) Mr. Kevin B. Smith
6 The Steinberg Law Firm, L.L.P.
7 Sixty-one Broad Street
8 Charleston, South Carolina 29401
9
10 For the Employer/
11 Carrier/Defendants: Mr. Jason W. Lockhart
12 (via telephone) McAngus, Goudelock and Courie, L.L.C.
13 Suite 300
14 700 Gervais Street
15 Columbia, South Carolina 29211-2519
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Page 4

1 ALBERT JAMES OSBAHR, M.D., being first duly sworn,
2 was examined and testified as follows:
3 EXAMINATION (By Mr. Lockhart):
4 Q. Dr. Osbahr, good afternoon. My name is Jason Lockhart;
5 I'm a lawyer in Columbia, South Carolina. I represent
6 Watkins and Shepard Trucking and their workers'
7 compensation insurance carrier, Zurich North America, in
8 a workers' compensation claim that's been filed by Joe
9 Osmanski against Watkins and Shepard for a work-related
10 accident that he was involved in on November 1, 2008.
11 I am taking your deposition this afternoon
12 telephonically. It is my understanding that you are in
13 your office in Hickory, North Carolina; is that correct?
14 A. Correct.
15 Q. Okay. And I am in Columbia and on the telephone we have
16 Mr. Pearlman and Mr. Smith, who are representing Mr.
17 Osmanski. They are located, I believe, in their offices
18 in Charleston. We are taking your deposition this
19 afternoon in anticipation of an upcoming hearing we have
20 in Mr. Osmanski's case. I want to talk to you in a
21 moment about your examination of Mr. Osmanski that
22 occurred in October of 2006, but before I get to that,
23 I wanted to ask you just some very brief background
24 questions. It's my understanding that you're currently
25 practicing medicine in Hickory, North Carolina; is that

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3 Examination By Pages
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5 Mr. Lockhart 4 - 15
6 24 - 26
7 Mr. Pearlman 15 - 24
8
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11
12
13 This is the transcript of the deposition of ALBERT
14 JAMES OSBAHR, M.D., being taken by consent of counsel for the
15 parties and in accordance with the South Carolina Workers'
16 Compensation Commission Rules of Procedure before Kimberly S.
17 Crosby, Certified Verbatim Reporter and Notary Public, at
18 Catawba Valley Medical Center, AHEC Building Room 105, 810
19 Fairgrove Church Road, Southeast, Hickory, North Carolina, on
20 the 8th day of April, 2010, beginning at 3:25 P.M.
21
22
23
24
25

Page 5

1 correct?
2 A. Yes.
3 Q. Okay. And you are licensed to practice medicine in the
4 state of North Carolina; is that correct?
5 A. Yes.
6 Q. Are you licensed in any other states besides North
7 Carolina?
8 A. No.
9 Q. What is your area of practice?
10 A. I practice occupational medicine. I am also board
11 certified in family medicine, as well as in preventive
12 medicine and public health.
13 Q. Where do you currently practice?
14 A. I practice at Catawba Valley Medical Center in Hickory,
15 North Carolina.
16 Q. How long -- I'm sorry. How long have you practiced at
17 Catawba Valley Medical Center?
18 A. I've been here approximately five and a half years.
19 Q. Do you practice alone there or do you have other
20 physicians who are in your practice?
21 A. I'm the only physician that's in the practice. I have
22 a physician assistant who works with me and I supervise.
23 Q. Okay.
24 MR. LOCKHART: David, I would offer Dr. Osbahr up
25 as an expert in -- in the area of

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1 occupational medicine. 2 MR. PEARLMAN: No objection. 3 MR. LOCKHART: Okay. 4 Q. Dr. Osbahr, when did you have -- first have an occasion 5 to see a Joe Osmanski? 6 A. My records indicate that I saw him for a D.O.T. 7 examination, it appears, as a new hire for Watkins, 8 Shepard Trucking on 10/30, 2006. 9 Q. Okay. We have obtained, both, I believe, Mr. Pearlman 10 and I, a -- a copy of something called a "Medical 11 Examination Report for Commercial Driver Fitness 12 Determination" dated October 30th of 2006. Would that 13 have been a report you would have completed as part of 14 your examination of Mr. Osmanski? 15 A. That's correct. 16 Q. Okay. 17 MR. LOCKHART: David, I am looking at pages 18 fourteen -- page fifteen of your APA 19 submissions. 20 Q. Doctor, I would like to take you for -- or -- or take a 21 moment and go through this -- this form with you. The 22 first page of the form appears to have a couple of 23 sections, one noted as "Driver's Information," another 24 as "Health History." Would those portions of that 25 document have been completed by you or by Mr. Osmanski?	1 show that this man underwent a surgery. 2 Q. Okay. Looking at the first page of the medical 3 examination report under the section labeled "Health 4 History," is there a question asking the patient if they 5 had a missing or impaired hand, arm, foot, leg, finger 6 or toe? 7 A. There is. 8 Q. And did Mr. Osmanski provide an answer to that question? 9 A. He did. 10 Q. Okay. His answer was? 11 A. No. 12 Q. Based on a review of your records and your personal 13 recollection, if any, from your examination of Mr. 14 Osmanski, were you ever informed that he had been 15 assigned a fourteen-percent impairment rating to the 16 left arm by an orthopaedic physician in Gainesville, 17 Florida, named Dr. Chidgey? 18 A. No. 19 Q. Okay. Do your records reflect or do you have any 20 personal recollection of Mr. Osmanski informing you that 21 he had been assigned a lifting restriction by Dr. 22 Chidgey in March of 2002, no lifting in excess of ten to 23 fifteen pounds? 24 A. No. 25 Q. All right. Would that information have been important
Page 7	Page 9
1 A. Mr. Osmanski is required under D.O.T. to fill out 2 section one, "Driver's Information," and "Health 3 History," which is section two, and then to sign under 4 driver's signature after completing the health history 5 form and date it, which he did indeed do. I am then 6 obligated under D.O.T. to fill in any information on 7 "Comments of the Medical Examiner" based on his health 8 history information. 9 Q. When you examined Mr. Osmanski on October 30th of 2006, 10 do your records reflect or do you have any personal 11 recollection of him telling you he had been involved in 12 a work-related accident in 1987? 13 (WHEREUPON, the witness reviewed the referenced 14 documents) 15 A. My records don't indicate the specifics of any accident. 16 He did not put that into his health history. I would 17 only have limited knowledge of this, based on my 18 examination information, which shows some limitations, 19 but on my record, I don't have that he had an accident 20 then. 21 Q. Okay. Do you have any information in your records or 22 any personal recollection, following your examination of 23 Mr. Osmanski, that he had informed you about having 24 undergone a left elbow replacement? 25 A. I did not have anything in my record, nor my examination	1 to you in your evaluating Mr. Osmanski's determination 2 of whether or not he was fit to work as a -- as a -- a 3 driver for Watkins and Shepard? 4 A. It would have been important. 5 Q. All right. Could you take us through your examination 6 of -- of -- of Mr. Osmanski and what your findings were? 7 A. I, on my physical examination information, reviewed his 8 visual, his side-to-side vision, his color vision -- 9 these were considered within normal -- his blood 10 pressure, pulse, and he had audiometric findings that 11 were within expected for D.O.T. qualification. He had 12 a urinalysis done, which was done by urine dipstick, 13 which showed no blood, sugar or protein. He had obesity 14 noted on the exam, with a weight of three hundred pounds 15 and a five, eleven frame, and on my examination, I 16 remarked that even though he was overweight or obese, I 17 found him to be very functional and mobile with his 18 weight. As noted on the report that I have there, I 19 found no abnormalities in his eyes, ears, mouth, throat, 20 heart, lungs. He had no problems with his abdomen or 21 viscera. Vascular exam, genital urine exam were normal. 22 He was also fine in terms of spine and neurological 23 exam. However, on the extremity examination, I did find 24 a (sic) impairment issue. He had diminished supination 25 of his left arm, getting only to about ninety degrees of

4 (Pages 10 to 13)

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1 supination there. He was able to pronate down to
2 normal. He had good functional compensation from the
3 standpoint of these limits and impairment for the
4 standpoint of driving a truck, from information that I
5 had. I then placed down that he should stop smoking and
6 reduce weight as preventive issues for his medical
7 history but, based on all the information, then
8 certified him as meeting standards for D.O.T.
9 Q. Okay. What is the -- I guess, the relevance to your
10 finding that he had limited supination of his left arm?
11 A. Well, since he was coming to work, it's important to
12 assess his baseline activities and also to note whether
13 he had any impairments, which is what the D.O.T. asked
14 for, and even though this man did not tell me on his
15 health history that he had an impairment, by the time
16 that I got to the examination, it was clear that he did
17 have an impairment and that's what I observed and noted.
18 Q. Would someone with supination limited to only ninety
19 degrees, would such a limitation impact the ability of
20 an individual like Mr. Osmanski to engage in -- in
21 activities such as lifting?
22 MR. PEARLMAN: Well, let me object. I think that's
23 calling for speculation. The employer did a
24 lift test to clear that up. I think Dr.
25 Osbahr's evaluation was strictly related to

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1 Q. After you examined Mr. Osmanski, did you have any
2 conversation or do you have any record of your having
3 any conversations with Watkins and Shepard about the
4 limited supination of the left arm that you noted in the
5 examination?
6 A. I don't recall any.
7 Q. Okay. The -- the standards that are outlined in the
8 federal regulations, forty-nine CFR, 391, point, four,
9 one, would you agree that those reference the physical
10 ability of someone or -- or the lack thereof to actually
11 drive a commercial motor vehicle? Isn't that what those
12 regulations address?
13 MR. PEARLMAN: Objection for leading.
14 A. That's the requirement or --
15 Q. Doctor, can -- can I stop here a second?
16 MR. LOCKHART: Are -- are both of y'all
17 participating in this deposition or is it
18 just --
19 MR. SMITH: That was -- that was David.
20 MR. LOCKHART: Okay. I'm sorry. Okay. I'm sorry,
21 I'm sorry.
22 Q. Go ahead, Doctor.
23 A. That's the criteria guidelines that are given to the
24 medical examiners for qualification -- physical
25 qualification, medical qualification for truck driving

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1 whether he was certified by the D.O.T.
2 Q. Doctor, you can answer the question.
3 A. It's possible that indeed that kind of limitation could
4 affect his lifting and it appeared, as I noted on my
5 examination, that he had good functional compensation
6 for it.
7 Q. When you examined Mr. Osmanski and indicated that he met
8 the standards, as noted on your report, did you have any
9 type of job description from Watkins and Shepard that
10 you were able to evaluate to determine if he was clear
11 to perform the essential job functions that they were to
12 ask him to perform?
13 A. I don't recall having in front of me a particular job
14 description piece from Watkins, Shepard, which usually
15 leaves me to looking at the D.O.T. requirements overall
16 for truck driving.
17 Q. Okay. That would be forty-nine CFR, 391, point, four,
18 one? Is that what you're referring to?
19 A. Yes.
20 Q. Okay. After you noted the limited supination of Mr.
21 Osmanski's left arm, at that point, do you have any
22 information to suggest that he informed you of his prior
23 left elbow or left arm injury and subsequent surgery?
24 A. Well, I don't have any documentation that indicates
25 that.

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1 under D.O.T.
2 Q. All right. Thank you, Doctor. You -- would -- would --
3 those regulations -- or do those regulations address
4 lifting, pushing, pulling, any specific physical
5 requirements?
6 A. Not specifically in the nature of poundage or push/pull
7 forces.
8 Q. So does that regulation address driving more so than
9 other physical activities?
10 MR. PEARLMAN: Well, let me note my objection. The
11 regulation speaks for itself and will be made
12 a part of this record.
13 A. In general, unless it's specifically laid out by the job
14 requirements for the company and given to us to review
15 and use, as mentioned earlier, it's the general activity
16 requirements for truck driving that the D.O.T.
17 considers. They do, I think, understand that truckers
18 are to be able to keep up maintenance of their truck,
19 have the ability to drive their truck, have the ability
20 to get in and out of their truck, possibly even climb up
21 onto areas in their truck. There may be some loading
22 and unloading requirements, but it's left in a general
23 type of setting that is not specifically codified to
24 mild or sedentary, medium, heavy work activity that you
25 might see with other jobs.

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1 Q. All right. Thank you, Doctor. When you examined Mr. 2 Osmanski on October 30th of 2006, did you have any 3 understanding of the specific lifting or pushing or 4 pulling requirements that he would have been asked to 5 perform as part of his employment with Watkins and 6 Shepard? 7 A. I was not aware of anything over and above what might be 8 necessary for D.O.T. 9 Q. Okay. Thank you. Doctor, I want to ask you for a 10 moment about a questionnaire that you completed on 11 November 5th of 2009. 12 MR. LOCKHART: David, I'm looking at page one of 13 your APA submissions. 14 MR. PEARLMAN: That's the one that he filled out 15 himself? 16 MR. LOCKHART: Yes. 17 MR. PEARLMAN: Okay. 18 Q. Doctor, did you complete a -- a -- what appears to be a 19 -- a short letter or -- on November 5th of 2009? 20 A. I did. 21 Q. Can you tell me a little bit about how you came about to 22 prepare that? 23 A. I was sent a letter from The Steinberg Law Firm. Mr. 24 Pearlman had sent me this letter. He asked me to review 25 the D.O.T. record that I had -- had on this particular	1 Q. Your one and only examination of Mr. Osmanski was on 2 October 30th; is that right? 3 A. That's correct. 4 Q. And that was at the request and behest of Watkins, 5 Shepard Trucking company? 6 A. Watkins, Shepard had their employees who are trucking 7 seeing us for D.O.T. exams. 8 Q. And so they do that routinely; they send them to you to 9 conduct an evaluation to examine them and to make sure 10 they meet D.O.T. requirements; is that right? 11 A. That's correct. 12 Q. And so Watkins is familiar with you and you're familiar 13 with them? 14 A. I'd say we were probably just starting that relationship 15 back then. 16 Q. Okay. And whatever you found with regard to Mr. 17 Osmanski as a result of your evaluation, you then 18 conveyed that information to Watkins, Shepard Trucking? 19 A. I believe we sent them the information on the card and 20 the long form; yes. 21 Q. Okay. And they would have gotten it. Did they ever 22 call you and ask for further clarification or further 23 information, that you're aware of? 24 A. Nothing in my records indicates that. 25 Q. Did they ever call you or do you recall them contacting
Page 15	Page 17
1 employee and then, if I felt comfortable with his 2 prepared letter that you see, based on my record 3 information, that I was to sign and date and send it 4 back to him. 5 Q. Okay. Did you have any other contact with The Steinberg 6 Firm other than receiving the letter from Mr. Pearlman's 7 office? 8 A. I'm not sure that I recall anything further beyond the 9 fact that this letter was coming to me and then 10 receiving it. 11 Q. Okay. Did you ever see Mr. Osmanski in your clinic 12 again after October 30th of 2006? 13 A. My records do not indicate that. 14 Q. Okay. So that would have been his only examination in 15 your office? 16 A. That's correct. 17 Q. Okay. Give me just a moment. I believe I've asked you 18 all the questions I need to. Thank you. Doctor, those 19 are all the questions I have. Thank you. 20 EXAMINATION (By Mr. Pearlman): 21 Q. Doctor, this is David Pearlman and I represent Mr. 22 Osmanski and I've just got a few questions for you. 23 Doctor, the -- you initially examined and evaluated Mr. 24 Osmanski back in October, 2006; is that correct? 25 A. That's correct.	1 you and say (sic), "Doctor, you note an impairment to 2 this gentleman's, I think, left arm; we want to ask you 3 some more about that, whether he can do this job or that 4 job"? 5 A. I don't have anything in my records that indicates that. 6 Q. But they had the opportunity to do that? I mean, if 7 they had called you, you would have certainly responded 8 to those questions; is that right? 9 A. I would have tried to clarify; yes. 10 Q. Okay. And I assume that on October 30th, 2006, you took 11 a thorough evaluation and examination of Mr. Osmanski; 12 is that fair? 13 A. As you see, yes. 14 Q. Okay. Initially he throws out this health history that 15 I'm looking at, which is section two, and one of the 16 questions that Mr. Lockhart asked you is did he tell you 17 he had an accident back in 1987 and you indicated you 18 have no record, but the question is really any illness 19 or injury in the last five years; isn't that correct? 20 A. That's one of the questions there; yes. 21 Q. Okay. And so if his injury was in 1987, that's, you 22 know, nine years before he could have truthfully 23 answered no to that question? 24 A. Yes. 25 Q. Okay. And you then proceed to conduct an evaluation of

6 (Pages 18 to 21)

Page 18	Page 20
1 him, a pretty thorough evaluation. You look at his 2 vision; is that right? 3 A. That's correct. 4 Q. You look at his hearing? 5 A. Yes. 6 Q. You look at his blood pressure and pulse rate? 7 A. Correct. 8 Q. You actually do a urinalysis? 9 A. Yes. 10 Q. And then you then conduct a physical examination? 11 A. That's correct. 12 Q. And that physical examination is contained in section 13 seven of this report, which is on page fifteen of our 14 APA submissions? 15 A. Yes. 16 Q. And during that physical examination, you noted that he 17 had an impairment of his left arm; is that right? 18 A. Yes. 19 Q. And that impairment was pretty obvious to you because 20 you noted that he only had about ninety percent of 21 supination; is that correct? 22 A. He had ninety degrees of supination. 23 Q. And he had full pronation but only ninety degrees of 24 supination? 25 A. Correct.	1 arm? 2 A. Yes. 3 Q. Because he only had ninety degrees of supination? 4 A. Yes. 5 Q. And do you actually look at the arm when you're testing 6 him? 7 A. I do. 8 Q. So if he had a scar on his arm, that would have 9 represented a surgical scar, whether or not you saw a 10 surgical scar? 11 A. If it was not -- I did not remark on that, so it might 12 have not been very obvious. 13 Q. Okay. 'Cause I can represent to you that he has one, 14 but you actually look at the arm? 15 A. I do. 16 Q. Okay. So if he has a scar, it would have been -- if 17 it's obvious to anybody, it would have been obvious to 18 a doctor, I would assume; is that fair? 19 A. Yeah. Some- -- sometimes the scars are hidden pretty -- 20 pretty good, so it -- it was not showing up to me in 21 terms of the exam. 22 Q. Okay. But in terms of your exam, it wouldn't matter 23 with regard to his ability to bend and use his arm; you 24 could take those measurements, whether he had surgery or 25 not, anyway?
Page 19	Page 21
1 Q. And that, to you, represented an impairment of the arm; 2 is that right? 3 A. Yes. 4 Q. And that's information that would have been conveyed to 5 Shepard Trucking in this report? 6 A. Yes; it's possible, if they got the entire long form. 7 Q. Okay. Well, -- well, when you say in possible long 8 form, I -- I'm looking at the form that we have. Is 9 there a different form? 10 A. Some of the employers don't take the entire long form. 11 They'll only take the very bottom section -- 12 Q. Uh-huh. 13 A. -- and it really just depends on the employer. I can't 14 answer for Watkins, Shepard. Most of our employers do 15 seem to receive the long form and then hold it in 16 confidential places in terms of protecting the medical 17 information. 18 Q. Okay. So I -- I think, and maybe we can ask Mr. 19 Lockhart to stipulate, that Watkins Glen (sic) received 20 this form, but in any event, they had the op- -- they 21 asked you to do the evaluation. If they wanted the 22 information, it was available to them, whether they 23 received it or not; is that correct? 24 A. It would and could have been available to them; yes. 25 Q. And you noted, again, that he had impairment of his left	1 A. That's correct. 2 Q. And was your -- based on your evaluation of his left 3 arm, that he had what you called good functional 4 compensation? 5 A. Yes. 6 Q. What do you mean by that? 7 A. That even though he had the impairment, it appeared he 8 could use his arm for the purposes of driving a truck. 9 Q. And are you -- do you have anything to do with the lift 10 test that Watkins, Shepard there requires? 11 A. No, I don't. 12 Q. Do you know where -- I mean, do you know whether they do 13 have a lift test or not? 14 A. I'm not sure if they have a lift test or not. 15 Q. But that's not done in your office? 16 A. No. It was not made available for this exam either. 17 Q. Based on your examination and evaluation of Mr. 18 Osmanski, did you certify him to be able to perform the 19 duties of a commercial motor vehicle driver? 20 A. I did. 21 Q. And you understand that that certification is based on 22 the forty-nine CFR, section 391, point, forty-one? 23 A. Yes. 24 Q. The regulation involving what the medical requirements 25 are of a -- commercial driver are; is that right?

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1 A. Yes. 2 Q. And in that regulation, it says that a person is 3 physically qualified to drive a commercial vehicle if 4 that person has no impairment of an arm, foot or leg 5 which interferes with the ability to perform normal 6 tasks associated with operating a commercial motor -- 7 motor vehicle; is that right? 8 A. That's correct. 9 Q. So it was your opinion, to a reasonable degree of 10 medical certainty, that Mr. Osmanski could perform all 11 the duties associated with operating a commercial motor 12 vehicle? 13 A. That was my recommendation. 14 Q. And, in fact, you filed -- that little statement that 15 Mr. Lockhart spoke about wherein I asked you about 16 whether he was certified to work, you state in this 17 report of November 5th, 2009, "I have certified his 18 ability to work;" is that right? 19 A. That's correct. 20 Q. And that was your opinion and remains your opinion, to 21 a reasonable degree of medical certainty? 22 A. That's correct. 23 Q. And as we sit here today, as far as you know, this 24 information was relayed to the -- the appropriate 25 individuals at Watkins, Shepard Truck (sic) with regard	1 any other independent knowledge of Mr. Osmanski other 2 than what's contained in your written report here? 3 A. No. 4 Q. Doctor, I don't have any further questions. 5 FURTHER EXAMINATION (By Mr. Lockhart): 6 Q. Doctor, I just have a couple real quick in follow-up. 7 Mr. Pearlman asked you and you indicated that the 8 results of your examination of Mr. Osmanski would have 9 been provided to Watkins and Shepard Trucking; is that 10 correct? 11 A. We can provide it to them. I can't tell you if they 12 actually received the long form or not. 13 Q. Okay. Do your records reflect to whom this information 14 would have been provided at Watkins and Shepard, if -- 15 if it was provided at all? In other words, did you send 16 the results of your examination to a particular 17 individual? 18 A. I don't have in my records if that was case. In some 19 cases, we will fax it across; in other cases, the 20 trucker's given the long form to take back to the 21 company so they're in possession of it and can be 22 delivered to Watkins and Shepard or another employer. 23 In 2006, I'm not sure how this was handled for Watkins 24 and Shepard. 25 Q. And I believe you testified earlier that your records
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1 to what you found with his left arm, his limitations 2 with regard to supination but his functional 3 capabilities with regard to his left arm; is that right? 4 A. I believe that's true. 5 Q. Now, you were asked a question about, in his health 6 history, whether he answered whether he had an impaired 7 arm or hand. He clearly didn't have a missing arm or 8 hand? 9 A. No. 10 Q. And so the question is whether he had an impaired arm or 11 hand and in the questionnaire, he signs -- he checks no, 12 but in your evaluation, you find that he does? 13 A. Correct. 14 Q. So there's nothing hidden with regard to his impairment 15 to his left arm contained in your evaluation? 16 A. Well, I would have expected him to have answered that as 17 a yes. Once he has marked that off as a no, that 18 section I cannot touch. 19 Q. I understand that, but if you look at your entire 20 report, the fact that he has an impairment to his left 21 arm is readily available and readily apparent because 22 you note it in your physical examination; is that 23 correct? 24 A. Yes. I noted the impairment based on my exam. 25 Q. Doctor, -- well, let me -- scratch that. Do you have	1 are inconclusive as to whether the long form was or was 2 not provided to Watkins and Shepard? 3 A. That's correct. 4 MR. PEARLMAN: Well, -- well, Jason, are you 5 contending that -- we got these from the 6 personnel file that you sent to us. Are you 7 contending that Watkins, Shepard didn't have 8 this form? 9 MR. LOCKHART: No, David; that's not my contention, 10 but I -- I'm -- I'm asking the question that 11 you asked. Is there -- is there an issue 12 with that? 13 MR. PEARLMAN: Well, there's not an issue about the 14 question, but I'd like to know whether you 15 are contending that somehow Watkins Glen 16 (sic) didn't have the personnel records which 17 they sent to us. 18 MR. LOCKHART: No; that's not my position at all. 19 I'm just following up on the question you 20 asked. Is that -- is that okay? 21 MR. PEARLMAN: I think -- well, that's fine; 22 please. 23 MR. LOCKHART: Okay; all right. All right. 24 Q. And, Doctor, just -- Mr. Pearlman asked you about your 25 certification of Mr. Osmanski pursuant to the federal

8 (Pages 26 to 29)

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1 regulations. Again, just to make sure I'm clear, do you
2 have any information -- specific information regarding
3 the physical requirements of his job duties and
4 responsibilities with Watkins and Shepard prior to or
5 during your examination of Mr. Osmanski?
6 A. No.
7 Q. Okay. And so if there were lifting requirements,
8 pushing or pulling requirements associated with his job
9 with Watkins and Shepard specific to Watkins and
10 Shepard, did you have any knowledge of those when you
11 examined him and certified him as able to work?
12 A. I was not aware of any.
13 Q. All right. Thank you, Doctor.
14 MR. PEARLMAN: Thank you, Doctor. I don't have any
15 further questions.
16
17 (WHEREUPON, the deposition was concluded at
18 3:58 P.M.)
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1 CHANGES AND SIGNATURE
2 WITNESS NAME: ALBERT JAMES OSBAHR, M.D., APRIL 8, 2010
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1 CHANGES AND SIGNATURE
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6 I, ALBERT JAMES OSBAHR, M.D., have read the foregoing
7 deposition and hereby affix my signature that same is
8 true and correct, except as noted above.
9
10
11 ALBERT JAMES OSBAHR, M.D.
12
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14 Sworn to and Subscribed before me
15 _____, Notary Public.
16 This _____ day of _____, 20 ____.
17 My Commission Expires:
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1 STATE OF NORTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF CATAWBA)
4

5 I, Kimberly S. Crosby, Certified Verbatim Reporter
6 and Notary Public, do hereby certify that ALBERT JAMES
7 OSBAHR, M.D., was duly sworn by me prior to the taking of his
8 deposition, that said deposition was taken by me and
9 transcribed under my supervision and that the foregoing
10 thirty (30) pages constitute a verbatim transcription of the
11 testimony of the said ALBERT JAMES OSBAHR, M.D. I do further
12 certify that the persons were present as stated.

13 I do further certify that I am not of counsel for
14 or in the employment of any of the parties to this action,
15 nor do I have any interest, financial or otherwise, in the
16 result thereof.

17 IN WITNESS WHEREOF, I have hereunto subscribed my
18 name, this 12th day of April, 2010.
19
20

21 _____
22 Kimberly S. Crosby, N.P.
23 Certified Verbatim Reporter
24 N.C. Notary No. 19985310084
25

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Y	2010			
Yeah	1:13 3:20 27:2 28:2			
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y'all	26			
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	16:2 17:10			

Reported By: Kimberly S. Crosby

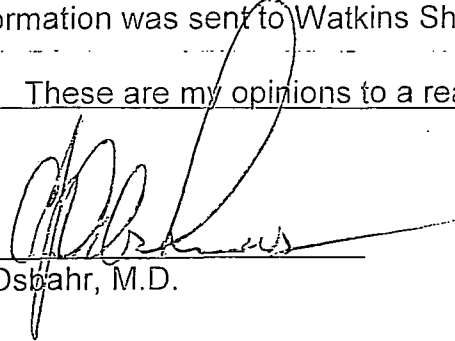
www.huseby.com

HUSEBY, INC. - 1230 W. Morehead Street, #408, Charlotte, North Carolina 28208 (800) 333-2082

To whom it may concern:

I conducted a medical evaluation of Joseph Osmanski at the request of Watkins Shepard Trucking, LLC. on October 30, 2006. I noted on the evaluation form that there was an abnormality of Mr. Osmanski's left arm. My evaluation of his left arm revealed he was limited in supination to only 90 degrees, with 180 degrees being normal. His pronation was ok. He had good functional use of his left arm. Therefore I certified his ability to work. This information was sent to Watkins Shepard Trucking, LLC.

These are my opinions to a reasonable degree of medical certainty.


Al Osbahr, M.D.

11/5/09
Date

04/14/2009 TUE 16:43 FAX

George Sink, P.A.**INJURY LAWYERS**www.sinklaw.com240 Stoneridge Drive
Suite 402
Columbia, SC 29210
FAX: 803-929-1911
803-929-1920Paula Howker Amick
E-mail: pamick@sinklaw.com

April 3, 2009

VIA FACSIMILE AND FIRST CLASS MAIL 352-273-7293

238962.20

Dr. Larry K. Chidgey
University of Florida Physicians
3450 Hull Road
P.O. Box 112727
Gainesville, FL 32611

RE: Joseph A. Osmanski vs. Watkins Shepard Trucking/Zurich American Insurance Company

WCC File Number	:	0816219
Date of Incident	:	11/1/2008
Our File Number	:	238962.20

Dear Dr. Chidgey:

As discussed with your office, we represent Mr. Osmanski in his claim arising from a work-related injury on or about November 1, 2008. We appreciate you kindly agreeing to respond to the following for purposes of presenting our client's claim at an upcoming hearing before the South Carolina Workers' Compensation Commission:

- I previously treated Mr. Osmanski for a left elbow joint replacement, pursuant to a previous injury which occurred over ten years ago.
Yes X No
- After his release, and pursuant to my recommendations, Mr. Osmanski gradually returned to activities, as *tolerated*, including employment which required him to use and lift with his left arm.
Yes X No
- Based upon Mr. Osmanski's history and prior records, he had been functioning well and was able to perform all the tasks required of him in his new position as a driver, including duties which required him to load and unload freight.
Yes X No
- Based upon his history and medical records, but for the unusual event of the heavy weight falling unexpectedly on to his left arm, damaging the joint replacement itself, Mr. Osmanski would have undoubtedly been able to continue his work activities for the employer, as he had for the two years prior to this work-related injury on or about November 1, 2008.
Yes X No

04/14/2009 EOB 16:44 FAX

Dr. Larry K. Chidgey
April 3, 2009
Page 2 of 2

1. Mr. Osmanski is in need of additional medical treatment to include _____

new total elbow replacement

The above responses represent my opinions to a reasonable degree of medical certainty.

4/10/09
Date

[Signature]
Dr. Larry K. Chidgey

Thank you for your assistance in this matter.

Sincerely,

Christina Logan for
Paula Howker Amick
Attorney at Law

Vcll
Enclosure

cc: Joseph Osmanski

UNIVERSITY OF
FLORIDA
PHYSICIANS

UF Orthopedics and Sports Medicine Institute
3450 Hun Road, P.O. Box 112733
Gainesville, FL 32611-2733
Clinic: (352) 273-7001 • Fax (352) 273-7295

Work Limitations/Release

Faxed To: _____

Date Faxed 5-14-09

Faxed By: Margie

Adjuster's Name

Company

803 894-7661

Fax #

Attending Physician: Chidgey Dell Sahajpal Wright

PATIENT'S NAME: Osmunohi Joseph MRN # 675885 DATE OF SERVICE: 5-14-09

DIAGNOSIS: _____

The above employee was examined and has been classified as follows as of this examination date:

- ☒ Temporarily not recommended for employment.
Estimated date of return to work _____
- ☐ Employable (full duty) with no restrictions.
May return to work on _____
- ☐ Employable (light duty) with limitations as follows:

- ☐ May return to work on _____
- ☒ No use of left hand.

RESTRICTIONS FOR RIGHT / LEFT HAND

- ☐ Can use involved hand as minimal helping hand.
- ☐ Must wear splint / cannot get hand wet or dirty.
- ☐ No heavy lifting with hand. Limited to _____ pounds.
- ☐ No high resistance pinching, pulling, pushing, gripping or twisting activities with hand.
- ☐ No vibratory tools.
- ☐ Restrictions for _____ days / weeks / months.
- ☐ Specific restrictions: _____
- ☐ No overhead reaching.

Copies to: Employee and Employer

Employee's date of next appointment: _____

ORTH-49-08C



UNIVERSITY OF
FLORIDA

OSMANSKI, JOSEPH ARTHUR
STH # 00675885

UF Orthopaedics and Sports Medicine Institute
UF Orthopaedic Clinic

3450 Hull Road
P.O. Box 112733
Gainesville, FL 32611-2733
Clinic (352) 273-7001
Fax (352) 273-7295

SHANDS at UF CLINIC

04/01/2009

DIAGNOSIS: His left history of left total elbow arthroplasty.

Mr. Osmanski returns to clinic today. When he was last seen it was for concern for infection, we obtained lab values. His lab values were within normal limits. However, the patient continues to have an increased amount of pain. He is unable to actively flex his left arm secondary to pain and weakness. The patient does have passive flexion but there is no active flexion noted. On radiographic examination there is radiolucency around the humeral stem.

ASSESSMENT: Loose prosthesis.

PLAN: Our plan will be to take the patient for a revision left total elbow arthroplasty. In addition, we would explore the anterior aspect to exam if he has had any ligamentous disruption of his elbow flexors. There is concern for this since the patient has no active flexion and does have passive flexion. We will see the patient back when we can schedule this.

I saw and evaluated this patient. I discussed the patient with the resident and agree with the findings and plan as documented in the above note.

Electronically Reviewed and Signed by
Larry K. Chidgey, M.D. 04/13/2009 21:32
Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: John D. McCormick, MD
/MDQ 04/01/2009:04/01/2009 4:16 P
UDN: 4156068 Job ID# 004335729

cc:
*



UNIVERSITY OF
FLORIDA

OSMANSKI, JOSEPH ARTHUR
STH # 00675885

UF Orthopaedics and Sports Medicine Institute
UF Orthopaedic Clinic

3450 Hull Road
P.O. Box 112733
Gainesville, FL 32611-2733
Clinic (352) 273-7001
Fax (352) 273-7295

~~SILANDS at UF CLINIC~~

02/23/2009

The patient returns for followup of his elbow. He is not making any progress and the pain is substantial. I think we need to check some lab work and make sure there is nothing going on with that. We will see him back after the infection studies are complete. We may then need to move forward with a revision.

Electronically Reviewed and Signed by
Larry K. Chidgey, M.D. 03/02/2009 08:46
Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Larry K. Chidgey, M.D.
LKC/MDQ 02/23/2009:02/23/2009 9:23 A
UDN: 4103264 Job ID# 004278127

cc:
*



UNIVERSITY OF
FLORIDA

OSMANSKI, JOSEPH ARTHUR
STH # 00675885

UF Orthopaedics and Sports Medicine Institute
UF Orthopaedic Clinic

3450 Hull Road
P.O. Box 112733
Gainesville, FL 32611-2733
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Fax (352)-273-7295

SHANDS at UF CLINIC

01/12/2009

The patient returns having had an injury to his left elbow. He has an implant that is in and he right now is having a lot of pain in the elbow. X-rays are unclear as to whether or not he has disrupted the implant. I would like to just have things settle down for the next few weeks in a brace and repeat x-rays in about four weeks of the left elbow. He may have even cracked through the humerus. On some of the views it looks like that may be the case.

Electronically Reviewed and Signed by
Larry K. Chidgey, M.D. 01/22/2009 09:15
Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Larry K. Chidgey, M.D.
LKC/MDQ 01/12/2009:01/12/2009 11:53 A
UDN: 4045561 Joh ID# 004215757

cc:
*

UNIVERSITY OF FLORIDA PHYSICIANS

NAME: Joseph Osmanski

Date 1/12/01

MRN 675885

UF Orthopaedics and Sports Medicine Institute
UF Orthopaedic Clinic

Date of Injury: 12/1/05

Are you a Student ☐ Yes ☒ No Attending What School? _____

Daytime Phone: 803-687-0866

Email Address: 022icplus7@AOL.com

General: ☒ Male ☐ Female Date of Birth 9/24/64 Age: 44

Race: ☐ Caucasian ☐ African-American ☐ Hispanic ☐ Asian ☐ Other _____

HEALTH HISTORY OF PATIENT

☒ No change from prior visit

	Yes	No
Alcoholism	☐	☒
Anemia	☐	☒
Arthritis	☐	☒
Asthma	☐	☒
Birth Defects	☐	☒
Bleeding Disorders	☐	☒
Cancer	☐	☒
Diabetes	☐	☒
Depression/Mental Problems	☐	☒
Glaucoma	☐	☒
Gout	☐	☒
Heart Disease	☐	☒
High Blood Pressure	☐	☒
Kidney Disease	☐	☒
Liver Disorder	☐	☒
Breathing/Lung Problems	☐	☒
Osteoporosis	☐	☒
(Low bone density)	☐	☒
Phlebitis/Blood Clots in	☐	☒
Legs or Lungs	☐	☒
Seizures/Epilepsy	☐	☒
Sickle Cell Anemia	☐	☒
Stroke	☐	☒
Thyroid Problem	☐	☒
Tuberculosis	☐	☒
Ulcers	☐	☒
Other Illnesses	☐	☒

Explain all Yes answers: _____

PREVIOUS SURGERIES

☐ Appendix	☐ Breast
☐ Colon	☐ Gall Bladder
☐ Heart	☐ Hernia(repair)
☐ Kidney	☐ Ovaries
☐ Prostate	☐ Small Intestine
☐ Stomach	☐ Thyroid
☐ Tonsils	☐ Uterus
☐ Extremity:	
☒ No Surgery since last visit	
Other Surgeries:	

FAMILY HISTORY

☒ No change from prior visit

	Yes	No
Blood clots in legs or lungs	☐	☒
Heart Disease	☐	☒
High Blood Pressure	☐	☒
Diabetes	☐	☒
Arthritis	☐	☒
Kidney Disease	☐	☒
Cancer	☐	☒
Bleeding Disorders	☐	☒
Osteoporosis (Low bone density)	☐	☒
Complications from Anesthesia	☐	☒

Explain all Yes answers: _____

Age/Cause of death of parents, brothers or sisters (only if younger than age 45 at time of death): _____

SOCIAL HISTORY

Most Recent Occupation _____

Are you currently employed? ☒ Yes ☐ No

What type of work? TRUCK DRIVER

☒ Married ☐ Single ☐ Widowed

Number of Children Living 9

Number of Pregnancies _____

Presently Living Alone? ☐ Yes ☒ No

☐ Non-Smoker ☒ Smoke

☐ Quit (when?) _____
Smoke(d) _____ packs per day for _____ years.

☐ Beer/Wine _____ drinks per week

☐ Shots of liquor _____ shots per week

☐ Other drug use _____

REVIEW OF SYSTEMS

Have you recently or do you now have:

	Yes	No
☒ No to all		
Anxiety	☐	☐
Recent vision change	☐	☐
Recent loss of hearing	☐	☐
Difficulty swallowing	☐	☐
Unplanned weight loss	☐	☐
Toothache/Bleeding Gums	☐	☐
Nausea or Vomiting	☐	☐
Shortness of breath	☐	☐
Fever	☐	☐
Chest pain	☐	☐
Heart Problems	☐	☐
Bowel or Bladder problems	☐	☐
Leakage of bowel or bladder	☐	☐
Numbness or tingling	☐	☐
Weakness	☐	☐
Bleeding problems	☐	☐
Frequent Headaches	☐	☐
Insomnia	☐	☐

Sleep is limited by: _____

Explain all Yes answers: _____

Women:

Irregular periods	☐	☐
Frequent spotting	☐	☐
Are you Pregnant?	☐	☐
Are you Nursing?	☐	☐

For Office Use Only

Vitals

Ht. _____ Wt. _____

Resp. _____ Pulse _____

BP _____ Temp _____

Physician Signature _____

Date _____

Patient Name: Soc. Sec. #: D/A: Visit/Review Date:

SECTION IV FUNCTIONAL LIMITATIONS AND RESTRICTIONS

Assignment of limitations or restrictions must be based upon the injured employee's specific clinical
does not necessarily equate to an automatic limitation or restriction in function.

- ☐ 21 No functional limitations identified or restrictions prescribed as of the following date:
- ☐ 22. The injured workers' functional limitations and restrictions, identified in detail below, are of such severity that he/she cannot perform activities, even at a sedentary level (e.g. hospitalization, cognitive impairment, infection, contagion), as of the following date: Use additional sheet if needed.
- ☐ 23. The injured worker may return to activities so long as he/she adheres to the functional limitations and restrictions identified below. Identify ONLY those functional activities that have specific limitations and restrictions for this patient. Identify joint and/or body part Use additional sheet if needed.

Functional Activity	Load	Frequency & Duration	ROM/ Position & Other Parameters
☐ Bend			
☐ Carry			
☐ Climb			
☐ Grasp			
☐ Kneel			
☐ Lift-floor > waist			
☐ Lift-waist>overhead			
☐ Pull			
☐ Push			
☐ Reach-overhead			
☐ Sit			
☐ Squat			
☐ Stand			
☐ Twist			
☐ Walk			
☐			
☐ Other			

no use (L) elbow

COMMENTS:

Other choices; Skin Contact/ Exposure; Sensory; Hand Dexterity; Cognitive; Crawl; Vision; Drive/Operate Heavy Equipment; Environmental Conditions: heat, cold, working at heights, vibration; Auditory; Specific Job Task(s); etc.

NOTE: Any functional limitations or restrictions assigned above apply to both on and off the job activities, and are in effect until the next scheduled appointment unless otherwise noted or modified prior to the appointment date.
Specify those functional limitations and restrictions, in Item 23, which are permanent if MMI / PIR have been assigned in Item 24.

SECTION V MAXIMUM MEDICAL IMPROVEMENT / PERMANENT IMPAIRMENT RATING

24. Patient has achieved maximum medical improvement?
☐ a) YES, Date: ☐ b) NO ☐ c) Anticipated MMI date: ☐ d) Anticipated MMI date cannot be determined at this time. Future Medical Care Anticipated: e) ☐ Yes ☐ No
 Comments:

25. % Permanent Impairment Rating (body as a whole) Body part/system:

26. Guide used for calculation of Permanent Impairment Rating (based on date of accident - see instructions):
☐ a) 1996 FL Uniform PIR Schedule ☐ b) Other, specify

27. Is a residual clinical dysfunction or residual functional loss anticipated for the work-related injury?
☐ a) YES ☐ b) NO ☐ c) Undetermined at this time.

SECTION VI FOLLOW-UP

28. Next Scheduled Appointment Date & Time:

SECTION VII ATTESTATION STATEMENT

"As the Physician, I hereby attest that all responses herein have been made, in accordance with the instructions as part of this form, to a reasonable degree of medical certainty based on objective relevant medical findings, are consistent with my medical documentation regarding this patient, and have been shared with the patient."
 Physician Group:
 Physician Signature:
 Physician Name: (print name)
 Date: 11/2/09
 Physician DOH License #:
 Physician Specialty: Other / General

If any direct billable services for this visit were rendered by a provider other than a physician, please complete sections below:

"I hereby attest that all responses herein relating to services I rendered have been made, in accordance with the instructions as part of this form, to a reasonable degree of medical certainty based on objective relevant medical findings, are consistent with my medical documentation regarding this patient, and have been shared with the patient."
 Provider Signature:
 Provider Name: (print name)
 Provider DOH License #:
 Date:

Florida Workers' Compensation Uniform Medical Treatment Status Reporting Form - PAGE 1

BEFORE COMPLETING THIS FORM, PLEASE CAREFULLY REVIEW THE INSTRUCTIONS BEGINNING ON PAGE 3

NOTE: Health care providers shall legibly and accurately complete all sections of this form, limiting their responses to their area of expertise.

1. Insurer Name:	2. Visit/Review Date: 1/12/09	FOR INSURER USE ONLY
3. Injured Employee (Patient) Name: Osmanski, Joseph	4. Date of Birth:	5. Social Security #:
6. Date of Accident:	7. Employer Name:	8. Initial visit with this physician? ☐ a) NO ☐ b) YES

SECTION I CLINICAL ASSESSMENT/DETERMINATIONS

9. ☐ No change in Items 9 - 13d since last reported visit. If checked, GO TO SECTION II.

10. Injury/Illness for which treatment is sought is:

☐ a) NOT WORK RELATED ☐ b) WORK RELATED ☐ c) UNDETERMINED as of this date

11. Has the patient been determined to have Objective Relevant Medical Findings? Pain or abnormal anatomical findings, in the absence of objective-relevant medical findings, shall not be an indicator of injury and/or illness and are not compensable.

☐ a) NO ☐ b) YES ☐ c) UNDETERMINED as of this date

If YES or UNDETERMINED, explain:

12. Diagnosis(es):

13. Major Contributing Cause: When there is more than one contributing cause, the reported work-related injury must contribute more than 50% to the present condition and be based on the findings in Item 11.

a) Is there a pre-existing condition contributing to the current medical disorder?

☐ a₁) NO ☐ a₂) YES ☐ a₃) UNDETERMINED as of this date

b) Do the objective relevant medical findings identified in Item 11 represent an exacerbation (temporary worsening) or aggravation (progression) of a pre-existing condition?

☐ b₁) NO ☐ b₂) exacerbation ☐ b₃) aggravation ☐ b₄) UNDETERMINED as of this date

c) Are there other relevant co-morbidities that will need to be considered in evaluating or managing this patient?

☐ c₁) NO ☐ c₂) YES

d) Given your responses to the items above, is the injury/illness in question the major contributing cause for:

☐ d₁) NO ☐ d₂) YES the reported medical condition?

☐ d₃) NO ☐ d₄) YES the treatment recommended (management/treatment plan)?

☐ d₅) NO ☐ d₆) YES the functional limitations and restrictions determined?

SECTION II PATIENT CLASSIFICATION LEVEL

☐ 14. LEVEL I - Key issue: specific, well-defined medical condition, with clear correlation between objective relevant physical findings and patients' subjective complaints. Treatment correlates to the specific findings.

☐ 15. LEVEL II - Key issue: regional or generalized deconditioning (i.e. deficits in strength, flexibility, endurance, and motor control. Treatment: physical reconditioning and functional restoration.

☐ 16. LEVEL III - Key issue: poor correlation between patient's complaints and objective, relevant physical findings, indicating both somatic and non-somatic clinical factors. Treatment: interdisciplinary rehabilitation and management.

☐ 17. LEVEL UNDETERMINED AS OF THIS DATE.

SECTION III MANAGEMENT/TREATMENT PLAN

☐ 18. No clinical services indicated at this time. If checked, GO TO SECTION IV

☐ 19. No change in Items 20a - 20g since last report submitted. If checked, GO TO SECTION IV

20. The following proposed, subsequent clinical service(s) is/are deemed medically necessary.

~~PHYSICIAN PROVIDER'S WRITTEN REQUEST FOR INSURER AUTHORIZATION OF TREATMENT OR SERVICES~~

☐ a) Consultation with or referral to a specialist. Identify principal physician:

Identify specialty & provide rationale:

☐ a₁) CONSULT ONLY ☐ a₂) REFERRAL & CO-MANAGE ☐ a₃) TRANSFER CARE

☐ b) Diagnostic Testing: (Specify)

☐ c) Physical Medicine. Check appropriate box and indicate specificity of services, frequency and duration below:

☐ c₁) Physical/Occupational therapy, Chiropractic, Osteopathic or comparable physical rehabilitation.

☐ c₂) Physical Reconditioning (Level II Patient Classification)

☐ c₃) Interdisciplinary Rehabilitation Program (Level III Patient Classification)

Specific instruction(s):

☐ d) Pharmaceutical(s) (specify):

☐ e) DME or Medical Supplies:

☐ f) Surgical Intervention - specify procedure(s):

☐ f₁) In-Office:

☐ f₂) Surgical Facility:

☐ f₃) Injectable(s) (e.g. pain management):

☐ g) Attendant Care:

Current problem

Reason for Today's Visit: Elbow Pain

Is visit due to Injury or Accident ☒ Yes ☐ No

Injury date: 1/1/08 Surgery Date: / /

Referring physician:

How did it happen? ATHEMIC

What treatment or tests have you had for this **current** problem?

☐ Chiropractic treatment: # of visits:

☒ Xrays

☐ MRI

☐ CT scan

☐ EMG

☐ Other diagnostic tests

☐ Surgery

☐ Injection

☒ Splinting/Bracing

☐ Massage Therapy: # of visits:

☐ Physical Therapy

☐ Occupational Therapy

What activities make your pain **worse**? Moving

What activities make your pain **better**? Keep it in sleep

How far can you walk?

What stops you?

When are your problems most severe?

☐ Morning

☐ Afternoon

☐ Evening

☒ Consistent all day

What is your normal sleeping position?

☐ Stomach

☒ Side/lying

☐ Back

Have you had **this problem** before?

☐ Yes

☒ No

If yes, then when

Previous treatment?

☐ Yes

☐ No

If yes, then what

Exercise prior to this problem:

Regularly?

☒ Yes

☐ No

What/how often?

Are your complaints affecting your ability to exercise or generally be active?

☒ Yes

☐ No

Additional questions:

☐ Yes ☒ No Do you frequently feel pain in your chest or heart?

☐ Yes ☒ No Do you know of any other reason why you should not do physical activity?

Your current pain:

Indicate on the diagram below the location and nature of your current pain according to the following symbols.

Do not indicate areas of pain which are not related to your present problem:

Pain location/quality: (indicate on diagram)

x x x Dull/aching pain ^ ^ ^ Sharp pain

+ + + Pins and Needles = = = Numbness

Pain Rating: On a scale of zero to ten

0 (zero) being no pain

10 (ten) being the worst pain imaginable

How would you rate the **intensity** of your pain?

Now 0 1 2 3 4 5 6 7 8 9 10

Worst Day 0 1 2 3 4 5 6 7 8 9 10

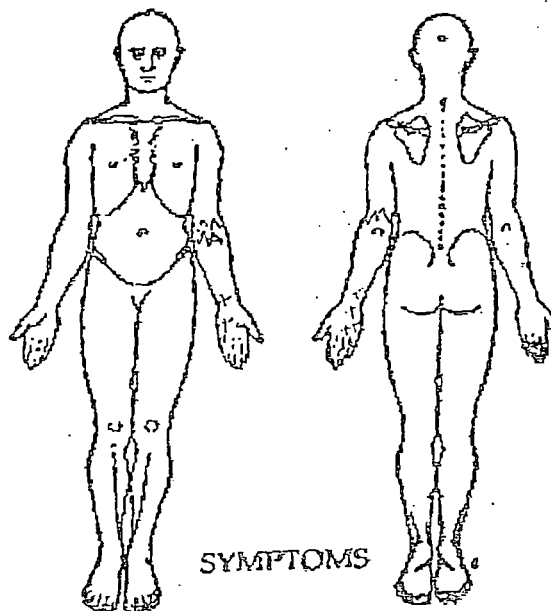
Best Day 0 1 2 3 4 5 6 7 8 9 10

How **stressful** is the pain you are feeling?

Now 0 1 2 3 4 5 6 7 8 9 10

Worst Day 0 1 2 3 4 5 6 7 8 9 10

Best Day 0 1 2 3 4 5 6 7 8 9 10



SYMPTOMS

Since **this problem began** is the problem:

☐ Increasing

☐ Decreasing

☒ Unchanged

Your goals for treatment are:

UNIVERSITY OF FLORIDA PHYSICIANS

Department of Orthopaedics and Rehabilitation

UF&Shands Orthopaedics and Sports Medicine Institute
Shands Hand and Upper Extremity Clinic
3450 Hull Road Gainesville, FL 32607

UF Physicians: (352) 273-7001
Shands Rehab: (352) 273-7005
Rehab Fax: (352) 273 7327

Referral Information

Date

Patient's Name:

MRN

Referring Physician:

Diagnosis:

Code:

Comments/Precautions:

Date of Surgery:

Surgical Procedure:

Frequency:

Duration:

If not stated, therapist will determine Frequency /Duration of Tx

OT and/or PT

Evaluate & Treat

Nerve Function/Sensation
R.O.M.
Strength
Manual Muscle Test
Functional Capacity Evaluation
Shoulder Pre-Op
Shoulder Eval. Specify
Other

Splinting

Static
Dynamic
Static Progressive
Serial Casting
Custom Ordered Dynamic
Other

Exercise

R.O.M.
Active
Active-Assisted
Passive
Resisted/Strengthening
A.D.L.
Myofascial Release
Other

Modalities

Hot/Cold
TENS
FES
Jobst Pump
CPM (specify)
Iontophoresis
Fluido Therapy
Paraffin
Other

Edema/Scar Management

Spenco Gel
Otoform
Silastic Gel
Massage/Release
Isotoner Glove
Coban
Other

My signature certifies this treatment is medically necessary based on the patient's treatment plan for the diagnosis/condition stated above.

Signature

Date

Physician License Number/UPIN

SMANSKI Joseph Arthur 264-91-7330 9/24/44 192 F Follow Up 10/30/06
City, State, Zip Code Work Tel: (603) 341-1730 Driver License No. License Class State of Issue
Ch. 1.00 K2 Pelow, SC 29123 Home Tel: (603) 874-7001 100560505 SC
A B C D Other

Driver completes this section, but medical examiner is encouraged to discuss with driver.

Any illness or injury in last 5 years? Head/Brain injuries, disorders or illnesses Seizures, epilepsy Medication Eye disorders or impaired vision (except corrective lenses) Ear disorders, loss of hearing or balance Heart disease or heart attack; other cardiovascular condition Medication Heart surgery (valve replacement, bypass, angioplasty, pacemaker) High blood pressure Medication Muscular disease Shortness of breath	YES NO ☐ Lung disease, emphysema, asthma, chronic bronchitis ☐ Kidney disease, dialysis ☐ Liver disease ☐ Digestive problems ☐ Diabetes or elevated blood sugar controlled by: ☐ Diet ☐ Pills ☐ Insulin ☐ Nervous or psychiatric disorders, e.g., severe depression ☐ Medication ☐ Loss of, or altered consciousness	YES NO ☐ Fainting, dizziness ☐ Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring ☐ Stroke or paralysis ☐ Numbness or impaired hand, arm, foot, leg, finger, toe ☐ Spinal injury or disease ☐ Chronic low back pain ☐ Regular, frequent alcohol use ☐ Narcotic or habit forming drug use

YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

Let the above information be complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Joseph A. Osman
Driver's Signature

10/30/06
Date

Examiner's Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, over-the-counter medications, while driving. This discussion must be documented below.)

Smoker

ING (Medical Examiner completes Section 3 through 7) Name: Last Osman, First Joseph Middle Arthur

Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate. NOTES: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears glasses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified. If readings must be provided.

	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/20	20/	Right Eye 85°
Left Eye	20/20	N/A	Left Eye 85°
Yes	20/20	20/	

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☒ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:

☐ Corrective Lenses
Monocular Vision: ☐ Yes ☒ No

next line only if vision testing is done by an Ophthalmologist or Optometrist

Examination Name of Ophthalmologist or Optometrist (print) Tel. No. License No./State of Issue Signature

Standard: a) Must first perceive forced whispered voice at 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB. Check if hearing aid used for tests. Check if hearing aid required to meet standard.

NOTES: To convert audiometric test results from ISO to ANSI, +14 dB from ISO for 500 Hz; -10 dB for 1,000 Hz; -8.5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Right Ear	500 Hz	1000 Hz	2000 Hz	Left Ear	500 Hz	1000 Hz	2000 Hz
00	05	20	20	10	15	20	20
Average: 11.6				Average: 18.3			

Standard: Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Reading	Category	Expiration Date	Recertification
140-159/90-99	Stage 1	1 year	1 year if $\leq 140/90$. One-time certificate for 3 months if 141-159/91-99.
160-179/100-109	Stage 2	One-time certificate for 3 months.	1 year from date of exam if $\leq 140/90$
$\geq 180/110$	Stage 3	6 months from date of exam if $\leq 140/90$	6 months if $\leq 140/90$

Standard: Numerical readings must be recorded.

is required. Protein, blood or sugar in the urine may be an indication for further testing to any underlying medical problem. (Describe and record)

URINE SPECIMEN	SP. GR.	PROTEIN	BLOOD	SUGAR
1.020	Trace	Trace	Trace	Trace

Physical Examination Height: 5'11" (in.) Weight: 300 (lbs.) Name: Last Osman, First Joseph Middle Arthur

ence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition disqualifies a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible. If the condition, if neglected, could result in more serious illness that might affect driving. If there are any abnormalities, check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. Refer to the Medical Examiner for guidance.

SYSTEM	CHECK FOR:	YES*	NO	BODY SYSTEM	CHECK FOR:	YES*	NO
1. Appearance	Marked overweight, emaciation, signs of alcoholism, problem drinking, or drug abuse.			7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.		
	Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle ptosis, extraocular movement, nystagmus, exophthalmos. Ask about monocular, cataracts, glaucoma, macular degeneration and refer to a specialist if appropriate.			8. Vascular system	Abnormal pulse and amplitude, carotid or aortic bruits, varicose veins.		
	Scarring of tympanic membrane, occlusion of external canal, perforated eardrums.			9. Genito-urinary system	Hernias.		
				10. Extremities-Limb	Loss or impairment of leg, foot, toe, arm, hand, finger. Paroskeletal limbs, deformities, atrophy, weakness, paralysis, clubbing, edema, hypothermia. Inadequate grip and prehension in		

MEDICAL EXAMINATION REPORT FOR COMMERCIAL DRIVER FITNESS DETERMINATION

Wm. 840879
Shepard Truck

1. DRIVER'S INFORMATION

Driver completes this section.

Driver's Name (Last, First, Middle) OSMANSKI Joseph Arthur		Social Security No. 264-97-6730	Birthdate 9/24/64	Age 42	Sex ☒ M ☐ F	☒ New certification ☐ Recertification ☐ Follow Up	Date of Exam 10/30/06
Address 157 Clae Rd		City, State, Zip Code Pelham SC 29123	Work Tel: (803) 361-1530	Driver License No. 100560508		License Class ☒ A ☐ C ☐ B ☐ D ☐ Other	State of Iss SC
			Home Tel: (803) 874-7661				

2. HEALTH HISTORY

Driver completes this section, but medical examiner is encouraged to discuss with driver.

YES NO ☐ ☒ Any illness or injury in last 5 years? ☐ ☒ Head/Brain injuries, disorders or illnesses ☐ ☒ Seizures, epilepsy ☐ medication ☐ ☒ Eye disorders or impaired vision (except corrective lenses) ☐ ☒ Ear disorders, loss of hearing or balance ☐ ☒ Heart disease or heart attack; other cardiovascular condition ☐ medication ☐ ☒ Heart surgery (valve replacement/bypass, angioplasty, pacemaker) ☐ ☒ High blood pressure ☐ medication ☐ ☒ Muscular disease ☐ ☒ Shortness of breath	YES NO ☐ ☒ Lung disease, emphysema, asthma, chronic bronchitis ☐ ☒ Kidney disease, dialysis ☐ ☒ Liver disease ☐ ☒ Digestive problems ☐ ☒ Diabetes or elevated blood sugar controlled by: ☐ diet ☐ pills ☐ insulin ☐ ☒ Nervous or psychiatric disorders, e.g., severe depression ☐ Medication ☐ ☒ Loss of, or altered consciousness	YES NO ☐ ☒ Fainting, dizziness ☐ ☒ Sleep disorders, problems in breathing while asleep, daytime sleepiness, loud snoring ☐ ☒ Stroke or paralysis ☐ ☒ Numbness or impaired hand, arm, foot, leg, finger, toe ☐ ☒ Spinal injury or disease ☐ ☒ Chronic low back pain ☐ ☒ Regular, frequent alcohol use ☐ ☒ Narcotic or habit forming drug use

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or for

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Driver's Signature

Date **10/30/06**

Medical Examiner Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving. This discussion must be documented below.)

Smoker

TESTING (Medical Examiner completes Section 3 through 7) Name: Last **OSMANSKI** First **Joseph** Middle **Arthur**

3. VISION Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° peripheral in horizontal meridian measured in each eye.

The use of corrective lenses should be noted on the Medical Examiner's Certificate.
INSTRUCTIONS: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified.

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/ 20	20/ N/A	Right Eye 85
Left Eye	20/ 20	20/ N/A	Left Eye 85
Both Eyes	20/ 20	20/ N/A	

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☒ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:
☐ Corrective Lenses
 Monocular Vision: ☐ Yes ☒ No

Complete next line only if vision testing is done by an Ophthalmologist or Optometrist

Date of Examination: _____ Name of Ophthalmologist or Optometrist (print): _____ Tel No: _____ License No/ State of Issue: _____ Signature: _____

4. HEARING Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40dB

☐ Check if hearing aid used for tests. ☐ Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500 Hz, -10 dB for 1,000 Hz, -8.5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard	Right Ear	Left Ear	b) If audiometer is used, record hearing loss in decibels (acc. to ANSI Z24.5-1951)	Right Ear	Left Ear
	Feet	Feet		500 Hz	500 Hz
				1000 Hz	1000 Hz
				2000 Hz	2000 Hz
				Average	Average
				05	20
				16	18

5. BLOOD PRESSURE / PULSE RATE Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Blood Pressure	Systolic 138	Diastolic 88
Driver qualified if ≤ 140/90.		
Pulse Rate: ☒ Regular ☐ Irregular		
Record Pulse Rate: 60		

Reading	Category	Expiration Date	Recertification
140-159/90-99	Stage 1	1 year	1 year if ≤ 140/90. One-time certificate for 3 months 141-159/91-99.
160-179/100-109	Stage 2	One-time certificate for 3 months.	1 year from date of exam if ≤ 140/90
≥ 180/110	Stage 3	6 months from date of exam if ≤ 140/90	6 months if ≤ 140/90

6. LABORATORY AND OTHER TEST FINDINGS Numerical readings must be recorded.

4. HEARING Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB
☐ Check if hearing aid used for tests. ☐ Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500 Hz, -10 dB for 1,000 Hz, -5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard	Right Ear			Left Ear		
	500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz
	00	05	40	20	15	20
b) If audiometer is used, record hearing loss in decibels (acc to ANSI Z24.5-1951)						
Average:	16			18.3		

5. BLOOD PRESSURE / PULSE RATE Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Blood Pressure	Systolic 138	Diastolic 88	Reading	Category	Expiration Date	Recertification
Driver qualified if: $\leq 140/90$			140-159/90-99	Stage 1	1 year	1 year if $\leq 140/90$. One-time certificate for 3 months if 141-159/91-99.
Pulse Rate ☒ Regular ☐ Irregular			160-179/100-109	Stage 2	One-time certificate for 3 months	1 year from date of exam if $\leq 140/90$
Record Pulse Rate 60			180/110	Stage 3	6 months from date of exam if $\leq 140/90$	6 months if $\leq 140/90$

6. LABORATORY AND OTHER TEST FINDINGS Numerical readings must be recorded.

Urinalysis is required. Protein, blood, or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

Other Testing (Describe and record)

URINE SPECIMEN	SP. GR.	PROTEIN	BLOOD	SUGAR
	1.020	Trace	NEG	NEG

7. PHYSICAL EXAMINATION Height: 5'11" (In.) Weight: 300 (lbs.) Name: Last, OSMANSKI First, Joseph Middle, Arthur

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen, or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible.

Check YES if there are any abnormalities. Check NO if no body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for.

See Instructions to the Medical Examiner for guidance.

BODY SYSTEM	CHECK FOR	YES	NO	BODY SYSTEM	CHECK FOR	YES	NO
1. General Appearance	Marked overweight/obesity, signs of alcoholism, problem drinking or drug abuse		☒	7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness		☒
2. Eyes	Pupillary equality, reaction, light, accommodation; ocular motility; ocular muscle imbalance; extraocular movement; nystagmus; exophthalmos; Ask about retinopathy, cataracts, glaucoma, macular degeneration and refer to a specialist if appropriate		☒	8. Vascular system	Abnormal pulse and amplitude, carotid or arterial bruits, varicose veins		☒
3. Ears	Scarring of tympanic membrane; occlusion of external canal; perforated eardrums		☒	9. Genito-urinary system	Hernias		☒
4. Mouth and Throat	Irreparable deformities likely to interfere with breathing or swallowing		☒	10. Extremities	Loss or impairment of leg, foot, toe, arm, hand, or finger		☒
5. Heart	Murmurs, extra sounds, enlarged heart, pacemaker, implantable defibrillator		☒	11. Spine, other musculoskeletal	Previous surgery, deformities, limitation of motion, tenderness		☒
6. Lungs and Chest (not including breast examination)	Abnormal chest wall expansion; abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales; impaired respiratory function; cyanosis; Abnormal findings on physical exam may require further testing such as pulmonary tests and/or x-ray of chest		☒	12. Neurological	Impaired equilibrium, coordination or speech pattern; asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski reflexes, ataxia		☒

COMMENTS:
 1. Very bulky/obese & weight
 10. L spine only 20° E (G arm points OK - gothic hump)
 V-seg 10-12
 V-seg 10-12

Note certification status (See Instructions to the Medical Examiner for guidance):

☒ Meets standards in 49 CFR 391.61, qualifies for 2-year certificate
☐ Does not meet standards
☐ Meets standards, but periodic monitoring required due to:
 Driver qualified only for: ☐ 3 months ☐ 6 months ☐ 1 year ☐ Other

☐ Wearing corrective lenses
☐ Driving within an exempt inactivity zone. (See 49 CFR 391.62)
☐ Qualifying operation of 49 CFR 391.64

Medical Examiner's Signature: [Signature]
 Medical Examiner's Name (print): Dr. W. Keith

Employee History

19289

JOSEPH A OSMANSKI

Register #	Loss Date	Lost Days	Restricted Days	Category	Descriptions
142108	11/1/2008	0	0	Injury	Loss Desc: ZURICH - MEDICAL ONLY - States breaking down freight, Lazy Boy Chairs and reached for chair and it came down and he hyperextended his left elbow. Saw ER and will f/u with Ortho today 11/3/08
		Pending		Injury Desc:	ZURICH - MEDICAL - States hyperextended left elbow. F/u with Orthopedic 11/3/08 regarding status.
1701AX08	7/1/2008			Report Only	Loss Desc: 10/31/06-Exp-Conway, SC- left turn- Driver states he caught a parked vehicle with his tailswing making a left turn into parking lot damaging mirror, and scraping/denting door and front qtr. Panel
		Preventable	\$5,185.44	Injury Desc:	
0131X07	1/31/2007			Report Only	Loss Desc: Driver states that he was turning right and hit a parked vehicle. Loris, SC (P) \$135.30
		Preventable	\$135.30	Injury Desc:	



TRUCKING, INC.

November 24, 2008

CORPORATE OFFICE

N6400 Hwy 10 West

P.O. Box 5328

Missoula, MT 59806

Direct (406) 532-6461

Toll free (800) 548-8895 x 461

Direct fax (406) 532-6561

E-Mail glorya@wksh.com

Mr. Joseph Osmanski
157 Cliff Road
Pelion, SC 29123

COPY

RE: FMLA Leave Certification

Dear Mr. Osmanski:

It is my understanding that you have been off work since November 1, 2008 as a result of a work related injury. Since Watkins and Shepard runs FMLA leave concurrently with work related injury leaves of absence, I thought it would be a good idea to provide you with the following information in writing.

The Family Medical Leave Act is one of many federal regulation guidelines we must follow. Under this Act an eligible employee may be entitled to a maximum of 12 weeks of unpaid leave in any consecutive rolling twelve months period due to FMLA-qualified reasons beginning with the date a qualifying leave is actually taken by the employee.

You are considered an eligible employee because you have been employed by Watkins and Shepard Trucking, Inc. for at least 12 consecutive months and may be deemed to be qualified for the leave because of a serious health condition that leaves you unable to perform the functions of your driving position. Your FMLA leave began November 1, 2008. The leave will be satisfied on January 24, 2009, if you are unable to return to work prior to that date.

Entitlements under a qualified FMLA leave include:

- Maintenance of active group health care plan participation. You may pay the monthly premium during the 12 weeks approved leave by sending a certified check or money order at the first of each month made payable to Watkins and Shepard Trucking in the amount of \$867.08 (\$455.68 for the health coverage; \$26.80 for the life coverage; and \$384.60 for the Flex Spending Account) or you can wait until you return to work and have the outstanding premiums deducted from your payroll in set increments for a short period of time until you are caught up.
- Rights to job and benefit restoration to the same or equivalent position upon returning from FMLA leave prior to the leave being satisfied.
- Protection from adverse action resulting from taking leave.

Page 2 – Joseph Osmanski

~~FMLA leave at Watkins and Shepard Trucking runs concurrently with other types of leave such as a workers compensation leave of absence.~~

While on FMLA leave you will not accrue personal leave (vacation) or holiday pay or any other employee benefits afforded to active employees.

FMLA leave is 'leave without pay'. However, we understand that you are receiving work comp lost time benefits while you recover.

If you would like more information regarding the Family Medical Leave Act, you will find it documented in your red Company Driver Policy Manual on pages 40 – 43.

Feel free to contact me if you have any questions regarding the provisions of the FMLA leave.

Sincerely,

Glory Blood*Artis, SPHR
Human Resources Manager

CC: Char Lewis, RN; Seamus Molloy, Benefits Specialist



TRUCKING, INC.

CORPORATE OFFICE
P.O. Box 5328
Missoula, MT 59807
Direct (406) 532-6462
Toll free (800) 548-8895
Direct fax (406) 532-6508
E-mail kristenr@wksn.com

October 29, 2007

Joseph Osmanski
157 Cliff Rd.
Pelion, SC. 29123

RE: SAFETY AWARD

Dear Joseph:

It is our pleasure to inform you that you have qualified for a 1 Year Watkins and Shepard Trucking Safe Driving Award. It is with sincere respect and admiration that we congratulate you.

We appreciate your professionalism and the fact that you have chosen to work with Watkins & Shepard Trucking. Thanks to you, Watkins and Shepard Trucking continues to grow and prosper, which in turn provides non-driving positions throughout our network. You are the heart of the operation.

Our business future includes you as a major contributor to our continued success. Your hard work and dedication is greatly appreciated. Keep up the good work!

Thank you.

Sincerely,

WATKINS AND SHEPARD TRUCKING INC.

A handwritten signature in cursive script, appearing to read "Ray Kuntz". The signature is written in dark ink and is positioned above the printed name of the signatory.

Ray Kuntz, CEO



TRUCKING, INC.

CORPORATE OFFICE

N6400 Hwy 10 West

P.O. Box 5328

Missoula, MT 59806

Direct (406) 532-6461

Toll free (800) 548-8895 x 461

Direct fax (406) 532-6561

E-Mail glorya@wksh.com

January 30, 2007

JOSEPH A OSMANSKI
157 CLIFF RD
PELION SC 29123

Dear Joseph:

The Executive Safety Committee recently reviewed your work performance because you have completed your new hire 90 days driver probation.

The review revealed that your overall work performance meets the standards of Watkins and Shepard Trucking and you are now a regular member of our driving fleet.

Congratulations! You are a pleasure to work with. We appreciate the hard work and dedication you offer Watkins and Shepard Trucking, Inc. We are proud to have you associated with us.

Sincerely,

On Behalf of the Executive Safety Committee:

A handwritten signature in cursive script that reads "Glory Blood Artis". The signature is fluid and stylized, with the first letters of each word being capitalized and prominent.

Glory Blood Artis
Human Resources Manager

Progress Notes**Page: 1**

Name: OSMANSKI, JOSEPH

Date Printed: 09/18/09
ID: 1711486 SEX:M AGE:44

08/25/09 : 00:00am

MUSC CHARLESTON HAND GROUP RETURN VISIT - WEST ASHLEY

GS1

08/25/2009: JOSEPH OSMANSKI

Orthopaedics Charleston Hand Group

Medical University of South Carolina

RETURN VISIT OFFICE NOTE

Mr. Osmanski is progressing satisfactorily. His wounds have healed on his left elbow following removal of the humeral component of the elbow prosthesis. The component has been reordered and has been manufactured, and he will be contacted as soon as it arrives and consideration of replacement undertaken at that time.

Gerald J. Shealy, MD

GS/am:567:1666045

SIGNED BY GERALD J SHEALY, M.D. (GS1) 09/14/2009 11:40AM

Progress Notes**Page: 1**

Date Printed: 09/18/09

Name: OSMANSKI, JOSEPH

ID: 1711486 SEX:M AGE:44

08/03/09 : 00:00am

MUSC CHARLESTON HAND GROUP RETURN VISIT - WEST ASHLEY

GS1

08/03/2009: JOSEPH OSMANSKI

Orthopaedics Charleston Hand Group

Medical-University-of-South-Carolina

RETURN-VISIT-OFFICE-NOTE

Mr. Osmanski is progressing satisfactorily. His wounds have healed to his left elbow. A new prosthesis is being fabricated for reinsertion, and this is discussed with him. Follow up for reevaluation in three to four weeks. He is given a refill on his pain medication.

Gerald J. Shealy, MD

GS/am:567:1637860

Progress Notes**Page: 1**

Date Printed: 09/18/09

Name: OSMANSKI, JOSEPH

ID: 1711486 SEX:M AGE:44

07/21/09 : 00:00am

MUSC CHARLESTON HAND GROUP RETURN VISIT - WEST ASHLEY

GS1

07/21/2009: JOSEPH OSMANSKI

Orthopaedics Charleston Hand Group

Medical University of South Carolina

RETURN VISIT OFFICE NOTE

Mr. Osmanski is progressing well following removal of the humeral component of his right elbow prosthesis. His wounds are healing well. Sutures are removed. No evidence of any infection is noted, and the cultures in the operating room are negative. The possibility of replacement of the humeral component is discussed with him. Unfortunately, DePuy no longer make this particular type of prosthesis and it will need to be specially ordered. He is to resume his activities as tolerated and get medication for pain. Follow up for reevaluation in three to four weeks.

Gerald J. Shealy, MD

GS/am:567:1592969

Discharge/Op Notes**Page: 1**

Date Printed: 07/24/09

Name: OSMANSKI, JOSEPH

ID: 1711486

SEX:M AGE:44

07/10/09 : 10:04pm

HOSPITAL DISCHARGE SUMMARY
OUT

Accession number: 18252297632

MUSC Medical Center

HOSPITAL DISCHARGE SUMMARY

Patient Name: OSMANSKI, JOSEPH A

MRN: 001711486

Patcom: 493129175

Admitted: 07/08/2009

Discharged: 07/10/2009

Service: Orthopedic Surgery

Attending: Gerald J. Shealy, MD

Referring:

HISTORY OF PRESENT ILLNESS: Mr. Osmanski is a 44-year-old male who presented after sustaining an injury to his left elbow and an injury at work, particularly in 1987. The patient reports he felt 32 feet and sustained a complex fracture to the left elbow, which he underwent surgical treatment. The procedures subsequently failed and in 2000, he underwent prosthesis to his left elbow at the University of Florida. He reports that the prosthesis offered him good relief of his symptoms and he was able to function normally for 9 years, returned to normal work activities until 11/08/2008, at which time, he attempted to lift a heavy object and reinjured his left elbow. Since that time, he reports persistent pain and was diagnosed as having a loosening of the prosthesis. He has undergone multiple procedures ulnar nerve transposition with no resolution of his symptoms. He presented to MUSC clinic for evaluation and consideration for treatment of loose prosthesis and revision of arthroplasty for definite treatment.

PAST MEDICAL HISTORY: Noncontributory.

REVIEW OF SYSTEMS: None.

PAST SURGICAL HISTORY: See HPI.

MEDICATIONS: Lortab. No dose specified.

ALLERGIES: Penicillin.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: Noncontributory.

HOSPITAL COURSE: Mr. Osmanski was taken to the OR on 07/07/2009. See dictated operative note for details of the procedure. The patient recovered in the PACU unit and transferred to the floor without complication. His postoperative course was dictated by the orthopedic postop protocol orders. He had SCDs placed bilaterally and ??TEDs??. His left arm was placed on _____ elevation. Weightbearing status postoperatively was nonweightbearing left upper extremity.

Discharge/Op Notes

Page: 2

Date Printed: 07/24/09

Name: OSMANSKI, JOSEPH

ID: 1711486

SEX:M AGE:44

Postoperative pain medication was managed by a PCA, transitioned to p.o. on postoperative day 1. On physical exam, his left upper extremity was resting on the pillow, not supporting weight. Dressing was overwrapped with an Ace bandage and clean, dry, and intact. The patient was unable to flex or extend his fingers or wrist secondary to nerve block placed intraoperatively. He had minimal sensation to light touch on fingertips in left upper extremity, brisk capillary refill, all compartments were soft. There was no pain on passive range of motion. Drain was productive of moderate sanguineous fluid. Neurovascular exams were _____ throughout is hospital stay, and the nerve block was noted to wear off and neurovascular exam returned to baseline with good sensation and movement. Occupational Therapy was consulted on the patient and followed him throughout the course of his hospital stay. He was placed in a left arm sling. The patient was meeting all therapy goals by the time of discharge. Mr. Osmanski was discharged on 07/10/2009 with a followup appointment with Dr. Shealy in 10-14 days. Weightbearing status on discharge, nonweightbearing left upper extremity.

DISCHARGE MEDICATIONS:

1. Bactrim DS 1 tablet p.o. b.i.d. x10 days.
2. Percocet 5/325 mg one to two tablets p.o. q.4 hours p.r.n. pain.
3. Ferrous sulfate 325 mg p.o. b.i.d. with meals.
4. Senna 8.6 mg p.o. b.i.d.
5. Docusate 100 mg p.o. b.i.d.

DISCHARGE INSTRUCTIONS: The patient was instructed on proper wound and dressing care, was instructed to attend all followup appointments and was discharged.

Dictated by: Bryan Thomas, PGY1

Bryan Thomas, PGY1

Gerald J. Shealy, MD
Attending

297632 / 44076 /
JOB: 9080307
DD: 07/10/09 11:31 AM
DT: 07/10/09 10:01 PM

Additional CC: _____

Progress Notes

Page: 1

Date Printed: 07/24/09

Name: OSMANSKI, JOSEPH

ID: 1711486

SEX:M AGE:44

05/21/09 : 00:00am

MUSC CHARLESTON HAND GROUP NEW PATIENT EVALUATION-W. ASHLEY

GS1

05/21/2009: JOSEPH OSMANSKI

~~Orthopaedics-Charleston-Hand-Group~~

Medical University of South Carolina

NEW PATIENT EVALUATION

Joseph Osmanski was seen today as a new patient evaluation.

Chief Complaint: Left elbow pain.

History of Present Illness: Mr. Osmanski is a pleasant 44-year-old right-handed male who was previously employed as a truck driver. He sustained an injury to his left elbow in an injury at work which occurred in 1987. He relates he fell 32 feet sustaining a complex fracture of the left elbow for which he underwent surgical treatment. The surgery failed, and therefore in 2000, he underwent prosthesis to his left elbow. This has been performed at the University of Florida. He noted good relief of his symptoms and was able to function normally for nine years. He was able to return to his normal activities as a truck driver until November 9, 2008, when a box caught in a truck, and in an attempt to extricate the box from the truck, he re-injured his left elbow. Since that time, he has had problems with persistent pain in the elbow. He has been diagnosed as having loosening of the prosthesis. He has undergone other surgical procedures including an ulnar nerve transposition with no complete resolution of his symptoms. He was most recently seen in April 2009 in Florida by Dr. Chidgey, who is a hand surgeon. He assessed Mr. Osmanski as having a loose prosthesis which would require revision of the arthroplasty for definitive treatment. He presents today for evaluation and consideration of further treatment. He is presently living in South Carolina.

Past Medical History/Review of Systems: Negative.

Surgery: None other than noted.

Medications: Lortab.

Allergies: Penicillin.

Family History: Negative.

Physical Examination: Physical examination is unremarkable with the exception of the left elbow revealing swelling, tenderness, and limited range of motion. The patient has approximately 30 to 45 degrees of motion in the elbow with pain noted. In addition, he has no active flexion of the elbow indicating he probably has disruption of the biceps insertion anteriorly.

X-rays are reviewed and demonstrate that there is loosening of the prosthesis primarily in the humeral component, although there does appear to be loosening distally in the ulnar component. No fracture of the prosthesis is noted.

Impression: Status post left total elbow arthroplasty with loosening.

Recommendations: The only option available to this man is to consider a removal and replacement of the prosthesis. I would perform this operation as a two-staged procedure. Initially, I would remove the prosthesis and make certain that there is no evidence of any active infection. We will attach the anterior biceps muscles and wait six to eight weeks before re-implying a new prosthesis. He understands the proposed surgical treatment, risk, complications, and anticipated results. He would like to have this surgery undertaken, and it will be scheduled as an outpatient at his request.

Progress Notes

Page: 2

Date Printed: 07/24/09

Name: OSMANSKI, JOSEPH

ID: 1711486 SEX:M AGE:44

Gerald J. Shealy, MD

GS/am:568:1416865

SIGNED BY GERALD J SHEALY, M.D. (GS1) 06/09/2009 01:27PM

Discharge/Op Notes**Page: 1**

Name: OSMANSKI, JOSEPH

Date Printed: 07/24/09

ID: 1711486

SEX:M AGE:44

07/08/09 : 5:18pm
OPERATIVE NOTE
OUT

Accession number: 18252271944

-----MUSC Medical Center

OPERATIVE NOTE

-----Patient Name: OSMANSKI, JOSEPH A

MRN: 001711486

Patcom: 493129175

Date of Surgery: 07/08/2009

Surgeon: Gerald J. Shealy, MD

Assistant(s): Harvinder Bhatti, MD

PREOPERATIVE DIAGNOSIS: Status post right total elbow prosthesis with loosening of components.

POSTOPERATIVE DIAGNOSIS: Status post right total elbow prosthesis with loosening of components.

PROCEDURES: CPT 24160, removal of humeral component, right elbow prosthesis.

DESCRIPTION OF PROCEDURE: With the patient under adequate general anesthesia in the left lateral decubitus position, the right upper extremity was scrubbed, prepped and draped in a routine sterile fashion. Following elevation and exsanguination, a sterile tourniquet was inflated. Through the previous operative incision over the posterior aspect of the elbow, the skin and subcutaneous tissue were sharply divided. Upon entering the subcutaneous tissue, the ulnar nerve was found; it had been previously transposed, and it was carefully dissected distally. Significant scarring was present about the ulnar nerve. Following dissection of the ulnar nerve, the triceps expansion was taken down from the olecranon by dissecting along the medial aspect of the triceps muscle, extending the incision along the medial epicondyle of the humerus and distally over the olecranon. The triceps muscle was lifted off the distal humerus and retracted in a lateral fashion to allow exposure of the posterior aspect of the elbow joint. The humeral component was noted to be obviously loose; the hinge was taken down from the humeral component, and the component was removed from the humerus without difficulty. In addition, the cement was also removed using curets and osteotomes. Upon removal of the cement from the distal humerus, attempt was made to remove the prosthesis from the ulna; however, it was noted to be fixed well, stable, and the wound did not appear to be infected. Cultures were obtained, to ascertain if there was any infection. The wound was copiously irrigated. The ulnar component was left in upon removal of the humeral component. Tobramycin cement was inserted into the humeral shaft. The triceps expansion was closed with 0 Monocryl interrupted figure-of-eight sutures, and the skin closed using 3-0 Vicryl and staples. Sterile dressings were applied with a posterior splint. Patient awakened from general anesthesia and returned to the recovery room in satisfactory condition. He is admitted postoperatively for observation, antibiotics and analgesics.

Discharge/Op Notes

Page: 2

Name: OSMANSKI, JOSEPH

Date Printed: 07/24/09

ID: 1711486

SEX:M AGE:44

Dictated by: Gerald J. Shealy, MDGerald J. Shealy, MD
Surgeon

271944 / 44076 /

JOB: 9079873

DD: 07/08/09 01:55 PM

DT: 07/08/09 05:15 PM

Additional CC: _____



UNIVERSITY OF
FLORIDA

OSMANSKI, JOSEPH ARTHUR
STH # 00675885

UF Orthopaedics and Sports Medicine Institute
UF Orthopaedic Clinic

3450 Hull Road
P.O. Box 112733
Gainesville, FL 32611-2733
Clinic (352)-273-7001
Fax (352) 273-7295

SHANDS at UF CLINIC
01/12/2009

The patient returns having had an injury to his left elbow. He has an implant that is in and he right now is having a lot of pain in the elbow. X-rays are unclear as to whether or not he has disrupted the implant. I would like to just have things settle down for the next few weeks in a brace and repeat x-rays in about four weeks of the left elbow. He may have even cracked through the humerus. On some of the views it looks like that may be the case.

Electronically Reviewed and Signed by
Larry K. Chidgey, M.D. 01/22/2009 09:15
Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Larry K. Chidgey, M.D.
LKC/MDQ 01/12/2009:01/12/2009 11:53 A
UDN: 4045561 Job ID# 004215757

cc:
#

SHANDS HOSPITAL AT UF
RADIOLOGY DEPARTMENT
1600 SW ARCHER ROAD
GAINESVILLE, FL 32610

DIAGNOSTIC RADIOLOGY
CONSULTATION

Phone: (352) 265-0107
Fax:

EXAM: ELBOW LT AP & LAT
EXAM DATE: Jan 12 2009
ORDER DATE: Jan 12 2009 8:01AM
** VERIFIED **

NAME: OSMANSKI, JOSEPH ARTHUR
LOC: XRY SEX: M
MRN: 00675885 DOB: 09/24/1964
PT NO: 000603809328
ORDER: 90001.001
ORD. LOC: HMP TECH: UAB301

ORDERING MD: CHIDGEY MD, LARRY K
ORD. SERVICE: ORT

REASON: PREORDER, LT ELBOW PAIN
EXAM DATE: Jan 12 2009 08:51 RMS# / INV#: 90001.001 / 00001-001
Accession#: 8398480

HXR 3840 ELBOW LT AP & LAT

ICD9 CODES: (XXX.X)

FINDINGS:
COMPARISON: None

FINDINGS: Four views of the left elbow were obtained. A left total elbow arthroplasty is noted. The cemented olecranon component appears uncomplicated, however there is a very prominent lucency surrounding the cemented humeral component consistent with loosening. There is also suggestion of a healing fracture of the distal humerus. The radial head has been resected. Reactive bone is noted throughout the soft tissues of the elbow. Two humeral K-wires are noted, one of which appears to be penetrating soft tissue.

IMPRESSION:

1. Loosening suggested within the humeral component of a total elbow arthroplasty.
2. Healing humeral fracture.
3. Humeral K-wire with distal component in soft tissues.

Dictated By: STEINIG, JEFFREY D. M.D.
Dictated Date: Jan 12 2009 11:44AM
Transcriptionist:

Interpreted By:
MONTGOMERY, WILLIAM J. MD
This study was personally reviewed
by me and I agree with the report.
Attending Radiologist
Verified on: Jan 12 2009 11:44AM

STEINIG, JEFFREY D. M.D.
Resident Radiologist

Ordering MD
CHIDGEY MD, LARRY K
BOX 112727

** VERIFIED **
Page: 1

GAINESVILLE, FL 32610

Printed: 01/12/2009 11:45:28

UF
OSMANSKI JOSEPH ARTHUR
DOB 9/24/1964
B8398480
00675885

Series 2
-1371

L
AB

20 cm

KVP: 60.00
Exp 3 / Exp Time 5.0
NONE
Dist 0

8:54:36 AM
1/12/2009

Zoom: 0.38
W 1334 L 1039

UF

Series 3

OSMANSKI JOSEPH ARTHUR

1371

DOB 9/24/1964

B8398480

00675885

KVP 60.00

20 cm

Exp 3 / Exp Time 5.0

NONE

Dist 0

8:55:56 AM

Zoom: 0.18

1/12/2009

W 2082 L 1541

UF
OSMANSKI JOSEPH ARTHUR
DOB 9/24/1964
88398480
00675885

Series
137

L
AB

10 cm

KVP 57 00
Exp 3 / Exp Time 5 0
NONE
Dist 0

8:54:04 AM
1/12/2009

Zoom 0.54
W 1600 L 1337

UF

Series 4

OSMANSKI JOSEPH ARTHUR

1371

DOB 9/24/1964

B8398480

00675885

KVP 55.00

Exp 3 / Exp Time 6.0

NONE

Dist 0

8:57:13 AM

Zoom: 0.23

1/12/2009

W 2206 L 1678

20 cm

UF
OSMANSKI JOSEPH ARTHUR
DOB 9/24/1964
B8490826
00675885

Series 3
1371

10 cm

KVP 57.00

Exp 3 / Exp Time 5.0

NONE

Dist 0

8:02:25 AM

Zoom: 0.24

2/23/2009

W 2088 L 1617

UF

OSMANSKI JOSEPH ARTHUR

DOB 9/24/1964

B6490826

00075885

Series 2

1377

20cm

KVP 64 50

Exp 3 / Exp Time 5.0

NONE

Dist 0

8:01:31 AM

2/23/2009

Zoom 0.33

W 1918 L 1495

OF
OSMANSKI JOSEPH ARTHUR
DOB 9/24/1964
B8490826
00675885

Series 1
1371

20 cm

KVP 55.00
Exp 3 / Exp Time 6.0
NONE
Dist 0

8:00:29 AM
2/23/2009

Zoom 0.30
W 17481-1593

RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER
WEST COLUMBIA, SC 29169
PHONE: (803) 791-2460

PATIENT: OSMANSKI, JOSEPH A

UNIT/MR NO: M000166905

AGE: 44

ACCT NO: H00036770626

DCB: 09/24/1964

SSN: 264-97-6730

SEX: M

REQ NO: 08-0142158

REPORT NO: 1102-0201

ROOM:

ADMITTING DR:

PT LOCATION: HED

ORDERING DR: ER PHYSICIANS

ER PHYS

REPORT STATUS: Signed

ORDERED BY: ER PHYSICIANS

LOCATION: DEP ER, HED

STUDY TYPE: 1102-0109 RAD/ELBOW LEFT

DATE OF EXAM: 11/02/08

CLINICAL DATA: 44M, PRIOR ELBOW SURGERY REMOTELY
ELBOW PAIN - HYPEREXTENSION

LEFT ELBOW:

FINDINGS: Three views of the left elbow performed. No prior films for comparison. There is joint replacement for the elbow with distal humeral and proximal ulnar components anatomically aligned. There is heterotopic ossification and cortical thickening for the distal humerus and to a lesser degree of the proximal ulna. Heterotopic ossifications are also present around the joint. Given the post surgical changes performed remotely, it is not possible to assess for joint effusion by plain film. There is a fractured Cerclage wire identified for one of the condyles on the oblique view, it is distal and is not secured within bone. There are other pins protruding through the posterior cortex of the humerus. There is presumed partial resection of the distal humerus and proximal ulna and radius. Without the benefit of prior studies it is difficult to assess for any significant changes in both hardware or surrounding bone.

IMPRESSION: Post surgical changes of joint replacement of the elbow as described above with hardware noted. There are no prior films for comparison thereby making it very difficult to assess for any true acute abnormality. Additionally because of the surgery, I cannot tell if there is joint fusion present either. There is soft tissue swelling posterior to the elbow joint. Otherwise without prior films, the joint is nonspecific.

SDH

EDWIN P PIA MD

REPORT STATUS: Signed

ER PHYSICIANS

OSMANSKI, JOE 76730 FISHER/cmh 10/22/2008 J994051

S: The patient is a 44-year-old white male, here for his 1st visit to our office. He basically comes in for a physical. It has been some time since he had a regular physician. He wanted to get his DOT form completed as well. He generally has been pretty healthy. He does take Flomax regularly for some nocturia and BPH. This has helped significantly. He only gets up about once nightly now to use the bathroom. He is also a smoker. He is not that interested quitting right now. He still drives a truck a good bit, although he is not over the road like he was. He is down to about 1 pack daily right now. Unsure when his last tetanus was given. He does have a history of a fall, in 1987, when he was about 23. He had a good bit of problems. He had a pretty bad injury in his left elbow and wrist, particularly. He still has some limited range of motion of elbow as far as supination but otherwise he lifts furniture and does not have any other residual problems. He has recently been seen for some kidney stones by Dr. Brightbill. He had an IVP, which was negative, because he was having some mild persistent pain but he is doing pretty well right now without any significant symptoms. He is allergic to penicillin. FH: Father, some kind of blood disorder in his 50s, did not know exactly what it was. Otherwise unremarkable. PMH: See chart for the rest. ROS: Negative for allergies. Not complaining of chest pain or shortness of breath. No recent bowel changes. Urine as discussed above. No skin problems. Never had any restriction from DOT physical in the past.

O: VITAL SIGNS: Blood pressure 136/84, heart rate 84, weight 273 (reports losing about 70 lbs. this year from just dietary changes). GENERAL: Alert. HEENT: See visual acuity. Eyes clear. TMs clear mouth with deteriorating tooth in the left lower jaw, otherwise clear. NECK: Supple, good pulses, no bruits. No masses. HEART: Regular rate and rhythm without murmurs. LUNGS: Clear to auscultation bilaterally. BACK: Without tenderness. ABDOMEN: Mildly obese, soft, nontender, no masses noted. EXTREMITIES: Without edema, good pulses. GU: Bilateral descended testicles. Very mild hernia on right side. Left clear. RECTAL: Moderately enlarged prostate, smooth, symmetric. SKIN: Clear with few non atypical appearing nevi. DIAGNOSTIC STUDIES: EKG: See chart. Executive profile to be done. Fasting today.

A

1. Physical examination performed in a 44-year-old white male.
 2. Department of Transportation physical performed, no obvious restrictions.
 3. History of benign prostatic hypertrophy, has done well with Flomax.
 4. Tobacco dependence. Encouraged to quit smoking. Do not think he really feels like he is ready right now.
 5. Persistent lack of supination, left elbow, status post injury at 23 years old.
 6. Some obesity in the past, significantly improved with just dietary changes.
- P: Tetanus updated today. DOT form completed. Executive profile and PSA. Proceed as needed on this. Encouraged to quit smoking once again. Did not need refills on Flomax. Follow up p.r.n.

ADDENDUM: Cyst between the DIP and PIP on right ring finger, has gotten a little bit larger, about 3 x 1 cm. Needs further evaluation, excision. Will send to orthopedist for evaluation.

OSMANSKI, JOE 76730 FISHER/cmh 11/13/2008 J911872

S: The patient is a 44-year-old white male who comes in to followup some labs. He has mildly increased cholesterol. He has not been told this in the past. He was also noted to have mildly increased liver functions. He rarely takes Tylenol at home. He drinks a little bit of on the weekends but not regularly. He is not on any medicines except Flomax. He has never been told his liver functions were elevated.

O: VITAL SIGNS: Blood pressure 130/88, weight 270. HEART: Regular rate and rhythm. LUNGS: Clear. ABDOMEN: Soft, no right upper quadrant tenderness. No obvious swelling or masses. DIAGNOSTIC STUDIES: See chart for labs.

A

1. Mildly increased triglycerides, low HDL. Ratio slight high.
 2. Mildly increased liver functions.
- P: Given low triglyceride diet sheet. Talked a little bit about omega-3 fatty acids. Would like to check cholesterol and liver functions in 3 months, sooner if he has any particularly symptoms. Follow up otherwise p.r.n.

CERTIFICATE OF QUALIFICATION

Joseph Osmański 204-99-6730
(Name of Driver) (Social Security Number)

[Signature]
(Signature of Driver)

I certify that the above driver, as defined in §390.5 is regularly driving a vehicle operated by the below named carrier and is fully qualified under Part 391, Federal Motor Carrier Safety Regulations. The current medical examiners certificate expires on 10/22/2010 this certificate expires: (Date not later than expiration date of medical certificate) 10/22/2010

Issued on 10/22/05
(Date)

Issued by _____
(Name of Carrier)

(Address)

(Signature)

(Title)

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined Joseph Osmański
in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, I find this person is qualified; and, if applicable, only when:

- ☐ wearing corrective lenses ☐ driving within an exempt zone (49 CFR 391.62)
☐ wearing hearing aid ☐ accompanied by a Skill Performance Evaluation Certificate (SPE)
☐ accompanied by a _____ waiver/exemption ☐ Qualified by operation of 49 CFR 391.64

The information I have provided regarding this physical examination is true and complete. A complete examination form with any attachment encloses my findings completely and correctly, and is on file in my office.

SIGNATURE OF MEDICAL EXAMINER [Signature] TELEPHONE 803-791-3499 DATE 10/22/08

MEDICAL EXAMINER'S NAME (PRINT) John Fisher ☐ MD ☐ DO ☐ CHIROPRACTOR
☐ Physician Assistant ☐ Advanced Practice Nurse

MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO. / ISSUING STATE 18887 / SC

SIGNATURE OF DRIVER [Signature] DRIVER'S LICENSE NO. 106560508 STATE SC

ADDRESS OF DRIVER 157 Cliff Rd Pelion SC 29123
MEDICAL CERTIFICATE EXPIRATION DATE _____

Columbia Orthopaedic Specialists, LLC
1301 Taylor Street, Suite 3-O
Columbia, SC 29202-0306

DATE: 12/23/08

PATIENT: Joseph A. Osmanski
SSN: 264-97-6730

CHIEF COMPLAINT: Left elbow injury.

PRESENT ILLNESS: This is a 44-year-old truck driver, who dropped a recliner in a box on his left elbow at work November 1st, 2008. He states that initially he was seen at Lexington Medical Center in Lexington and apparently the diagnosis of a torn biceps was made.

He was then seen by Dr. McIntosh on three different occasions. He has not had any physical therapy. At one point he was wearing a sling.

In 1987 he apparently underwent surgery on his left elbow for a severe fracture. In 2000 he underwent a left elbow replacement, which was done in Gainesville, Florida. In 2004 he had a left ulnar transposition done.

The patient states that because the pain is so severe that he still finds it necessary to take Vicodin, which he uses mainly at night. He has yet to return to any type of work.

Today he was kindly sent here for consultation.

PAST MEDICAL HISTORY: He did not mention any other medication and he is allergic to Penicillin. He has also had a right ulnar nerve transposition. Three surgeries have been done on his left shoulder and two have been done on his right shoulder. His only other surgery was a right radial head excision.

PHYSICAL EXAMINATION: General appearance is that of a pleasant 5'11" 270 lb. male, who has considerable discomfort with any attempt at movement of his left elbow. Passive range of motion at the left elbow is possible from 60° to 90° of flexion before pain becomes too much for him. At the posterior medial aspect of his left elbow there is a well-healed 22 cm surgical incision. At the posterolateral aspect there was a well-healed 14 cm surgical incision. Distal neurovascular status was intact, except for some partial numbness of the left little finger.

12/23/08
Joseph A. Osmanski
Page 2

RADIOGRAPHS: AP, lateral and oblique x-rays of his left elbow revealed an elbow replacement to be in place, without any obvious complicating feature.

There was one broken wire, as well as a single pin, which was too long posteriorly. There was also a screw.

IMPRESSION: LEFT ELBOW INJURY.

DISPOSITION: I will see if an MRI scan can be done to assess his biceps at his left elbow. However, I do have my doubts that it can be done.

He is not to perform any work involving the left upper extremity.

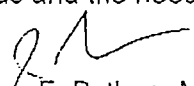
I did write a prescription for (#60) Vicodin to be taken one every four hours as needed for pain without a refill.

I think that it would be prudent to refer him back to Dr. Chidgey in Gainesville for an evaluation, since Dr. Chidgey performed his elbow replacement in 2000.

No definite return appointment was made for him here.

I do not know of any orthopaedic surgeon in this state who is performing this surgery frequently.

I did have a discussion with the case manager concerning Mr. Osmanski's work status and the need for a referral back to the surgeon in Florida.


James F. Bethea, M.D.
JFB/prf

(Next Appointment p.r.n.)

File #: 280 00 63420

Cc: Zurich North America
P.O. Box 195008
Charlotte, NC 28219-5008

Carol Chester, RN, CRRN, CCM
Zurich Services Corporation
P.O. Box 602
Warrenton, GA 30828

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: OSMANSKI, JOE		VISIT DATE:
PATIENT #: 00001529860	XXX-X7-6730	D: 11/06/2008 8:51 AM
PHYSICIAN: JAMES C. MCINTOSH, MD		T: 11/07/2008 6:10 AM / cir
		DATE OF BIRTH: 09/24/1964

*

HISTORY OF PRESENT ILLNESS: Patient presents today for workmen's comp injury to his left elbow. He is a truck driver and had a hyperextension injury last week with immediate onset of pain. He went to the Emergency Department and was evaluated. He has a very complicated history with his left elbow. Apparently he had a comminuted fracture. They attempted what sounds like an interpositional arthroplasty that ultimately failed. Back in late 1990s, he underwent a total elbow arthroplasty in his 30s. This was all done in FL. He is a truck driver and has been doing this for some time. He is right-hand dominant. Ever since the injury, he has had some numbness. He has had transposition of ulnar nerves in the past. Little bit of tingling. It has always been painful, but this is a little bit more. Feels like arm is dead and he cannot move it. It sounds basically like he had a hyperextension injury with some crepitance and onset of pain. Not that uncomfortable today. Still has difficulty moving the arm. Some numbness and tingling in his ring and small fingers. No other injuries reported. We saw him just recently for a mass on his right ring finger. Health otherwise is good. No change since we saw him last week.

PHYSICAL EXAMINATION

GENERAL: Mildly obese black male in no apparent cardiopulmonary distress, alert and oriented x3.

ELBOW: Some mild swelling. I really cannot palpate his biceps very well. He has a 1 bone forearm so he cannot supinate. Ulnar nerve function appears to be intact. Decreased sensation in ulnar distribution. Radial and medial nerve function appears to be intact. Good capillary refill. Several scars on posterior aspect of elbow. No obvious crepitance. Actually fairly good motion. Nearly full extension. Flexion to about 125-130. Elbow showed implant in place; several wires present. No obvious evidence of implant loosening. Some asymmetry at the bushing, which is consistent with wear. Do not see any obvious implant loosening.

ASSESSMENT: Left elbow strain; difficult to tell what is going on with him. His implant appears to be intact. Pins extending at the posterior aspect of the elbow. I do not know if this is old or new.

PLAN: I asked him to continue same range of motion exercises and work status. No use of left arm. Also asked him to get old notes or x-rays to see if we can compare to past films. Recheck and reexamine in 3 weeks.

JAMES C. MCINTOSH, MD

cc:

Lexington Orthopaedics West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: OSMANSKI, JOE		VISIT DATE:
PATIENT #: 00001529860	XXX-X7-6730	D: 11/20/2008 5:15 PM
PHYSICIAN: JAMES C. MCINTOSH, MD		T: 11/24/2008 2:45 PM / cgu
		DATE OF BIRTH: 09/24/1964

HISTORY OF PRESENT ILLNESS: The patient returns today. He seems like he may be doing just a tiny bit better. He still has difficulty actively contracting his arm. He may be getting a tiny bit better with his pain. No new numbness or tingling.

PHYSICAL EXAMINATION: ARM: No significant swelling or discoloration. I cannot really palpation his biceps. Not contracting very well. Some swelling and ecchymosis. No crepitation.

DISCUSSION: We asked him on his last visit to try to get some of his old records and films. He was unable to produce either. Again a difficult time for me to tell exactly what is going on. He had a complex elbow injury. I do not see any true objective findings. His films do show a longstanding elbow implant. There is some prominent hardware but I am not sure if this is new or old.

PLAN: We are going to try once again to get his previous films. Return in 3 weeks. Work status, no use of left arm.

JAMES C. MCINTOSH, MD

cc:

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

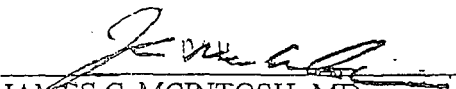
PATIENT: OSMANSKI, JOE		VISIT DATE:
PATIENT #: 00001529860	XXX-X7-6730	D: 12/15/2008 12:45 PM
PHYSICIAN: JAMES C. MCINTOSH, MD		T: 12/15/2008 3:50 PM / dji
		DATE OF BIRTH: 09/24/1964

HISTORY OF PRESENT ILLNESS: The patient returns today. He is doing about the same. He still has a fair amount of pain. He is no better, no worse. We still have no information.

PHYSICAL EXAMINATION: ELBOW: No swelling or discoloration. No crepitation. Limited range of motion. Painful with all activities. Intact neurovascular exam otherwise.

RECOMMENDATIONS: Again, I am not sure. We have asked him to try to get the old notes and old x-rays to try to determine what is going on with him. MRI will not be helpful. He has a total elbow implant which will create artifact. We have asked several times to get information and they are not able to produce it. The only thing I can offer him is to send him back to Florida where his surgery was done to try to figure out what was done. I cannot tell the patient nor the insurance company what is going on with his arm because I do not know what his baseline level is. Return on a p.r.n. basis.

WORK STATUS/WORK RESTRICTIONS: Will continue work status.


JAMES C. MCINTOSH, MD

cc:

DEPARTMENT OF HOPAEDICS
College of Medicine
University of Florida

Box J-246 JHM Health Center
Gainesville, Florida 32610
Telephone: 904.392-4251
FAX: 904.392-6637

August 09, 1988

L.K. Chidgey, M.D.
*General Orthopaedic Surgery,
Hand and Microsurgery*

P.C. Dell, M.D.
*General Orthopaedic Surgery
Hand and Microsurgery*

W.F. Enneking, M.D.
*General Orthopaedic Surgery
Oncology*

P.M. Fry, M.D.
General Orthopaedic Surgery

P.F. Gearen, M.D.
*General Orthopaedic Surgery
Joint Implant Surgery*

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Oncology*

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Pediatrics*

M. Mac Millan, M.D.
*General Orthopaedic Surgery
Adult Spine Surgery*

E.G. McFarland, M.D.
*General Orthopaedic Surgery
Sports Medicine*

R.W. Parry, M.D.
*Chairman
General Orthopaedic Surgery
Joint Implant Surgery*

S. S. Spanier, M.D.
Psychology

C.M. Tylkowski, M.D.
*General Orthopaedic Surgery
Pediatrics*

R.A. Vander Griend, M.D.
*General Orthopaedic Surgery
Oncology*

INVESTIGATIVE FACULTY

F.F. Glowczewskie, Jr.
Tissue Bank

G.J. Miller, Ph.D.
Bio mechanics

N.L. Scarborough, Ph.D.
Pharmacology

George J. Haas, M.D.
501 E. Osceola Street
Stuart, FL 33494

RE: OSMANSKI, Joseph Arthur
STH # 67-58-85
Clinic: 8/05/88

Dear Dr. Haas:

We had the pleasure of seeing Joseph Osmanski in Clinic today. As you recall, this is a 23-year-old right-hand dominant carpenter who fell approximately 22' on 12/18/87. This accident occurred in New Jersey and apparently he had several surgical procedures on the upper extremity fractures he sustained from the fall. Apparently on the right-side he had a radial head fracture and had the radial head excised acutely. On the left-side, he had a lateral condylar fracture and a radial head fracture requiring open reduction of the lateral condylar fracture and excision of the radial head fracture. Apparently, over the ensuing weeks, he developed considerable settling of the left radius with ulnar impingement.

Reviewing his old x-rays show that he apparently developed well over 1.0 cm of ulnar positive wrist. A Darrach procedure was performed to try and give him some relief of the subsequent left wrist pain which developed.

He has since been going with Physical Therapy and apparently has been making minimal progress with the left arm pain being worse than the right. He lacks about the last 30 degrees of extension of both elbows and has approximately an 80 degree arc of supination and pronation on the right and only about a 30 degree arc on the left. On the left-side he has considerable pain over the wrist by palpation in the area of the distal radial ulnar joint region. He also has considerable tenderness over the elbow, both medially and laterally with the lateral pain much worse than medially. He has pain with any attempt at motion of the elbow, especially extension, supination, and pronation. The pain on the right-side is mainly over the radial head excision site with some very mild pain over the distal radial ulnar joint distally. His sensation seems to be completely intact as well as his vascular supply.

X-rays taken today reveal considerable settling on the left-side with the proximal radius impinging upon the capitellum and also with some callus formation at the end of the ulna, which may be causing some impingement distally.

George J. P., M.D.
August 9, 1988

RE: OSISKI, Joseph A.
STH 67-58-85
Clinic: 8/05/88

page two

We feel this represents an Essex-Lopresti type injury and he has developed considerable settling problems. With continued attempts ~~at excision of the radius on the right, we feel that he would~~ continue to settle down and would continue to have problems with ~~impingement at the wrist level. There are no good options for this~~ particular problem with only one I think should be considered would be the creation of a one bone forearm. I feel that no arthroplasty procedures would offer him any help in his young age and he would tear them up in a matter of a few years.

On the right-side, I feel that I would continue to follow this conservatively as he feels he may be getting some mild improvement on the right-side. He is developing some minor degree of settling on this side as well several mm of an ulnar positive variant. We discussed these options with Joseph and he would like to think about it and get back in touch with us if he decides to go ahead with the procedure.

Thank you for this consult.

Sincerely,


Larry K. Chidgey, M.D.
Assistant Professor
Hand and Microsurgery

LKC/dmg

cc: WC

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

DISCHARGE SUMMARY

SHANDS-at-UF

ADMISSION DATE: 02/17/2000

DISCHARGE DATE: 02/19/2000

ADMISSION DIAGNOSIS: (1) Degenerative joint disease, left elbow.

DISCHARGE DIAGNOSIS: (1) Degenerative joint disease, left elbow.

PROCEDURES: (1) Left elbow fascia lata interpositional graft on 2/17/00. CONSULTATIONS: (1) Physical Therapy.

HISTORY AND PHYSICAL: Please see the chart for the complete H&P.

HOSPITAL COURSE: The patient is a 35-year-old white male with a history of left elbow DJD. He was admitted on 2/17/00 following the aforementioned procedure which was performed at Florida Surgical Center on 2/17/00. The patient tolerated the procedure well and was placed on a morphine PCA for pain control until postop day two. He was switched over to oral pain medication at that time and tolerated that well. His Hemovac drain was discontinued with minimal drainage on the day of discharge on postop day two. He had no fevers and was tolerating a regular diet.

DISCHARGE CONDITION: Stable.

DISPOSITION: Home.

DISCHARGE MEDICATIONS: (1) Tylox one to two PO q.4-6h. PRN pain. (2) Oxycodone 5-10 mg PO q.4-6h. PRN breakthrough pain. (3) Clindamycin 600 mg one PO t.i.d. x 1 day.

DISCHARGE INSTRUCTIONS: The patient should notify us for a temperature greater than 35, increased drainage from his wound, pain uncontrolled with pain medication, numbness, tingling or weakness in his extremity. He was given physical therapy for a walking device as directed by PT.

FOLLOW-UP: Follow-up will be with Dr. Chidgey at Hampton Oaks and the Surgery Clinic in two weeks.


Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jason W. Thackeray, M.D.
JWT/344 02/19/2000:02/20/2000 5:17 P

DISCHARGE SUMMARY

OSMANSKI, JOSEPH ARTHUR

PIDX MRN: 00675885

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Orthoped 09/14/00

DATE OF SURGERY: 09/14/2000

PREOPERATIVE DIAGNOSIS: Left elbow arthritis.

POSTOPERATIVE DIAGNOSIS: Left elbow arthritis.

OPERATION PERFORMED: Left total elbow arthroplasty.

~~SURGEON: Chidgey.~~

ASSISTANT:

ANESTHESIOLOGIST:

ASSISTANT:

ANESTHESIA: General.

DESCRIPTION OF PROCEDURE: The patient was taken to the Operating Room. After adequate general anesthesia was established, the arm was prepped and sterilely draped. The limb was exsanguinated and a tourniquet around the upper arm inflated to 250 mmHg. A posterior incision was utilized. The triceps was dissected off of the ulna and kept intact with the forearm fascia. It was dissected subperiosteally off of the tip of the olecranon. The patient had a previous anterior transposition of the ulnar nerve. Therefore, the nerve did not have to be dissected out. The patient had no articular cartilage left on either side of the joint as he had a previous fascial arthroplasty which had failed. There was no sign of any infection. The patient had also had a previous one bone forearm with a radial head excision so the radial head did not have to be dealt with. The ulna was prepared with a power saw and a combination of the reamers to prepare the canal. The trial was then fitted. The saw was then utilized to prepare the distal humerus and the canal reamed; and a trial reduction with the trial implant was carried out and found to be good, lacking only the last 20 degrees from full extension. The ulnar component was then cemented into place. The humeral component was then cemented into place. During the cementing process, there was trouble with the articulating pin. In an effort to try and get the pin articulated properly, the cement hardened sufficiently that it could not be fully seated. Therefore, the humeral component was taken back out and the canal cleaned of the cement. Another attempt was then made filling the humeral canal with cement. At this time, the humeral component seated well with the ulnar component and the pin articulated appropriately. The humeral component was then fully seated in the humerus. Once the cement hardened, the triceps was reattached to the ulna through drill holes utilizing #2 Ethibond suture. It should also be mentioned that the lateral epicondylar area fractured off and had to be secured back down with two K-wires and a figure-of-eight tension band wire. A drain was then placed through a separate stab wound and the wound closed

Requested by HENDEP on 01/12/09 at 09:03 From M173 Page 1

NM800701

P380

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN: 00675885

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

in layers. A sterile dressing was then applied followed by a splint. The patient tolerated the procedure well and was taken to the Recovery Room in stable condition. Good vascular status returned to the hand after tourniquet deflation.

Larry K. Chidgey, M.D.

Associate Professor, Hand Surgery

Dept. of Orthopaedics and Rehabilitation

Dictated by: Larry K. Chidgey, M.D.
LKC/344 09/14/2000:09/14/2000 6:10 P

Requested by HENDEP on 01/12/09 at 09:03 From M173 Page 2

JM800701

P381

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

FSC OPERATIVE REPORT

DATE OF SURGERY: 11/01/2001

PREOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

POSTOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

OPERATION PERFORMED: Left ulnar nerve transposition and neurolysis

SURGEON: Chidgey
ASSISTANT: Gilmore

ANESTHESIOLOGIST:
ASSISTANT:

INDICATIONS FOR PROCEDURE: The patient initially had a cubital tunnel syndrome of the left ulnar nerve. He sustained paresthesias and sensation difficulties in the ulnar distribution of his hand. The initial procedure was a left ulnar nerve transposition. He did return complaining of continued pain and paresthesias about his arm. He had developed a significant amount of scar tissue after multiple surgical procedures to his left elbow. It was deemed he would need a revision of the transposition and likely neurolysis.

DESCRIPTION OF PROCEDURE: The patient was appropriately identified, as well as the extremity was identified. He was taken to the operative suite, and general anesthesia was obtained. Next sterile dressings were applied, along with a sterile tourniquet. The total tourniquet time was approximately 1 hour and 6 minutes. Before the tourniquet was inflated the arm was exsanguinated.

Next the previous scar was identified on the medial ulnar aspect of his left elbow. The incision was made over the previous scar site. It was extended approximately 3 cm proximal and distal from that site. Dissection was then performed down through the skin with a knife in the subcutaneous tissue. Next tenotomies were used to clear some of the scar tissue, and the ulnar nerve was identified distally just underneath the subcutaneous tissue. It was mobilized both distally and proximally across the elbow.

It was noted there was a significant amount of scar tissue on the floor of the nerve, and the nerve was released from the scar tissue with neurolysis. It was determined that instead of dissecting through the abundance and thickness of the scar tissue that it would best serve the ulnar nerve to lie above this tissue with an overlying subcutaneous tissue for cushion. As this layer was sutured over top of the ulnar nerve, it was determined that the ulnar nerve was mobile and free. The rest of the suture line was drawn with 2-

FSC OPERATIVE REPORT

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

FSC OPERATIVE REPORT

0 Polysorb. This was done in inverted interrupted fashion. Next skin was stapled. The patient then had sterile dressings applied.

Next the patient was awakened. The tourniquet was deflated, and the patient was taken to the Recovery Room without difficulty. He remained neurovascularly intact postoperatively. He will be admitted to the hospital postoperatively for observation overnight. His pain is under good control with the use of Tylox and morphine.

Dr. Chidgey was present for the entire procedure and participated in the case.



Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Michael D. Gilmore, M.D.
MDG/448 11/01/2001:11/01/2001 10:33 P
Job ID# 001087363

cc:

FSC OPERATIVE REPORT

WATKINS & SHEPARD TRUCKING, INC.
POST-JOB OFFER QUESTIONNAIRE

1. After receiving a copy of our job description, essential job functions and minimum qualification standards for over the road drivers and upon review of it, can you complete all essential job functions listed in the Job Description?
Yes ✓
No
2. If no, which essential job function(s) can you not perform and why? Do you need an accommodation to complete the Essential Job Function(s)? What accommodation do you feel you need?
n/a
3. Have you had any non-work related injuries or illnesses (such as broken bones, surgeries, hospitalizations, heart attacks, tuberculosis, etc.), which may affect your ability to perform the Essential Job Functions? If yes, what is the date(s) and type of injury or illness?
no
4. Have you been injured or suffered an occupational disease (such as broken bones, surgeries, hospitalizations, etc.) while working for another employer? If yes, what is the date(s) and type of injury or occupational disease?
no
5. Do you have any physical limitation(s) or restriction(s) (such as lifting, squatting, bending, kneeling, etc.) that would prevent you from performing the Essential Job Functions? If so what?
no
6. Are you currently being prescribed any medication by a physician which may affect your ability to perform the Essential Job Functions? If so, what medications?
no
7. Have you been certified by any Subsequent Injury Fund of any states Department of Labor and Industry (such as an impairment rating from a disability or a settlement from a claim)? If so, when and for what condition or limitation?
n/a
8. Do you currently have or previously had a D.O.T. waiver? If yes, attach documentation from the D.O.T. This is a special medical permit that the Department of Transportation issues for specific physical and or medical conditions.
no

My signature below certifies that this questionnaire is true and complete to the best of my knowledge.

Joseph Osmański
Printed Name10-30-06
Dateby phone
Signature
Debi Houle
Interviewer

Please fax this immediately to Debi Houle or Janice Peterson in the Missoula Safety Department

Revised 04/15/05

MISSOURI MEDICAL EXAMINER'S REPORT FOR COMMERCIAL DRIVER FITNESS DETERMINATION

Shepherd 840879

1. **Driver completes this section.**

Driver's Name (Last, First, Middle) OSMANSKI Joseph Arthur Social Security No. 264-17-6730 Birthdate 9/24/44 Age 42 Sex ☒ M ☐ F ☐ New certification ☐ Recertification ☐ Follow Up ☐ Date of Exam 10/30/06

Address 1576 L.R. Rd. City, State, Zip Code Pelham, SC 29123 Work Tel: (603) 361-1530 Home Tel: (603) 874-7661 Driver License No. 100560508 License Class ☒ A ☐ B ☐ C ☐ D ☐ Other SC State of Iss. SC

2. **Driver completes this section, but medical examiner is encouraged to discuss with driver.**

YES NO

☐ ☒ Any lacerations or injury in last 5 years?

☐ ☒ Head/Brain injuries, disorders or illnesses

☐ ☒ Seizures, epilepsy

☐ ☐ medication

☐ ☒ Eye disorders or impaired vision (except corrective lenses)

☐ ☒ Ear disorders, loss of hearing or balance

☐ ☒ Heart disease or heart attack/other cardiovascular condition

☐ ☐ medication

☐ ☒ Heart surgery (valve replacement, bypass, angioplasty, pacemaker)

☐ ☒ High blood pressure

☐ ☐ medication

☐ ☒ Diabetes

☐ ☒ Shortness of breath

YES NO

☐ ☒ Lung diseases, emphysema, asthma, chronic bronchitis

☐ ☒ Kidney disease, dialysis

☐ ☒ Liver diseases

☐ ☒ Digestive problems

☐ ☒ Diabetes (except insulin injected by

☐ ☐ diet

☐ ☐ insulin

☐ ☒ Nervous or psychiatric disorders, e.g., severe depression

☐ ☐ medication

☐ ☒ Local or stored anesthetic

YES NO

☐ ☒ Fainting, dizziness

☐ ☒ Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring

☐ ☒ Stroke or paralysis

☐ ☒ Missing or impaired hand, arm, foot, leg, finger, toe

☐ ☒ Spinal injury or disease

☐ ☒ Chronic low back pain

☐ ☒ Regular, frequent alcohol use

☐ ☒ Marijuana or hash smoking drug use

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitations. List all medications (including over-the-counter medications) used regularly or frequently.

I hereby attest that the above information is complete and true. I understand that inaccurate, false or misleading information may invalidate the examination and my Missouri Examiner's Certificate.

Driver's Signature Joseph A. Osmanski Date 10/30/06

Medical Examiner's Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving. This discussion must be documented below.)

Smoker

TESTING (Medical Examiner completes Section 3 through 7) Name: Last Osmanski First Joseph Middle Arthur

3. **Standards:** At least 20/40 acuity (vision) in each eye with or without correction. At least 70° peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

INSTRUCTIONS: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio: 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified. Numerical readings must be provided.

ACUITY:	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/20	20/20	Right Eye 85°
Left Eye	20/20	20/20	Left Eye 85°
Both Eyes	20/20	20/20	

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☒ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:

☐ Corrective Lenses

Monocular Vision: ☐ Yes ☒ No

Complete next line only if vision testing is done by an Ophthalmologist or Optometrist:

Date of Examination: 10/30/06 Name of Ophthalmologist or Optometrist (print): Dr. Joseph A. Osmanski Tel No. 603-361-1530 License No./State of Issue 100560508/SC Signature Joseph A. Osmanski

4. **Standards:** a) Must first perceive forced whispered voice at 5 ft., with or without hearing aid, or an average hearing loss in better ear of 40 dB. ☐ Check if hearing aid used for tests. ☐ Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500 Hz, -10 dB for 1,000 Hz, -5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard	Right Ear	Left Ear	b) If audiometer is used, record hearing loss in decibels (see to ANSI Z39.5-1981)	Right Ear	Left Ear
	5 ft.	5 ft.		500 Hz	500 Hz
				1000 Hz	1000 Hz
				2000 Hz	2000 Hz
				Average	Average

5. **Standards:** Numerical readings must be recorded. Blood pressure should take at least two readings to confirm BP.

Blood Pressure	Systolic	Diastolic	Reading	Category	Expiration Date	Recertification
	138	88	140-159/90-99	Stage 1	1 year	1 year if $\leq 140/90$. One-time certificate for 3 months 141-159/91-99.
Driver qualified if $\leq 140/90$.			160-179/100-109	Stage 2	One-time certificate for 3 months.	1 year from date of exam if $\leq 140/90$.
Pulse Rate: ☒ Regular ☐ Irregular			>180/110	Stage 3	6 months from date of exam if $\leq 140/90$.	6 months if $\leq 140/90$.
Record Pulse Rate <u>60</u>						

6. **Standards:** Urinalysis: If required: Protein, blood or sugar in the urine may be an indication for further testing.

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 01/10/01

SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

01/10/2001

CHIEF COMPLAINT: Followup surgery of left elbow.

HISTORY OF PRESENT ILLNESS: Mr. Osmanski is well known to our service. He is now approximately three-and-a-half months after a complex left total arthroplasty. He also had a previous radial ulnar synostosis. He has been wearing his Bledsoe brace and working on motion. He does complain of occasional popping noises coming from that elbow, and lack of strength.

PHYSICAL EXAMINATION: The surgical wounds are well healed. There are no signs of infection. Range of motion actually is fairly good considering what he has been through. It is from approximately 40 degrees to 110 degrees. He can fully flex extend his fingers and his wrist, and abduct and extend his thumb. Light touch sensation is intact to his fingers, however, he complains of numbness on the dorsal side of his hand and forearm. He is able to actively flex and extend his elbow but with minimal strength, compared to the other side.

X-RAYS: X-rays, radiographs obtained again today show the prosthesis in position with tension band construct on the lateral condyle. A line is seen around the cement area which may or may not be related to loosening of the cement, but rather the technique.

IMPRESSION: Status post complex left salvage total hip arthroplasty.

PLAN: The patient was seen and evaluated today with Dr. Chidgey. We again reiterated no more narcotics and will continue the Ultram and Neurontin. He does feel a difference with both of these medications. We again stressed the importance of limited use of his left arm to increase the longevity of this prosthesis. He can work on gentle exercises and motion, and a lot of that popping he is feeling is suspected to be scar tissue which will loosen over time. He will always have a 15 pound weight limit restriction for the left upper extremity. He should also avoid situations where he might fall or excessively stress his left arm. We stressed this multiple times today, and the patient stated he understands. Overall, his wife stated that she feels he has made significant improvements, and is much better than he was prior to this last surgery. All questions were answered. We will see him again in three months with pre-clinic x-rays of the left elbow.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8630

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UP

Clinic N 02/11/02

SHANDS at UF CLINIC

02/11/2002

OSMANSKI, JOSEPH STH#00-67-58-85

Joseph returns today for evaluation status post ulnar nerve neurolysis on 11/01/01. On exam, his incision is well-healed. Sensation is unchanged. X-rays are not obtained. His elbow range of motion is approximately 0 to 120 degrees of flexion, minimal pronation and supination. ✓

Assessment: Status post left ulnar nerve neurolysis following transposition.

Plan: The plan will be to obtain a functional capacity evaluation. This was written today to set permanent impairment. We have indicated, however, that he will be at a 10-pound lifting restriction indefinitely for his left upper extremity due to this total elbow arthroplasty on that side. We will see him back after functional capacity evaluation again to set his permanent impairment grading. Work restrictions were given (again, a 10-pound lifting restriction). The patient was seen and examined by Dr. Chidgey. ✓

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Thomas F. Saylor, MD
02/11/2002:02/11/2002 9:58 P
Job ID# 001188532

CC:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8640

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 03/22/02

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SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

03/22/2002

DIAGNOSIS: Status post left total elbow arthroplasty and left ulnar nerve neurolysis and transposition.

INTERVAL HISTORY: The patient returns today for repeat evaluation following his functional capacity evaluation. We agree with the findings and work recommendations which include a conditioning program as well as teaching techniques to promote good biomechanics. We also agree with them limiting his workload and emphasized that he cannot lift more than 10 or 15 pounds with his left arm due to his total elbow arthroplasty. We will place him at MMI today for his left elbow with a PPI of 14%. This combined with his 6% for his right shoulder gives him a total PPI of 20%.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Daniel A. Worrel, M.D.
DAW/329 03/22/2002:03/26/2002 2:17 P
Job ID# 001232836

CC:

Requested by WHIDDS on 01/07/09 at 10:08 From M009 Page 1

NL1E8641

OSMANSKI, JOE 76730 FISHER/cmh 10/22/2008 J994051

S: The patient is a 44-year-old white male, here for his 1st visit to our office. He basically comes in for a physical. It has been some time since he had a regular physician. He wanted to get his DOT form completed as well. He generally has been pretty healthy. He does take Flomax regularly for some nocturia and BPH. This has helped significantly. He only gets up about once nightly now to use the bathroom. He is also a smoker. He is not that interested quitting right now. He still drives a truck a good bit, although he is not over the road like he was. He is down to about 1 pack daily right now. Unsure when his last tetanus was given. He does have a history of a fall, in 1987, when he was about 23. He had a good bit of problems. He had a pretty bad injury in his left elbow and wrist, particularly. He still has some limited range of motion of elbow as far as supination but otherwise he lifts furniture and does not have any other residual problems. He has recently been seen for some kidney stones by Dr. Brightbill. He had an IVP, which was negative, because he was having some mild persistent pain but he is doing pretty well right now without any significant symptoms. He is allergic to penicillin. FH: Father, some kind of blood disorder in his 50s, did not know exactly what it was. Otherwise unremarkable. PMH: See chart for the rest. ROS: Negative for allergies. Not complaining of chest pain or shortness of breath. No recent bowel changes. Urine as discussed above. No skin problems. Never had any restriction from DOT physical in the past.

O: VITAL SIGNS: Blood pressure 136/84, heart rate 84, weight 273 (reports losing about 70 lbs. this past year from just dietary changes). GENERAL: Alert. HEENT: See visual acuity. Eyes clear. TMs clear, mouth with deteriorating tooth in the left lower jaw, otherwise clear. NECK: Supple, good pulses, no bruits. No masses. HEART: Regular rate and rhythm without murmurs. LUNGS: Clear to auscultation bilaterally. BACK: Without tenderness. ABDOMEN: Mildly obese, soft, nontender, no masses noted. EXTREMITIES: Without edema, good pulses. GU: Bilateral descended testicles. Very mild hernia on right side. Left clear. RECTAL: Moderately enlarged prostate, smooth, symmetric. SKIN: Clear with a few non atypical appearing nevi. DIAGNOSTIC STUDIES: EKG: See chart. Executive profile to be done. Fasting today.

A

1. Physical examination performed in a 44-year-old white male.
 2. Department of Transportation physical performed, no obvious restrictions.
 3. History of benign prostatic hypertrophy, has done well with Flomax.
 4. Tobacco dependence. Encouraged to quit smoking. Do not think he really feels like he is ready right now.
 5. Persistent lack of supination, left elbow, status post injury at 23 years old.
 6. Some obesity in the past, significantly improved with just dietary changes.
- P: Tetanus updated today. DOT form completed. Executive profile and PSA. Proceed as needed on that. Encouraged to quit smoking once again. Did not need refills on Flomax. Follow up p.r.n.

ADDENDUM: Cyst between the DIP and PIP on right ring finger, has gotten a little bit larger, about 3 x 1 cm. Needs further evaluation, excision. Will send to orthopedist for evaluation.

OSMANSKI, JOE 76730 FISHER/cmh 11/13/2008 J911872

S: The patient is a 44-year-old white male who comes in to followup some labs. He has mildly increased cholesterol. He has not been told this in the past. He was also noted to have mildly increased liver functions. He rarely takes Tylenol at home. He drinks a little bit of on the weekends but not regularly. He is not on any medicines except Flomax. He has never been told his liver functions were elevated.

O: VITAL SIGNS: Blood pressure 130/88, weight 270. HEART: Regular rate and rhythm. LUNGS: Clear. ABDOMEN: Soft, no right upper quadrant tenderness. No obvious swelling or masses. DIAGNOSTIC STUDIES: See chart for labs.

A

1. Mildly increased triglycerides, low HDL. Ratio slight high.
 2. Mildly increased liver functions.
- P: Given low triglyceride diet sheet. Talked a little bit about omega-3 fatty acids. Would like to check cholesterol and liver functions in 3 months - 6 months if he has any particularly symptoms. Follow up

LEXINGTON FAMILY PRACTICE, L.L.C.

NAME Joseph A OSMANSKI

NO. _____

DATE 10/22/08

LIFESTYLE

Circle The Correct Answer

- YES ☒ NO ☐ 1. Do you use tobacco regularly?
cigarette ☒ pipe ☐ cigar ☐ chew ☐
If yes, how long _____, how much _____
- YES ☒ NO ☐ 2. Do you drink over 6 cups of coffee a day?
- YES ☒ NO ☐ 3. Do you drink alcohol regularly?
1 oz/d ☐ 2 oz/d ☐ 4 oz/d ☐ Over 4 oz/d ☐
Beer - 1 bottle/d ☐ 2 bottles/d ☐
over 2 bottles/d ☐
- YES ☒ NO ☐ a. Have you felt the need to cut down on your drinking?
- YES ☒ NO ☐ b. Have you felt annoyed by criticism about your drinking?
- YES ☒ NO ☐ c. Have you had guilty feelings about your drinking?
- YES ☒ NO ☐ 4. Do you wear a seat belt regularly?
- YES ☒ NO ☐ 5. Do you have much stress in your life?
- YES ☒ NO ☐ 6. Do you often feel depressed or down for more than a few days with no apparent cause?
- Did you have frequent episodes (more than 3 times) of any of the following during the past year?
- YES ☒ NO ☐ 7. Constipation (trouble passing stool)
- YES ☒ NO ☐ 8. Indigestion (stomach trouble)
- YES ☒ NO ☐ 9. Difficulty urinating (pain, trouble starting stream, dribbling, losing water)
- YES ☒ NO ☐ 10. Persistent hoarseness or a cough
- YES ☒ NO ☐ 11. Rectal bleeding (blood on your toilet paper, red colored water in the bowl, black or tarry stool).
- YES ☒ NO ☐ 12. Freckle, mole or skin growths that get bigger or change color.

List medications you take regularly:

Flomax

List allergies to medications:

Penicillin

FAMILY HISTORY

Please relate to blood relatives and if yes describe relation-*ie.* brother, mother, etc.

YES ☐ NO ☐ Anyone in the family with allergies or asthma?

YES ☒ NO ☐ Anyone in the family with diabetes mellitus (or sugar)?

YES ☒ NO ☐ Anyone in the family with heart disease (heart attack/heart failure)?

YES ☒ NO ☐ Anyone in the family with hypertension (or high blood pressure or stroke)

YES ☒ NO ☐ Anyone in the family with cancer or tumor (please discuss the kind of cancer or tumor)

PAST HISTORY

List operations in the past. (include the year the surgery occurred)

1987 Elbow surgery (Both)

List serious diseases requiring hospitalization or not, and the year.

List serious injuries or accidents & the year.

- OVER -

Please Fill Out Other Side

REVIEW OF SYSTEMS

(A) SKIN

1. Have you ever had any serious skin troubles, rashes, eczema, acne, skin cancer? YES ___ NO ☒

(B) HEAD

2. Do you have severe headaches? YES ___ NO ☒
 3. Do you have episodes of dizziness or numbness, tingling, or weakness in any part of your body? YES ___ NO ☒
 4. Have you ever had fits, spells, seizures, or convulsions? YES ___ NO ☒
 5. Do you have any other head problems? YES ___ NO ☒

(C) EYES - EARS

6. Do you wear glasses or contacts? YES ___ NO ☒
 7. Do you ever see double or does your eyesight ever black out? YES ___ NO ☒
 8. Do you have trouble hearing? YES ___ NO ☒
 9. Do you have any other ear or eye problems? YES ___ NO ☒

(D) NOSE

10. Do you have problems with allergy, sneezing, or sinus trouble? YES ___ NO ☒
 11. Do you have any other nose problems? YES ___ NO ☒

(E) MOUTH

12. Do you have any mouth problems? YES ___ NO ☒

(F) CHEST

13. Do you now have asthma? YES ___ NO ☒
 14. Do you cough a lot? YES ___ NO ☒
 15. Do you cough up sputum or phlegm? YES ___ NO ☒
 16. Have you ever coughed up blood? YES ___ NO ☒
 17. Have you ever had tuberculosis or lived with someone who had tuberculosis? YES ___ NO ☒
 18. Do you get short of breath with activity? YES ___ NO ☒
 19. Do you have any other chest problems? YES ___ NO ☒

(G) CARDIOVASCULAR (HEART)

20. Have you ever had high blood pressure? YES ___ NO ☒
 21. Have you ever had a heart attack? YES ___ NO ☒
 22. Do you have pains in your chest (angina) when walking, working, or climbing stairs? YES ___ NO ☒
 23. Does your heart beat peculiarly or rapidly? YES ___ NO ☒
 24. Do you ever have to prop up in bed at night to breathe? YES ___ NO ☒
 25. Are your ankles often swollen? YES ___ NO ☒
 26. Do you have cramping in your calves or thighs after walking? YES ___ NO ☒
 27. Do you have any other cardiovascular problems? YES ___ NO ☒

(H) GASTROINTESTINAL (STOMACH)

28. Have you ever had stomach ulcers? YES ___ NO ☒
 29. Have you ever had gallstones or gallbladder trouble? YES ___ NO ☒
 30. Have you ever had jaundice (yellow eyes) or hepatitis? YES ___ NO ☒
 31. Have you ever had rectal hemorrhoids? YES ___ NO ☒
 32. Do you have any other gastrointestinal problems? YES ___ NO ☒

(I) GENITO-URINARY (KIDNEY)

33. Have you ever had blood in your urine? YES ___ NO ☒
 34. Do you have trouble starting or stopping your stream? YES ___ NO ☒
 35. Do you have to get up more than once during the night to urinate? YES ___ NO ☒
 36. Do you sometimes lose control of your bladder? YES ___ NO ☒
 37. Do you have any other genito-urinary (kidney) problems? YES ___ NO ☒

(J) BONES - JOINTS - MUSCLES

38. Are your joints often painfully swollen or stiff? YES ___ NO ☒
 39. Have you ever had serious back trouble? YES ___ NO ☒

(K) ENDOCRINE (GLANDS)

40. Have you gained or lost weight recently without trying? YES ___ NO ☒
 41. Are you usually hungry or thirsty at all times? YES ___ NO ☒
 42. Do you urinate more than you think you should? YES ___ NO ☒
 43. Have you ever had any thyroid trouble? YES ___ NO ☒
 44. Have you ever had gout? YES ___ NO ☒

(L) GENERAL

45. Have you noticed any swelling or a lump in your neck, armpits, or groin? YES ___ NO ☒
 46. Do you have trouble falling or staying asleep? YES ___ NO ☒
 47. Have you ever had a nervous breakdown? YES ___ NO ☒
 48. Are there any sexual problems you want to discuss? YES ___ NO ☒

(M) ADDITIONAL QUESTIONS FOR MEN ONLY

49. Have you ever had any prostate gland trouble? YES ___ NO ☒
 50. Do you have any other male problems? YES ___ NO ☒

(N) ADDITIONAL QUESTIONS FOR WOMEN ONLY

51. When was the first day of your last period? _____
 52. When was your last period before that? _____
 53. Are your periods frequently irregular? YES ___ NO ☒
 54. Do you have a lot of cramping with your period? YES ___ NO ☒
 55. Have you, within the past year, had vaginal bleeding other than at the time of a period? YES ___ NO ☒
 56. Have you ever been pregnant? YES ___ NO ☒
 If yes, how many times _____
 57. Number of living children _____
 58. Have you ever had a lump in your breast? YES ___ NO ☒
 59. Do you have any other female problems? YES ___ NO ☒

(O) DENTAL

60. Have you had any pain in your jaw joints (pain in front of your ear)? YES ___ NO ☒

Medical Examination Report

FOR COMMERCIAL DRIVER FITNESS DETERMINATION

1. DRIVER'S INFORMATION Driver completes this section									
Driver's Name (Last, First, Middle) Osmanaki, Joseph A			Social Security No. 264-97-6730		Birthdate 4/24/64 M/D/Y	Age 44	Sex ☒ M ☐ F	☐ New certification ☒ Recertification ☐ Follow Up	Date of Exam 10/22/08
Address 157 Cliff Rd		City, State, Zip Code Pelion SC 29123		Work Tel: (803) 894-7661 Home Tel: ()		Driver License No. 100560508		License Class ☐ A ☐ C ☐ B ☐ D ☐ Other	State of Issue SC

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.		
Yes No ☐ ☒ Any illness or injury in last 5 years? ☐ ☒ Head/Brain injuries, disorders or illnesses ☐ ☒ Seizures, epilepsy ☐ medication _____ ☐ ☒ Eye disorders or impaired vision (except corrective lenses) ☐ ☒ Ear disorders, loss of hearing or balance ☐ ☒ Heart disease or heart attack; other cardiovascular condition ☐ medication _____ ☐ ☒ Heart surgery (valve replacement/bypass, angioplasty, pacemaker) ☐ ☒ High blood pressure ☐ medication _____ ☐ ☒ Muscular disease ☐ ☒ Shortness of breath	Yes No ☐ ☒ Lung disease, emphysema, asthma, chronic bronchitis ☐ ☒ Kidney disease, dialysis ☐ ☒ Liver disease ☐ ☒ Digestive problems ☐ ☒ Diabetes or elevated blood sugar controlled by: ☐ diet ☐ pills ☐ insulin ☐ ☒ Nervous or psychiatric disorders, e.g., severe depression ☐ Medication _____ ☐ ☒ Loss of, or altered consciousness	Yes No ☐ ☒ Fainting, dizziness ☐ ☒ Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring ☐ ☒ Stroke or paralysis ☐ ☒ Missing or impaired hand, arm, foot leg, finger, toe ☐ ☒ Spinal injury or disease ☐ ☒ Chronic low back pain ☐ ☒ Regular, frequent alcohol use ☐ ☒ Narcotic or habit forming drug use
For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently. _____ _____ _____		

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Driver's Signature

Date

Medical Examiners Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving)

Name _____ Social Security No. _____

TESTING (Medical Examiner completes Section 3 through 7)

3. VISION Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

INSTRUCTIONS: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified.

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/ 40	20/	Right Eye °
Left Eye	20/ 30	20/	Left Eye °
Both Eyes	20/ 20	20/	°

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors?

☒ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:

☐ Corrective Lenses

Monocular Vision: ☐ Yes ☐ No

Complete next line only if vision testing is done by an ophthalmologist or optometrist.

Date of Examination _____ Name of Ophthalmologist or Optometrist (print) _____ Tel No. _____ License No./State of issue _____ Signature _____

4. HEARING Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB
☐ Check if hearing aid used for tests. ☐ Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500 Hz, -10 dB for 1,000 Hz, -8.5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard.	Right Ear 5 Feet	Left Ear 5 Feet

b) If audiometer is used, record hearing loss in decibels. (acc. to ANSI Z24.5-1951)

Right Ear			Left Ear		
500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz
Average:			Average:		

5. BLOOD PRESSURE/PULSE RATE Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Blood Pressure	Systolic 120	Diastolic 84

Driver qualified if $\leq 140/90$.

Pulse Rate	☒ Regular ☐ Irregular

Record Pulse Rate: 84

Reading	Category	Expiration Date	Recertification
140-159/90-99	Stage 1	1 year	1 year if $\leq 140/90$. One time certificate for 3 months if 141-159/91-99.
160-179/100-109	Stage 2	One-time certificate for 3 months.	1 year from date of exam if $\leq 140/90$.
$\geq 180/110$	Stage 3	6 months from date of exam if $\leq 140/90$.	6 months if $\leq 140/90$.

6. LABORATORY AND OTHER TEST FINDINGS Numerical readings must be recorded.

Urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

Other Testing (Describe and record)

URINE SPECIMEN	SP. GR. 1.015	PROTEIN neg	BLOOD neg	SUGAR neg

7. PHYSICAL EXAMINATIONHeight: 5'11" (in.)Weight: 273.6 (lbs.)

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for.

See Instructions To The Medical Examiner for guidance.

BODY SYSTEM	CHECK FOR:	YES*	NO	BODY SYSTEM	CHECK FOR:	YES*	NO
1. General Appearance	Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.		✓	7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.		✓
2. Eyes	Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos, strabismus uncorrected by corrective lenses, retinopathy, cataracts, aphakia, glaucoma, macular degeneration.		✓	8. Vascular system	Abnormal pulse and amplitude, carotid or arterial bruits, varicose veins.		✓
3. Ears	Middle ear disease, occlusion of external canal, perforated eardrums.		✓	9. Genito-urinary system	Hernias.		✓
4. Mouth and Throat	Irremediable deformities likely to interfere with breathing or swallowing.		✓	10. Extremities - Limb Impaired. Driver may be subject to SPE certificate if otherwise qualified.	Loss or impairment of leg, foot, toe, arm, hand, finger. Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.		✓
5. Heart	Murmurs, extra sounds, enlarged heart, pacemaker.		✓	11. Spine, other musculoskeletal	Previous surgery, deformities, limitation of motion, tenderness		✓
6. Lungs and chest, not including breast examination.	Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/or xray of chest.		✓	12. Neurological	Impaired equilibrium, coordination or speech pattern; paresthesia, asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski's reflexes, ataxia.		✓

* COMMENTS: _____

Note certification status here. See Instructions to the Medical Examiner for guidance.

☒ Meets standards in 49 CFR 391.41; qualifies for 2 year certificate.

☐ Does not meet standards

☐ Meets standards, but periodic evaluation required.

Due to _____ driver qualified only for:

☐ 3 months ☐ 1 year
☐ 6 months ☐ Other

☐ Temporarily disqualified due to (condition or medication): _____

Return to medical examiner's office for follow up on _____

☐ Wearing corrective lenses

☐ Wearing hearing aid

☐ Accompanied by a _____ waiver/exemption

☐ Skill Performance Evaluation (SPE) Certificate

☐ Driving within an exempt intracity zone.

☐ Qualified by operation of 49 CFR 391.84

Medical Examiner's Signature _____

Medical Examiner's Name (print) _____

Address _____

Telephone Number _____

John H. Fisher M.D.

3314 Platt Springs Road

West Columbia, SC 29170

(803) 791-3494

If meets standards, complete a Medical Examiner's Certificate according to 49 CFR 391.43(h). (Driver must carry certificate when operating a commercial vehicle.)



Lexington Medical Center

Patient History Form

PATIENT LABEL

Patient Name: Joseph Ozmanisko Date of Birth: 9-24-64

Social History (circle the most accurate choice):

Primary Language: English Spanish Other (specify) _____
 Marital Status: Single Married Divorced Separated Widowed
 Occupation: Truck Driver Disabled: No Yes What condition? _____
 Alcohol Use: Never Rarely Weekly Daily -- Drinks per day? _____
 Caffeine Use: Never Rarely Weekly Daily -- Drinks per day? 1
 Tobacco Use: No Yes -- Chew? Smoke? Packs per day 1
 Drug Use: Marijuana Other Drugs (specify): _____
 Advanced Directives (Living Will): Yes No

Environmental/Occupational Exposure:

Tobacco Smoke: _____ Asbestos: _____ Chemicals/Pesticides: _____

PATIENT Medical History (PLEASE SPECIFY CONDITION!):

Heart Problems: _____	Stomach/Intestinal/Hepatitis: _____
Lung Problems: _____	Thyroid Problems: _____
Diabetes: _____	Kidney Problems: _____
High Blood Pressure: _____	Bleeding Problems: _____
High Cholesterol: _____	Seizure Disorder: _____
Obesity: _____	Hereditary Disorder: _____
Arthritis: _____	TB: _____
Cancer: _____	Sex. Transmitt. Diz: _____
Depression/Anxiety: _____	HIV/AIDS: _____
Other Psychiatric Conditions: _____	Chronic Pain: _____
	Other Problems: _____

FAMILY History (Do any of the above medical conditions run in your family?):

Which ones? NO

Surgeries (Please be specific as possible!):

Abdominal: _____
 Gyn (female): _____
 Heart (including catheterization): _____
 Orthopedic: left Elbow Implant
 Other: _____

Medications: (Please include over the counter meds and nutritional supplements.):

IB Profen _____

ALLERGIES: Penic

SIGNATURE Joe Ozmanisko (Relation to Patient) Self DATE: Nov 22 2008

**LEXINGTON
MEDICAL CENTER**
LEXINGTON
811 Main Street
Lexington, South Carolina 29072
803-358-6100

PATIENT: OSMANSKI, JOSEPH A	VISIT DATE: 11/04/2008
ADM. #: X00004373411	M.R. #: M000166905
PHYSICIAN: SALLY L HERPST, MD	D: 11/07/2008 7:33 PM
DATE OF BIRTH: 09/24/1964	T: 11/10/2008 8:25 AM / mwl

URGENT CARE

CC: Elbow pain.

S: Patient states that on Saturday November 1st, he had a forceful hyperextension of his left arm at the elbow. A box containing a lazy boy chair came unbalanced from the top of a pile. He tried to brace it as it fell but the weight of it caused his left elbow to suddenly hyperextend. He has a history of left elbow implanted prosthesis. He shattered the elbow in a fall in 1987. He had several surgeries culminating in hardware replacement of the elbow in 1999. Since the injury, he has been unable to actively flex his left arm at the elbow. He can do a passive range of motion with assistance from the right hand. He was seen in the Emergency Department on Sunday November 2nd. He had a normal x-ray taken and was given a sling. He still notes a lot of pain with pain radiating from elbow up to anterior shoulder. He denies any other areas of injury. **PMH:** Healthy. **CURRENT MEDICATIONS:** None. **DRUG ALLERGIES:** None known. **PMD:** Dr. Fisher. He has seen Dr. McIntosh for a different, unrelated orthopaedic concern. He was not the original operating surgeon. **SH:** Married. Works as driver delivery person. Smokes cigarettes, 1 pack/day.

O: **VITAL SIGNS:** TEMP 98.7, pulse 90, respirations 18, blood pressure 151/97, O2 SAT 99% on room air. **GENERAL:** Pleasant. Well-developed, well-nourished 44-year-old white male, established patient. Alert, nontoxic appearing. **SKIN:** No rash or jaundice. **HEENT:** Oral mucosa moist. **EXTREMITIES:** Initially wearing sling on his left arm. When sling is removed, he has some soft tissue fullness that he states is his normal around the area. It has been this way since his surgery. He holds the arm in partial extension in his lap. He is not able to do any active flexion at the left elbow. He requires the use of his right hand to lift up the arm if this movement is needed. Able to extend actively at the elbow. His pain is at the area of the supracondylar notches of the humerus although he no longer possesses these bony. Radiates anterolaterally up toward the mid deltoid area. Some pain to palpation in posterior aspect of elbow as well. No pain to palpation of any part of the shoulder joint. No pain to palpation of mid or distal left forearm. Hand, notes some slight tingling in the left 4th and 5th fingers, although is able to flex/extend as well as abduct and adduct all fingers. Capillary refill 1 second at each fingertip of this hand. More pain with supination of the forearm as well. He states he was not able to achieve 180 degrees of extension with the left arm prior to his injury, although the arm can be made to extend now to about 175 degrees. Previously 135 degrees was about his range of movement. **DIAGNOSTIC STUDIES:** X-ray re-obtained of left elbow and entire humerus, shows implanted prosthesis with good bit of accessory ossification now around the soft tissues of the elbow. Difficult to tell if there could be a fracture or movement of the prosthetic part. X-rays appear similar to those taken in Emergency Department 2 days ago. We do not have any x-rays that pre-date his injury. Appears there could be an effusion within the elbow joint area. Radiologist concurred that there were no evidences of actual fracture, although this

LEXINGTON MEDICAL CENTER - LEXINGTON

PAGE 1 OF 2



PATIENT: OSMANSKI, JOSEPH A	
M.R. #: M000166905	

call is made difficult by the lack of previous films. I suspect the patient has ruptured the distal insertion of his biceps tendon, which may account for his inability to actively flex his elbow.

A: Hyperextension injury, left elbow, rule out complete biceps tear.

P: Patient clearly needs to be seen by an orthopaedist. As this is a worker's comp. injury, I am not able to make this referral. I have written on the paperwork that I have asked him to take immediately to his worker's comp. personnel, that he needs to be seen preferably this week. I am going to remove him from all work until cleared to return in any function by the orthopaedist. Recommend use of sling during waking hours. Rx Vicodin every 4 - 6 hours p.r.n. severe pain (#20, no refill). Discharged stable condition.

S. Herpst M.D.

SALLY L HERPST, MD

cc:

LEXINGTON MEDICAL CENTER - LEXINGTON
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RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER - LEXINGTON
811 WEST MAIN STREET
LEXINGTON, SC 29073
PHONE: (803) 358-6120

PATIENT: OSMANSKI, JOSEPH A

AGE: 44
DOB: 09/24/1964
SEX: M

UNIT/MR NO: M000168905
ACCT NO: X00004373411
SSN: 264-97-6730
REQ NO: 08-0027188
REPORT NO: 1105-0033

ORDERING DR: SALLY L HERPST MD

PT LOCATION: LEXURG
HERSALEM

REPORT STATUS: Signed

ORDERED BY: SALLY L HERPST MD
LOCATION: DEPER LEXURG
STUDY TYPE: 1104-0005 LRAD/HUMERUS LEFT

DATE OF EXAM: 11/04/08

CLINICAL DATA: 44M, PATIENT INJURED ELBOW BY HYPEREXTENDING ARM LIFTING BOXES

LEFT HUMERUS:

FINDINGS: AP and lateral views of the left humerus demonstrate the patient's previously noted left elbow prosthesis. The humerus appears intact with no acute fracture seen.

MK

CLARENCE S DAVIS MD

REPORT STATUS: Signed

ORDER#/PROCEDURE: 1104-0005 LRAD/HUM (73060TC)
EXAM TECH: DELWEA
REP RELEASED BY: DAVCLA RAD 11/05/08 1025
ADD RELEASED BY:
DISC DATE: 11/04/08
ED DISC DIAG: 00

PT LOC/ROOM: 01LEXURG/

OSMANSKI, JOSEPH A

Patient Location's copy

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RADIOLOGY DEPARTMENT
LEXINGTON MEDICAL CENTER -- LEXINGTON
811 WEST MAIN STREET
LEXINGTON, SC 29073
PHONE: (803) 358-6120

PATIENT: OSMANSKI, JOSEPH A

AGE: 44
DOB: 09/24/1984
SEX: M

UNIT/MR NO: M000166905
ACCT NO: X00004373411
SSN: 264-97-6730
REQ NO: 08-0027189
REPORT NO: 1105-0032

ORDERING DR: SALLY L HERPST MD

PT LOCATION: LEXURG
HERSAL EM

REPORT STATUS: Signed

ORDERED BY: SALLY L HERPST MD
LOCATION: DEP ER LEXURG
STUDY TYPE: 1104-0006 LRAD/ELBOW LEFT

DATE OF EXAM: 11/04/08

CLINICAL DATA: 44M, PATIENT INJURED ELBOW BY HYPEREXTENDING ARM LIFTING BOXES

LEFT ELBOW:

COMPARISON: AP, lateral, and oblique views of the left elbow are compared to the prior study of 11/02/2008.

FINDINGS: There are extensive postoperative changes consistent with previous placement of a prosthetic left elbow. Heterotopic new bone is seen about the elbow joint. There is no significant change in the alignment or positioning of the metallic hardware or fixation pins or suture wires since the previous study. Again, the possibility of elbow joint effusion cannot be excluded.

IMPRESSION: Extensive postoperative changes about the left elbow with evidence of a left elbow prosthesis. Heterotopic new bone formation is seen. There is no definite acute fracture detected on this study. The possibility of a joint effusion, again, cannot be excluded.

SM

MK

CLARENCE S DAVIS MD

REPORT STATUS: Signed

ORDER#/PROCEDURE: 1104-0006 LRAD/ELB (73080TC)
EXAM TECH: DELWEA
REP RELEASED BY: DAVCLA RAD 11/05/08 1025
ADD RELEASED BY:
DISC DATE: 11/04/08
ED DISC DIAG: GG

PT LOC/ROOM: LEXURG/

OSMANSKI, JOSEPH A

Patient Location's copy

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P399

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: OSMANSKI, JOE		VISIT DATE: 11-5-08
PATIENT #: 00001529860	XXX-X7-6730	D: 11/06/2008 8:51 AM
PHYSICIAN: JAMES C. MCINTOSH, MD		T: 11/07/2008 6:10 AM / cir
		DATE OF BIRTH: 09/24/1964

HISTORY OF PRESENT ILLNESS: Patient presents today for workmen's comp injury to his left elbow. He is a truck driver and had a hyperextension injury last week with immediate onset of pain. He went to the Emergency Department and was evaluated. He has a very complicated history with his left elbow. Apparently he had a comminuted fracture. They attempted what sounds like an interpositional arthroplasty that ultimately failed. Back in late 1990s, he underwent a total elbow arthroplasty in his 30s. This was all done in FL. He is a truck driver and has been doing this for some time. He is right-hand dominant. Ever since the injury, he has had some numbness. He has had transposition of ulnar nerves in the past. Little bit of tingling. It has always been painful, but this is a little bit more. Feels like arm is dead and he cannot move it. It sounds basically like he had a hyperextension injury with some crepitance and onset of pain. Not that uncomfortable today. Still has difficulty moving the arm. Some numbness and tingling in his ring and small fingers. No other injuries reported. We saw him just recently for a mass on his right ring finger. Health otherwise is good. No change since we saw him last week.

PHYSICAL EXAMINATION

GENERAL: Mildly obese black male in no apparent cardiopulmonary distress, alert and oriented x3.

ELBOW: Some mild swelling. I really cannot palpate his biceps very well. He has a 1 bone forearm so he cannot supinate. Ulnar nerve function appears to be intact. Decreased sensation in ulnar distribution. Radial and medial nerve function appears to be intact. Good capillary refill. Several scars on posterior aspect of elbow. No obvious crepitance. Actually fairly good motion. Nearly full extension. Flexion to about 125-130. Elbow showed implant in place; several wires present. No obvious evidence of implant loosening. Some asymmetry at the bushing, which is consistent with wear. Do not see any obvious implant loosening.

ASSESSMENT: Left elbow strain; difficult to tell what is going on with him. His implant appears to be intact. Pins extending at the posterior aspect of the elbow. I do not know if this is old or new.

PLAN: I asked him to continue same range of motion exercises and work status. No use of left arm. Also asked him to get old notes or x-rays to see if we can compare to past films. Recheck and reexamine in 3 weeks.

JAMES C. MCINTOSH, MD

cc:

Lexington Orthopaedics
PAGE 1 OF 1

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: OSMANSKI, JOE		VISIT DATE:
PATIENT #: 00001529860	XXX-X7-6730	D: 11/20/2008 5:15 PM
PHYSICIAN: JAMES C. MCINTOSH, MD		T: 11/24/2008 2:45 PM / cgu
		DATE OF BIRTH: 09/24/1964

HISTORY OF PRESENT ILLNESS: The patient returns today. He seems like he may be doing just a tiny bit better. He still has difficulty actively contracting his arm. He may be getting a tiny bit better with his pain. No new numbness or tingling.

PHYSICAL EXAMINATION: ARM: No significant swelling or discoloration. I cannot really palpation his biceps. Not contracting very well. Some swelling and ecchymosis. No crepitation.

DISCUSSION: We asked him on his last visit to try to get some of his old records and films. He was unable to produce either. Again a difficult time for me to tell exactly what is going on. He had a complex elbow injury. I do not see any true objective findings. His films do show a longstanding elbow implant. There is some prominent hardware but I am not sure if this is new or old.

PLAN: We are going to try once again to get his previous films. Return in 3 weeks. Work status, no use of left arm.

JAMES C. MCINTOSH, MD

cc:

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOR: 09/24/1954 M

EAD SSN: 264-97-6730

SHANDS-11F

Clinic N 02/19/92 23:59

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February 19, 1992

DIAGNOSIS: Left upper extremity fracture with resultant one bone forearm.

HISTORY: Mr. Osmanski returns today with complaints of new onset left elbow pain beginning last Sunday when he picked up an empty cooler. He said the pain persisted with motion of his elbow with temporary relief with the use of Feldene. Since then, however, the pain has been persistent and he has been wearing an arm sling to relieve the discomfort.

PHYSICAL EXAMINATION: He has essentially full range of motion of his elbow. However, it is painful. He also has a significant amount of tenderness over the left cubital tunnel in the ulnar nerve region. He has no tenderness over his forearm.

TEST RESULTS: X-ray examination of his left elbow today demonstrates that he has evidence of degenerative joint changes and has had progression of some of his heterotopic ossification. He also has several osteophytes which have formed specifically in the cubital tunnel region.

DISPOSITION: Mr. Osmanski is experiencing some irritation of his ulnar nerve, probably from irritation by the heterotopic bone and osteophytes. We recommended he be put into a resting elbow splint and resume taking Feldene 20 mg PO q day. We hope that he will improve on this regimen and we will see him back in approximately three to four weeks for follow up and no new x-rays are needed.

Larry K. Chidgey, M.D.
Assistant Professor
Hand and Microsurgery
Department of Orthopaedics
Box 100246
Phone: 904-392-4251

Dictated by: A. Wong, M.D.
LKC/AW/vbs 02-19/02-21-92

Requested by WHIDDS on 01/07/09 at 10:05 From M009 Page 1

NL1E8608

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 11/04/98 23:59

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UNIVERSITY OF
FLORIDA

OSMANSKI, JOSEPH
STH #00-67-58-85

SHANDS CLINIC at Hampton Oaks

32607

200-B SW 62nd Blvd.
Gainesville, FL

(352) 395-0647

11/04/98

SHANDS CLINIC at Hampton Oaks

SUBJECTIVE: Patient is a 34-year-old male status post fall back in 1987. Patient has been disabled since that time. He has had bilateral shoulder dislocations at that time as well as bilateral elbow fractures. He has had multiple procedures to his left upper extremity including ulnar nerve transposition x 2 to his left elbow. He has most recently had a shoulder scope with repair of an apparent labral lesion with shrinkage of his capsule. He has had removal of bony fragments from his left wrist and two previous arthroscopic procedures to his left shoulder. He has had also a one bone forearm procedure to his left elbow. Patient is here today for evaluation of his left shoulder and his left elbow.

PAST MEDICAL HISTORY: He denies any hypertension, diabetes, coronary artery disease, seizures, or history of cancer.

PAST SURGICAL HISTORY: Multiple reconstructive surgeries to his left shoulder, left elbow, and right elbow.

ALLERGIES: Penicillin.

SOCIAL HISTORY: He smokes one pack per day. Ethanol: Denies.

OBJECTIVE: On physical examination of his left shoulder, patient, due to pain, is only able to abduct his shoulder about 20 or 30 degrees. He is only able to elevate his shoulder about 10 degrees. He has significant tenderness to any passive range of motion beyond these extremes. Right upper extremity reveals he has full range of motion of his shoulder. On his left shoulder, he is unable to axially rotate his arm any further than to his pocket and he only externally rotates to neutral. Patient's sensation is grossly intact. He has tenderness over his previous ulnar nerve transposition sites. He has about 60 degree range of motion from 30

Requested by WHIDDS on 01/07/09 at 10:05 From M009 Page 1

NL1E8609

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PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

degrees loss of extension to about 120 degrees of flexion. He only supinates to neutral and he has good distal refill and good sensation distally.

X-RAYS: His left elbow x-rays show he has significant arthritis, post traumatic, of his elbow with loss of his joint space. His left shoulder x-rays show some erosion along the anterior glenoid and some arthritic changes in the glenohumeral joint.

ASSESSMENT & PLAN: Patient with severe post traumatic arthritis of his left elbow. Patient was explained that there are a few options at this point for his left elbow. One was to continue with conservative management with nonsteroidals and the second choice was to do an inner position arthroplasty of his left elbow versus a total elbow. We did not feel that he is a good candidate for a total elbow due to his age and the fact that he will probably wear it out very quickly. His best option for his elbow would probably be an inner position arthroplasty. Patient states that he would like to think about that procedure. For his left shoulder difficulty, Dr. Chidgey would like to have Joseph referred to Dr. Wright due to the complex nature of his shoulder. He has had two previous arthroscopies including a labral repair and capsular shrinkage and he has very minimal range of motion and very painful with any range of motion to his shoulder. Patient will follow up with us after he has had his shoulder evaluated.

TEACHING PHYSICIAN'S STATEMENT: I was present during all activities documented above, agree with the above documentation, and participated in the entire history, physical exam, and medical decision-making of this patient.

Larry K. Chidgey, M.D.
Associate Professor
Department of Orthopaedics

Dictated by: Jeffrey A. Baker, M.D.

JAB/tra 11/04:11/04/98 c:td 11/13/98

CC:

Requested by WHIDDS on 01/07/09 at 10:05 From M009 Page 2

NL1E8609

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 06/23/99

06/23/1999

HPI: Joseph is being followed for two problems, his left elbow arthritis as well as his left shoulder. He was previously seen in November and we referred him to Dr. Wright for his complex left shoulder injury and we have recommended that he undergo an interpositional arthroplasty of his left elbow. The patient has run up against some road blocks with his insurance company and would like to proceed with the elbow surgery, however, he has not been able to get the referral for the shoulder. So, today we will make a referral for the patient to see Dr. Wright with regards to his complex shoulder injury. We would like to know what Dr. Wright has to say with regards to his treatment plan and whether any further plans for surgery would be needed. Following this evaluation and his recommendations, we will then appropriately schedule the patient for any surgery on his elbow.

TEACHING PHYSICIAN STATEMENT: I was present during all activities documented above, agree with the above documentation, and participated in the entire history, physical exam and medical decision making of this patient.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Anthony J. Leone, M.D.
AJL/tra 06/23/1999:06/23/1999 3:53 P

Requested by WHIDDS on 01/07/09 at 10:05 From M009 Page 1

NL1E8610

Shands HealthCare

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 01/10/00

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SHANDS at UF CLINIC

01/10/2000

Joseph is here today for follow-up of left elbow pain. He has a long history of left upper extremity issues, the most recent of which was creation of a one bone forearm after an Essex-Lopresti injury. He has had progressive elbow degenerative joint disease over time. This pain is now disabling and barely tolerable. He is unable to use the arm for any significant activity due to elbow pain.

PHYSICAL EXAMINATION: No distress. Examination of the left upper extremity reveals tenderness about the joint line of the left elbow. Any pronation-supination force applied to the forearm exacerbates the pain.

IMPRESSION: Advanced degenerative joint disease of the left elbow after one bone forearm procedure. The treatment options were discussed extensively with the patient. They include left total elbow arthroplasty, left elbow arthrodesis, left elbow interpositional arthroplasty. The most viable option for this young, potentially active, patient is the interpositional arthroplasty. He wishes to proceed with this procedure. He was referred to the surgery scheduling office today.

The patient was seen and examined with Dr. Chidgey.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Drew E. Kiernan, M.D.
DEK/460 01/10/2000:01/10/2000 1:52 P

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1E8616

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1954 M

KAD SSN: 264-97-6730

SHANDS-UF

Clinic N 02/16/00

SHANDS at UF CLINIC

02/16/2000

Mr. Osmanski is a 35 year old gentleman who had previous Essex-Lopresti injury of the left forearm after a 32 foot fall on his construction job. He has subsequently undergone left long bone forearm fusion and he has developed severe degenerative joint disease of the left elbow. He is here for preoperative evaluation for a left elbow fascia lata, fascial interposition arthroplasty. All questions were answered, informed consent was obtained after discussion of risks, benefits and alternatives to surgical procedure. The patient will undergo his surgery on 2/17/00.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/367 02/16/2000:02/17/2000 8:47 A

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1E8617

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-5730

SHANDS-UF

Clinic N 02/28/00

SHANDS at UF CLINIC

02/28/2000

Mr. Osmanski is a 35-year-old gentleman who presents today for his postoperative visit following left elbow fascia lata interpositional arthroplasty performed on 02/17/00. Overall, he has had significant amount of postoperative pain and has required a significant amount of pain medication but this is not totally surprising given the extent of his surgery.

REVIEW OF SYSTEMS: Has remained unchanged.

PHYSICAL EXAMINATION: Splint was removed from his left elbow. The incision was well-healed. Staples were removed and Steri-Strips applied. His radial ulnar and medial nerve distributions are grossly intact in motor and sensory and capillary refill is less than two seconds with palpable pulses. His left fascia lata donor site had evidence of seroma. The incision was well healed and staples were removed followed by application of Steri-Strips. Approximately 50 cc of seroma was drained from the left thigh and a compressive Ace bandage was applied to the leg. He will keep this compressive wrap on the leg and elevate his leg with pillows in the supine position. He was given a prescription for Mepergan Fortis, number 45, to be taken for pain and he will follow-up with us in 10 to 14 days. At this time he is in a anterior splint of the left elbow at 90 degrees and at his next visit we will have him converted to a hinged elbow brace to begin on flexion and extension exercises but this will provide him with medial and lateral stability. Patient will continue to be temporarily totally disabled from work, but we would anticipate that in six to eight weeks he might be able to return to work in a light-duty capacity, continued no use of the left upper extremity and given the leg surgery, he would probably be a sedentary clerical-type of position.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/496 02/28/2000:02/29/2000 8:21 A

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1E8619

Shands HealthCare

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-5730

SHANDS-UF

Clinic N 03/13/00

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SHANDS at UF CLINIC

03/13/2000

SUBJECTIVE: Mr. Omanski is a 35 year old gentleman who had severe post traumatic end stage degenerative joint disease of the left elbow and underwent fascilata interpositional arthroplasty of his left elbow performed on 2/17/00. He presents today for a second postoperative visit. He states that he has been wearing his Ace spica wrap around his left thigh, however, the fluid in his thigh has recollected at the site of fascilata donor harvest. He has been taking the Mephergan 4 tabs and states that this is too strong for him and he would like something less powerful. Review of systems has remained unchanged.

OBJECTIVE: On physical examination his elbow incision is well healed. he is neurovascularly intact distally. His range of motion at this time just when gently tested was from 80 to 95 degrees. He had a significant fluid collection in his thigh region. this incision is well healed. 500 cc of serosanguinous fluid was aspirated from this thigh region after sterile prep. Following this a Triple A spica wrap was placed around his entire left thigh and hip region

IMPRESSION: Overall doing well. At this time we are sending him to therapy to obtain a hinged elbow brace and he will begin on active assist and passive range of motion in his elbow in the splint. He will not remove the brace except for bathing and is aware of the need to protect the elbow for continued ligamentous soft tissue healing. With regards to the thigh we have given him a prescription of Keflex 50 mg p.o. q.i.d. for 7 days just as prophylaxis given the fact that we aspirated a significant amount of fluid here in the office. He will continue with the Ace spica wrap as well as frequent elevation of the leg above the level of his heart. He will follow up with us in 4-5 weeks for repeat evaluation. We also gave him a prescription for Lortab 10s #50 1-2 p.o. q. 6 hours p.r.n. As far as work is concerned he will remain temporarily totally disabled as he cannot be up on his feet given the seroma collection nor can he use his left upper extremity. At his next visit we should obtain x-rays of his left elbow AP and lateral.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 08/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 04/19/00

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SHANDS at UF CLINIC

04/19/2000

Mr. Osmanski is now three months status post fascia lata interposition arthroplasty of his left elbow. Overall he feels that he is improved somewhat. He still has a fair amount of significant pain. He still has only 75-100 degrees range of motion with pain at the end of each arch. He has less pain with extension and more discomfort with elbow flexion. His incision is well healed and he is neurovascularly intact distally.

IMPRESSION: Progressing slowly. X-rays show no significant interval change and overall the elbow joint appears to be grossly located.

PLAN: The plan will be to progress slowly. The patient would like to begin with physical therapy for range of motion exercises and we will begin this and he will perform these exercises as tolerated. We have discussed the future options which would include possibly living with the discomfort and loss of motion versus total elbow arthroplasty which in a man of his age and size may not last very long and suffer severe wear and tear versus possible elbow fusion. All of the above have significant disadvantages and we have discussed these with the patient and at this time he would like to proceed with therapy and we will follow his progress. He was given a refill for Lortab 7.5 and as far as work is concerned he will continue to be absolutely no use of the left upper extremity.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/422 04/19/2000:04/20/2000 7:44 A

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1B8622

Shands HealthCare *Confidential* Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 05/17/00

SHANDS at UF CLINIC

05/17/2000

Follow-up for elbow fascia lata interposition on 02/17/00. He is having an extreme amount of pain in his elbow. Very unhappy because of the amount of discomfort he is having. Review of systems, past medical history is unchanged.

PHYSICAL EXAM: Well-developed, well-nourished male in some distress because of the pain. His range of motion, he can flex passively to 90, extend with gravity for a total of about -40 degrees, but still has quite a bit of discomfort at this time. His neurovascular status is intact. He wears a Bledsoe brace for support.

At this time we want to just monitor and try to manage him with pain medicine. Gave him OxyContin 20 mg to take two p.o. q. 12 hours. Gave him pain pills and some Vicxx 25 mg. As far as his work is concerned, he is not really to use that left arm, definitely no lifting greater than 5-10 pounds at this time. We mentioned that the only options would be to leave it alone, fuse it, or replace the joint, but because of his age it would be not a good option at this time. We will see him back in about two months to see how he is doing.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/362 05/17/2000:05/18/2000 10:42 A
c:pjh 5/25/00

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1E8623

Shands HealthCare

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 06/28/00

SHANDS at UF CLINIC

06/28/2000

DIAGNOSIS: Status post left elbow fascia lata interpositional graft.

DATE OF PROCEDURE: 02/17/00

INTERVAL HISTORY: Mr. Osmanski returns for follow-up with his ongoing problem. He continues to have pain and stiffness in his left elbow with decreased range of motion. He is taking Oxycontin 40 mg b.i.d. with good relief of his pain. However, he has been unable to work and has been in a bledsoe brace. He has no history of further trauma.

PHYSICAL EXAM: Examination reveals exquisite tenderness about the entire elbow. He had some mild swelling associated with that. Range of motion of the elbow is about almost full extension to approximately 90 degrees of flexion passively. Actively, he almost has no elbow motion actively. Light touch is normal throughout the extremity. Supination and pronation is extremely limited.

IMPRESSION/PLAN: We have had a long discussion with Mr. Osmanski at this time. Due to his young age and acute atypical postoperative course, we think that he may have difficulties with a total elbow arthroplasty, but will give us his best chance of relieving some of his pain and possibly regaining some more function. Patient has been thinking about this for some time and after answering all of his questions, he has elected to undergo total elbow arthroplasty. This will be done sometime in August, and we will see him back for his preoperative visit at that time.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Christopher Sforzo, M.D.
CS/pjs 06/28/2000:07/03/2000 3:09 P
c: pjh 7/3/00

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1B8625

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 254-97-6730

SHANDS-ITF

Clinic N 09/13/00

SHANDS at UF CLINIC

09/13/2000

Joseph comes in today for preop to have left total elbow arthroplasty.
Consent was signed. Questions answered. He will return for suture removal
and x-ray of elbow at that time.

As far as work is concerned, TTD.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/312 09/13/2000:09/14/2000 4:58 P
c:cjt 9/29/00

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1E8626

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

RAD SSN: 264-97-6730

SHANDS-UF

Clinic N 09/27/00

SHANDS at UF CLINIC

09/27/2000

Joseph is followed for total elbow arthroplasty, left elbow. We went ahead and removed the staples and got him in a posterior splint that he can start taking off and working on active motion, not flexing completely. His x-rays showed that the prosthesis was in excellent alignment.

ADDENDUM: Joseph had requested pain medication and we are going to decrease his Oxycontin to 40 mg. only once a day and not twice a day. We gave him 50 pills today. He is to taper off this medication and the next visit we need to get him off the pain medication.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/344 09/27/2000:09/28/2000 10:54 A add:ker09/27/00

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8628

Shands HealthCare

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

RAD SSN: 264-97-6730

SHANDS-UP

Clinic N 11/01/00

SHANDS at UF CLINIC

11/01/2000

Joseph comes in today for a postop follow-up for his total elbow arthroplasty. He is complaining of pain in his forearm region.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY: Unchanged.

PHYSICAL EXAM: Well-developed, well-nourished man in no distress. Examination of his arm reveals he is tender over the posterior osseous nerve. Looking at x-rays, there is nothing that appears to have loosened.

IMPRESSION: Status post above surgery with pain over his posterior osseous nerve.

PLAN: We are going to give him some Ultram, no more narcotics for him, and Neurontin. We are going to increase the dose to two pills three times a day. As far as work is concerned, TTD still.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/427 11/01/2000:11/02/2000 10:37 A

CC:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8629

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 04/04/01

SHANDS at UF CLINIC

04/04/2001

OSMANSKI, JOSEPH STH#00-67-58-85

CHIEF COMPLAINT: Follow-up surgery of left elbow.

DATE OF SURGERY: Total elbow arthroplasty preformed on 09/14/00.

HISTORY: Mr. Osmanski continues to complain of ulnar nerve-type pain status post the above procedure.

PHYSICAL EXAM; On exam, his wounds are remain well-healed. There is no significant change in range of motion which remains fairly good from approximately 35-110 degrees. He can fully flex and extend his fingers and his wrist as well as abduct and extend his thumb. Light touch is intact throughout.

RADIOGRAPHIC DATA: Radiographs again show today that the elbow prosthesis is in good position with a line seen around the cement area which may or may not be related to loosening of cement but rather the technique.

IMPRESSION: Continued nerve-like pain status post complex left salvage total elbow arthroplasty.

PLAN: At this point in time we would recommend that Mr. Osmanski continue with the hinged-elbow brace. We would like him to continue to work on range of motion. He will not be able to lift any heavy weights. With respect to work status, the patient is not recommended to be employed at this time until he is able to see the Pain Management Clinic for possible suggestions regarding his continuing difficult-to-manage ulnar nerve-type pain. At this point, we have filled out a referral for Dr. Sassano in the Pain Management Clinic and will await his recommendations.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Timothy S. Bollom, M.D.
TSB/496 04/04/2001:04/05/2001 11:26 A
Job ID# 871474

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8631

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 09/05/01

SHANDS at UF CLINIC

09/05/2001

OSMANSKI, JOSEPH STH#00-67-58-85

DIAGNOSIS: (1) Status post left total elbow arthroplasty by Dr. Chidgey on 09/14/00. (2) Status post left shoulder arthroscopy with subacromial decompression via Dr. Wright in 1999.

INTERVAL HISTORY: Mr. Osmanski returns to clinic for repeat evaluation. He reports that he has continued to have numbness and burning pain and tingling in his left forearm and hand. He reports that this has been significantly improved with Neurontin, although he was taking 900 mg three times a day and reported erectile dysfunction and loss of sex drive due to the medication. He has slowly titrated himself down and is still having some ulnar nerve symptoms, but has had some improvement in his erectile dysfunction.

PHYSICAL EXAMINATION: He is tender to palpation over the ulnar nerve and has some swelling and tenderness about the elbow. His incisions are all well healed. His range of motion is 5 degrees to 120 degrees of flexion. He has no supination or pronation due to both bone forearm fusion.

IMPRESSION: Left ulnar neuritis.

PLAN: At this point, we had a discussion of re-exploring and performing a neurolysis of his ulnar nerve. Mr. Osmanski is thinking seriously about that. The paperwork was filled out today and he will meet with Teresa. He has temporary total disability regarding his work status.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Daniel A. Worrel, M.D.
DAW/370 09/05/2001:09/05/2001 4:51 P
Job ID# 001026333

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8634

Shands HealthCare *Confidential* Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 10/24/01

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SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

10/24/2001

Joseph comes in today for a preop to have an ulnar nerve exploration.
Previous transposition in the past for neurolysis. He understands the postoperative course. He understands the risk of possible nerve damage. We will plan on seeing him back for postop followup approximately two weeks after surgery for suture removal. He will be in house for 23 hours postop for postop pain.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/338 10/24/2001:10/25/2001 11:56 A
Job ID# 001078276

CC:

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NL1E8635

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OSMANSKI, JOSEPH ARTEUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 11/09/01

SHANDS at UF CLINIC

11/09/2001

OSMANSKI, JOSEPH STH#00-67-58-85

Mr. Osmanski is follow-up for transposition of ulnar nerve neurolysis performed by Dr. Chidgey on 11/01/01. Unfortunately he has developed quite a bit of swelling. His wound is slightly erythematous. We are going to go through nerve gliding today with him but wait to take the staples out in two weeks because he is still swollen. He understands that if his wound looks worse before then to come back sooner. We are going to give him some Keflex prophylactically, gave him some more pain medication, Lorcet 10, #50 pills. As far as work is concerned, he is really going to be off for next two weeks until we see him again.

Debbie M. Rafanan, PA
Hand Surgery
Dept. of Orthopaedics & Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/418 11/09/2001:11/11/2001 2:56 P
Job ID# 001095876

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-ITF

Clinic N 11/26/01

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SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

11/26/2001

PROBLEM: Status post left ulnar nerve decompression and neurolysis on 11/01/01.

HISTORY: Joseph returns. He complains of some problems with the wound. He denies fevers or chills. He states that he was given Keflex last week after calling the office and is currently on that. He says that he no longer has the pins and needle sensation in the ulnar nerve distribution on the right, although he still has some decreased sensation.

PHYSICAL EXAMINATION: His surgical incision has intact staples over the bulk of it. Just distal to the elbow, there is a region approximately 2 x 2 cm in size of wound dehiscence. There is no evidence of infection. No radiographs were taken.

ASSESSMENT: Wound dehiscence status post ulnar nerve decompression.

PLAN: We are going to treat this with b.i.d. wet-to-dry dressing changes as Joseph has an elbow prosthesis on that side, and we will continue his Keflex for seven days. We will bring him back in one week for a repeat wound check.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Joel D. Thompson, MD
/466 11/26/2001:11/26/2001 1:02 P
Job ID# 001109398

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NL1E8638

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

RAD SSN: 264-97-6730

SHANDS-UF

Clinic N 01/14/02

SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

01/14/2002

PROBLEM: Status post ulnar nerve decompression and neurolysis on 11/01, with postop wound dehiscence.

HISTORY: Mr. Osmanski returns. He says the pins and needles sensation that existed in his hand preoperatively is gone; however, sensation is not normal. He complains of continued pain in the elbow secondary to his arthritis, but he generally says he feels pretty good. He denies fevers or chills.

EXAM: His ulnar wound is near completely healed. There is a small area of eschar approximately 2 cm in diameter just proximal to the medial epicondyle. There is no evidence of infection. Hand intrinsic are intact. Sensation to light touch is diminished in the ulnar nerve distribution. His elbow range of motion is extremely limited and his elbow is swollen. He has minimal pronation/supination.

ASSESSMENT: Stable course.

PLAN: Mr. Osmanski is about to baseline. His wound is not fully healed and will reevaluate him in one month. At that time, we will refer him for FCE, and place him at MMI regarding his elbow.

We will see him in four weeks.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Joel D. Thompson, MD
/424 01/14/2002:01/14/2002 7:21 P
Job ID# 001158523

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NL1E8639



SHANDS HOSPITAL AND CLINICS
at the University of Florida
OPERATIVE REPORT

OSMANSKI, JOSEPH
#67-58-85

08-23-88

SERVICE: ORTHOPAEDICS	DAYS:	VOUCHER # 1892	I.P.x	O.P.
SURGEON: Dr. Chidgey		ASSISTANT: Dr. McCormick		
ANESTHESIOLOGIST: Dr. DePadua		ASSISTANT: Dr. Winston/Raessler/Fontenot		

PREOPERATIVE DIAGNOSIS: Essex-Lopresti fracture
status post radial head excision plus Darrach procedure

POSTOPERATIVE DIAGNOSIS: Same

OPERATION PERFORMED: Fusion left distal radial ulna joint and fusion of
proximal radial ulna joint and creation of synostosis
with iliac bone graft left radius and ulna

1. SCRUB: C. Brannan, CST	2. SCRUB: M. Holsbeke	RELIEF:
1. CIRCULATOR: S. Bingham, RN	2. CIRCULATOR: Donovan, RN	RELIEF:

BLOOD LOST:	BLOOD REPLACED:
FLUID LOST:	FLUID REPLACED:

SPONGE COUNT yes ☒	SPECIMEN: yes ☐
CORRECT: no ☐	no: ☒

SUMMARY OF PROCEDURE: The patient was taken to the Operating Room and after adequate general anesthesia was established, the tourniquet was placed on the upper left arm and the limb prepped and sterilely draped. The right hip area was also prepped and sterilely draped for an iliac bone graft. The left arm was then exsanguinated with an Esmarch bandage and the tourniquet inflated to 250 mm. of Mercury. The patient had an previous ulnar longitudinal incision over the distal ulna for the previous Darrach procedure. This incision was incorporated into an S-type incision over the dorsal distal forearm. Blunt dissection was carried through the subcutaneous tissue and all superficial veins that could be protected, were retracted out of the way. Blunt dissection was continued down to deep fascia which was split longitudinally. The fourth compartment muscles were retracted radialward and the ulna was identified just on the radial side of the extensor carpi ulnaris. The ulna was also identified between the flexor carpi ulnaris and the extensor carpi ulnaris thus mobilizing the extensor carpi ulnaris such that full access to the excised distal radius was achieved. The fourth and fifth compartment muscles were then retracted radialward and the distal portion of the radius dorsally was exposed subperiosteally along its ulnar border. A small drill was used to make multiple drill holes and an osteotome connecting the drill holes used to create a window in the ulnar side of the radius. The cortical margins of the ulna were then rongeuired to reveal cancellous bone and the ulna transposed radialward into the slot in the radius. Two 40 mm. length 3.5 screws were then used to fix the distal ulna to the radius. Attention had been turned slightly more proximally where the dorsal portions of the radius and ulna were exposed. 2 1/2 cm. wide slot was then cut in both the dorsal one-third of the distal ulna and the dorsal one-third of the distal radius to accept an iliac bone cortical cancellous graft.



Page ² OPERATIVE REPORT
SHANDS HOSPITAL AND CLINICS
at the University of Florida

OSMANSKI, JOSEPH
#67-58-85
08-23-88

Attention was then turned to the iliac crest on the right side which had been previously draped sterilely and through an oblique incision overlying the iliac crest, blunt dissection continued down to the deep fascia which was incised and the external musculature from the iliac wing dissected from the iliac wing and a 2½ cm. x 4 cm. corticocancellous graft was harvested from the external table of the iliac wing. A generous supply of cancellous bone was also harvested. A Gelfoam was then placed over the defect in the iliac wing and the deep fascia was closed with interrupted 0-Vicryl, followed by closure of the subcutaneous tissue with 2-0 Vicryl and closure of the skin with staples. A Jackson-Pratt drain had been placed down through a separate stab wound at the hip. Attention was then turned to the forearm and the cortical cancellous bone "plate" was inserted into the slot prepared in the distal radius and ulna. 3.5 mm. screws were then used to secure the dome plate across the radius and ulna. Two were placed into the radius and two into the ulna through the bone graft. A generous supply of cancellous bone was then packed on the cortical cancellous bone "plate" and the distal ulna and radius synostosis site. It should be noted that prior to securing the radius to the ulna, the rotation of the forearm was set at neutral. The tourniquet was then deflated during the harvesting of the bone graft and had been reinflated prior to completing the procedure on the forearm. After the distal forearm procedure had been performed, attention was turned to the proximal forearm. A previous radial incision over the radial head region had been used for the previous radial head excision. This incision was re-entered and blunt dissection carried through the subcutaneous tissue. This incision was re-entered and blunt dissection carried through the subcutaneous tissue. The scar overlying the interval between the inconeus and extensor carpi ulnaris was then entered and the proximal radial region identified. The radial head region was exposed subperiosteally revealing the proximal 1-2 cm. of the proximal radius. The interval between the radius and ulna was cleaned out with a rongeur and cancellous bone exposed on both the ulna notch region as well as the proximal radius. A 3.5 mm. screw was then inserted across the proximal radial and ulna joint and cancellous bone was packed around this synostosis region. Drains had been placed down through separate stab wounds in both proximal and distal forearm wounds and the interval between the inconeus and extensor carpi ulnaris closed with interrupted 4-0 Vicryl followed by closure of the subcutaneous tissue with 4-0 Vicryl and closure of the skin with staples. Attention was then turned to the distal wound which was closed with interrupted subcu 4-0 Vicryl followed by closure of the skin with staples. Sterile dressings were then applied both to the hip and arms and a long arm bulky hand dressing incorporating long arm splints was applied to the arm. The tourniquet was inflated with good vascular status returning to the hand. The patient tolerated the procedure well, was taken to the Recovery Room in stable condition.

LC
Larry Chidgey, M.D.
Assistant Professor
Department of Orthopaedics

LC/ss 08-23-88/08-25-88

**SHANDS HOSPITAL**

at the University of Florida
Gainesville, Florida 32610

August 31, 1988

OSMANSKI, JOSEPH

67-58-85

ADMISSION: 08-23-88

DISCHARGE: 08-29-88

DIAGNOSIS:

1. Left Essex-Lopresti fracture.

OPERATIONS/MAJOR PROCEDURES WITH DATES:

1. Left one bone forearm with right iliac crest bone grafting,
08-23-88.

CONSULTATIONS: Physical Therapy.

BRIEF HISTORY: Mr. Osmanski is a 23 year old, right hand dominant white male, presently unemployed (previously a carpenter) who, on December 18, 1987 fell from a ladder approximately 22 feet landing on outstretched both arms. At that time he suffered a right radial head fracture and an Essex-Lopresti fracture on the left. The patient was treated on December 18 with open reduction and internal fixation of the humerus fracture and a radial head excision of the left elbow.

Subsequently the patient developed a ulnar positive wrist on the left which was painful, largely symptomatic and for this the patient underwent Darrach procedure with ipsilateral radial head excision and Darrach procedure. The patient developed an unstable above forearm with proximal migration of the carpus and progressive pain and decreased range of motion. He was admitted for elective radial ulnar synostosis/one bone forearm.

PAST MEDICAL HISTORY: Essentially unremarkable. The patient denies any history of cardiopulmonary, gastrointestinal, renal, endocrine, or hemopoetic diseases. He denies taking any medications at the time of admission.

THE PATIENT IS ALLERGIC TO PENICILLIN.

PHYSICAL EXAMINATION: Examination at the time of admission is essentially within normal limits with the exception of the right forearm. There are well healed scars of the left elbow and wrist, has decreased grip and pinch strength. Range of motion of the elbow is 30-115°, with 45° supination and 60° pronation with marked pain at the extremes of motion. He is significantly swollen over wrist and elbow. There is no evidence of inflammation or infection.

DISCHARGE SUMMARY

**SHANDS HOSPITAL**

at the University of Florida
Gainesville, Florida 32610

Page 2

OMANSKI, JOSEPH
67-58-85

08-31-88

LABORATORY: Routine preoperative evaluation revealed no contraindications for surgery.

The patient was then counseled regarding the relative risks and benefits of the radial ulnar synostosis/one bone forearm with iliac crest bone grafting. Understanding these, and given no guarantees were made or implied, the patient consented to proceeding with this elective procedure.

HOSPITAL COURSE: Therefore on 8-23-88 he was taken to the major Operating Room where under general endotracheal anesthesia he underwent the formation of a one bone forearm to the left upper extremity. Iliac crest bone grafting was utilized. The patient tolerated the procedure well. Estimated blood loss was 300 cc. Total tourniquet time was 151/130. The patient received 1,900 cc of crystalloid intraoperatively.

The patient tolerated the procedure well and was extubated in the Operating Room and returned to the Recovery Room in good condition.

After routine stabilization in the Recovery Room the patient as returned to the orthopedic ward. There a Physical Therapy consultation was obtained and the patient was instructed in partial weight bearing ambulation. Postoperative drainage was moderate and his wound drain was removed on the second postoperative day. All perioperative antibiotics were discontinued subsequent to this. The patient's only complaint postoperatively was of persistent pain. His neurovascular exams were normal.

On 8-26-88 it was felt that the patient had obtained full hospital benefits. He is therefore discharged in good condition.

Current medications include Tylox 3 p.o. q 3 hours p.r.n. pain.

DISCHARGE SUMMARY

**SHANDS HOSPITAL**

at the University of Florida
Gainesville, Florida 32610

Page 3

OMANSKI, JOSEPH
67-58-85

08-31-88

We will see the patient back in the Clinic on 09-02-88 at which time x-rays should be obtained of the forearm. At that time he will be changed from his coaptation splint to a long arm cast.

LARRY CHIDGEY, M.D.
Assistant Professor
Department of Orthopaedics

Dictated by: Michael McCormick, M.D.
MTS110 #1456 08-22/08-31-88

. REFERRING PHYSICIAN

George Haaf, M.D.
309 S. E. Riverside Avenue
Stuart, FL 34994

DISCHARGE SUMMARY

Osmanski, Joseph Arthur

Sex: M

BD: 09/24/1964

MR#: 00675885

Oper Note Orthopedic Hand P

Nov 09, 1999

DATE OF SURGERY: 11/09/1999

PREOPERATIVE DIAGNOSIS: Left shoulder pain, possible instability.

POSTOPERATIVE DIAGNOSIS: Left shoulder arthritis.

OPERATION PERFORMED: 1) Left shoulder arthroscopy and synovectomy. 2)
Left shoulder complete bursectomy.

SURGEON: Wright

ASSISTANT: Kiernan

ANESTHESIOLOGIST:

ASSISTANT:

INDICATIONS FOR PROCEDURE: Joseph Osmanski is a gentleman who has had significant problems with his left shoulder consistent with instability. He previously had an arthroscopic shrinkage and Bankart repair. He still has significant pain and feels that he is unstable. It was therefore, felt that evaluation under anesthesia and arthroscopy was indicated. Repair of appropriately disrupted structures would be performed at the same time. The risks, benefits, alternatives and rehab course were fully discussed preoperatively.

PROCEDURE: The patient was placed on the operating room table in a supine position. General endotracheal anesthesia was induced. The patient was then placed in a full beach-chair position. Examination of his left arm under anesthesia showed that he had 45 degrees of external rotation with his arm by his side, 160 degrees of passive elevation. The arm was not dislocatable anteriorly or posteriorly. There was a negative sulcus sign. There was no significant increase in translation of the humeral head on the glenoid. The arm was then sterilely prepped and draped. The 4.5 30 degree arthroscope was introduced posteriorly. Using a Weisinger rod, a second portal was then placed above the subscapularis and rotator cuff interval, lateral to the conjoined tendon. Through this, a 4.5 Aggressor meniscal shaver was introduced. Evaluation of the joint showed a large amount of fibrillated and fibrinous material. Using the shaver, this was debrided. There was a moderate to significant synovitis throughout. A synovectomy was performed of the anterior capsule, undersurface of rotator cuff and along the labrum. The biceps anchor was palpated with the shaver and was noted to be stable with no evidence of a SLAP lesion. The anterior labrum was well-attached on the glenoid rim; although it was hypoplastic, it was definitely well-attached and the anterior inferior glenohumeral ligament which, again was hypoplastic, was attached appropriately. There was no real significant large middle glenohumeral ligament. Evaluation of the humeral head showed there was no Hill-Sachs lesion posteriorly. Anteriorly and superiorly, however, there was a 1 cm by 5 mm osteochondral defect all the way down to cortical cancellous bone. The rest of the humeral head - at least the anterior two-thirds of it, was covered with grade II and possibly grade III chondromalacia. The glenoid likewise had chondromalacia grade II at least throughout. There was a negative drive-through sign. Under direct arthroscopic visualization, the humeral head was not dislocatable anteriorly or posteriorly. There was some tendency to it - just slightly inferiorly and anteriorly subluxate, but this would not be considered pathologic. With even significant pressure, I could not get the head to come outside of the labrum. It was, therefore, our feeling that the patient's problem was not instability but was likely secondary to arthritis. The rotator cuff was nicely funneled through its insertion. There was no evidence of undersurface cuff tear after debridement of the synovitis. In the area, the cuff appeared to be totally normal and its

attachment appeared to be totally normal. Therefore, the arthroscope was then placed into the subacromial space. A third portal was then placed laterally, through which the shaver was placed. A significant bursitis was noted with very hypertrophic globules of synovium. The synovium was removed. The acromial undersurface was palpated. The anterior lateral cord could easily be palpated with the shaver and there was absolutely no hook consistent with having a previous acromioplasty. There was no reason to denude bone again from our standpoint. A complete bursectomy was performed and rotator cuff appeared normal from this superior side. It was our conclusion at the end of the operative procedure that 90+% of the patient's pathology could be attributed to glenohumeral arthritis. The arthroscope was then removed from the joint. The wounds were closed with 4-0 nylon. The wound was dressed with a sterile compressive dressing. The patient had a scalene block postoperatively. The patient was placed in a sling and transferred to the recovery room in stable condition.

Thomas Wright, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Thomas Wright, M.D.
TW/385 11/09/1999:11/09/1999 10:45 A

01/08/2003 11:53 FAX 352 273 34

Ortho Medical Records

010/036

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OSMANSKI, JOSEPH ARTHUR	PIDX MRN:
DOR: 09/24/1964 M	EAD SSN: 264-97-6730
SHANDS-ITF	

Oper Not 02/17/00

DATE OF SURGERY: 02/17/2000

PREOPERATIVE DIAGNOSIS: Post-traumatic end-stage degenerative joint disease, left elbow.

POSTOPERATIVE DIAGNOSIS: Post-traumatic end-stage degenerative joint disease, left elbow.

OPERATION PERFORMED: Fascia lata interposition arthroplasty, left elbow.

SURGEON: Chidgey

ASSISTANT: Stone

ANESTHESIA: General endotracheal anesthesia.

ANESTHESIOLOGIST:

ASSISTANT:

INDICATIONS FOR SURGERY: Briefly, Joseph Ozanski is a 35-year-old, right-hand dominant gentleman, who sustained an _____ injury of his left forearm and wrist after a fall approximately 30 ft. from a scaffolding. He underwent multiple procedures, including distal ulnar resection and one-bone forearm fusion, and he has continued to progress to severe degenerative joint disease of the left elbow. His pain and stiffness have been severely limiting to his activities of daily living. Upon discussion of risks, benefits, and alternatives to the above procedure, the patient provided informed consent.

DESCRIPTION OF OPERATION: The patient was properly identified and brought into the operating room and placed in the supine position on the operating table, at which time he underwent administration of general endotracheal anesthesia. Following successful administration of general endotracheal anesthesia, the patient's left leg and left upper extremity were prepped with Hibiclens x 3 and then draped in a usual sterile fashion. A sterile tourniquet was then placed on the upper extremity. The left arm was then exsanguinated with an Esmarch graft and tourniquet was inflated to 350 mmHg. A straight posterior incision that was curved medially so as not to cross the posterior aspect of the olecranon, hip was outlined and made with a 10-blade knife, again curving somewhat medially around the tip of the olecranon and then brought back to straight posterior midline. Incision was made approximately 15 to 20 cm in length. Subcutaneous tissue was then bluntly dissected in line with the incision with scissors. Electrocautery was used to obtain hemostasis where necessary. The triceps muscle was identified and the subcutaneous tissue was elevated off of the triceps fascia to its medial border. At the medial aspect of the triceps and the proximal aspect of the wound, the ulnar nerve was identified where it pierces the lateral intermuscular septum and traced distally. Because the

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

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ulnar nerve had been previously transposed, it was embedded in a fair amount of scar tissue, but it had already been transposed anteriorly. Therefore, having taken great care to dissect free the ulnar nerve far enough past the elbow to ensure that it would be elevated safely with the subcutaneous and then periosteal flap, the humerus was approached through the posteromedial interval by elevating the triceps off of the posterior aspect of the humerus and reflecting it laterally. Again, the ulnar nerve and medial tissues were taken medially and protected. Dissection was then carried down to subperiosteal plane, down to the posterior capsule, and the capsule was incised and elevated off of the distal humerus. The dissection was carried down across the posterior aspect of the elbow joint, again by elevating the medial structures off in a subperiosteal plane, including the significantly scarred ligamentous tissues as well. An osteotome was used to remove a sliver of the tip of the olecranon so that the triceps fascia could be taken with this piece of bone laterally. This dissection was aided by extending the incision along the ulna with the knife down through periosteum and the proximal ulna was also exposed in a subperiosteal plane with blunt and sharp dissection using elevators and a 15-blade knife, reflecting the majority of the periosteum with the triceps fascia laterally and the medial periosteum and medial structures medial.

Following exposure of the elbow joints, on its posterior aspect there was evidence there was severe osteophyte formation and loose bodies within the joint, as well as near complete loss of articular cartilage and severe eburnation of bone. Having elevated the ligaments as well in the subperiosteal plane off the lateral side, as well as the scarred ligaments on the medial side, The elbow could not be easily subluxed. A bur was then used to bur down through the eburnated subchondral bone of the distal humerus, creating a barrel-shaped contour of the distal humerus. The severely enlarged portion of the radial head, which had been fused to the ulna due to reactive bone as well as was resected sharply with rongeur and osteotomes. Then, osteotomes and a bur were used to remove the severely eburnated bone from the olecranon articular surface as well.

Following this, the two joint surfaces were evaluated for smoothness of contouring and congruency of fit now that subchondral bone was exposed with bleeding bone via the bur. The size of the distal humerus and olecranon were then measured, and it was felt that a 9 x 25 cm piece of fascia lata was needed for the fascia lata autograft to be used for interposition.

At this time approximately a 20 to 25 cm lateral incision was made on the thigh with a 15-blade knife. Subcutaneous tissue was sharply dissected in line with the incision with a knife down to the fascia lata. A key elevator was used to elevate the subcutaneous tissue, both medially and laterally and anteriorly and posteriorly off of the fascia lata. A 9 x 25 cm rectangular portion of the fascia lata was outlined and then heavy Mayo scissors were used to sharply excise the fascia lata carefully elevating it

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off of the underlying vastus lateralis musculature and fascia. The fascia lata was then removed from the leg after sharp dissection and tagged with sutures for orientation and placed in a saline-soaked gauze on the back table.

This wound was then irrigated. A medium Hemovac drain was placed and the wound was closed in layers with 2-0 Vicryl sutures followed by staples. Attention was now turned back to the left elbow and a drill was used to make three holes from posterior to anterior on both the medial and lateral sides of the distal humerus and these were stepwise brought down along the distal humerus. They were also taken cleanly from posterior to anterior.

0 Ethibond sutures were then used to secure the fascia lata autograft with its mucosal surface facing toward the joint space, and this was wrapped around the distal humerus and secured with the 0 Ethibond sutures, both medially and laterally utilizing three sutures on each side with inverted horizontal mattress sutures, which were placed so that the knots would be buried beneath the fascia.

Following successful suturing of the fascia lata autograft to the distal humerus, the fascia lata was then carried down to the olecranon and laid out such that it would fit appropriately onto the olecranon. A drill bit was then used to create multiple holes in both the anterior portion where the coronoid had been resected of osteophytes. Drill holes were also placed through the posterior aspect of the olecranon as well in the region where it had been debrided of osteophytes also. Three holes were placed anteriorly and three holes were placed posteriorly and the fascia lata was secured with inverted horizontal mattress sutures, burying the knots away from the joint space. Then, 0 Vicryl sutures were used to suture the loose ends of the fascia lata on both the medial and lateral sides, thus further fine-tuning the contouring and fit of the fascia lata autograft.

Following this, the elbow joint was reduced and was taken through full extension to 0 degrees and flexion to 145 degrees with smooth motion. Future drill holes were then placed through both the lateral aspect of the ulna and the medial aspect of the humeral medial epicondyle and 0 Ethibond sutures were then used to repair the collateral ligaments back down to bone through these bone holes from where they had been elevated in the subperiosteal plane. Again, the elbow was noted to be with satisfactory reduction and taken through full extension to 145 degrees of flexion without any evidence of subluxation or medial lateral instability. 0 Vicryl sutures were then used to close the remainder of the periosteal full-thickness medial and lateral flaps along the olecranon and this was carried up completely closing the interval. Again, the ulnar nerve was observed throughout this time to take great care not to create any tethering of the nerve. The nerve was released more proximally of adherent tissue and a portion of the intermuscular septum was sharply excised to

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OSMANSKI, JOSEPH ARTHUR

PIDX MKN:

DOB: 09/24/1964 M

RAD SSN: 264-07-6730

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remove any possible impingement upon the nerve more proximally as well. A drain had been inserted into the elbow joint prior to closure of the periosteal flaps and capsule.

The wound was then irrigated with antibiotic irrigation solution and the skin was closed in layers with 2-0 Vicryl sutures followed by staples. Sterile dressing was applied to both wounds. A long-arm splint was placed posteriorly on the elbow and upper extremity and was appropriately padded. Prior to application of the splint, the tourniquet was deflated and removed and patient had palpable radial and ulnar pulses with capillary refill less than 2 seconds in all digits.

Patient was extubated in the operating room and taken to the surgical recovery room in good condition.

The plan for this patient was to admit him for pain control and observation of his drains and IV antibiotics postoperatively.

Dr. Larry Chidgey, the attending surgeon, was present and scrubbed throughout all key portions of the surgical procedure and immediately available for opening and closing.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/417 02/19/2000:02/20/2000 7:56 P

cc:

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NL1E8618

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

DISCHARGE SUMMARY

SHANDS at UF

ADMISSION DATE: 02/17/2000

DISCHARGE DATE: 02/19/2000

ADMISSION DIAGNOSIS: (1) Degenerative joint disease, left elbow.

DISCHARGE DIAGNOSIS: (1) Degenerative joint disease, left elbow.

PROCEDURES: (1) Left elbow fascia lata interpositional graft on 2/17/00. CONSULTATIONS: (1) Physical Therapy.

HISTORY AND PHYSICAL: Please see the chart for the complete H&P.

HOSPITAL COURSE: The patient is a 35-year-old white male with a history of left elbow DJD. He was admitted on 2/17/00 following the aforementioned procedure which was performed at Florida Surgical Center on 2/17/00. The patient tolerated the procedure well and was placed on a morphine PCA for pain control until postop day two. He was switched over to oral pain medication at that time and tolerated that well. His Hemovac drain was discontinued with minimal drainage on the day of discharge on postop day two. He had no fevers and was tolerating a regular diet.

DISCHARGE CONDITION: Stable.

DISPOSITION: Home.

DISCHARGE MEDICATIONS: (1) Tylox one to two PO q.4-6h. PRN pain. (2) Oxycodone 5-10 mg PO q.4-6h. PRN breakthrough pain. (3) Clindamycin 600 mg one PO t.i.d. x 1 day.

DISCHARGE INSTRUCTIONS: The patient should notify us for a temperature greater than 35, increased drainage from his wound, pain uncontrolled with pain medication, numbness, tingling or weakness in his extremity. He was given physical therapy for a walking device as directed by PT.

FOLLOW-UP: Follow-up will be with Dr. Chidgey at Hampton Oaks and the Surgery Clinic in two weeks.


Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jason W. Thackeray, M.D.
JWT/344 02/19/2000:02/20/2000 5:17 P

DISCHARGE SUMMARY

Page 1

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Oper Not 09/14/00

DATE OF SURGERY: 09/14/2000

PREOPERATIVE DIAGNOSIS: Left elbow arthritis.

POSTOPERATIVE DIAGNOSIS: Left elbow arthritis.

OPERATION PERFORMED: Left total elbow arthroplasty.

SURGEON: Chidgley.

ASSISTANT:

ANESTHESIOLOGIST:

ASSISTANT:

ANESTHESIA: General.

DESCRIPTION OF PROCEDURE: The patient was taken to the Operating Room. After adequate general anesthesia was established, the arm was prepped and sterilely draped. The limb was exsanguinated and a tourniquet around the upper arm inflated to 250 mmHg. A posterior incision was utilized. The triceps was dissected off of the ulna and kept intact with the forearm fascia. It was dissected subperiosteally off of the tip of the olecranon. The patient had a previous anterior transposition of the ulnar nerve. Therefore, the nerve did not have to be dissected out. The patient had no articular cartilage left on either side of the joint as he had a previous fascial arthroplasty which had failed. There was no sign of any infection. The patient had also had a previous one bone forearm with a radial head excision so the radial head did not have to be dealt with. The ulna was prepared with a power saw and a combination of the reamers to prepare the canal. The trial was then fitted. The saw was then utilized to prepare the distal humerus and the canal reamed; and a trial reduction with the trial implant was carried out and found to be good, lacking only the last 20 degrees from full extension. The ulnar component was then cemented into place. The humeral component was then cemented into place. During the cementing process, there was trouble with the articulating pin. In an effort to try and get the pin articulated properly, the cement hardened sufficiently that it could not be fully seated. Therefore, the humeral component was taken back out and the canal cleaned of the cement. Another attempt was then made filling the humeral canal with cement. At this time, the humeral component seated well with the ulnar component and the pin articulated appropriately. The humeral component was then fully seated in the humerus. Once the cement hardened, the triceps was reattached to the ulna through drill holes utilizing #2 Ethibond suture. It should also be mentioned that the lateral epicondylar area fractured off and had to be secured back down with two K-wires and a figure-of-eight tension band wire. A drain was then placed through a separate stab wound and the wound closed

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NL1E8627

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UP

in layers. A sterile dressing was then applied followed by a splint. The patient tolerated the procedure well and was taken to the Recovery Room in stable condition. Good vascular status returned to the hand after tourniquet deflation.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Larry K. Chidgey, M.D.
LKC/344 09/14/2000:09/14/2000 6:10 P

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 2

NL1E8627

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

FSC OPERATIVE REPORT

DATE OF SURGERY: 11/01/2001

PREOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

POSTOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

OPERATION PERFORMED: Left ulnar nerve transposition and neurolysis

SURGEON: Chidgey
ASSISTANT: Gilmore

ANESTHESIOLOGIST:
ASSISTANT:

INDICATIONS FOR PROCEDURE: The patient initially had a cubital tunnel syndrome of the left ulnar nerve. He sustained paresthesias and sensation difficulties in the ulnar distribution of his hand. The initial procedure was a left ulnar nerve transposition. He did return complaining of continued pain and paresthesias about his arm. He had developed a significant amount of scar tissue after multiple surgical procedures to his left elbow. It was deemed he would need a revision of the transposition and likely neurolysis.

DESCRIPTION OF PROCEDURE: The patient was appropriately identified, as well as the extremity was identified. He was taken to the operative suite, and general anesthesia was obtained. Next sterile dressings were applied, along with a sterile tourniquet. The total tourniquet time was approximately 1 hour and 6 minutes. Before the tourniquet was inflated the arm was exsanguinated.

Next the previous scar was identified on the medial ulnar aspect of his left elbow. The incision was made over the previous scar site. It was extended approximately 3 cm proximal and distal from that site. Dissection was then performed down through the skin with a knife in the subcutaneous tissue. Next tenotomies were used to clear some of the scar tissue, and the ulnar nerve was identified distally just underneath the subcutaneous tissue. It was mobilized both distally and proximally across the elbow.

It was noted there was a significant amount of scar tissue on the floor of the nerve, and the nerve was released from the scar tissue with neurolysis. It was determined that instead of dissecting through the abundance and thickness of the scar tissue that it would best serve the ulnar nerve to lie above this tissue with an overlying subcutaneous tissue for cushion. As this layer was sutured over top of the ulnar nerve, it was determined that the ulnar nerve was mobile and free. The rest of the suture line was drawn with 2-

FSC OPERATIVE REPORT

Page 1

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

FSC OPERATIVE REPORT

0 Polysorb. This was done in inverted interrupted fashion. Next skin was stapled. The patient then had sterile dressings applied.

Next the patient was awakened. The tourniquet was deflated, and the patient was taken to the Recovery Room without difficulty. He remained neurovascularly intact postoperatively. He will be admitted to the hospital postoperatively for observation overnight. His pain is under good control with the use of Tylox and morphine.

Dr. Chidgey was present for the entire procedure and participated in the case.



Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Michael D. Gilmore, M.D.
MDG/448 11/01/2001:11/01/2001 10:33 P
Job ID# 001087363

cc:

FSC OPERATIVE REPORT

Page 2

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PID# MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UP

Oper Not 11/01/01

DATE OF SURGERY: 11/01/2001

OSMANSKI, JOSEPH ST#00-67-58-85

PREOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

POSTOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

OPERATION PERFORMED: Left ulnar nerve transposition and neurolysis

SURGEON: Chidgey

ASSISTANT: Gilmore

ANESTHESIOLOGIST:

ASSISTANT:

INDICATIONS FOR PROCEDURE: The patient initially had a cubital tunnel syndrome of the left ulnar nerve. He sustained paresthesias and sensation difficulties in the ulnar distribution of his hand. The initial procedure was a left ulnar nerve transposition. He did return complaining of continued pain and paresthesias about his arm. He had developed a significant amount of scar tissue after multiple surgical procedures to his left elbow. It was deemed he would need a revision of the transposition and likely neurolysis.

DESCRIPTION OF PROCEDURE: The patient was appropriately identified, as well as the extremity was identified. He was taken to the operative suite, and general anesthesia was obtained. Next sterile dressings were applied, along with a sterile tourniquet. The total tourniquet time was approximately 1 hour and 6 minutes. Before the tourniquet was inflated the arm was exsanguinated.

Next the previous scar was identified on the medial ulnar aspect of his left elbow. The incision was made over the previous scar site. It was extended approximately 3 cm proximal and distal from that site. Dissection was then performed down through the skin with a knife in the subcutaneous tissue. Next tenotomies were used to clear some of the scar tissue, and the ulnar nerve was identified distally just underneath the subcutaneous tissue. It was mobilized both distally and proximally across the elbow.

It was noted there was a significant amount of scar tissue on the floor of the nerve, and the nerve was released from the scar tissue with neurolysis. It was determined that instead of dissecting through the abundance and thickness of the scar tissue that it would best serve the ulnar nerve to lie above this tissue with an overlying subcutaneous tissue for cushion. As this layer was sutured over top of the ulnar nerve, it was determined

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

PAD SSN: 264-97-6730

SHANDS-HP

that the ulnar nerve was mobile and free. The rest of the suture line was drawn with 2-0 Polysorb. This was done in inverted interrupted fashion. Next skin was stapled. The patient then had sterile dressings applied.

Next the patient was awakened. The tourniquet was deflated, and the patient was taken to the Recovery Room without difficulty. He remained neurovascularly intact postoperatively. He will be admitted to the hospital postoperatively for observation overnight. His pain is under good control with the use of Tylox and morphine.

Dr. Chidgey was present for the entire procedure and participated in the case.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Michael D. Gilmore, M.D.
MDG/44811/01/2001:11/01/2001 10:33 P
Job ID# 001087363

cc:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 2

NL1B8636

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH

00-67-58-85

DISCHARGE SUMMARY

SHANDS at UF

ADMISSION DATE: 11/01/2001

DISCHARGE DATE: 11/02/2001

PRINCIPAL DIAGNOSIS: Ulnar nerve neuritis and neuropathy.

DISCHARGE DIAGNOSIS: Status post revision of an ulnar nerve transposition and neurolysis.

HOSPITAL COURSE: The patient was admitted to the hospital postop for pain control. He was placed on Tylox and OxyContin. He tolerated this well. His pain has been under good control. His arm has remained elevated. He is eating a regular diet without any difficulties.

DISCHARGE INSTRUCTIONS: He will follow up with Dr. Chidgey on 11/09/01. An appointment has already been scheduled. He should call for confirmation. He will also be discharged on Lortab and OxyContin along with clindamycin p.o. for 7 days.



Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Michael D. Gilmore, M.D.
MDG/426 11/02/2001:11/02/2001 11:04 A
Job ID# 001088525

cc:

DISCHARGE SUMMARY

Page 1

Lexington Orthopaedics

West Columbia

146 North Hospital Drive, Suite 140
West Columbia, South Carolina 29169

PATIENT: OSMANSKI, JOE	VISIT DATE: 11-5-08
PATIENT #: 00001529860 XXX-X7-6730	D: 11/06/2008 8:51 AM
PHYSICIAN: JAMES C. MCINTOSH, MD	T: 11/07/2008 6:10 AM / cir
	DATE OF BIRTH: 09/24/1964

HISTORY OF PRESENT ILLNESS: Patient presents today for workmen's comp injury to his left elbow. He is a truck driver and had a hyperextension injury last week with immediate onset of pain. He went to the Emergency Department and was evaluated. He has a very complicated history with his left elbow. Apparently he had a comminuted fracture. They attempted what sounds like an interpositional arthroplasty that ultimately failed. Back in late 1990s, he underwent a total elbow arthroplasty in his 30s. This was all done in FL. He is a truck driver and has been doing this for some time. He is right-hand dominant. Ever since the injury, he has had some numbness. He has had transposition of ulnar nerves in the past. Little bit of tingling. It has always been painful, but this is a little bit more. Feels like arm is dead and he cannot move it. It sounds basically like he had a hyperextension injury with some crepitance and onset of pain. Not that uncomfortable today. Still has difficulty moving the arm. Some numbness and tingling in his ring and small fingers. No other injuries reported. We saw him just recently for a mass on his right ring finger. Health otherwise is good. No change since we saw him last week.

PHYSICAL EXAMINATION

GENERAL: Mildly obese black male in no apparent cardiopulmonary distress, alert and oriented x3.

ELBOW: Some mild swelling. I really cannot palpate his biceps very well. He has a 1 bone forearm so he cannot supinate. Ulnar nerve function appears to be intact. Decreased sensation in ulnar distribution. Radial and medial nerve function appears to be intact. Good capillary refill. Several scars on posterior aspect of elbow. No obvious crepitance. Actually fairly good motion. Nearly full extension. Flexion to about 125-130. Elbow showed implant in place; several wires present. No obvious evidence of implant loosening. Some asymmetry at the bushing, which is consistent with wear. Do not see any obvious implant loosening.

ASSESSMENT: Left elbow strain; difficult to tell what is going on with him. His implant appears to be intact. Pins extending at the posterior aspect of the elbow. I do not know if this is old or new.

PLAN: I asked him to continue same range of motion exercises and work status. No use of left arm. Also asked him to get old notes or x-rays to see if we can compare to past films. Recheck and reexamine in 3 weeks.

JAMES C. MCINTOSH, MD

cc:

OSMANSKI, JOE

76730

FISHER/cmh

10/22/2008

J994051

S: The patient is a 44-year-old white male, here for his 1st visit to our office. He basically comes in for a physical. It has been some time since he had a regular physician. He wanted to get his DOT form completed as well. He generally has been pretty healthy. He does take Flomax regularly for some nocturia and BPH. This has helped significantly. He only gets up about once nightly now to use the bathroom. He is also a smoker. He is not that interested quitting right now. He still drives a truck a good bit, although he is not over the road like he was. He is down to about 1 pack daily right now. Unsure when his last tetanus was given. He does have a history of a fall, in 1987, when he was about 23. He had a good bit of problems. He had a pretty bad injury in his left elbow and wrist, particularly. He still has some limited range of motion of elbow as far as supination but otherwise he lifts furniture and does not have any other residual problems. He has recently been seen for some kidney stones by Dr. Brightbill. He had an IVP, which was negative, because he was having some mild persistent pain but he is doing pretty well right now without any significant symptoms. He is allergic to penicillin. FH: Father, some kind of blood disorder in his 50s, did not know exactly what it was. Otherwise unremarkable. PMH: See chart for the rest. ROS: Negative for allergies. Not complaining of chest pain or shortness of breath. No recent bowel changes. Urine as discussed above. No skin problems. Never had any restriction from DOT physical in the past.

O: VITAL SIGNS: Blood pressure 136/84, heart rate 84, weight 273 (reports losing about 70 lbs. this past year from just dietary changes). GENERAL: Alert. HEENT: See visual acuity. Eyes clear. TMs clear, mouth with deteriorating tooth in the left lower jaw, otherwise clear. NECK: Supple, good pulses, no bruits. No masses. HEART: Regular rate and rhythm without murmurs. LUNGS: Clear to auscultation bilaterally. BACK: Without tenderness. ABDOMEN: Mildly obese, soft, nontender, no masses noted. EXTREMITIES: Without edema, good pulses. GU: Bilateral descended testicles. Very mild hernia on right side. Left clear. RECTAL: Moderately enlarged prostate, smooth, symmetric. SKIN: Clear with a few non atypical appearing nevi. DIAGNOSTIC STUDIES: EKG: See chart. Executive profile to be done. Fasting today.

A

1. Physical examination performed in a 44-year-old white male.
2. Department of Transportation physical performed, no obvious restrictions.
3. History of benign prostatic hypertrophy, has done well with Flomax.
4. Tobacco dependence. Encouraged to quit smoking. Do not think he really feels like he is ready right now.
5. Persistent lack of supination, left elbow, status post injury at 23 years old.
6. Some obesity in the past, significantly improved with just dietary changes.

P: Tetanus updated today. DOT form completed. Executive profile and PSA. Proceed as needed on that. Encouraged to quit smoking once again. Did not need refills on Flomax. Follow up p.r.n.

ADDENDUM: Cyst between the DIP and PIP on right ring finger, has gotten a little bit larger, about 3 x 1 cm. Needs further evaluation, excision. Will send to orthopedist for evaluation.

OSMANSKI, JOE

76730

FISHER/cmh

11/13/2008

J911872

S: The patient is a 44-year-old white male who comes in to followup some labs. He has mildly increased cholesterol. He has not been told this in the past. He was also noted to have mildly increased liver functions. He rarely takes Tylenol at home. He drinks a little bit of on the weekends but not regularly. He is not on any medicines except Flomax. He has never been told his liver functions were elevated.

O: VITAL SIGNS: Blood pressure 130/88, weight 270. HEART: Regular rate and rhythm. LUNGS: Clear. ABDOMEN: Soft, no right upper quadrant tenderness. No obvious swelling or masses. DIAGNOSTIC STUDIES: See chart for labs.

A

1. Mildly increased triglycerides, low HDL. Ratio slight high.
2. Mildly increased liver functions.

P: Given low triglyceride diet sheet. Talked a little bit about omega-3 fatty acids. Would like to check cholesterol and liver functions in 3 m - 5 9 - mer if he has any particularly symptoms. Follow up

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOR: 09/24/1954 M

EAD ASN: 264-97-6730

SHANDS-UF

Clinic N 02/19/92 23:59

February 19, 1992

DIAGNOSIS: Left upper extremity fracture with resultant one bone forearm.

HISTORY: Mr. Osmanski returns today with complaints of new onset left elbow pain beginning last Sunday when he picked up an empty cooler. He said the pain persisted with motion of his elbow with temporary relief with the use of Feldene. Since then, however, the pain has been persistent and he has been wearing an arm sling to relieve the discomfort.

PHYSICAL EXAMINATION: He has essentially full range of motion of his elbow. However, it is painful. He also has a significant amount of tenderness over the left cubital tunnel in the ulnar nerve region. He has no tenderness over his forearm.

TEST RESULTS: X-ray examination of his left elbow today demonstrates that he has evidence of degenerative joint changes and has had progression of some of his heterotopic ossification. He also has several osteophytes which have formed specifically in the cubital tunnel region.

DISPOSITION: Mr. Osmanski is experiencing some irritation of his ulnar nerve, probably from irritation by the heterotopic bone and osteophytes. We recommended he be put into a resting elbow splint and resume taking Feldene 20 mg PO q day. We hope that he will improve on this regimen and we will see him back in approximately three to four weeks for follow up and no new x-rays are needed.

Larry R. Chidgey, M.D.
Assistant Professor
Hand and Microsurgery
Department of Orthopaedics
Box 100246
Phone: 904-392-4251

Dictated by: A. Wong, M.D.
LKC/AW/vbs 02-19/02-21-92

Requested by WHIDDS on 01/07/09 at 10:05 From M009 Page 1

NL1E8608

01/08/2000 11:51 FAX 352 273 004

Ortho Medical Records

@005/038

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

RAD SRN: 264-97-6730

SHANDS-UF

Clinic N 11/04/98 23:59

UNIVERSITY OF
FLORIDAOSMANSKI, JOSEPH
STH #00-67-58-85

SHANDS CLINIC at Hampton Oaks

200-B SW 62nd Blvd.
Gainesville, FL

32607

(352) 395-0647

11/04/98

SHANDS CLINIC at Hampton Oaks

SUBJECT: Patient is a 34-year-old male status post fall, which in 1987, patient has been disabled since that time. He has had bilateral shoulder dislocations at that time as well as bilateral elbow fractures. He has had multiple procedures to his left upper extremity including ulnar nerve transposition x 2 to his left elbow. He has most recently had a shoulder scope with removal of an apparent loose body from within the joint capsule. He has had removal of bony fragments from his left wrist and two previous arthroscopic procedures to his left shoulder. He has had all of a one bone forearm procedure to his left elbow. Patient is here today for evaluation of his left shoulder and his left elbow.

PAST MEDICAL HISTORY: He denies any hypertension, diabetes, coronary artery disease, seizures, or history of cancer.

PAST SURGICAL HISTORY: Multiple reconstructive surgeries to his left shoulder, left elbow, and right elbow.

ALLERGIES: Penicillin.

SOCIAL HISTORY: He smokes one pack per day. Ethanol: Denies.

OBJECTIVE: On physical examination of his left shoulder, patient, due to pain, is only able to abduct his shoulder about 20 or 30 degrees. He is only able to elevate his shoulder about 10 degrees. He has significant tenderness to any passive range of motion beyond these extremes. Right upper extremity reveals he has full range of motion of his shoulder. On his left shoulder, he is unable to axially rotate his arm any further than to his pocket and he only externally rotates to neutral. Patient's sensation is grossly intact. He has tenderness over his previous ulnar nerve transposition sites. He has about 60 degree range of motion from 30

Requested by WHIDS on 01/07/09 at 10:05 From M009 Page 1

NL1E8609

01/08/2009 11:52 FAX 352 273 1114

Ortho Medical Records

@003/036

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-5710

SHANDE-NE

degrees loss of extension to about 120 degrees of flexion. He only supinates to neutral and he has good distal refill and good sensation distally.

X-RAYS: His left elbow x-rays show he has significant arthritis, post traumatic, of his elbow with loss of his joint space. His left shoulder x-rays show some erosion along the anterior glenoid and some arthritic changes in the glenohumeral joint.

ASSESSMENT & PLAN: Patient with severe post traumatic arthritis of his left elbow. Patient was explained that there are a few options at this point for his left elbow. One was to continue with conservative management with nonsteroidals and the second choice was to do an inner position arthroplasty of his left elbow versus a total elbow. We did not feel that he is a good candidate for a total elbow due to his age and the fact that he will probably wear it out very quickly. His best option for his elbow would probably be an inner position arthroplasty. Patient states that he would like to think about that procedure. For his left shoulder difficulty, Dr. Chidgey would like to have Joseph referred to Dr. Wright due to the complex nature of his shoulder. He has had two previous arthroscopies including a labral repair and capsular shrinkage and he has very minimal range of motion and very painful with any range of motion to his shoulder. Patient will follow up with us after he has had his shoulder evaluated.

TEACHING PHYSICIAN'S STATEMENT: I was present during all activities documented above, agree with the above documentation, and participated in the entire history, physical exam, and medical decision-making of this patient.

Larry K. Chidgey, M.D.
Associate Professor
Department of Orthopaedics

Dictated by: Jeffery A. Baker, M.D.

JAB/tra 11/04:11/04/98 c:td 11/13/98

CC:

Requested by WHIDDS on 01/07/09 at 10:05 From M009 Page 2

NLEB609

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

FIDX MRN:

DOB: 09/24/1964 M

RAD SEN: 264-87-5730

SEANDS-UT

Clinic N 06/23/99

06/23/1999

HPI: Joseph is being followed for two problems, his left elbow arthritis as well as his left shoulder. He was previously seen in November and we referred him to Dr. Wright for his complex left shoulder injury and we have recommended that he undergo an interpositional arthroplasty of his left elbow. The patient has run up against some road blocks with his insurance company and would like to proceed with the elbow surgery, however, he has not been able to get the referral for the shoulder. So, today we will make a referral for the patient to see Dr. Wright with regards to his complex shoulder injury. We would like to know what Dr. Wright has to say with regards to his treatment plan and whether any further plans for surgery would be needed. Following this evaluation and his recommendations, we will then appropriately schedule the patient for any surgery on his elbow.

TEACHING PHYSICIAN STATEMENT: I was present during all activities documented above, agree with the above documentation, and participated in the entire history, physical exam and medical decision making of this patient.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Anthony J. Leone, M.D.
AJL/tra 06/23/1999:06/23/1999 3:53 P

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD, SSN: 264-97-6730

SHANDS-UF

Clinic N 01/10/00

SHANDS at UF CLINIC

01/10/2000

Joseph is here today for follow-up of left elbow pain. He has a long history of left upper extremity issues, the most recent of which was creation of a one bone forearm after an Essex-Lopresti injury. He has had progressive elbow degenerative joint disease over time. This pain is now disabling and barely tolerable. He is unable to use the arm for any significant activity due to elbow pain.

PHYSICAL EXAMINATION: No distress. Examination of the left upper extremity reveals tenderness about the joint line of the left elbow. Any pronation-supination force applied to the forearm exacerbates the pain.

IMPRESSION: Advanced degenerative joint disease of the left elbow after one bone forearm procedure. The treatment options were discussed extensively with the patient. They include left total elbow arthroplasty, left elbow arthrodesis, left elbow interpositional arthroplasty. The most viable option for this young, potentially active, patient is the interpositional arthroplasty. He wishes to proceed with this procedure. He was referred to the surgery scheduling office today.

The patient was seen and examined with Dr. Chidgey.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Drew E. Kiernan, M.D.
DEX/460 01/10/2000:01/10/2000 1:52 P

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1B8616

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1954 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 02/16/00

SHANDS at UF CLINIC

02/16/2000

Mr. Osmanski is a 35 year old gentleman who had previous Essex-Lopresti injury of the left forearm after a 32 foot fall on his construction job. He has subsequently undergone left long bone forearm fusion and he has developed severe degenerative joint disease of the left elbow. He is here for preoperative evaluation for a left elbow fascia lata, fascial interposition arthroplasty. All questions were answered, informed consent was obtained after discussion of risks, benefits and alternatives to surgical procedure. The patient will undergo his surgery on 2/17/00.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/367 02/16/2000;02/17/2000 8:47 A

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1E8517

Shands HealthCare

Confidential

Not an Original

OSMANSEY, JOSEPH ARTHUR	PIDX MRN:
DOB: 09/24/1964 M	EAD SSN: 264-97-5730
SHANDS-UF	

Clinic N 02/28/00
SHANDS at UF CLINIC

02/28/2000

Mr. Osmanski is a 35-year-old gentleman who presents today for his postoperative visit following left elbow fascia lata interpositional arthroplasty performed on 02/17/00. Overall, he has had significant amount of postoperative pain and has required a significant amount of pain medication but this is not totally surprising given the extent of his surgery.

REVIEW OF SYSTEMS: Has remained unchanged.

PHYSICAL EXAMINATION: Splint was removed from his left elbow. The incision was well-healed. Staples were removed and Steri-Strips applied. His radial ulnar and medial nerve distributions are grossly intact in motor and sensory and capillary refill is less than two seconds with palpable pulses. His left fascia lata donor site had evidence of seroma. The incision was well healed and staples were removed followed by application of Steri-Strips. Approximately 50 cc of seroma was drained from the left thigh and a compressive Ace bandage was applied to the leg. He will keep this compressive wrap on the leg and elevate his leg with pillows in the supine position. He was given a prescription for Mepergan Fortis, number 45, to be taken for pain and he will follow-up with us in 10 to 14 days. At this time he is in a anterior splint of the left elbow at 90 degrees and at his next visit we will have him converted to a hinged elbow brace to begin on flexion and extension exercises but this will provide him with medial and lateral stability. Patient will continue to be temporarily totally disabled from work, but we would anticipate that in six to eight weeks he might be able to return to work in a light-duty capacity, continued no use of the left upper extremity and given the leg surgery, he would probably be a sedentary clerical-type of position.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/496 02/28/2000:02/29/2000 8:21 A

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-5730

SHANDS-UF

Clinic N 03/13/00

SHANDS at UF CLINIC

03/13/2000

SUBJECTIVE: Mr. Omanski is a 35 year old gentleman who had severe post traumatic end stage degenerative joint disease of the left elbow and underwent fascilata interpositional arthroplasty of his left elbow performed on 2/17/00. He presents today for a second postoperative visit. He states that he has been wearing his Ace spica wrap around his left thigh, however, the fluid in his thigh has recollected at the site of fascilata donor harvest. He has been taking the Mephergan 4 tabs and states that this is too strong for him and he would like something less powerful. Review of systems has remained unchanged.

OBJECTIVE: On physical examination his elbow incision is well healed. he is neurovascularly intact distally. His range of motion at this time just when gently tested was from 80 to 95 degrees. He had a significant fluid collection in his thigh region. this incision is well healed. 500 cc of serosanguinous fluid was aspirated from this thigh region after sterile prep. Following this a Triple A spica wrap was placed around his entire left thigh and hip region

IMPRESSION: Overall doing well. At this time we are sending him to therapy to obtain a hinged elbow brace and he will begin on active assist and passive range of motion in his elbow in the splint. He will not remove the brace except for bathing and is aware of the need to protect the elbow for continued ligamentous soft tissue healing. With regards to the thigh we have given him a prescription of Keflex 50 mg p.o. q.i.d. for 7 days just as prophylaxis given the fact that we aspirated a significant amount of fluid here in the office. He will continue with the Ace spica wrap as well as frequent elevation of the leg above the level of his heart. He will follow up with us in 4-5 weeks for repeat evaluation. We also gave him a prescription for Lortab 10s #50 1-2 p.o. q. 6 hours p.r.n. As far as work is concerned he will remain temporarily totally disabled as he cannot be up on his feet given the seroma collection nor can he use his left upper extremity. At his next visit we should obtain x-rays of his left elbow AP and lateral.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1E8620

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 08/24/1964 M

ED SSN: 264-97-6730

SHANDS-UF

Clinic N 04/19/00

SHANDS at UF CLINIC

04/19/2000

Mr. Osmanski is now three months status post fascia lata interposition arthroplasty of his left elbow. Overall he feels that he is improved somewhat. He still has a fair amount of significant pain. He still has only 75-100 degrees range of motion with pain at the end of each arch. He has less pain with extension and more discomfort with elbow flexion. His incision is well healed and he is neurovascularly intact distally.

IMPRESSION: Progressing slowly. X-rays show no significant interval change and overall the elbow joint appears to be grossly located.

PLAN: The plan will be to progress slowly. The patient would like to begin with physical therapy for range of motion exercises and we will begin this and he will perform these exercises as tolerated. We have discussed the future options which would include possibly living with the discomfort and loss of motion versus total elbow arthroplasty which in a man of his age and size may not last very long and suffer severe wear and tear versus possible elbow fusion. All of the above have significant disadvantages and we have discussed these with the patient and at this time he would like to proceed with therapy and we will follow his progress. He was given a refill for Lortab 7.5 and as far as work is concerned he will continue to be absolutely no use of the left upper extremity.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/422 04/19/2000:04/20/2000 7:44 A

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

MAD SSN: 254-97-6730

SHANDS-UP

Clinic N 05/17/00

SHANDS at UP CLINIC

05/17/2000

Follow-up for elbow fascia lata interposition on 02/17/00. He is having an extreme amount of pain in his elbow. Very unhappy because of the amount of discomfort he is having. Review of systems, past medical history is unchanged.

PHYSICAL EXAM: Well-developed, well-nourished male in some distress because of the pain. His range of motion, he can flex passively to 90, extend with gravity for a total of about -40 degrees, but still has quite a bit of discomfort at this time. His neurovascular status is intact. He wears a Bledsoe brace for support.

At this time we want to just monitor and try to manage him with pain medicine. Gave him OxyContin 20 mg to take two p.o. q. 12 hours. Gave him pain pills and some Vicxx 25 mg. As far as his work is concerned, he is not really to use that left arm, definitely no lifting greater than 5-10 pounds at this time. We mentioned that the only options would be to leave it alone, fuse it, or replace the joint, but because of his age it would be not a good option at this time. We will see him back in about two months to see how he is doing.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/362 05/17/2000:05/18/2000 10:42 A
c:pjh 5/25/00

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1EB623

P452

01/08/2000 11:55 FAX 352 273 1 24

Ortho Medical Records

010/038

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 06/28/00

SHANDS at UF CLINIC

06/28/2000

DIAGNOSIS: Status post left elbow fascia lata interpositional graft.

DATE OF PROCEDURE: 02/17/00

INTERVAL HISTORY: Mr. Osmanski returns for follow-up with his ongoing problem. He continues to have pain and stiffness in his left elbow with decreased range of motion. He is taking Oxycontin 40 mg b.i.d. with good relief of his pain. However, he has been unable to work and has been in a bledsoe brace. He has no history of further trauma.

PHYSICAL EXAM: Examination reveals exquisite tenderness about the entire elbow. He had some mild swelling associated with that. Range of motion of the elbow is about almost full extension to approximately 90 degrees of flexion passively. Actively, he almost has no elbow motion actively. Light touch is normal throughout the extremity. Supination and pronation is extremely limited.

IMPRESSION/PLAN: We have had a long discussion with Mr. Osmanski at this time. Due to his young age and acute atypical postoperative course, we think that he may have difficulties with a total elbow arthroplasty, but will give us his best chance of relieving some of his pain and possibly regaining some more function. Patient has been thinking about this for some time and after answering all of his questions, he has elected to undergo total elbow arthroplasty. This will be done sometime in August, and we will see him back for his preoperative visit at that time.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Christopher Sforzo, M.D.
CS/pjs 06/28/2000:07/03/2000 3:09 P
c: pjh 7/3/00

Requested by WHIDDS on 01/07/09 at 10:05 From M009 Page 1

NL138625

01/08/2009 11:55 FAX 352 273 7204

Ortho Medical Records

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020/036

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

Clinic N 09/13/00

SHANDS at UF CLINIC

09/13/2000

Joseph comes in today for preop to have left total elbow arthroplasty.
Consent was signed. Questions answered. He will return for suture removal
and x-ray of elbow at that time.

As far as work is concerned, TTD.

Larry K. Chidgey, M.D.

Associate Professor, Hand Surgery

Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA

DMR/312 09/13/2000:09/14/2000 4:58 P

c:cjt 9/29/00

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 1

NL1B8626

P454

Shands HealthCare

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Not an Original

OSKANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

RAD SSN: 264-97-6730

SHANDS-UF

Clinic N 09/27/00

SHANDS at UF CLINIC

09/27/2000

Joseph is followed for total elbow arthroplasty, left elbow. We went ahead and removed the staples and got him in a posterior splint that he can start taking off and working on active motion, not flexing completely. His x-rays showed that the prosthesis was in excellent alignment.

ADDENDUM: Joseph had requested pain medication and we are going to decrease his Oxycontin to 40 mg. only once a day and not twice a day. We gave him 50 pills today. He is to taper off this medication and the next visit we need to get him off the pain medication.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/344 09/27/2000:09/28/2000 10:54 A add:ker09/27/00

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8628

Shands HealthCare *Confidential* Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UP

Clinic N 11/01/00

SHANDS at UF CLINIC

11/01/2000

Joseph comes in today for a postop follow-up for his total elbow arthroplasty. He is complaining of pain in his forearm region.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY: Unchanged.

PHYSICAL EXAM: Well-developed, well-nourished man in no distress. Examination of his arm reveals he is tender over the posterior osseous nerve. Looking at x-rays, there is nothing that appears to have loosened.

IMPRESSION: Status post above surgery with pain over his posterior osseous nerve.

PLAN: We are going to give him some Ultram, no more narcotics for him, and Neurontin. We are going to increase the dose to two pills three times a day. As far as work is concerned, TTD still.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/427 11/01/2000:11/02/2000 10:37 A

cc:

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-ITF

Clinic N 04/04/01

SHANDS at UF CLINIC
04/04/2001

OSMANSKI, JOSEPH STH#00-67-58-85

CHIEF COMPLAINT: Follow-up surgery of left elbow.

DATE OF SURGERY: Total elbow arthroplasty performed on 09/14/00.

HISTORY: Mr. Osmanski continues to complain of ulnar nerve-type pain status post the above procedure.

PHYSICAL EXAM: On exam, his wounds are remain well-healed. There is no significant change in range of motion which remains fairly good from approximately 35-110 degrees. He can fully flex and extend his fingers and his wrist as well as abduct and extend his thumb. Light touch is intact throughout.

RADIOGRAPHIC DATA: Radiographs again show today that the elbow prosthesis is in good position with a line seen around the cement area which may or may not be related to loosening of cement but rather the technique.

IMPRESSION: Continued nerve-like pain status post complex left salvage total elbow arthroplasty.

PLAN: At this point in time we would recommend that Mr. Osmanski continue with the hinged-elbow brace. We would like him to continue to work on range of motion. He will not be able to lift any heavy weights. With respect to work status, the patient is not recommended to be employed at this time until he is able to see the Pain Management Clinic for possible suggestions regarding his continuing difficult-to-manage ulnar nerve-type pain. At this point, we have filled out a referral for Dr. Sassano in the Pain Management Clinic and will await his recommendations.Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and RehabilitationDictated by: Timothy S. Bollom, M.D.
TSB/496 04/04/2001:04/05/2001 11:26 A
Job ID# 871474

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8631

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UP

Clinic N 09/05/01

SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

09/05/2001

DIAGNOSIS: (1) Status post left total elbow arthroplasty by Dr. Chidgey on 09/14/00. (2) Status post left shoulder arthroscopy with subacromial decompression via Dr. Wright in 1999.

INTERVAL HISTORY: Mr. Osmanski returns to clinic for repeat evaluation. He reports that he has continued to have numbness and burning pain and tingling in his left forearm and hand. He reports that this has been significantly improved with Neurontin, although he was taking 900 mg three times a day and reported erectile dysfunction and loss of sex drive due to the medication. He has slowly titrated himself down and is still having some ulnar nerve symptoms, but has had some improvement in his erectile dysfunction.

PHYSICAL EXAMINATION: He is tender to palpation over the ulnar nerve and has some swelling and tenderness about the elbow. His incisions are all well healed. His range of motion is 5 degrees to 120 degrees of flexion. He has no supination or pronation due to both bone forearm fusion.

IMPRESSION: Left ulnar neuritis.

PLAN: At this point, we had a discussion of re-exploring and performing a neurolysis of his ulnar nerve. Mr. Osmanski is thinking seriously about that. The paperwork was filled out today and he will meet with Teresa. He has temporary total disability regarding his work status.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Daniel A. Worrel, M.D.
DAW/370 09/05/2001:09/05/2001 4:51 P.
Job ID# 001026333

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1EB634

Shands HealthCare *Confidential* Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAT SSN: 254-97-5730

SHANDS-UF

Clinic N 10/24/01

SHANDS at UF CLINIC

10/24/2001

OSMANSKI, JOSEPH STH#00-57-58-85

Joseph comes in today for a preop to have an ulnar nerve exploration. Previous transposition in the past for neurolysis. He understands the postoperative course. He understands the risk of possible nerve damage. We will plan on seeing him back for postop followup approximately two weeks after surgery for suture removal. He will be in house for 23 hours postop for postop pain.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/338 10/24/2001:10/25/2001 11:56 A
Job ID# 001078276

cc:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8535

01/08/2009 11:58 FAX 352 273 7554

Ortho Medical Records

032/038

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOR: 08/24/1964 M

RAD: SSN: 264-87-6730

SHANDS-UF

Clinic N 11/09/01

SHANDS at UF CLINIC
11/09/2001

OSMANSKI, JOSEPH STH#00-67-58-85

Mr. Osmanski is follow-up for transposition of ulnar nerve neurolysis performed by Dr. Chidgey on 11/01/01. Unfortunately he has developed quite a bit of swelling. His wound is slightly erythematous. We are going to go through nerve gliding today with him but wait to take the staples out in two weeks because he is still swollen. He understands that if his wound looks worse before then to come back sooner. We are going to give him some Keflex prophylactically, gave him some more pain medication, Lorcet 10, #50 pills. As far as work is concerned, he is really going to be off for next two weeks until we see him again.

Debbie M. Rafanan, PA
Hand Surgery
Dept. of Orthopaedics & Rehabilitation

Dictated by: Debbie M. Rafanan, PA
DMR/418 11/09/2001:11/11/2001 2:56 P
Job ID# 001095876

cc:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8637

P460

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-DE

Clinic N 11/26/01

SHANDS at UF CLINIC

OSMANSKI, JOSEPH STR#00-67-58-85

11/26/2001

PROBLEM: Status post left ulnar nerve decompression and neurolysis on 11/01/01.

HISTORY: Joseph returns. He complains of some problems with the wound. He denies fevers or chills. He states that he was given Keflex last week after calling the office and is currently on that. He says that he no longer has the pins and needle sensation in the ulnar nerve distribution on the right, although he still has some decreased sensation.

PHYSICAL EXAMINATION: His surgical incision has intact staples over the bulk of it. Just distal to the elbow, there is a region approximately 2 x 2 cm in size of wound dehiscence. There is no evidence of infection. No radiographs were taken.

ASSESSMENT: Wound dehiscence status post ulnar nerve decompression.

PLAN: We are going to treat this with b.i.d. wet-to-dry dressing changes as Joseph has an elbow prosthesis on that side, and we will continue his Keflex for seven days. We will bring him back in one week for a repeat wound check.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Joel D. Thompson, MD
/466 11/26/2001:11/26/2001 1:02 P
Job ID# 001109398

cc:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8638

P461

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-5730

SHANDS-UF

Clinic N 01/14/02

SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

01/14/2002

PROBLEM: Status post ulnar nerve decompression and neurolysis on 11/01, with postop wound dehiscence.

HISTORY: Mr. Osmanski returns. He says the pins and needles sensation that existed in his hand preoperatively is gone; however, sensation is not normal. He complains of continued pain in the elbow secondary to his arthritis, but he generally says he feels pretty good. He denies fevers or chills.

EXAM: His ulnar wound is near completely healed. There is a small area of eschar approximately 2 cm in diameter just proximal to the medial epicondyle. There is no evidence of infection. Hand intrinsics are intact. Sensation to light touch is diminished in the ulnar nerve distribution. His elbow range of motion is extremely limited and his elbow is swollen. He has minimal pronation/supination.

ASSESSMENT: Stable course.

PLAN: Mr. Osmanski is about to baseline. His wound is not fully healed and will reevaluate him in one month. At that time, we will refer him for FCE, and place him at MMI regarding his elbow.

We will see him in four weeks.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Joel D. Thompson, MD
/424 01/14/2002:01/14/2002 7:21 P
Job ID# 001158523

cc:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8639

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1954 M

EAD SSN: 264-97-6730

SHANDS-TIF

Clinic N 01/10/01

SHANDS at UF CLINIC
01/10/2001.

OSMANSKI, JOSEPH STH#00-67-58-85

CHIEF COMPLAINT: Followup surgery of left elbow.

HISTORY OF PRESENT ILLNESS: Mr. Osmanski is well known to our service. He is now approximately three-and-a-half months after a complex left total arthroplasty. He also had a previous radial ulnar synostosis. He has been wearing his Bledsoe brace and working on motion. He does complain of occasional popping noises coming from that elbow, and lack of strength.

PHYSICAL EXAMINATION: The surgical wounds are well healed. There are no signs of infection. Range of motion actually is fairly good considering what he has been through. It is from approximately 40 degrees to 110 degrees. He can fully flex extend his fingers and his wrist, and abduct and extend his thumb. Light touch sensation is intact to his fingers, however, he complains of numbness on the dorsal side of his hand and forearm. He is able to actively flex and extend his elbow but with minimal strength, compared to the other side.

X-RAYS: X-rays, radiographs obtained again today show the prosthesis in position with tension band construct on the lateral condyle. A line is seen around the cement area which may or may not be related to loosening of the cement, but rather the technique.

IMPRESSION: Status post complex left salvage total hip arthroplasty.

PLAN: The patient was seen and evaluated today with Dr. Chidgey. We again reiterated no more narcotics and will continue the Ultram and Neurontin. He does feel a difference with both of these medications. We again stressed the importance of limited use of his left arm to increase the longevity of this prosthesis. He can work on gentle exercises and motion, and a lot of that popping he is feeling is suspected to be scar tissue which will loosen over time. He will always have a 15 pound weight limit restriction for the left upper extremity. He should also avoid situations where he might fall or excessively stress his left arm. We stressed this multiple times today, and the patient stated he understands. Overall, his wife stated that she feels he has made significant improvements, and is much better than he was prior to this last surgery. All questions were answered. We will see him again in three months with pre-clinic x-rays of the left elbow.

Larry K. Chidgey, M.D.

Associate Professor, Hand Surgery

Requested by WHIDDS on 01/07/09 at 10:07 From MD09 Page 1

NL133630

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-07-5730

SHANDS-UP

Clinic N 02/11/02

SHANDS at UF CLINIC

02/11/2002

OSMANSKI, JOSEPH STH#00-57-58-85

Joseph returns today for evaluation status post ulnar nerve neurolysis on 11/01/01. On exam, his incision is well-healed. Sensation is unchanged. X-rays are not obtained. His elbow range of motion is approximately 0 to 120 degrees of flexion, minimal pronation and supination.

Assessment: Status post left ulnar nerve neurolysis following transposition.

Plan: The plan will be to obtain a functional capacity evaluation. This was written today to set permanent impairment. We have indicated, however, that he will be at a 10-pound lifting restriction indefinitely for his left upper extremity due to this total elbow arthroplasty on that side. We will see him back after functional capacity evaluation again to set his permanent impairment grading. Work restrictions were given (again, a 10-pound lifting restriction). The patient was seen and examined by Dr. Chidgey.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Thomas F. Saylor, MD
/357 02/11/2002:02/11/2002 9:58 P
Job ID# 001188532

cc:

Requested by WHIDDS on 01/07/09 at 10:07 From MD09 Page 1

NL1B8640

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-5730

SHANDS-UF

Clinic N 03/22/02

SHANDS at UF CLINIC

OSMANSKI, JOSEPH STH#00-67-58-85

03/22/2002

DIAGNOSIS: Status post left total elbow arthroplasty and left ulnar nerve neurolysis and transposition.

INTERVAL HISTORY: The patient returns today for repeat evaluation following his functional capacity evaluation. We agree with the findings and work recommendations which include a conditioning program as well as teaching techniques to promote good biomechanics. We also agree with them limiting his workload and emphasized that he cannot lift more than 10 or 15 pounds with his left arm due to his total elbow arthroplasty. We will place him at MMI today for his left elbow with a PPI of 14%. This combined with his 6% for his right shoulder gives him a total PPI of 20%.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Daniel A. Worrel, M.D.
DAW/329 03/22/2002:03/26/2002 2:17 P
Job ID# 001232835

cc:

Requested by WHIDDS on 01/07/09 at 10:08 From M009 Page 1

NL1E8541



SHANDS HOSPITAL AND CLINICS

at the University of Florida

OPERATIVE REPORT

OSMANSKI, JOSEPH

#67-58-85

08-23-88

SERVICE: ORTHOPAEDICS	DAYS:	VOUCHER # 1892	I.P.	O.P.
SURGEON: Dr. Chidgey		ASSISTANT: Dr. McCormick		
ANESTHESIOLOGIST: Dr. DePadua		ASSISTANT: Dr. Winston/Racsbler/Fontenot		
PREOPERATIVE DIAGNOSIS: Essex-Lopresti fracture status post radial head excision plus Darrach procedure				
POSTOPERATIVE DIAGNOSIS: Same				
OPERATION PERFORMED: Fusion left distal radial-ulna joint and fusion of proximal radial ulna joint and creation of synostosis with iliac bone graft left radius and ulna				
1. SCRUB: C. Brannan, CST		2. SCRUB: M. Holsbeke		RELIEF:
1. CIRCULATOR: S. Bingham, RN		2. CIRCULATOR: Donovan, RN		RELIEF:
BLOOD LOST:		BLOOD REPLACED:		
FLUID LOST:		FLUID REPLACED:		
SPONGE COUNT yes ☒		SPECIMEN: yes ☐		
CORRECT: no ☐		no: ☒		

SUMMARY OF PROCEDURE: The patient was taken to the Operating Room and after adequate general anesthesia was established, the tourniquet was placed on the upper left arm and the limb prepped and sterily draped. The right hip area was also prepped and sterily draped for an iliac bone graft. The left arm was then exsanguinated with an Esmarch bandage and the tourniquet inflated to 250 mm. of Mercury. The patient had an previous ulnar longitudinal incision over the distal ulna for the previous Darrach procedure. This incision was incorporated into an S-type incision over the dorsal distal forearm. Blunt dissection was carried through the subcutaneous tissue and all superficial veins that could be protected, were retracted out of the way. Blunt dissection was continued down to deep fascia which was split longitudinally. The fourth compartment muscles were retracted radialward and the ulna was identified just on the radial side of the extensor carpi ulnaris. The ulna was also identified between the flexor carpi ulnaris and the extensor carpi ulnaris thus mobilizing the extensor carpi ulnaris such that full access to the excised distal radius was achieved. The fourth and fifth compartment muscles were then retracted radialward and the distal portion of the radius dorsally was exposed subperiosteally along its ulnar border. A small drill was used to make multiple drill holes and an osteotome connecting the drill holes used to create a window in the ulnar side of the radius. The cortical margins of the ulna were then rongueured to reveal cancellous bone and the ulna transposed radialward into the slot in the radius. Two 40 mm. length 3.5 screws were then used to fix the distal ulna to the radius. Attention had been turned slightly more proximally where the dorsal portions of the radius and ulna were exposed. 2 1/2 cm. wide slot was then cut in both the dorsal one-third of the distal ulna and the dorsal one-third of the distal radius to accept an iliac bone cortical cancellous graft.



Page ² OPERATIVE REPORT
SHANDS HOSPITAL AND CLINICS
at the University of Florida

OSMANSKI, JOSEPH
#67-58-85

08-23-88

Attention was then turned to the iliac crest on the right side which had been previously draped sterilely and through an oblique incision overlying the iliac crest, blunt dissection continued down to the deep fascia which was incised and the external musculature from the iliac wing dissected from the iliac wing and a 2½ cm. x 4 cm. corticocancellous graft was harvested from the external table of the iliac wing. A generous supply of cancellous bone was also harvested. A Gelfoam was then placed over the defect in the iliac wing and the deep fascia was closed with interrupted 0-Vicryl, followed by closure of the subcutaneous tissue with 2-0 Vicryl and closure of the skin with staples. A Jackson-Pratt drain had been placed down through a separate stab wound at the hip. Attention was then turned to the forearm and the cortical cancellous bone "plate" was inserted into the slot prepared in the distal radius and ulna. 3.5 mm. screws were then used to secure the dome plate across the radius and ulna. Two were placed into the radius and two into the ulna through the bone graft. A generous supply of cancellous bone was then packed on the cortical cancellous bone "plate" and the distal ulna and radius synostosis site. It should be noted that prior to securing the radius to the ulna, the rotation of the forearm was set at neutral. The tourniquet was then deflated during the harvesting of the bone graft and had been reinflated prior to completing the procedure on the forearm. After the distal forearm procedure had been performed, attention was turned to the proximal forearm. A previous radial incision over the radial head region had been used for the previous radial head excision. This incision was re-entered and blunt dissection carried through the subcutaneous tissue. This incision was re-entered and blunt dissection carried through the subcutaneous tissue. The scar overlying the interval between the inconeus and extensor carpi ulnaris was then entered and the proximal radial region identified. The radial head region was exposed subperiosteally revealing the proximal 1-2 cm. of the proximal radius. The interval between the radius and ulna was cleaned out with a rongeur and cancellous bone exposed on both the ulna notch region as well as the proximal radius. A 3.5 mm. screw was then inserted across the proximal radial and ulna joint and cancellous bone was packed around this synostosis region. Drains had been placed down through separate stab wounds in both proximal and distal forearm wounds and the interval between the inconeus and extensor carpi ulnaris closed with interrupted 4-0 Vicryl followed by closure of the subcutaneous tissue with 4-0 Vicryl and closure of the skin with staples. Attention was then turned to the distal wound which was closed with interrupted subcu 4-0 Vicryl followed by closure of the skin with staples. Sterile dressings were then applied both to the hip and arms and a long arm bulky hand dressing incorporating long arm splints was applied to the arm. The tourniquet was inflated with good vascular status returning to the hand. The patient tolerated the procedure well, was taken to the Recovery Room in stable condition.

LCH
Larry Chidgey, M.D.
Assistant Professor.
Department of Orthopaedics

LC/ss 08-23-88/08-25-88

**SHANDS HOSPITAL**

at the University of Florida
Gainesville, Florida 32610

August 31, 1988

OSMANSKI, JOSEPH

67-58-85

ADMISSION: 08-23-88

DISCHARGE: 08-27-88

DIAGNOSIS:

1. Left Essex-Lopresti fracture.

OPERATIONS/MAJOR PROCEDURES WITH DATES:

1. Left one bone forearm with right iliac crest bone grafting,
08-23-88.

CONSULTATIONS: Physical Therapy.

BRIEF HISTORY: Mr. Osmanski is a 23 year old, right hand dominant white male, presently unemployed (previously a carpenter) who, on December 18, 1987 fell from a ladder approximately 22 feet landing on outstretched both arms. At that time he suffered a right radial head fracture and an Essex-Lopresti fracture on the left. The patient was treated on December 18 with open reduction and internal fixation of the humerus fracture and a radial head excision of the left elbow.

Subsequently the patient developed a ulnar positive wrist on the left which was painful, largely symptomatic and for this the patient underwent Darrach procedure with ipsilateral radial head excision and Darrach procedure. The patient developed an unstable above forearm with proximal migration of the carpus and progressive pain and decreased range of motion. He was admitted for elective radial ulnar synostosis/one bone forearm.

PAST MEDICAL HISTORY: Essentially unremarkable. The patient denies any history of cardiopulmonary, gastrointestinal, renal, endocrine, or hemopoetic diseases. He denies taking any medications at the time of admission.

THE PATIENT IS ALLERGIC TO PENICILLIN.

PHYSICAL EXAMINATION: Examination at the time of admission is essentially within normal limits with the exception of the right forearm. There are well healed scars of the left elbow and wrist, has decreased grip and pinch strength. Range of motion of the elbow is 30-115°, with 45° supination and 60° pronation with marked pain at the extremes of motion. He is significantly swollen over wrist and elbow. There is no evidence of inflammation or infection.

DISCHARGE SUMMARY

at the University of Florida
Gainesville, Florida 32610

OMANSKI, JOSEPH
67-58-85

LABORATORY: Routine preoperative evaluation revealed no
contraindications for surgery.

HOSPITAL COURSE: Therefore on 8-23-88 he was taken to the major Operating Room where under general endotracheal anesthesia he underwent ~~the formation of a~~ one bone forearm to the left upper extremity. Iliac crest bone grafting was utilized. The patient tolerated the procedure well. Estimated blood loss was 300 cc. Total tourniquet time was 151/130. The patient received 1,900 cc of crystalloid intraoperatively.

After routine stabilization in the Recovery Room the patient as returned to the orthopedic ward. There a Physical Therpay consultation was obtained and the patient was instructed in partial weight bearing ambulation. Postoperative drainage was modrate and his wound drain was removed on the second postoperative day. All perioperative antibiotics were discontinued subsequent to this. The patient's only complaint postoperatively was of petsistent pain. His neurovascular exams were normal.

Current medications include Tylox 3 p.o. q 3 hours p.r.n. pain.

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**SHANDS HOSPITAL**

at the University of Florida
Gainesville, Florida 32610

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OMANSKI, JOSEPH
67-58-85

08-31-88

We will see the patient back in the Clinic on 09-02-88 at which time x-rays should be obtained of the forearm. At that time he will be changed from his coaptation splint to a long arm cast.

L. Chidgey
LARRY CHIDGEY, M.D.
Assistant Professor
Department of Orthopaedics

Dictated by: Michael McCormick, M.D.
MTS110 #1456 08-22/08-31-88

REFERRING PHYSICIAN

George Haaf, M.D.
309 S. E. Riverside Avenue
Stuart, FL 34994

DISCHARGE SUMMARY

Osmanski, Joseph Arthur

Sex: M

BD: 09/24/1964

MR#: 00675885

Print this Page.
PT#: 603809323

Oper Note Orthopedic Hand P

Nov 08, 1999

DATE OF SURGERY: 11/08/1999

PREOPERATIVE DIAGNOSIS: Left shoulder pain, possible instability.

POSTOPERATIVE DIAGNOSIS: Left shoulder arthritis.

OPERATION PERFORMED: 1) Left shoulder arthroscopy and synovectomy. 2)
Left shoulder complete bursectomy.

SURGEON: Wright

ASSISTANT: Kiernan

ANESTHESIOLOGIST:

ASSISTANT:

INDICATIONS FOR PROCEDURE: Joseph Osmanski is a gentleman who has had significant problems with his left shoulder consistent with instability. He previously had an arthroscopic shrinkage and Bankart repair. He still has significant pain and feels that he is unstable. It was therefore, felt that evaluation under anesthesia and arthroscopy was indicated. Repair of appropriately disrupted structures would be performed at the same time. The risks, benefits, alternatives and rehab course were fully discussed preoperatively.

PROCEDURE: The patient was placed on the operating room table in a supine position. General endotracheal anesthesia was induced. The patient was then placed in a full beach-chair position. Examination of his left arm under anesthesia showed that he had 45 degrees of external rotation with his arm by his side, 150 degrees of passive elevation. The arm was not dislocatable anteriorly or posteriorly. There was a negative sulcus sign. There was no significant increase in translation of the humeral head on the glenoid. The arm was then sterily prepped and draped. The 4.5 30 degree arthroscope was introduced posteriorly. Using a Weisinger rod, a second portal was then placed above the subscapularis and rotator cuff interval, lateral to the conjoined tendon. Through this, a 4.5 Aggressor meniscal shaver was introduced. Evaluation of the joint showed a large amount of fibrillated and fibrinous material. Using the shaver, this was debrided. There was a moderate to significant synovitis throughout. A synovectomy was performed of the anterior capsule, undersurface of rotator cuff and along the labrum. The biceps anchor was palpated with the shaver and was noted to be stable with no evidence of a SLAP lesion. The anterior labrum was well-attached on the glenoid rim; although it was hypoplastic, it was definitely well-attached and the anterior inferior glenohumeral ligament which, again was hypoplastic, was attached appropriately. There was no real significant large middle glenohumeral ligament. Evaluation of the humeral head showed there was no Hill-Sachs lesion posteriorly. Anteriorly and superiorly, however, there was a 1 cm by 5 mm osteochondral defect all the way down to cortical cancellous bone. The rest of the humeral head - at least the anterior two-thirds of it, was covered with grade II and possibly grade III chondromalacia. The glenoid likewise had chondromalacia grade II at least throughout. There was a negative drive-through sign. Under direct arthroscopic visualization, the humeral head was not dislocatable anteriorly or posteriorly. There was some tendency to it - just slightly inferiorly and anteriorly subluxate, but this would not be considered pathologic. With even significant pressure, I could not get the head to come outside of the labrum. It was, therefore, our feeling that the patient's problem was not instability but was likely secondary to arthritis. The rotator cuff was nicely funneled through its insertion. There was no evidence of undersurface cuff tear after debridement of the synovitis. In the area, the cuff appeared to be totally normal and its

attachment appeared to be totally normal. Therefore, the arthroscope was then placed into the subacromial space. A third portal was then placed laterally, through which the shaver was placed. A significant bursectitis was noted with very hypertrophic globules of synovium. The synovium was removed. The acromial undersurface was palpated. The anterior lateral cord could easily be palpated with the shaver and there was absolutely no hook consistent with having a previous acromioplasty. There was no reason to denude bone again from our standpoint. A complete bursectomy was performed and rotator cuff appeared normal from this superior side. It was our conclusion at the end of the operative procedure that 90+% of the patient's pathology could be attributed to glenohumeral arthritis. The arthroscope was then removed from the joint. The wounds were closed with 4-0 nylon. The wound was dressed with a sterile compressive dressing. The patient had a scapular block postoperatively. The patient was placed in a sling and transferred to the recovery room in stable condition.

Thomas Wright, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Thomas Wright, M.D.
TW/385 11/09/1999:11/09/1999 10:45 A

Shands HealthCare

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Not an Original

OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 02/24/1964 M

EAD SSN: 264-97-6730

SHANDS-ITP

Oper Not 02/17/00

DATE OF SURGERY: 02/17/2000

PREOPERATIVE DIAGNOSIS: Post-traumatic end-stage degenerative joint disease, left elbow.

POSTOPERATIVE DIAGNOSIS: Post-traumatic end-stage degenerative joint disease, left elbow.

OPERATION PERFORMED: Fascia lata interposition arthroplasty, left elbow.

SURGEON: Chidgey

ASSISTANT: Stone

ANESTHESIA: General endotracheal anesthesia.

ANESTHESIOLOGIST:

ASSISTANT:

INDICATIONS FOR SURGERY: Briefly, Joseph Ozanski is a 35-year-old, right-hand dominant gentleman, who sustained an injury of his left forearm and wrist after a fall approximately 30 ft. from a scaffolding. He underwent multiple procedures, including distal ulnar resection and one-bone forearm fusion, and he has continued to progress to severe degenerative joint disease of the left elbow. His pain and stiffness have been severely limiting to his activities of daily living. Upon discussion of risks, benefits, and alternatives to the above procedure, the patient provided informed consent.

DESCRIPTION OF OPERATION: The patient was properly identified and brought into the operating room and placed in the supine position on the operating table, at which time he underwent administration of general endotracheal anesthesia. Following successful administration of general endotracheal anesthesia, the patient's left leg and left upper extremity were prepped with Hibiclens x 3 and then draped in a usual sterile fashion. A sterile tourniquet was then placed on the upper extremity. The left arm was then exsanguinated with an Esmarch graft and tourniquet was inflated to 350 mmHg. A straight posterior incision that was curved medially so as not to cross the posterior aspect of the olecranon, hip was outlined and made with a 10-blade knife, again curving somewhat medially around the tip of the olecranon and then brought back to straight posterior midline. Incision was made approximately 15 to 20 cm in length. Subcutaneous tissue was then bluntly dissected in line with the incision with scissors. Electrocautery was used to obtain hemostasis where necessary. The triceps muscle was identified and the subcutaneous tissue was elevated off of the triceps fascia to its medial border. At the medial aspect of the triceps and the proximal aspect of the wound, the ulnar nerve was identified where it pierces the lateral intermuscular septum and traced distally. Because the

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NL138618

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1954 M

RAD SSN: 264-97-6730

SHANDS-UP

ulnar nerve had been previously transposed, it was embedded in a fair amount of scar tissue, but it had already been transposed anteriorly. Therefore, having taken great care to dissect free the ulnar nerve far enough past the elbow to ensure that it would be elevated safely with the subcutaneous and then periosteal flap, the humerus was approached through the posteromedial interval by elevating the triceps off of the posterior aspect of the humerus and reflecting it laterally. Again, the ulnar nerve and medial tissues were taken medially and protected. Dissection was then carried down to subperiosteal plane, down to the posterior capsule, and the capsule was incised and elevated off of the distal humerus. The dissection was carried down across the posterior aspect of the elbow joint, again by elevating the medial structures off in a subperiosteal plane, including the significantly scarred ligamentous tissues as well. An osteotome was used to remove a sliver of the tip of the olecranon so that the triceps fascia could be taken with this piece of bone laterally. This dissection was aided by extending the incision along the ulna with the knife down through periosteum and the proximal ulna was also exposed in a subperiosteal plane with blunt and sharp dissection using elevators and a 15-blade knife, reflecting the majority of the periosteum with the triceps fascia laterally and the medial periosteum and medial structures medial.

Following exposure of the elbow joints, on its posterior aspect there was evidence there was severe osteophyte formation and loose bodies within the joint, as well as near complete loss of articular cartilage and severe eburnation of bone. Having elevated the ligaments as well in the subperiosteal plane off the lateral side, as well as the scarred ligaments on the medial side, The elbow could not be easily subluxed. A bur was then used to bur down through the eburnated subchondral bone of the distal humerus, creating a barrel-shaped contour of the distal humerus. The severely enlarged portion of the radial head, which had been fused to the ulna due to reactive bone as well as was resected sharply with rongeur and osteotomes. Then, osteotomes and a bur were used to remove the severely eburnated bone from the olecranon articular surface as well.

Following this, the two joint surfaces were evaluated for smoothness of contouring and congruency of fit now that subchondral bone was exposed with bleeding bone via the bur. The size of the distal humerus and olecranon were then measured, and it was felt that a 9 x 25 cm piece of fascia lata was needed for the fascia lata autograft to be used for interposition.

At this time approximately a 20 to 25 cm lateral incision was made on the thigh with a 15-blade knife. Subcutaneous tissue was sharply dissected in line with the incision with a knife down to the fascia lata. A key elevator was used to elevate the subcutaneous tissue, both medially and laterally and anteriorly and posteriorly off of the fascia lata. A 9 x 25 cm rectangular portion of the fascia lata was outlined and then heavy Mayo scissors were used to sharply excise the fascia lata carefully elevating it

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OSMANSKI, JOSEPH ARTHUR

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DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UF

off of the underlying vastus lateralis musculature and fascia. The fascia lata was then removed from the leg after sharp dissection and tagged with sutures for orientation and placed in a saline-soaked gauze on the back table.

This wound was then irrigated. A medium Hemovac drain was placed and the wound was closed in layers with 2-0 Vicryl sutures followed by staples. Attention was now turned back to the left elbow and a drill was used to make three holes from posterior to anterior on both the medial and lateral sides of the distal humerus and these were stepwise brought down along the distal humerus. They were also taken cleanly from posterior to anterior.

0 Ethibond sutures were then used to secure the fascia lata autograft with its mucosal surface facing toward the joint space, and this was wrapped around the distal humerus and secured with the 0 Ethibond sutures, both medially and laterally utilizing three sutures on each side with inverted horizontal mattress sutures, which were placed so that the knots would be buried beneath the fascia.

Following successful suturing of the fascia lata autograft to the distal humerus, the fascia lata was then carried down to the olecranon and laid out such that it would fit appropriately onto the olecranon. A drill bit was then used to create multiple holes in both the anterior portion where the coronoid had been resected of osteophytes. Drill holes were also placed through the posterior aspect of the olecranon as well in the region where it had been debrided of osteophytes also. Three holes were placed anteriorly and three holes were placed posteriorly and the fascia lata was secured with inverted horizontal mattress sutures, burying the knots away from the joint space. Then, 0 Vicryl sutures were used to suture the loose ends of the fascia lata on both the medial and lateral sides, thus further fine-tuning the contouring and fit of the fascia lata autograft.

Following this, the elbow joint was reduced and was taken through full extension to 0 degrees and flexion to 145 degrees with smooth motion. Suture drill holes were then placed through both the lateral aspect of the ulna and the medial aspect of the humeral medial epicondyle and 0 Ethibond sutures were then used to repair the collateral ligaments back down to bone through these bone holes from where they had been elevated in the subperiosteal plane. Again, the elbow was noted to be with satisfactory reduction and taken through full extension to 145 degrees of flexion without any evidence of subluxation or medial lateral instability. 0 Vicryl sutures were then used to close the remainder of the periosteal full-thickness medial and lateral flaps along the olecranon and this was carried up completely closing the interval. Again, the ulnar nerve was observed throughout this time to take great care not to create any tethering of the nerve. The nerve was released more proximally of adherent tissue and a portion of the intermuscular septum was sharply excised to

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OSMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

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remove any possible impingement upon the nerve more proximally as well. A drain had been inserted into the elbow joint prior to closure of the periosteal flaps and capsule.

The wound was then irrigated with antibiotic irrigation solution and the skin was closed in layers with 2-0 Vicryl sutures followed by staples. Sterile dressing was applied to both wounds. A long-arm splint was placed posteriorly on the elbow and upper extremity and was appropriately padded. Prior to application of the splint, the tourniquet was deflated and removed and patient had palpable radial and ulnar pulses with capillary refill less than 2 seconds in all digits.

Patient was extubated in the operating room and taken to the surgical recovery room in good condition.

The plan for this patient was to admit him for pain control and observation of his drains and IV antibiotics postoperatively.

Dr. Larry Chidgey, the attending surgeon, was present and scrubbed throughout all key portions of the surgical procedure and immediately available for opening and closing.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jeffrey D. Stone, M.D.
JDS/417 02/19/2000:02/20/2000 7:56 P

cc:

Requested by WHIDDS on 01/07/09 at 10:06 From M009 Page 4

NL1E8618

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

DISCHARGE SUMMARY

SHANDS at UF

ADMISSION DATE: 02/17/2000

DISCHARGE DATE: 02/19/2000

ADMISSION DIAGNOSIS: (1) Degenerative joint disease, left elbow.

DISCHARGE DIAGNOSIS: (1) Degenerative joint disease, left elbow.

PROCEDURES: (1) Left elbow fascia lata interpositional graft on 2/17/00. CONSULTATIONS: (1) Physical Therapy.

HISTORY AND PHYSICAL: Please see the chart for the complete H&P.

HOSPITAL COURSE: The patient is a 35-year-old white male with a history of left elbow DJD. He was admitted on 2/17/00 following the aforementioned procedure which was performed at Florida Surgical Center on 2/17/00. The patient tolerated the procedure well and was placed on a morphine PCA for pain control until postop day two. He was switched over to oral pain medication at that time and tolerated that well. His Hemovac drain was discontinued with minimal drainage on the day of discharge on postop day two. He had no fevers and was tolerating a regular diet.

DISCHARGE CONDITION: Stable.

DISPOSITION: Home.

DISCHARGE MEDICATIONS: (1) Tylox one to two PO q.4-6h. PRN pain. (2) Oxycodone 5-10 mg PO q.4-6h. PRN breakthrough pain. (3) Clindamycin 600 mg one PO t.i.d. x 1 day.

DISCHARGE INSTRUCTIONS: The patient should notify us for a temperature greater than 35, increased drainage from his wound, pain uncontrolled with pain medication, numbness, tingling or weakness in his extremity. He was given physical therapy for a walking device as directed by PT.

FOLLOW-UP: Follow-up will be with Dr. Chidgey at Hampton Oaks and the Surgery Clinic in two weeks.


Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Jason W. Thackeray, M.D.
JWT/344 02/19/2000:02/20/2000 5:17 P

Shands HealthCare

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Not an Original

OSMANSEI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-5730

SHANDS-UF

Oper Not 09/14/00

DATE OF SURGERY: 09/14/2000

PREOPERATIVE DIAGNOSIS: Left elbow arthritis.

POSTOPERATIVE DIAGNOSIS: Left elbow arthritis.

OPERATION PERFORMED: Left total elbow arthroplasty.

SURGEON: Chidgey.

ASSISTANT:

ANESTHESIOLOGIST:

ASSISTANT:

ANESTHESIA: General.

DESCRIPTION OF PROCEDURE: The patient was taken to the Operating Room. After adequate general anesthesia was established, the arm was prepped and sterilely draped. The limb was exsanguinated and a tourniquet around the upper arm inflated to 250 mmHg. A posterior incision was utilized. The triceps was dissected off of the ulna and kept intact with the forearm fascia. It was dissected subperiosteally off of the tip of the olecranon. The patient had a previous anterior transposition of the ulnar nerve. Therefore, the nerve did not have to be dissected out. The patient had no articular cartilage left on either side of the joint as he had a previous fascial arthroplasty which had failed. There was no sign of any infection. The patient had also had a previous one bone forearm with a radial head excision so the radial head did not have to be dealt with. The ulna was prepared with a power saw and a combination of the reamers to prepare the canal. The trial was then fitted. The saw was then utilized to prepare the distal humerus and the canal reamed; and a trial reduction with the trial implant was carried out and found to be good, lacking only the last 20 degrees from full extension. The ulnar component was then cemented into place. The humeral component was then cemented into place. During the cementing process, there was trouble with the articulating pin. In an effort to try and get the pin articulated properly, the cement hardened sufficiently that it could not be fully seated. Therefore, the humeral component was taken back out and the canal cleaned of the cement. Another attempt was then made filling the humeral canal with cement. At this time, the humeral component seated well with the ulnar component and the pin articulated appropriately. The humeral component was then fully seated in the humerus. Once the cement hardened, the triceps was reattached to the ulna through drill holes utilizing #2 Ethibond suture. It should also be mentioned that the lateral epicondylar area fractured off and had to be secured back down with two K-wires and a figure-of-eight tension band wire. A drain was then placed through a separate stab wound and the wound closed.

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NL1E8627

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Not an Original

OEMANSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

RAD SSN: 264-07-6730

SHANDS-DE

in layers. A sterile dressing was then applied followed by a splint. The patient tolerated the procedure well and was taken to the Recovery Room in stable condition. Good vascular status returned to the hand after tourniquet deflation.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Larry K. Chidgey, M.D.
LKC/344 09/14/2000:09/14/2000 6:10 P

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 2

NL1EB627

SHANDE HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH

00-67-58-85

FSC OPERATIVE REPORT

DATE OF SURGERY: 11/01/2001

PREOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

POSTOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

OPERATION PERFORMED: Left ulnar nerve transposition and neurolysis

SURGEON: Chidgey
ASSISTANT: Gilmore

ANESTHESIOLOGIST:
ASSISTANT:

INDICATIONS FOR PROCEDURE: The patient initially had a cubital tunnel syndrome of the left ulnar nerve. He sustained paresthesias and sensation difficulties in the ulnar distribution of his hand. The initial procedure was a left ulnar nerve transposition. He did return complaining of continued pain and paresthesias about his arm. He had developed a significant amount of scar tissue after multiple surgical procedures to his left elbow. It was deemed he would need a revision of the transposition and likely neurolysis.

DESCRIPTION OF PROCEDURE: The patient was appropriately identified, as well as the extremity was identified. He was taken to the operative suite, and general anesthesia was obtained. Next sterile dressings were applied, along with a sterile tourniquet. The total tourniquet time was approximately 1 hour and 6 minutes. Before the tourniquet was inflated the arm was exsanguinated.

Next the previous scar was identified on the medial ulnar aspect of his left elbow. The incision was made over the previous scar site. It was extended approximately 3 cm proximal and distal from that site. Dissection was then performed down through the skin with a knife in the subcutaneous tissue. Next tenotomies were used to clear some of the scar tissue, and the ulnar nerve was identified distally just underneath the subcutaneous tissue. It was mobilized both distally and proximally across the elbow.

It was noted there was a significant amount of scar tissue on the floor of the nerve, and the nerve was released from the scar tissue with neurolysis. It was determined that instead of dissecting through the abundance and thickness of the scar tissue that it would best serve the ulnar nerve to lie above this tissue with an overlying subcutaneous tissue for cushion. As this layer was sutured over top of the ulnar nerve, it was determined that the ulnar nerve was mobile and free. The rest of the suture line was drawn with 2-

FSC OPERATIVE REPORT

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SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

FSC OPERATIVE REPORT

0 Polysorb. This was done in inverted interrupted fashion. Next skin was stapled. The patient then had sterile dressings applied.

Next the patient was awakened. The tourniquet was deflated, and the patient was taken to the Recovery Room without difficulty. He remained neurovascularly intact postoperatively. He will be admitted to the hospital postoperatively for observation overnight. His pain is under good control with the use of Tylox and morphine.

Dr. Chidgey was present for the entire procedure and participated in the case.



Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Michael D. Gilmore, M.D.
MDG/448 11/01/2001:11/01/2001 10:33 P
Job ID# 001087363

cc:

FSC OPERATIVE REPORT

Shands HealthCare

Confidential

Not an Original

OSMANSKI, JOSEPH ARTHUR

PID# MRN:

DOB: 09/24/1964 M

KAD SSN: 254-92-5730

SHANDS-UP

Oper Not 11/01/01

DATE OF SURGERY: 11/01/2001

OSMANSKI, JOSEPH STH#00-57-58-85

PREOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

POSTOPERATIVE DIAGNOSIS: Left ulnar nerve compression at the elbow with excessive scar formation

OPERATION PERFORMED: Left ulnar nerve transposition and neurolysis

SURGEON: Chidgey
ASSISTANT: Gilmore

ANESTHESIOLOGIST:
ASSISTANT:

INDICATIONS FOR PROCEDURE: The patient initially had a cubital tunnel syndrome of the left ulnar nerve. He sustained paresthesias and sensation difficulties in the ulnar distribution of his hand. The initial procedure was a left ulnar nerve transposition. He did return complaining of continued pain and paresthesias about his arm. He had developed a significant amount of scar tissue after multiple surgical procedures to his left elbow. It was deemed he would need a revision of the transposition and likely neurolysis.

DESCRIPTION OF PROCEDURE: The patient was appropriately identified, as well as the extremity was identified. He was taken to the operative suite, and general anesthesia was obtained. Next sterile dressings were applied, along with a sterile tourniquet. The total tourniquet time was approximately 1 hour and 6 minutes. Before the tourniquet was inflated the arm was exsanguinated.

Next the previous scar was identified on the medial ulnar aspect of his left elbow. The incision was made over the previous scar site. It was extended approximately 3 cm proximal and distal from that site. Dissection was then performed down through the skin with a knife in the subcutaneous tissue. Next tenotomies were used to clear some of the scar tissue, and the ulnar nerve was identified distally just underneath the subcutaneous tissue. It was mobilized both distally and proximally across the elbow.

It was noted there was a significant amount of scar tissue on the floor of the nerve, and the nerve was released from the scar tissue with neurolysis. It was determined that instead of dissecting through the abundance and thickness of the scar tissue that it would best serve the ulnar nerve to lie above this tissue with an overlying subcutaneous tissue for cushion. As this layer was sutured over top of the ulnar nerve, it was determined

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 1

NL1E8636

Shands HealthCare

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Not an Original

OSMAWSKI, JOSEPH ARTHUR

PIDX MRN:

DOB: 09/24/1964 M

EAD SSN: 264-97-6730

SHANDS-UP

that the ulnar nerve was mobile and free. The rest of the suture line was drawn with 2-0 Polysorb. This was done in inverted interrupted fashion. Next skin was stapled. The patient then had sterile dressings applied.

Next the patient was awakened. The tourniquet was deflated, and the patient was taken to the Recovery Room without difficulty. He remained neurovascularly intact postoperatively. He will be admitted to the hospital postoperatively for observation overnight. His pain is under good control with the use of Tylox and morphine.

Dr. Chidgey was present for the entire procedure and participated in the case.

Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Michael D. Gilmore, M.D.
MDG/44811/01/2001:11/01/2001 10:33 P
Job ID# 001087363

cc:

Requested by WHIDDS on 01/07/09 at 10:07 From M009 Page 2

NL1B8536

SHANDS HOSPITAL
at the University of Florida

OSMANSKI, JOSEPH
00-67-58-85

DISCHARGE SUMMARY

SHANDS at UF

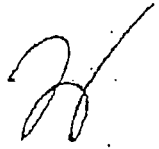
ADMISSION DATE: 11/01/2001
DISCHARGE DATE: 11/02/2001

PRINCIPAL DIAGNOSIS: Ulnar nerve neuritis and neuropathy.

DISCHARGE DIAGNOSIS: Status post revision of an ulnar nerve transposition and neurolysis.

HOSPITAL COURSE: The patient was admitted to the hospital postop for pain control. He was placed on Tylox and OxyContin. He tolerated this well. His pain has been under good control. His arm has remained elevated. He is eating a regular diet without any difficulties.

DISCHARGE INSTRUCTIONS: He will follow up with Dr. Chidgey on 11/09/01. An appointment has already been scheduled. He should call for confirmation. He will also be discharged on Lortab and OxyContin along with clindamycin p.o. for 7 days.



Larry K. Chidgey, M.D.
Associate Professor, Hand Surgery
Dept. of Orthopaedics and Rehabilitation

Dictated by: Michael D. Gilmore, M.D.
MDG/426 11/02/2001:11/02/2001 11:04 A
Job ID# 001088525

cc:

DISCHARGE SUMMARY

MINNESOTA DRIVER FITNESS DETERMINATION

Driver completes this section.

Driver's Name (Last, First, Middle) OSMAN, Joseph Arthur Social Security No. 264-97-4730 Birthdate 9/24/44 Age 42 Sex ☒ M ☐ F ☐ New participant ☐ Re-certification ☐ Follow Up

Address 15761/24 K.A. City, State, Zip Code Pelican SC 29123 Work Tel: (803) 341-1730 Driver License No. 100560508 License Class ☒ A ☐ B ☐ C ☐ D ☐ Other SC

Home Tel: (803) 874-7111 Date of Exam 10/30/06 State of Iss. SC

Driver completes this section, but medical examiner is encouraged to discuss with driver.

YES NO

☐ Any lacerations or injury in last 5 years

☒ Head/Brain injuries, disorders or illnesses

☒ Seizures, epilepsy

☐ Medication

☐ Eye disorders or impaired vision (except corrective lenses)

☐ Ear disorders, loss of hearing or balance

☒ Heart disease or heart attack/other cardiovascular condition

☐ Heart surgery (Valve replacement, bypass, angioplasty, pacemaker)

☒ High blood pressure

☐ Medication

☒ Diabetes

☒ Shortness of breath

YES NO

☐ Lung disease, emphysema, asthma, chronic bronchitis

☐ Kidney disease, dialysis

☐ Liver disease

☐ Digestive problems

☐ Diabetes or other blood sugar disorder

☐ Rheumatoid arthritis

☐ Multiple sclerosis

☐ Mental or psychiatric disorder, e.g., severe depression

☐ Alcoholism

☐ Use of or abuse of alcohol

YES NO

☐ Fainting, dizziness

☐ Sleep disorders, problems in breathing and

☐ Chronic or recurrent chest pain, chest

☐ Stroke or paralysis

☐ Abnormal or impaired hand, arm, foot

☐ Leg, back, toe

☐ Recent injury or disease

☐ Chronic low back pain

☐ Recent, frequent alcohol use

☐ Recent or chronic drug use

For any "YES" answer, indicate onset date, diagnosis, treating physician's name and address, and city and state. (List all conditions, including over-the-counter medications, used regularly or

Country but the above information is complete and true. I understand that inaccurate, false or misleading information may invalidate the examination and my license. Examiner's Certificate

10/30/06

Medical Examiner Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and provide necessary explanations, including over-the-counter medications, while driving. This discussion must be documented below.)

Smoker

TESTING (Medical Examiner completes Section 3 through 7) Name OSMAN, Joseph Arthur

3. OSMAN, Joseph Arthur Born 9/24/44 (Month/Day/Year) in SC (State) or SC (Country). If born in SC, the date of birth must be recorded in each eye.

The use of corrective lenses should be based on the Snellen chart. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually or occasionally does so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Document. If none, not documented.

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/20	20/20	Right Eye 85
Left Eye	20/20	20/20	Left Eye 85
Both Eyes	20/20	20/20	

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☒ Yes ☐ No

Applicant meets visual acuity requirement only when wearing: ☐ Corrective Lenses ☒ Monocular Vision: ☐ Yes ☒ No

Complete next line only if vision testing is done by an Ophthalmologist or Optometrist

Date of Examination 10/30/06 Name of Ophthalmologist or Optometrist (Print) Dr. Joseph Arthur Osman Tel. No. 341-1730 License No./State of Issue SC Signature Dr. Joseph Arthur Osman

4. OSMAN, Joseph Arthur Standards: a) Test: Short perceive forced whispered value a 5 ft. each of utterance hearing test or 20 ft. average hearing test in better ear. b) Check if hearing aid used for tests. c) Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, +14 dB from 120 to 130 Hz, -10 dB for 1,000 Hz, +5 dB for 2,000 Hz. To average, add the results for 3 test frequencies listed and divide by 3.

Numerical readings must be recorded. Standard Examiner should take at least two readings to confirm BP.

a) Record distance from which first heard whispered voice can first be heard.

	Right Ear	Left Ear
Feet	10	10

b) If audiometric test results are recorded, indicate the results in the following table.

Right Ear	Left Ear
500 Hz	500 Hz
1000 Hz	1000 Hz
2000 Hz	2000 Hz
4000 Hz	4000 Hz

5. OSMAN, Joseph Arthur Numerical readings must be recorded. Standard Examiner should take at least two readings to confirm BP.

Blood Pressure	Systolic	Diastolic	Readings	Catagory	Frequency	Next Examination
135	85	140-159/90-99	Stage 1	1 year	1 year if $\leq 140/90$	
160	100	160-179/100-109	Stage 2	One-time certificate for 3 months	One-time certificate for 3 months	
180	110	>180/110	Stage 3	One-time certificate for 3 months	One-time certificate for 3 months	

Driver qualified if $\leq 140/90$

Pulse Rate: ☒ Regular ☐ Irregular

Record Pulse Rate: 60



TRUCKING, INC.

Affirmative Action Program Information

Full Name: Joseph ARTHUR DSMANSKISocial Security Number: 264-97-6730

DATE: _____

As an Equal Opportunity/Affirmative Action employer, government regulations require us to obtain the following information about every employee and applicant for employment. Your completion of this form is voluntary.

This information will not be used in making any hiring or employment decision, and it will be used solely for equal employment opportunity reporting purposes. If you choose not to complete this form, or if you indicate clearly inappropriate information, the form will be completed based on visual or other factors. The information will be kept confidential if it is supplied, except that government officials investigating compliance shall be informed. You will not be adversely affected if you refuse to supply the information.

SEX: MALE ☒ FEMALE ☐BIRTHDATE: 9/24/1964

RACE/ETHNIC CATEGORY

- ☒ 1. WHITE (Not of Hispanic Origin) - All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- ☐ 2. BLACK (Not of Hispanic Origin) - All persons having origins in any of the Black racial groups of Africa.
- ☐ 3. HISPANIC - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- ☐ 4. ASIAN OR PACIFIC ISLANDER - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, Samoa, India, Pakistan, Bhutan and Bangladesh.
- ☐ 5. AMERICAN INDIAN/ALASKAN NATIVE - All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- ☐ 6. OTHER _____

DISABLED

- ☐ YES: 1. You have an impairment (physical or mental) that substantially limits one or more of your major life activities (i.e. any mental or physical function which, if impaired, creates a substantial barrier to employment); or
2. You have a record of such an impairment; or
3. Society regards you as having such an impairment.

☒ NO

VIETNAM ERA VETERAN

- ☐ YES: 1. You served on active duty for more than 180 days, any part of which occurred between August 5, 1964 and May 7, 1975, and you were discharged or released from duty with other than a dishonorable discharge; or
2. You were discharged or released from active duty for a service-connected disability and any part of that duty was performed between August 5, 1964 and May 7, 1975.

☒ NO

SPECIAL DISABLED VETERAN

- ☐ YES: 1. You are entitled to disability compensation under laws administered by the Veterans Administration for a disability rated at 30% or more, or rated at 10 or 20% for veterans with a serious employment handicap; or
2. You were discharged or released from active duty because of a service-connected disability.

☒ NO

- Driver's license or CDL suspension or revocation.
- Arrest or conviction of a DUI/DWI in either a commercial vehicle or private vehicle as set forth in Article I, Section T, "Driver Disqualification."
- Arrest or conviction of any offense involving the use, possession or distribution of a controlled substance (drugs).
- Citation or conviction of hit and run, leaving the scene of an accident or failure to report an accident while in a commercial motor vehicle or a private vehicle.
- A citation or conviction of reckless, negligent or careless driving or other more serious driving offense whether in a commercial motor vehicle or private vehicle.
- Receiving more than 2 moving violation convictions (including DOT log book convictions) in a 1 year period.
- Receiving more than 3 moving violation convictions (including DOT log book convictions) in a 5 year period.

In accordance with Federal Regulations, the Company runs a motor vehicle report on every driver at least once per year. Motor vehicle records are also often run when a driver is involved in a preventable collision and the Executive Safety Committee is considering disciplinary action against the driver.

K. Guidelines for Appropriate Conduct

As an employee driver of Watkins and Shepard, you are expected to accept certain responsibilities and exhibit a high degree of personal integrity at all times.

Certain types of behavior are so serious they may warrant disciplinary action up to and including termination of employment. Behavior and conduct that Watkins and Shepard Trucking, Inc. considers inappropriate include, but are not limited to, the following:

- Major preventable accident as determined by the Executive Safety Committee after a full investigation.
- Tampering with the on-board computer, electronic

equipment, speedograph, service records, governors, and/or fuel pump.

- Unauthorized carrying of passengers. If you pick up a passenger during an emergency, make a notation on your log and notify the Driver Supervisor or Safety Director immediately.
- Failure to comply with controlled substance and alcohol regulations of the FMCSR, including use, impairment, or possession of a controlled substance as defined in the Statement of Procedure and Policy on Controlled Substances and Alcohol Use.
- Failure to report a collision or cargo claim immediately.
- Reporting to work under the influence of alcoholic beverages and/or non-prescribed drugs (while engaged in company business on or off the Company's premises).
- Use of Company assets for personal benefit.
- Unauthorized access to Company records.
- Disregarding safety or security regulations.
- The use of profanity or abusive language.
- The personal possession of firearms, weapons, or explosives on Company property.
- Insubordination or the refusal by a driver to follow management's instructions concerning a job-related matter.
- Fighting or assault on a co-worker or customer.
- Theft, destruction, defacement, or misuse of Company property or of another employee's or customer's property.
- Falsifying or altering any Company record or report, such as an application for employment, a medical report, a production record, a time record, an expense account, an absentee report, or shipping and receiving records.
- Threatening or intimidating co-workers or customers.
- Horseplay, pranks, or practical jokes.
- Engaging in any form of sexual or other harassment.
- Unsatisfactory work performance.
- Failing to maintain confidentiality of Company, staff or

2. C **Function:** Drives 3-axis tractor to hook up to and unhook from trailer and to transport general commodities not limited to furniture, carpet, mattresses, and box springs.
- Methods:** Sits (on air cushioned seat) with brief standing, walking, climbing, and/or stooping to access truck (first step is 16" from the ground; second step is 18"; final step is 13"). Uses reciprocal leg movements to operate foot controls. Uses unilateral lower extremities to operate clutch, brake, and gas pedal (requiring up to 60# exertional force). Bilaterally and/or unilaterally reaches (gear shift is 26" high), handles, fingers, pushes, and pulls controls, steering wheel, and truck doors (requiring negligible exertional force). Hears to monitor vehicular performance and warning signals. Uses visual near through far acuity, depth perception, accommodation for focal length changes, color vision, and field of vision.
- Note:** *See pictures 1-6: Drivers have 14 hours within a 24 hour period to drive 11 hours. Gripping the steering wheel for 11 hours has been noted to be hard on the drivers' hands. The trucks are equipped with power steering and require no more force to turn than a regular vehicle. Drivers get in and out of the cab approximately three to four times when hooking up to the trailer. The clutch is only fully depressed when starting and stopping and is only depressed approximately 3½" when driving. It takes approximately 10 clutch depressions to start. This is called "tapping the clutch". The gear shift takes the same amount of force to push/pull as a gear shift in a vehicle.*
3. O **Function:** Prepares to drive the truck (adjusts electric mirrors, releases parking brake, and adjusts steering wheel).
- Methods:** Sits (air-cushioned seat) while unilaterally and/or bilaterally reaching, handling, fingering, pushing, and/or pulling buttons and knobs (requiring weights and exertional force up to 5#). Uses visual near through far acuity, depth perception, and field of vision.
4. O **Function:** Utilizes Qualcomm to contact and correspond with dispatchers and other main office employees.
- Methods:** Sits (air-cushioned seat). Bilaterally and/or unilaterally reaches, handles, fingers, and lifts Qualcomm (requiring weights up to 3#). Uses visual near acuity.
- Note:** *See picture 5.*
5. O **Function:** Lowers and raises trailer support stands (landing gear) when hooking up and unhooking trailer.
- Methods:** Intermittently stands, walks, and stoops with brief crouching. Unilaterally and/or bilaterally reaches, handles, pushes, and/or pulls 38" high handle (requiring up to 57# exertional force). Hears for air bags to release. Uses visual near through far acuity and depth perception.
- Note:** *See picture 7.*
6. O **Function:** Hooks/unhooks electrical "glad hand connectors" between the cab and trailer
- Methods:** Stands with brief walking and climbing (steps to access glad hand connectors). Bilaterally reaches, handles, pushes, and/or pulls connectors (requiring weights and exertional force up to 5#). Uses visual near through far acuity and color vision.
- Note:** *See picture 8.*

7. ○ Function: Opens and closes trailer doors.
- Methods: Walks with brief climbing (first step is 27" and the step up into the trailer is another 21"). Bilaterally reaches, handles, lifts, pushes, and/or pulls 62" high latch and doors (requiring weights and exertional force up to 3#). Uses visual far acuity and depth perception.
- Note: See picture 11: Some trailers have handles on the back door and others do not.
8. ○ Function: Pulls fifth wheel pin.
- Methods: Crouches with brief walking and stooping. Unilaterally reaches, handles, and pulls fifth wheel puller and/or fifth wheel pin (requiring exertional force up to 100#). Uses visual far acuity and depth perception.
- Note: See picture 12: Pulling the fifth wheel pin is not difficult until it gets cold and grease gets stiff. This job analysis was completed in warm temperatures and, therefore, the exertional force required in cold weather could not be obtained.
9. ○ Function: Chains up as needed.
- Methods: Intermittently stands, walks, stoops, kneels, and crouches (under trailer 43½" high). Bilaterally reaches, handles, lifts, carries, pushes, and/or pulls 3-railer or 1-railer chains (requiring weights and exertional force up to 45#). Uses visual near through far acuity, depth perception, and field of vision.
- Note: See picture 13: Drivers typically only need to use three 1-railer chains weighing 25# each. Drivers are instructed to store the 1-railers on the outside of 3-railers for easy access and to avoid having to remove the 45# chains to get to the 1-railers. Drivers may be able to remove the mudflaps on some of the older trucks, which help the driver get better positioning behind the wheel to put the chains on.
10. ○ Function: Moves tandems on frame rail.
- Methods: Stoops and crouches with brief kneeling. Bilaterally reaches, handles, pushes and/or pulls bar and pin (requiring exertional force up to 146#). Uses visual far acuity and depth perception.
- Note: See picture 10: Some newer trucks are air-assisted and require the driver to only press a button.
11. ○ Function: Utilizes CB to communicate with other truck drivers and dispatchers.
- Methods: Sits (air-cushioned seat). Unilaterally reaches (up to approximately 54" high to reach CB), handles, and fingers CB and controls (requiring negligible weights and exertional force). Talks and hears to exchange information by CB. Uses visual near acuity.
12. ○ Function: Pulls dock plate into place as needed.
- Methods: Stands and walks. Unilaterally and/or bilaterally reaches, handles, lifts, and pulls bar and dock plate (requiring weights and exertional force up to 60#). Uses visual far acuity.
- Note: The dock plates at the delivery sites in Missoula are on hydraulics and require 40# of force.

13. O Function: Delivers merchandise to customers as needed.

Methods: Intermittently stands, walks, climbs, stoops, and crouches. Bilaterally reaches, handles, lifts, carries, pushes, and/or pulls carpet, mattresses, box springs, desks, recliners, marble, and sofas (requiring weights and exertional force up to 180#). Briefly talks and hears to exchange information in person. Uses visual acuity, depth perception, and field of vision.

Note: 80 percent of the time a dock worker is present to assist the driver with unloading. Drivers can call ahead to inform the store they are on their way and will need assistance. However, there are instances when dock workers are not available due to being at lunch, on a delivery, or unloading another truck. When this occurs, the driver can deliver to other locations and return to that one when there is assistance. If assistance is still not available, drivers will occasionally decide to unload with no assistance in order to ensure productivity. Furthermore, there are, on occasion, smaller stores that do not have dock workers or employees available to assist with unloading. Hand carts are not always available at the delivery locations. Drivers can ensure they have a hand cart by bringing their own. Forklifts are only available approximately 1% of the time. Following is a list of weights a driver may encounter:

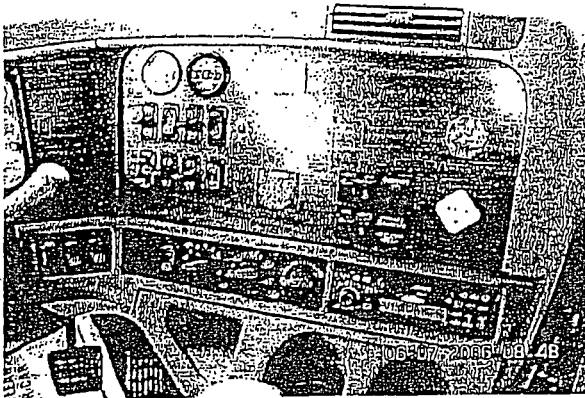
Regular Sofa:	20# of force with hand cart
Sleeper Sofa:	35# of force with hand cart
Love Seat:	40# of force with hand cart
2, 91# recliners:	45# of force with hand cart
Armoire (275#):	50# of force with hand cart
Queen Box Spring:	54#
Twin Mattress:	55#
Recliner:	60# of force with hand cart
Bench:	66#
Marble Top:	70#
Queen Mattress:	84#
Desk (404#) =	90# of force with hand cart
Roll of carpet =	90#
Recliner:	93# to 150#
Office Desk =	180# of force (two people lift the desk onto the hand cart)



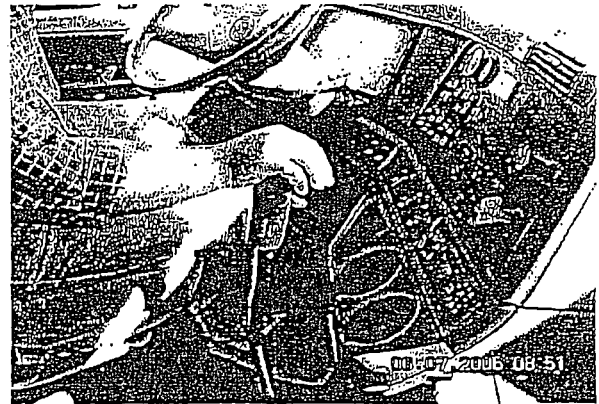
1. Trailer truck cab



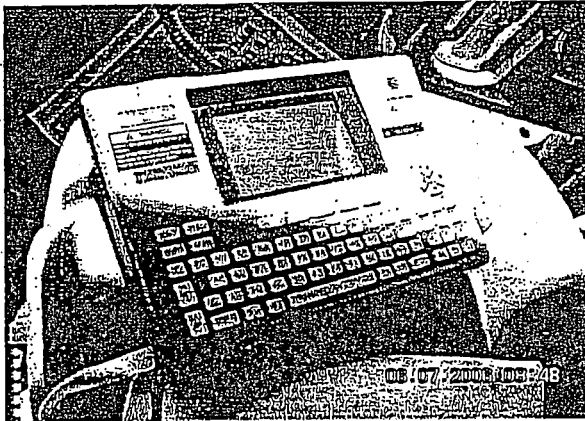
2. Air-cushioned seat, height-adjustable steering wheel, and 26" high gear shift which is no more difficult to push/pull than a car's gear shift.



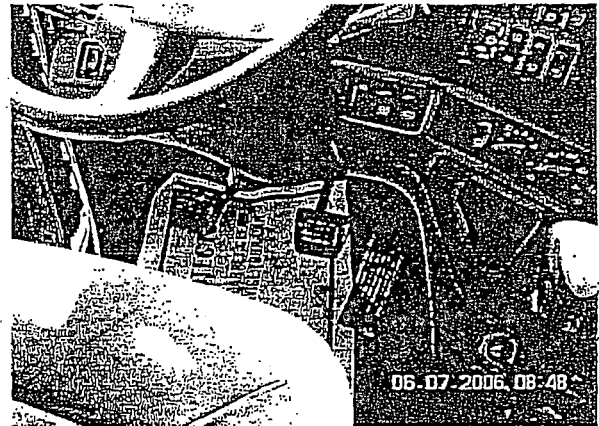
3. Cab controls



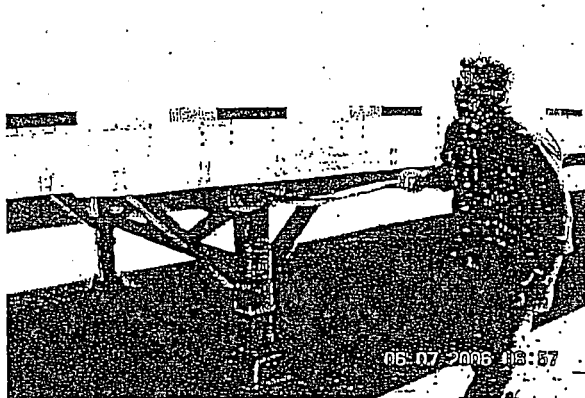
4. Demonstration of driver positioning when driving



5. Qualcomm used to communicate with the home office and dispatch



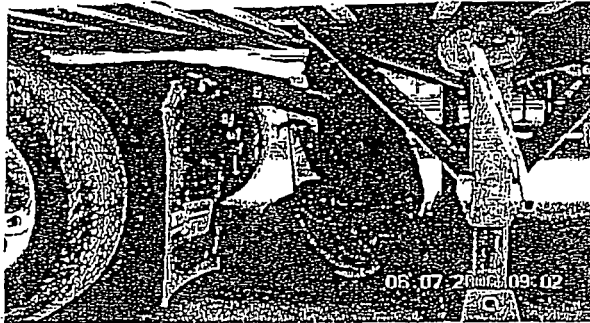
6. Clutch requiring 60# of force to depress to the floor. The clutch is only fully depressed when starting and stopping. Otherwise it is 'tapped', which requires pushing it down approximately 3 1/2"



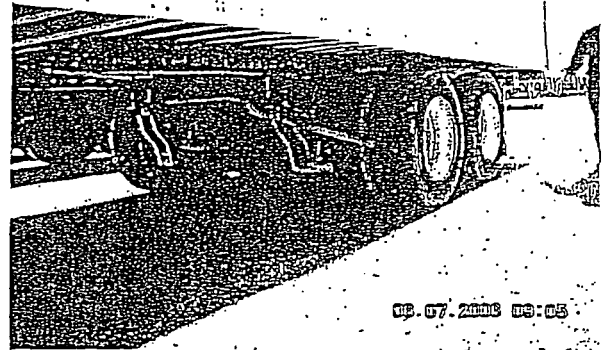
7. Raising trailer legs up and down requiring 40# to 57# of force.



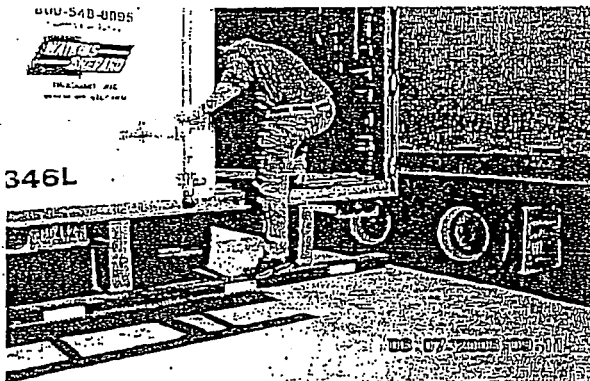
8. Connecting glad hands (electrical connections between the cab and trailer)



9. Ensuring fifth wheel hitch is connected properly



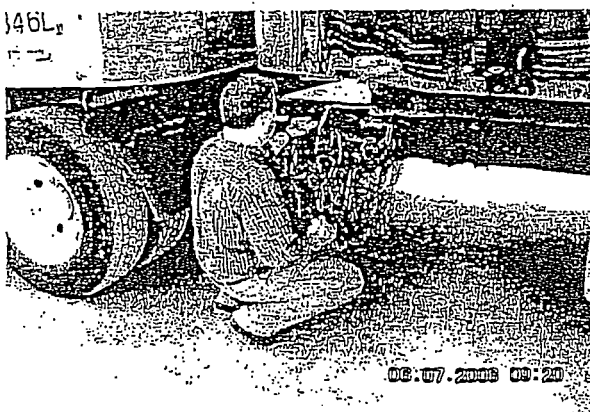
10. Moving tandems: pulls bar and pin located near the rear tires requiring 146# of exertional force



11. Driver climbing into the trailer. The first step is 27" and the second step into the trailer is another 21"



12. Pulling the fifth wheel pin – up to 100# of force



13. 1-rail chains weighing 25# and 3-railers weighing 45#



14. Putting dock plate in place requiring 60# of force



15. Opening hood requiring 40# to 60# of force

PHYSICAL DEMANDS SUMMARY

Sedentary = Exert up to 10# occasionally or negligible force frequently
Light = Exert up to 20# occasionally, up to 10# frequently or negligible force constantly
Medium = Exert up to 50# occasionally, up to 25# frequently or up to 10# constantly
Heavy = Exert up to 100# occasionally, up to 50# frequently or up to 20# constantly
Very Heavy = Exert > 100# occasionally, > 50# frequently or > 20# constantly

Duration of Work Shift: N = none, O = occasionally - up to 33%, F = frequently - up to 66%, C = continuously - >67%

Frequency: Brief = occurs in short duration, Intermittent = occurs at varying intervals, Repetitive = performs tasks in regular cycles

STRENGTH REQUIREMENTS				
Position: Sits, Stands, Walks, Drives (only positions required for this specific job title are included in the following table)				
Activity	Duration	Frequency	Comments	
Sits	C	Repetitive	Air-cushioned seat	
Stands	O	Intermittent	Concrete, asphalt, dirt	
Walks	O	Intermittent	Concrete, asphalt, dirt	
Drives	C	Repetitive	Up to 11 hours	
Maximum Weight / Force: 0 - 10#, 11# - 20#, 21# - 50#, 51# - 100#, > 100#				
Lift	0 - 10#	O	Brief	Qualcomm, CB, glad hands, log book, writing materials
	11# - 20#	O	Brief	Merchandise
	21# - 50#	O	Brief	1-rail chains, 3-rail chains
	51# - 100#	O	Brief – Intermittent	Twin mattress, queen box spring, queen mattress, recliner, bench, carpet, bench, marble
	> 100#	O	Brief	Recliner, desk (up to 180# maximum)
Carry	0 - 10#	O	Brief	Log book, writing materials
	11# - 20#	O	Brief	Merchandise
	21# - 50#	O	Brief	1-rail chains, 3-rail chains
	51# - 100#	O	Brief – Intermittent	Twin mattress, queen box spring, queen mattress, recliner, bench, carpet (up to 90# maximum)
Push	0 - 10#	F	Intermittent	Truck knobs, buttons, controls, hand cart, sofa, and doors
	11# - 20#	O	Brief	Hand cart with merchandise (sofa)
	21# - 50#	O	Brief	Trailer leg crank, tandem bar, truck hood, loaded hand cart (sleeper sofa, love seat, 2- 91# recliners, armoire)
	51# - 100#	O	Brief	Sofa, truck hood, desk
	> 100#	O	Brief	Office desk (up to 180# maximum)

Pull	0 - 10#	F	Intermittent	Truck knobs, buttons, controls, hand cart, and doors
	11# - 20#	O	Brief	Hand cart with merchandise (sofa)
	21# - 50#	O	Brief	Trailer leg crank, tandem bar, truck hood, loaded hand cart (sleeper sofa, love seat, 2- 91# recliners, armoire)
	51# - 100#	O	Brief	Sofa, dock plate, truck hood, fifth wheel pin
	> 100#	O	Brief	Tandem bar (up to 146# maximum)

All Other Physical Demands: CLIMB, BALANCE, STOOP/BEND, KNEEL, CROUCH/SQUAT, CRAWL, REACHES, HANDLES, HAND - ARM CONTROLS, FOOT - LEG CONTROLS, FINGERS, FEELS, TALKS, HEARS, TASTE/SMELL, VISUAL - NEAR ACUITY, FAR ACUITY, DEPTH PERCEPTION, ACCOMMODATION, COLOR, FIELD OF VISION (ALL OTHER PHYSICAL DEMANDS REQUIRED FOR THIS SPECIFIC JOB TITLE ARE INCLUDED IN THE FOLLOWING TABLE)

Activity	Duration	Frequency	Comments
Climb	O	Intermittent	In/out of truck cab; in/out of back of trailer
Stoop/Bend	O	Intermittent	
Kneels	O	Brief	
Crouch/Squat	O	Intermittent	
Crawl	O	Brief	Under trailer
Reaches Vertically Floor - 30"	O	Brief - Intermittent	Ensuring hitch is connected; unhitching hitch; moving tandems; retrieving chains; transporting merchandise (while handling weights and exertional force up to 180#)
31" - 48"	O	Intermittent	Connecting glad hands, dollying trailer legs, opening/closing back door, putting dock plate in place, transporting merchandise (while handling weights and exertional force up to 180#)
49" and Above	O	Brief	Opening/closing cab door; using CB in cab; opening hood; transporting merchandise (while handling weights and exertional force up to 90#)
Reaches Horizontally Body - 20"	C	Repetitive	Driving; connecting trailer; moving tandems; transporting merchandise; using Qualcomm; putting dock plate in place; dollying trailer legs; opening/closing doors (while handling weights and exertional force up to 180#)
21" or More	O	Intermittent	Operating truck cab controls; removing fifth wheel pin; chaining tires (while handling weights and exertional force up to 10#)
Handles	C	Repetitive	
Hand-Arm Controls	F	Intermittent	
Foot-Leg Controls	C	Intermittent - Repetitive	
Fingers	O	Intermittent	
Talks	O	Brief	
Hears	C	Repetitive	
Vision - Near Acuity	O	Brief - Intermittent	
Far Acuity	C	Repetitive	
Depth Perception	C	Repetitive	
Accommodation	O	Intermittent	
Color	O-F	Intermittent	
Field of Vision	C	Repetitive	

Environmental Conditions: EXPOSURE TO WEATHER, ARTIFICIAL - EXTREME COLD, ARTIFICIAL - EXTREME HEAT, ARTIFICIAL - WET &/OR HUMID, NOISE INTENSITY LEVEL (1 - 5), VIBRATION, ATMOSPHERIC IRRITANTS, MOVING PARTS, ELECTRICAL SHOCK/BURN, EXPOSED HEIGHTS, RADIANT ENERGY, EXPLOSIVES, TOXIC/CAUSTIC, OTHER HAZARDS/CONDITIONS CHEMICALS (ENVIRONMENTAL CONDITIONS ENCOUNTERED FOR THIS SPECIFIC JOB TITLE ARE INCLUDED IN THE FOLLOWING TABLE)			
Activity	Duration	Frequency	Comments
Exposure to Weather	O	Intermittent	Seasonal weather and temperature extremes
Noise Intensity Level (1 - 5)	C	(3-4)	Moderate - Loud
Atmospheric Irritants	O	Intermittent	Diesel fumes
Products, Materials, Machines, Tools, Equipment, and Work Aids Utilized			
1-rail tire chains (25#)	3-rail tire chains (45#)	Twin mattress (55#)	
Queen mattress (84#)	Queen box spring (54#)	Sofa sleeper (35# exertion)	
Recliners (93# to 150#)	Carpet (90#)	Tractor trailer	
Hood (40# - 60# exertion)	CB (negligible)	Qualcomm (3#)	
Trailer leg stand crank (56# exertion)	Glad hands (negligible)	Moving tandems (146# exertion)	
Regular sofa (20# exertion)	Love seat (40# exertion)	Armoire (50# exertion)	
Recliner (60# exertion)	Bench (66#)	Marble top (70#)	
Desk (90# exertion)	Office desk (180# exertion)		

General educational development, specific vocational preparation, aptitudes, temperaments, and/or other abilities necessary for average job performance:

Must have good driving record with no restrictions which would prevent transportation of specific types of freight. Must follow standard pre-trip inspection process. Mandatory drug testing. Must perform within the policies and performance expectations of the Company.

Required Licenses and/or Certifications:

Must have a current Class A, Type 1 Commercial Drivers' License, with air brakes endorsement. Van Drivers must have hazardous materials and combination endorsements. Minimum of one year proven Class 8 OTR driving experience; six months experience and driving school; truck driving school and Watkins Shepard training or successfully completed Watkins Shepard driving school.

General Comments:

Must be at least 21 years of age. Reasoning, problem solving, and organizational skills to plan routes and delivery sequences, load/unload freight quickly and safely; work independently; read directions, bills of lading, and road maps; follow directions; interact appropriately with customers; use radio to discuss routes with dispatchers and use cell phone to call customers in event of delivery time changes.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

**APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

Avery B. Wilkerson, Appellate Panel Chairman, Commissioner

WCC File No.: 0818219

JOE OSMANSKI, EMPLOYEE,

APPELLANT,

V.

WATKINS & SHEPARD TRUCKING, INC.,
EMPLOYER, AND ZURICH NORTH AMERICAN
INSURANCE COMPANY, CARRIER,

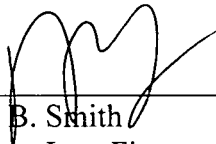
DEFENDANTS,

OF WHOM, ZURICH NORTH AMERICAN
INSURANCE COMPANY, CARRIER, IS THE

RESPONDENT:

CERTIFICATE OF COUNSEL

The undersigned certifies this Record on Appeal contains no material which is irrelevant
to the appeal.



Kevin B. Smith
Hoffman Law Firm
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North Charleston, SC 29406
(843) 769-7077
Attorney for the Appellant

North Charleston, South Carolina

May 9, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Appellate Panel Chairman, Commissioner

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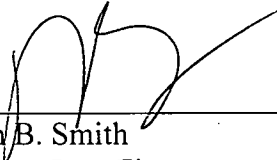
DEFENDANTS,

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RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on May 30, 2012, addressed to the attorneys of record, Jason Lockhart, Esquire, McAngus, Goudelock & Courie, LLC, P.O. Box 12519, Columbia, SC 29211-2519.



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May 30, 2012

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Joe A. Osmanski v. Watkins & Shepard Trucking, Inc., and Zurich North
American Insurance Company
Case No.: 2011196087
SCWCC File No.: 0818219

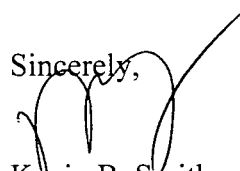
Dear Ms. Gee:

Enclosed please find the original, unbound Record on Appeal in the above-referenced matter, together with fifteen (15) bound copies. I have also included a Proof of Service and ask that you file-stamp this document and return to me in the self-addressed, stamped envelope enclosed for your convenience.

By copy of this letter to Jason Lockhart, we are hereby serving the Defendants/Respondents with a copy of same.

With kind regards, I am

Sincerely,



Kevin B. Smith

KBS/jhd

Enclosures

cc: Joe Osmanski
Jason Lockhart, Esquire
David T. Pearlman, Esquire
Paula Amick, Esquire